

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

CRM-M-50042 of 2022

**Date of Decision: April 26, 2023****Om Parkash Boora****...Petitioner****Versus****State of Haryana and another****...Respondents****CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**

**Present:-** Mr. Rahul Vats, Advocate with Ms. Sonika Garg,  
Advocate for the petitioner.  
Mr. Randhir Singh, Addl. AG, Haryana.

**DEEPAK GUPTA, J.**

Complaint bearing No.NACT/201/2016 (CNR No.HRJNB0-000525-2016) titled “Balwan Versus Om Parkash”, was filed in the Court of learned Judicial Magistrate Ist Class, Safidon to prosecute the accused Om Parkash Boora (petitioner herein) under Section 138 of the Negotiable Instruments Act. Petitioner was declared proclaimed person on 02.07.2018 and on the direction of the Court, FIR No.184 dated 09.08.2022 under Section 174-A IPC was registered against him at Police Station City Safidon, District Jind. By way of this petition, prayer is made to quash the said FIR, besides the order dated 05.09.2022 framing the charges and the subsequent proceedings.

2. Although quashing of the FIR in question and subsequent proceedings has been sought on various grounds as set out in the petition, but before this Court, the only plea raised by learned counsel for the petitioner is that Court is debarred from taking cognizance of the offence in question because of bar of limitation placed by Section 468 of Cr.P.C. Attention is drawn towards the fact that though the impugned order,

declaring the petitioner as proclaimed person was passed on 02.07.2018 but the FIR has been registered on 09.08.2022 i.e. beyond period of three years. Attention is then drawn towards Section 468 Cr.P.C, as per which three years' period is provided for taking cognizance of an offence, which is punishable up to three years imprisonment.

3. Factual position is not disputed by learned State Counsel, though prayer made to quash the FIR is opposed.

4. Having considered the submissions of both the sides, I find merit in the plea raised by learned counsel for the petitioner.

5. Section 174-A of the IPC reads as under:-

***“Section 174A in The Indian Penal Code***

***174A. Non-appearance in response to a proclamation under section 82 of Act 2 of 1974.—Whoever fails to appear at the specified place and the specified time as required by a proclamation published under sub-section(1) of section 82 of the Code of Criminal Procedure, 1973 shall be punished with imprisonment for a term which may extend to three years or with fine or with both, and where a declaration has been made under sub-section (4) of that section pronouncing him as a proclaimed offender, he shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.”***

6. As is evident from the above-said provision, Section 174A IPC consists of two parts. In case, proclamation was published under sub-section (1) of Section 82 Cr.P.C and the accused fails to appear pursuant to that proclamation, then he is liable to be punished for a term which may extend to three years or fine or with both. However, in case

the declaration was made under sub-section (4) of Section 82 Cr.P.C declaring a person as proclaimed offender, then he is liable to be punished with imprisonment for a term, which may extend to seven years and also with fine.

7. Section 82 Cr.P.C reads as under:-

***82. Proclamation for person absconding.***

*(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.*

*(2) & (3) xxxxxxxxxxxxxxxx (not relevant).*

*(4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.*

*(5) xxxxxxxxxxxxxxxx (not relevant)."*

8. As will be evident from the above-said provision, it is only in respect of offences specified under sub-section(4) of Section 82 Cr.P.C that when proclamation is published under sub-Section (1) in respect of a

person accused of an offence, that he can be pronounced as proclaimed offender in case he fails to appear at the specified place and time. If the concerned person is involved in any offence, other than specified sub-section (4) of Section 82 Cr.P.C., then declaration to pronounce him as a proclaimed offender cannot be made.

9. Section 138 of Negotiable Instruments Act does not find mention in sub-Section (4) of Section 82 Cr.P.C., and, therefore, if a person accused of committing an offence punishable under Section 138 of the Negotiable Instruments Act and against whom proclamation has been issued under Section 82 (1) Cr.P.C, fails to appear, he will be liable to be punished under the first part of Section 174A IPC, i.e. up to three years' imprisonment or with fine or with both; and not under second part of Section 174A IPC.

10. Further, Section 468 of the Code of Criminal Procedure reads as under:-

***“Bar to taking cognizance after lapse of the period of limitation***

*(1) Except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in Sub-Section (2), after the expiry of the period of limitation.*

*(2) The period of limitation shall be-*

*(a) six months, if the offence is punishable with fine only;*

*(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;*

*(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not*

*exceeding three years.*

*(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.”*

11. It is clear that a Court cannot take cognizance of an offence of the category specified in sub-Section (2) after the expiry of the period of limitation. The period of limitation for taking cognizance of an offence, punishable with the imprisonment for a term exceeding one year but not exceeding three years, is three years. Thus, cognizance of an offence punishable under first part of Section 174A IPC cannot be taken after the expiry of three years.

12. In the present case, though the petitioner was declared proclaimed person vide order dated 02.07.2018 but the FIR in question under Section 174A IPC had been registered on 09.08.2022 i.e. much beyond the period of limitation of three years and so, obviously, the Court will be debarred from taking cognizance of such an offence under Section 174A IPC.

13. Consequent to the above discussion, this petition is hereby accepted. FIR No.184 dated 09.08.2022 registered at Police Station City Safidon, District Jind under Section 174-A IPC and all the subsequent proceedings arising therefrom, are hereby quashed.

**April 26, 2023**

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**(DEEPAK GUPTA)**  
**JUDGE**

Whether reasoned/speaking: Yes/No

Whether reportable: Yes/No