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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: September 21, 2023

Vipin Kumar

....Petitioner

versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Dhruv Gupta, Advocate for petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

ARUN MONGA, J. (ORAL)

Petition herein is under section 482 Code of Criminal Procedure for quashing the impugned order dated 20.03.2023 whereby petitioner has been declared a proclaimed person by learned Judicial Magistrate 1st Class, District Ambala, in a complaint case dated 14.11.2019 bearing No.COMA/3552/2019, under Section 138 of the Negotiable Instruments Act, 1881 (for short 'NI Act') titled "Gurwinder Singh versus Vipin Kumar etc.", and consequent FIR No.493 dated 01.09.2023, under Section 174-A of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station Ambala City, District Ambala.

2. Vide order dated 17.01.2020, petitioner was summoned to face trial. Vide order dated 09.09.2021, bailable warrants were issued against the petitioner, which were stated as not received back, served or unserved. Vide order dated 04.02.2022, fresh bailable warrants were issued against the petitioner. Thereafter, warrants of arrest were issued vide order dated 20.05.2022. Subsequently, vide order dated 19.12.2022, proceedings under Section 82 Cr. P.C. were initiated, and vide impugned order dated 20.03.2023, petitioner was declared as a proclaimed person. FIR in question was also got registered against him.

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3. Learned counsel contends that petitioner was never served with any summons or warrants of arrest. In the absence of proper service of warrants of arrest or summons on the petitioner, he cannot be declared as a proclaimed person/ offender.

3.1. Learned counsel further contends that vide order dated 25.08.2023 (Annexure P-5), respondent No.2/ complainant already withdrew the complaint under Section 138 of NI Act. Learned counsel contends that since complaint itself has been dismissed as withdrawn, no purpose would be served by keeping proceedings alive *qua* proclamation as well as FIR under Section 174-A of IPC against the petitioner.

4. Notice of motion.

5. On advance service of copy of petition, learned State counsel appears and accepts notice on behalf of respondent No.1-State of Haryana. She opposes the petition and submits that order declaring petitioner as a proclaimed person has rightly been passed. Offence under Section 174-A IPC is independent of the main case.

5.1. Given the nature of order being passed, there is no necessity to issue notice to respondent No.2, as no serious prejudice would be caused to him. Notice to respondent No.2 is thus dispensed with.

6. I have heard learned counsel for the parties and gone through the case file.

7. The complaint against the petitioner was for an offence under section 138 of the Act.

8. Vide order dated 20.03.2023 passed by learned Judicial Magistrate Ist Class, Ambala, recorded its satisfaction that the accused-petitioner had absconded, declared him as a proclaimed persons and directed that intimation be sent to the concerned police station to initiate proceedings against him under section 174-A of IPC. Aforesaid FIR was registered, alleging that the Court had declared the petitioner proclaimed person. In my opinion, the order for registering an FIR and the FIR so registered are not legal.

9. Reference may be had to judgment rendered by me in Pardeep Kumar versus State of Punjab and another wherein I have, *inter alia*, opined that the offence under Section 174-A of IPC falls within the scope Section 195(1) (a)(i) of the Code *ibid*

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which provides that no Court shall take cognizance of any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. Further, it was held that if after declaring an individual as a “proclaimed person” or “proclaimed offender,” the Court decides to proceed against him for an offence under section 174-A of IPC, it has to institute a formal written complaint in the competent jurisdictional court and that the order passed for registering FIR and the FIR so registered in such case were not sustainable in law.

10. In the present case, proceedings under Section 174-A of IPC were not initiated as per guidelines and ratio laid down in Pardeep Kumar judgment *ibid*. As an upshot, it is held that the judgment and order dated 20.03.2023 passed by learned Judicial Magistrate Ist Class, Ambala is not sustainable on that ground alone. Neither there is any compliance of the relevant statutory requirements in letter and spirit, for declaring the petitioner a proclaimed person/offender, nor is the impugned judgment of trial court in terms of the guidelines laid in Pardeep Kumar judgment. For the sake of brevity, the guidelines laid down in Pardeep Kumar judgment are not being reproduced and the same may be referred therefrom. The requisite application of mind by the Court while invoking criminal liability of the petitioner for offence under Section 174-A of IPC is also lacking herein. The said initial order dated 20.03.2023 itself which formed the basis of the registration of the FIR under Section 174-A of IPC against the petitioner and subsequent trial are bad in law.

11. As submitted by the learned counsel for the petitioner, complaint under section 138 of the Act was withdrawn vide order dated 25.08.2023. On withdrawal of the complaint and termination of its proceedings against the petitioner, the requirement for his appearance in Court also came to an end.

12. Considering the aforesaid facts and circumstances, I am of the opinion that the impugned order, FIR and all subsequent proceedings emanating therefrom are liable to be quashed.

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13. Accordingly, the order dated 20.03.2023 is hereby set aside and FIR No.493 dated 01.09.2023, under Section 174-A of the IPC, registered at Police Station Ambala City, District Ambala along with all consequential proceedings arising therefrom *qua* petitioner, are quashed.

14. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

September 21, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No