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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CRM-M-51917 OF 2023 (O&M)
DATE OF DECISION : 13.10.2023****Rajpal****...Petitioner****Versus****State of Haryana and another****...Respondents****CORAM : HON'BLE MR. JUSTICE ARUN MONGA**Present : Mr. R. D. Gupta, Advocate,
For the petitioner.

Ms. Svaneel Jaswal, Addl. AG, Haryana.

Mr. Viresh Dahiya, Advocate,
For respondent No.2.**ARUN MONGA, J. (ORAL)****CRM-43565-2023**

Allowed, as prayed for.

MAIN CASE

The instant petition has been filed under Section 482 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking quashing of FIR No.0002 dated 08.02.2023 registered under Section 174-A of the Indian Penal Code, 1860 (for short 'IPC') at Police Station Women, District Sonipat and all subsequent proceedings emanating therefrom.

2. Pledged case of petitioner is that on 24.08.2016, FIR No.0070/2016 was got registered against him and his relative by his ex-wife at Women Police Station, District Sonipat under Sections 323, 354, 406, 498-A, 506 read with Section 34 IPC. During the proceedings, petitioner also filed a divorce petition bearing No. HMA-176 of 2016 under Section 13 of Hindu Marriage Act and he was granted ex parte decree of divorce vide judgment dated 02.02.2018. After obtaining *ex parte* divorce, petitioner got remarried. He

is a professional driver and due to his professional commitments, he could not join the proceedings in above mentioned FIR.

2.1 Vide order dated 19.08.2023 (Annexure P-4), petitioner was granted interim bail by learned Additional Sessions Judge, Sonipat. Thereafter, petitioner filed application for anticipatory bail under Section 438 Cr.P.C and vide order dated 27.09.2023 (Annexure P-5), he was granted bail.

2.2 Vide order dated 12.12.2022 (Annexure P-1), petitioner was declared a proclaimed offender and proceedings under Section 83 of Cr.P.C were initiated against him. Pursuant to said order, instant FIR has been registered against the petitioner.

3. Learned counsel for the petitioner contends that with the intervention of respectable, parties have settled the matter amicably. Compromise deed is annexed as Annexure P-6. He further contends that no useful purpose would be served by keeping the present proceedings under Section 174-A of IPC, pending.

4. Learned State counsel opposes the prayer made in the petition and submits that order declaring petitioner as a proclaimed person has rightly been passed. She further submits that the offence under Section 174-A IPC is independent of the main case.

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

6. Arguments heard.

7. Vide order dated 12.12.2022 (Annexure P-1) passed by learned Judicial Magistrate First Class, Sonapat, recorded its satisfaction that the accused-petitioner had absconded, declared him as a proclaimed person 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 thus

registered. In my opinion, the order for registering an FIR itself is not sustainable and fatal to the FIR for the reasons stated hereinafter.

8. Reference may be had to judgment rendered by me in ***Pardeep Kumar versus State of Punjab and another¹*** passed in ***CRM-M-41656-2023 (O&M) decided on 23.08.2023*** 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* 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.

9. 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 order dated 11.07.2023 passed by learned Magistrate 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 11.07.2023 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.

10. As submitted by the learned counsel for the petitioner, since the parties have amicably settled the dispute, the requirement for his appearance in Court also came to an end.

11. 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.

12. Accordingly, the order dated 12.12.2022 (Annexure P-1) is hereby set-aside and FIR bearing No.0002 dated 08.02.2023 registered under Section 174-A IPC at Police Station Women, District Sonipat, along with all consequential proceedings arising therefrom against the petitioner, are quashed.

13. Petition is allowed accordingly.

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

OCTOBER 13, 2023
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No