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135 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-53271-2023

Date of Decision: 19.10.2023

Rakesh Kumar Dhiman

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Ajnikant Upadhyay, Advocate,
 for the petitioner.

 Mr. Dhruv Dayal, Additional A.G., Punjab.

ARUN MONGA, J. (ORAL)

1. The instant petition has been filed under Section 482 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') for quashing of order dated 16.07.2022 (Annexure P-2) passed by learned Sub-Divisional Judicial Magistrate, Moonak, whereby petitioner was declared as a proclaimed person in complaint case No.NACT-129 of 11.11.2020, under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act'), as well as quashing of the FIR bearing No.23 dated 04.03.2023 (Annexure P-4), registered under Section 174-A of the Indian Penal Code, 1860 (for short 'IPC'), at Police Station, Moonak, District Sangrur, and all subsequent proceedings emanating therefrom.

2. Learned counsel for the petitioner contends that matter stands settled as entire cheque amount has been paid to the complainant by the petitioner and complaint case under Section 138 of the Act has also been

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withdrawn vide order dated 11.09.2023 (Annexure P-5) by the complainant. He further contends that no useful purpose would be served by keeping the present proceedings under Section 174-A of IPC, pending.

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

4. 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.

5. Arguments heard.

6. The complaint against the petitioner was for an offence under Section 138 of the Act.

7. Vide order dated 16.07.2022 (Annexure P-2) passed by learned Sub-Divisional Judicial Magistrate, Moonak, 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 another*** 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)

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(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 judgment and orders dated 16.07.2022 passed by the 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 16.07.2022 itself which formed the basis of the registration of the FIR

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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, the entire cheque amount was paid to the complainant and the complaint under section 138 of the Act was withdrawn vide order dated 11.09.2023 (Annexure P-5). On withdrawal of the complaint and termination of it's proceedings against the petitioner, 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 16.07.2022 (Annexure P-2) is hereby set aside and FIR bearing No.23 dated 04.03.2023 (Annexure P-4), registered under Section 174-A IPC at Police Station, Moonak, District Sangrur, 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.

(ARUN MONGA)
JUDGE

19.10.2023
adhikari

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No