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134 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-53268-2023

Date of Decision: 19.10.2023

Kuldeep Kumar

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Shakti Mehta, 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 05.08.2023 (Annexure P-7) passed by learned Judicial Magistrate Ist Class, S.A.S. Nagar, in a complaint filed by respondent No.2 under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act'), in complaint case bearing CIS No.NACT-687 of 2021 titled as 'Kulvinder Singh Vs. Kuldeep Singh' (Annexure P-1), whereby the trial Court declared the petitioner proclaimed offender in the proceedings arising out of criminal complaint under Section 138 of Negotiable Instrument Act, 1881.

2. Learned counsel for the petitioner submits that the petitioner was granted bail vide order dated 28.04.2022 and thereafter, he was regularly appearing before learned trial Court in complaint case. He further submits that on 04.01.2023, the petitioner made a statement before the trial

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Court that both the parties have settled their dispute and he will pay the entire amount to respondent No.2 within one month and the case was adjourned to 06.02.2023 for making the entire payment. Thereafter, the petitioner made a part payment of Rs.3 lakhs in cash to respondent No.2 and requested him to make the balance amount within four weeks. On this, respondent No.2 assured the petitioner that he will withdraw his complaint on the next date. On 06.02.2023, the petitioner could not appear before the trial Court as he was informed by his counsel that his appearance is not necessary on the next date of hearing. As a result, the bail of the petitioner was cancelled and bonds were forfeited to the State and non-bailable warrants were also issued against him. Non-appearance of the petitioner before the trial Court was neither intentional nor deliberate. The petitioner is not intending to avoid the process of Court. Rather, he undertakes to appear before the Court below regularly. Hence, the petitioner deserves to be protected against his arrest.

3. On advance service of petition, learned State counsel appears and opposes the prayer made in the petition and submits that order declaring petitioner as a proclaimed person has rightly been passed.

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.

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

7. Vide order dated 05.08.2023 (Annexure P-7) passed by learned Judicial Magistrate Ist Class, SAS Nagar, 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 for registration of the FIR against the petitioner-accused under the relevant provision of law.

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) (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.

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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 05.08.2023 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 05.08.2023 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. In the premise, impugned order dated 05.08.2023 (Annexure P-7) cannot be sustained and same is set aside. Petitioner be released on personal bond on his causing appearance before the Court below within three weeks from today, on furnishing bail bonds to its satisfaction. Petitioner shall join proceedings before learned Court below and shall continue to appear without default during pendency of trial. Additionally, in case his arrest is required to be caused, the petitioner shall be released on

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bail by the Arresting Officer, on furnishing adequate bail and surety bonds to his/her satisfaction.

11 However, it is made clear that any observations and/or submissions noted herein above shall not have any effect on merits of the case as the same are for the limited purpose of hearing the instant petition alone and learned Court below shall proceed without being influenced with this order.

12. Petition is accordingly disposed of.

13. 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