

130 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH
CRM-M-3392-2024 (O&M)
Date of Decision: 22.01.2024

ROOPAM SHARMA

...Petitioner

V/S

STATE OF PUNJAB

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: None.

HARPREET SINGH BRAR J. (Oral)

1. This petition has been filed under Section 482 of the Code of Criminal Procedure seeking quashing of the FIR No. 278 dated 22.09.2022 registered under Section 174-A of Indian Penal Code at Police Station Phillaur, District Jalandhar, Rural (Annexure P-1) along with consequential proceedings arising therefrom, as the complaint case No. NACT-313 of 2019 has been withdrawn.

2. In view of the resolution passed by Punjab & Haryana High Court Bar Association, there is no representation on behalf of the parties, however, pleadings of the case would indicate that petitioner was accused of offence under Section 138 of Negotiable Instruments Act in case titled as **Neha Kalia Vs. Roopam Singh** filed vide case No. NACT-313-2018 and the same was pending before the SDJM, Phillaur. The petitioner was declared as proclaimed offender on account of non-appearance before the trial Court on 19.03.2022 and the learned trial Court also directed the SHO of Police Station Phillaur, District Jalandhar Commissionerate to register FIR(supra). The complainant has appeared before the trial Court and has withdrawn the complaint filed under Section 138 of Negotiable Instruments

Act against the petitioner vide order dated 13.08.2024 (Annexure P-3) passed by the Presiding Officer, Lok Adalat, Phillaur. Learned counsel further contends that the main offence, on the basis of which the FIR(supra) has been registered, stands withdrawn by the complainant, as she has already received the cheque amount from the petitioner to her satisfaction.

4. After perusing the record and pleadings, it transpires that once the main complaint under Section 138 of the NI Act, has been withdrawn by the complainant against the petitioner, the proceedings against the petitioner arising out of FIR(supra) under Section 174-A of IPC, cannot sustain either. Moreover, in view of the provisions contained under Section 195 of Cr.P.C., no Court can take cognizance of any offence punishable under Section 172 to 188 of the Indian Penal Code, except on the complaint in writing of the public servant concerned. In the considered opinion of this Court, order passed by the concerned Jurisdictional Magistrate and the registration of the FIR under Section 174-A by the Jurisdictional Police Officer, is in violation of the procedure under Section 195 of Cr.P.C. Reliance in this regard can be placed upon the judgment passed by Co-ordinate Bench of this Court in CRM-M-41656-2023 decided on 23.08.2023 titled as **Pardeep Kumar Vs. State of Punjab and Another**. A perusal of the record clearly indicates that even before declaring the petitioner as proclaimed person, the procedure as provided under Section 82 of Cr.P.C. has not been followed. The effective service of the petitioner before passing of the impugned order is debatable.

5. This Court in the judgment passed in **Major Singh @ Major Vs. State of Punjab 2023 (3) RCR (Criminal) 406; 2023 (2) Law Herald 1506** has held that the Court is first required to record its satisfaction before issuance of process under Section 82 Cr.P.C. and non-recording of the

satisfaction itself makes such order suffering from incurable illegality. In the judgment passed by this Court in *Sonu vs. State of Haryana 2021 (1) RCR (Cri.) 319*, it has been held that the conditions specified in Section 82 (2) Cr.P.C. for the publication of a proclamation against an absconder are mandatory. Any non-compliance therewith cannot be cured as an ‘irregularity’ and renders the proclamation as nullity. Once the impugned order passed under Section 82 Cr.P.C. is found to be suffering from incurable illegality, the FIR registered on the basis of the same under Section 174A IPC would not survive either.

6. In view of the discussion made hereinabove, the present petition is allowed and the impugned FIR No. 278 dated 22.09.2022 registered under Section 174-A of Indian Penal Code at Police Station Phillaur, District Jalandhar, Rural (Annexure P-1) along with consequential proceedings arising therefrom is hereby quashed qua the petitioner only.

22.01.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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