

240

2024:PHHC: 010943

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRR-2819-2018
DECIDED ON: 24.01.2024

AMIT KUMAR

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Vivek Aggarwal, Advocate for
Mr. Vivek K. Thakur, Advocate
for the petitioner.

Mr. Pawan Kumar Jhanda, DAG, Haryana.

SANDEEP MOUDGIL, J

1. The instant revision petition has been filed against the judgment dated 18.08.2018 passed by Additional Sessions Judge, Karnal, whereby, an appeal of the appellant-Amit Kumar (petitioner-herein) filed against the judgment of conviction dated 04.06.2015 and order of sentence dated 05.06.2015 passed by the Court of Additional Chief Judicial Magistrate, Karnal, in criminal case bearing FIR No. 787, dated 12.11.2014, under Section 174-A of the Indian Penal Code, 1860 (for short 'IPC') was dismissed.

2. Brief facts necessary for the disposal of the present revision petition are that on 12.11.2014, P/SI Raj Pal along-with ASI Kuldeep and ASI Rajbir, was present at Pingli Chowk in search of the petitioner, who is

was declared as proclaimed offender in case FIR No. 358, dated 10.08.2009, under Section 7, 10 and 55 of Essential Commodities Act, registered at Police Station Sadar, Karnal and an information was received that the proclaimed offender, in whose search the police party was, is confined in District Jail, Karnal and has surrendered in the Court.

3. On the basis formal FIR was registered against the petitioner and was arrested on 14.11.2014 in this case. On completion of investigation, challan was presented before the Court of Illaqa Magistrate.

4. Charges were framed. Trial was conducted. On the completion of trial, accused-Amit Kumar (petitioner-herein) was held guilty for the offence punishable under Section 174-A Part-II IPC vide judgment of conviction dated 04.06.2015 and sentenced thereunder by learned trial Court vide order of sentence dated 05.06.2015. Thereafter, he preferred an appeal against the afore-said judgment of conviction and order of sentence passed by learned trial Court, which was dismissed by Additional Sessions Judge, Karnal vide impugned judgment dated 18.08.2018, which necessitated to file the instant revision petition.

5. Notice of motion was issued to respondent-State way back in the year 2018.

6. It has been contended by learned counsel for the petitioner that there is an inherent legal defect in the case of prosecution of which both the Courts below have failed to take notice and, hence, the impugned judgments as well as the order under challenge in this revision petition are not tenable. It is further contended that offence in question under Section 174-A, IPC is embodied in Chapter X of the IPC. He also contended that as per provisions of Section 195 Cr.P.C., no Court can take cognizance of

the offences falling under Sections 172 to 178 (Chapter X of IPC) except on the complaint in writing of the Court concerned or by such officer authorized to do so in its behalf.

7. The relevant part of provision of Section 195 Cr.P.C., is detailed as under:-

“(I) No Court shall take cognizance-
(a)(i) of any offence punishable under Sections 172 to 188
(both inclusive of the Indian Penal Code (45 of 1860),
XXXXX XXXXX XXXXX XXXXX
[except on the complaint in writing of that Court or by such
officer of the Court as that Court may authorize in writing in
this behalf, or of some other Court to which that Court is
subordinate].

8. Admittedly, the present in in hand, no complaint in writing has been sent by the Court or by any of its officers authorized to do so of whose order has allegedly been disobeyed by the accused (petitioner- herein).

9. Reliance can be placed upon the judgment of the Apex Court in the case of **“Daulat Ram vs. State of Punjab; AIR 1962 Supreme Court 1206 (Full Bench);**

In this case the accused was tried for the offence under Section 182, IPC. Report was made to Tehsildar with a view to take action against the accused which was found false. Tehsildar did not move any complaint as required under Section 195, Cr.P.C., for taking action against the accused. It was held that Section 195, Cr.P.C., contemplates that a complaint must be in writing by the public servant concerned. The cognizance of the case was held to be wrongly assumed by the Court, there being no complaint in writing of public servant namely Tehsildar. The trial

was thus without jurisdiction *ab-initio* and the conviction cannot be maintained. The appeal was allowed.

10. The principles laid down in this case law were further followed by the Apex Court in another subsequent case law titled as “C. Muniappan & Others vs. State of Tamil Nadu”, 2010 AIR (SC) 3718.

After discussing various case laws on the point in issue, the Apex Court further laid down as under:-

XXXX

"the law can be summarised to the effect that there must be a complaint by the public servant whose lawful order has not been complied with. The complaint must be in writing. The provisions of Section 195, Criminal Procedure Code, are mandatory. Non-compliance of it would vitiate the prosecution and all other consequential orders. The Court cannot assume the cognizance of the case without such complaint. In the absence of such a complaint, the trial and conviction will be void ab-initio being without jurisdiction."

11. Reliance can also be placed upon the judgment rendered by this Court in the case of “Raj Singh vs. State of Punjab”, 1997(2) R.C.R. (Criminal) 100.

In this case, a person obtained a decree of Civil Court by impersonation. The police registered a case under Sections 467, 468, 420/34, IPC. It was held that police cannot register the case and investigate the matter. Section 195, Cr.P.C., is a bar not only to the Court taking cognizance of the offence without a complaint in writing from the Court where the offence took place but the same is even applicable to the registration and investigation by the Police into the offence.

12. Further reliance can be placed upon the judgment of this Court

rendered in the case of “Jagdish and Others vs. State of Haryana”,
2015(4) R.C.R. (Criminal) 694.

In this case FIR was registered under Section 188, IPC, for disobeying the order lawfully promulgated by public servant. No complaint in writing as required under section 195(1) Cr.P.C. was moved by the public servant concerned. The FIR was consequently quashed

13. On the other hand, learned State counsel did not produce any case law in order to show that the judgments and order under challenge in the instant revision petition are sustainable.

14. In the light of above discussion, this revision petition stands accepted. As a result thereof, the impugned judgments as well as order of sentence passed by both the Courts below are set aside. Petitioner-herein (accused) is acquitted of the charge under Section 174-A, IPC, in this case. He is on bail, and as such, he and his surety are also discharged from their liability of bail bonds and surety bonds respectively.

SANDEEP MOUDGIL
JUDGE

24.01.2024
sham

1. *Whether speaking/ reasoned :* *Yes / No*
2. *Whether reportable :* *Yes / No*