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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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CRM-M No.32347 of 2024
Date of decision: 03.09.2024

Balihar Singh ... Petitioner

Vs.

State of Haryana and another ... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Sudhir Rana, Advocate,
for the petitioner.

Mr. Arjun Lakhanpal, Addl. AG, Haryana,
for the respondent-State.

Mr. Ravi Kant Berwal, Advocate,
for respondent No.2.

MANISHA BATRA, J. (Oral)

1. The petitioner is seeking quashing of order dated 22.08.2023 passed in Criminal Complaint No.NACT 54 of 2020 titled as *Gurmeet Singh v. Balihar Singh*, filed under Section 138 of Negotiable Instruments Act, 1881 (For short “NI Act”) whereby he was declared a proclaimed person as well as the FIR No.1106 dated 23.08.2023 registered under Section 174-A of IPC at Police Station Panipat City, District Panipat.

2. The relevant facts are that the respondent No.2 filed the aforementioned complaint against the petitioner on the allegations that a

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cheque issued by the petitioner in his favour for an amount of Rs.7 lakhs had been dishonoured. After considering the preliminary evidence, the learned Magistrate vide order dated 26.02.2020 summoned the present petitioner as an accused. As the presence of the petitioner could not be secured by issuing the summons and then non bailable warrants, therefore, proceedings under Section 82 of Cr.P.C. were initiated against him and he was declared a proclaimed person. Subsequently, by order dated 13.05.2024, the aforementioned complaint was dismissed as withdrawn in view of the statement recorded by the respondent-complainant. The challenge to the order dated 22.08.2023 has been made by the petitioner on the ground that the mandatory provisions of Section 82 of Cr.P.C. had not been complied with by the learned trial Magistrate while declaring him as a proclaimed person.

3. At the outset, it may be mentioned that the essential requirements of Section 82 of Cr.P.C. for issuance and publication of proclamation against an absconder and declaring him as a proclaimed person/offender are that there must be prior issuance of warrants of arrest by the Court concerned, then there must be report before the Court that the person against whom warrant was issued has absconded or had concealed himself so that the warrant of arrest could not be executed against him and then the Court must be satisfied that the person concerned was absconding or concealing himself so that the warrant of

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arrest, previously issued could not be executed despite reasonable diligence. That apart, the requisite date and place of appearance must be specified in the proclamation requiring the accused to appear on such date at the specified place and such period must not be less than 30 days from the date of issuance and publication of proclamation. Section 82 (2) of Cr.P.C. prescribes the manner in which the proclamation shall be published and the requirements as given thereunder are to be complied conjunctively and not disjunctively. On a perusal of the orders passed by the learned trial Magistrate, it has been revealed that after issuing process against the petitioner, initially summons and then non bailable warrants were issued. Proclamation was ordered to be issued against him vide order dated 14.06.2023 while simply observing that the Court was satisfied that the presence of accused could not be secured through non bailable warrants. It is apparent that no proper satisfaction much less prima facie satisfaction had been recorded by the learned trial Magistrate to the effect that the petitioner had absconded or was concealing so that warrant of arrest issued against him could not be executed despite reasonable diligence and, therefore, for want of recording such satisfaction which was mandatory, the provisions of Section 82 (1) of Cr.P.C. were certainly violated, and this fact in my considered opinion, has rendered the proclamation and proceedings subsequent thereto as a nullity.

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4. In view of the discussion as made above, it is held that the order dated 22.08.2023 was not sustainable in the eyes of law for want of compliance of statutory provisions of Section 82 of Cr.P.C. and hence, the same is liable to be quashed.

5. Now coming to the prayer made by the petitioner for quashing the proceedings under Section 174-A of IPC. Before delving on that point, it will be proper to refer to Section 174-A of IPC which reads as under:-

“174A. Non-appearance in response to a proclamation under section 82 of Act 2 of 1974.—Whoever fails to appear at the specified place and the specified time as required by a proclamation published under sub-section(1) of section 82 of the Code of Criminal Procedure, 1973 shall be punished with imprisonment for a term which may extend to three years or with fine or with both, and where a declaration has been made under sub-section (4) of that section pronouncing him as a proclaimed offender, he shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.”

6. Learned counsel for the petitioner has submitted that since the main complaint already stands dismissed as withdrawn in pursuance of a compromise effected between the parties, therefore, no useful purpose would be served by continuing the proceedings in the FIR No.1106. It is further argued that even otherwise the Magistrate is not competent to take cognizance of the offence under Section 174-A of IPC in view of the bar

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created under Section 195 (1) (a) (i) of Cr.P.C. To fortify his argument, he has relied upon the authority cited as **Pardeep Kumar v. State of Punjab and another**, Law Finder Doc Id # 2325731 and upon the order dated 08.01.2024 passed in Criminal Miscellaneous Writ Petition No.17560 of 2023 titled as **Sumit and another v. State of U.P. and others**, Neutral Citation No.-2024:AHC:4023-DB.

7. Learned counsel for the respondent No.2 while affirming the fact that a compromise had been arrived at between the parties, has not raised any objection whatsoever to the contentions as addressed by learned counsel for the petitioner. However, learned State counsel has argued that since the offence under Section 174-A of IPC is independent of the complaint filed under Section 138 of NI Act, hence, only because of withdrawal of the complaint, the FIR cannot be quashed.

8. In **Pardeep Kumar's** case (Supra), a Coordinate Bench of this Court had observed that offence under Section 174-A of IPC fell within the scope of Section 195 (1) (a) (i) of the Code and its cognizance could not be taken by any Court except on the complaint in writing of the public servant/Judge concerned or of some other public servant/Judge to whom he is administratively subordinate.

9. Then in **Sumit and another's** case (Supra), a Division Bench of High Court of Allahabad made similar observations to the effect that since proceedings under Section 174-A of IPC could be initiated only on

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the basis of written complaint of the Court which had initiated proceedings under Section 82 of Cr.P.C., as such the FIR was barred by Section 195 (1) (a) (i) of the Cr.P.C. In the instant case, there was no complaint by the Court which had passed order dated 22.08.2023 thereby declaring the petitioner as a proclaimed person and for calling upon the concerned SHO to register FIR. A non-speaking and mechanical order was passed for sending intimation with regard to declaration of the petitioner as a proclaimed person, to the police station concerned to initiate proceedings under Section 174-A of IPC. The requisite application of mind by the Court concerned by invoking criminal liability of the petitioner for offence under Section 174-A of IPC was apparently lacking and, therefore, in the considered opinion of this Court, the order dated 22.08.2023 forming the basis of registration of FIR under Section 174-A of IPC can also not be stated to be sustainable in eyes of law. As per the discussion made above and considering all the facts and circumstances, this Court is of the opinion that the impugned FIR and consequential proceedings having emanated therefrom are also liable to be quashed.

10. Resultantly, the petition is allowed. The FIR No.1106 dated 23.08.2023 registered under Section 174-A of IPC at Police Station Panipat City, District Panipat and all consequential proceedings arising therefrom as well as the order dated 22.08.2023 declaring the petitioner a

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proclaimed person and directing the SHO Police Station City, Panipat for initiating proceedings against the petitioner under Section 174-A of IPC are quashed.

03.09.2024	(MANISHA BATRA)
manju	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No