



202 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-48718-2019 (O&M)
DECIDED ON: 17.09.2024

JARNAIL SINGH @ RANA

....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Kamaljit Singh Dhillon, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, AAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. RELIEF SOUGHT

The present petition under Section 482 Cr.P.C. has been invoked seeking quashing of FIR No. 71, dated 03.06.2016, under Section 174-A of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station Goraya, District Jalandhar (Rural) along-with all subsequent proceedings arising therefrom.

2. *FACTS*

The brief facts of the present *lis* are that FIR No.114, dated 25.06.2014, under Section 21 of NDPS Act, 1985 stands registered at Police Station Goraya, District Jalandhar (Rural) against the petitioner, wherein, during the trial the petitioner could not appear before the trial Court on 05.04.2016, hence, vide order dated 05.04.2016 the petitioner was declared proclaimed

offender and direction was given to the concerned Station House Officer to register an FIR under Section 174-A IPC against the petitioner. As such the present FIR stands registered against the present petitioner, wherein, he has been granted the anticipatory bail by the trial Court vide its order dated 11.01.2019.

3. SUBMISSIONS

Counsel for the petitioner:

It has been contended by learned counsel for the petitioner that after registration of FIR No. 71, dated 03.06.2016, under Section 174-A IPC at Police Station Goraya, District Jalandhar (Rural), the petitioner surrendered before the trial Court in FIR No.114, dated 25.06.2014 on 09.10.2017. Thereafter, he was enlarged on regular bail by the trial Court vide its order dated 20.11.2017. Further submission is that the petitioner stands convicted in FIR No. 114, dated 25.06.2014, under Section 21 of NDPS Act, 1985, registered at Police Station Goraya, Jalandhar (Rural) and has been sentenced to undergo rigorous imprisonment for three months along-with fine.

The assertion is that FIR No. 71, dated 03.06.2016 (Annexure P-1) is not maintainable due to the bar imposed by Section 195 (1) (a) (i) Cr.P.C., which states that Courts can only take cognizance of offences punishable under Sections 172 to 188 IPC only, if a written complaint is filed by the concerned Public Servant. In the present case, the Magistrate who issued proceedings under Section 82 Cr. P.C is considered as Public Servant under Section 195 Cr.P.C., as they are empowered by law for discharging adjudicatory functions.

The aforesaid view has been adopted by this Court in a petition bearing No. CRM-M-41656 of 2023 titled as “Pardeep Kumar vs. State of

Punjab”; decided on 23.08.2023 , whereby it has been held that the Court wants to prosecute an accused under Section 174-A IPC, the Magistrate shall make a written complaint before the Court and the FIR in such case is not maintainable.

Similar view has been adopted by this Court in a petition bearing No. CRM-M-38831-2022 titled as “**Gursewak Singh and Others vs. State of UT Chandigarh**”; decided on 05.01.2023 , wherein this Court has quashed the FIR registered under Section 188 IPC stating that the bar of Section 195 (1) (a) (i) Cr.P.C applies and the cognizance for an offence under Section 188 IPC can only be taken on the written complaint filed by the public servant concerned.

Counsel for the respondent-State

Learned counsel for the respondent-State submits that he is not in a position to controvert the legal position, as has been held in the judgment relied upon by learned counsel for the petitioner.

4. ANALYSIS & CONCLUSION

The main question before this Court is whether Section 174-A IPC is within the ambit of Section 195 Cr.P.C?

This particular question has been entertained by this Court in **Pardeep Kumar's** case (supra).

Moreover, the same view has been adopted by the Allahabad High Court in the case No. Criminal Misc. Writ Petition No. 17560 of 2023 titled as “**Sumit and Another vs. State of UP and 2 Others**”, wherein, it was held that Section 174-A IPC was introduced in the IPC through Amendment Act, 2005 and a corresponding amendment was also made in the Schedule 1 of Cr.P.C classifying Section 174-A IPC as cognizable. However, no amendment was made in Section 195 Cr. P.C ,so as to exclude Section 174-A IPC from its

ambit.

Further more, in the year 2006, amendment was made in Section 195 (1) (b) Cr. P.C, however, then also, Section 195 (1) (a) (i) Cr. P.C was left untouched. From the above discussion, the intention of the legislature is clear that the bar of Section 195 Cr.P.C applies to the offence punishable under Section 174-A IPC also.

Further, the statutory insistence of filing the written compliant by the public servant/judge concerned is in tune with the Fundamental right of the accused enshrined under Article 21 of Constitution of India. Since, the person who has been declared as Proclaimed Offender is still a suspect/under trial and not a declared convict. Therefore, he is entitled to the procedural safeguards in exercise of the Fundamental Right to protection of life and liberty provided under Section 21 of Constitution of India as held in **Pardeep Kumar's** case (supra)

Moreover, in the main case, i.e., FIR No. 114 dated 26.06.2014 in pursuant to which in pursuant to which FIR No. 71, dated 03.06.2016, under Section 174-A IPC, was registered at Police Station Goraya, District Jalandhar (Rural), the petitioner has already been convicted and sentenced to undergo rigorous imprisonment for a period of 3 months along-with fine. It is pertinent to note here that the petitioner has already undergone the period of sentence.

This court has already observed in catena of judgments that once the main case has been decided in either way therefore it would not be justified to make the petitioner face the trial for an offence under section 174-A of IPC.

A Co-ordinate Bench of this Court in a case titled as ***“Ashok Madan vs. State of Haryana and another” reported as 2020 (4) RCR***

(Criminal) 87 has also held as under:-

“No doubt, the learned counsel for the respondent has vehemently argued that the offence under Section 174A I.P.C. is independent of the main case, therefore, merely because the main case has been dismissed for want of prosecution, the present petition cannot be allowed, however, keeping in view the fact that the present FIR was registered only on account of absence from the proceedings in the main case which had been subsequently regularised by the court while granting bail to the petitioner, the default stood condoned. In such circumstances, continuation of proceedings under Section 174-A I.P.C. Shall be abuse of the process of court.

Accordingly, the petition is allowed. FIR No.446 dated 21.08.2017, registered under Section 174-A I.P.C. At Police Station Kotwali, District Faridabad, as well as consequential proceedings shall stand quashed.”

Since, the main case has already decided/disposed of, thus, no useful purpose shall be served by carrying on the ancillary proceedings i.e., the present FIR No. 71 dated 03.06.2016, arising out of the main case.

Reliance has also been placed on the judgement passed by the Apex Court in Criminal Appeal Nos. 127-130 of 2008 titled as “**C. Muniappan & Others vs. State of Tamil Nadu**”, wherein it has been held that the provision of Section 195 Cr.P.C is mandatory in nature and its non-compliance would vitiate the prosecution and all other consequential orders.

The view adopted in **Pardeep Singh's** case (supra) has also been adopted by this in a petitions bearing Nos. CRM-M-55907 of 2023, decided on 21.12.2023 & CRM-M-42221 of 2023, decided on 04.10.2023 titled as **Darshan Singh vs. State of Punjab and Others** and **Som Nath vs. State of Punjab**,, respectively.

In the case bearing No. CRM-M-25619-2022, titled as Siddharth Kumar vs. State of Haryana', decided on 17.07.2023, this Court has held as under:

"...The FIR under Section 174A IPC is the consequence of declaring a person/offender, as the case may be. The basis of the same is the absence of the concerned from the court, be it for any reason. Subsequently it having dawned on such person to join the proceedings, the court extending him the concession of bail and the complaint itself being satisfied or culminated on any account, can all be factored to conclude that the very purpose of initiation of proclamation proceedings, that is to compel and secure the presence of the accused to face trial and establish the rule of law so as to ensure finalization of the proceedings pending between the parties, stands nonetheless achieved. In wake of the above, to permit the continuation of the FIR would amount to an abuse of the process of law..."

A perusal of the relevant extract of the above judgment would show that where the main case was dismissed for want of prosecution, it was observed that the continuation of proceedings under Section 174-A of the IPC shall be an abuse of the process of court.

Since the petitioner has already been convicted and sentenced for three months imprisonment along-with fine in a main case i.e. FIR No. 114, dated 26.06.2014 in pursuant to which FIR No. 71, dated 03.06.2016, under Section 174-A IPC was registered against the petitioner, therefore, no useful purpose would be served by continuing the proceedings under section 174-A of IPC and as the same is personal in nature not against the society at large.

Keeping in view the above-said facts and circumstances, the present petition is allowed and FIR No.71 dated 03.06.2016, under Section 174-A

IPC (Annexure P-1) registered at Police Station Goraya, Jalandhar (Rural) is

quashed alongwith all consequential proceedings arising therefrom qua the petitioner.

Pending criminal misc. application, if any shall also disposed off.

17.09.2024
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(SANDEEP MOUDGIL)
JUDGE

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