



122 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-35442-2025
Date of Decision:28.07.2025

Sachin Jain

...Petitioner

Vs.

State of Punjab and Others

...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Ms. Pallavi, Advocate
 for the petitioner.

Mr. M.S. Bajwa, DAG, Punjab.

N.S.Shekhawat J.

1. The petitioner has filed the present petition under Section 528 of B.N.S.S with a prayer to set aside the order dated 15.02.2025 (Annexure P-3) passed by the Court of Judicial Magistrate Ist Class-4, Jalandhar, whereby the prayer of the petitioner to get the FIR registered under Section 174-A of IPC against the accused was declined illegally. A further prayer has been made to direct the official respondents to register a FIR under Section 209 of B.N.S (earlier 174-A of IPC) against respondent No.5 as he has been declared as a proclaimed person by the Court of Judicial Magistrate Ist Class-4, Jalandhar on 13.03.2023 (Annexure P-1) in a complaint case No.NACT-2222-2018 titled as **“Sachin Jain Vs. Sundeep Kumar etc”**.

2. Learned counsel for the petitioner contends that the respondent

No.5 had issued a cheque to the petitioner in token of having receipt a loan from the petitioner and to discharge his legal and lawful debt. The cheque was presented with the banker, however, the same was dishonoured. The petitioner filed a complaint under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the “Act”) in the Court of Judicial Magistrate Ist Class, Jalandhar against respondent No.5. After recording of preliminary evidence, summons were issued for the service of respondent No.5, however, despite service, he failed to appear before the Trial Court. Ultimately, the Trial Court vide order dated 13.03.2023 (Annexure P-1) declared the respondent No.5 as a proclaimed person. Thereafter, the petitioner requested the Trial Court to order the registration of the FIR under Section 209 of B.N.S, against respondent No.5. However, the said prayer was declined by the Trial Court.

3. Learned counsel further submits that in fact, after declaring the respondent No.5 as a proclaimed person, the Trial Court was under a legal obligation to order the registration of the FIR against respondent No.5.

4. On the other hand learned State counsel submitted that the respondent No.5/accused has already been declared as a proclaimed person by the Trial Court and the necessary intimation has already been sent to the SHO concerned. However, the charge under Section 174-A of IPC would be framed along with the notice of accusation under Section 138 of the “Act”.

5. I have heard learned counsel for the parties and perused the record carefully.

6. In fact, after taking into consideration the entire record, this Court finds sufficient force in the submissions made by learned counsel for the petitioner. While, dealing with a similar issue, the Delhi High Court has held in

the matter of “Maneesh Goomer Vs. State”, 2013(6) RCR (Criminal)2736:- as follows:-

“9.As regards the next contention of the Petitioner that for a prosecution under Section 174A Indian Penal Code no cognizance can be taken on a charge-sheet but on a complaint under Section 195 Criminal Procedure Code, it may be noted that Section 174A Indian Penal Code was introduced in the Code with effect from 23rd June, 2006. Section 195(1) Criminal Procedure Code provides that no Court shall take cognizance of offences punishable under Section 172 to 188 (both inclusive) of the Indian Penal Code or of the abatement, or attempt to commit the said offences, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. Section 195 Criminal Procedure Code has not been correspondingly amended so as to include Section 174A Indian Penal Code which was brought into the Penal Code with effect from 23rd June, 2006. The Legislature was conscious of this fact and that is why though all other offences under chapter X of the Criminal Procedure Code are non-cognizable, offence punishable under Section 174A Indian Penal Code is cognizable. Thus the Police officer on a complaint under Section 174A Indian Penal Code is competent to register FIR and after investigation thereon file a charge-sheet before the Court of Magistrate who can take cognizance thereon. Thus. I find no merit in the contention raised by the Learned Counsel for the Petitioner”.

7. In the present case also, the respondent No.5 has already been declared as a proclaimed person on 13.03.2023, however, when the prayer was made by the petitioner to get a FIR under Section 174-A of IPC registered against respondent No.5, the prayer was declined illegally. In fact, once the Court found that the provisions of Section 174-A of IPC can be invoked by the Trial Court and the offence is cognizable, the Trial Court should have ordered the registration of the FIR instead of framing of notice of accusation against

respondent No.5.

8. Thus, the order dated 15.02.2025 (Annexure P-3) passed by the Court of Judicial Magistrate Ist Class-4, Jalandhar is set aside and the Court of Judicial Magistrate Ist Class, Jalandhar is directed to order the registration of the FIR under Section 174-A of IPC against respondent No.5 within a period of two weeks from the date of receipt of certified copy of the order by the Court.

(N.S.SHEKHAWAT)
JUDGE

28.07.2025
hitesh

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