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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 1341/2023& CRL.M.A. 5149/2023**

JASWINDER SINGH

.....Petitioner

Through: Mr. Mukesh Birla & Ms. Megha
Rathi, Advs.

Versus

GOVT OF NCT OF DELHI

.....Respondent

Through: Ms. Shubhi Gupta, APP for the State.
SI Sanjeev, P.S. Kalkaji.
Mr. Divyansh Arora, Adv. for R-2
(through VC).

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

28.01.2025

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1. This hearing has been done through hybrid mode.
2. The present petition under Section 482 of the CrPC has filed seeking the following prayers: -

“In the aforesaid facts and circumstances, it is most respectfully prayed in the interest of justice that this Hon'ble Court may be pleased to quash the FIR No.374/2019, registered at P.S. Kalka Ji U/s 174-A IPC, and proceedings thereof ,if any ;

Pass any such order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

3. The aforesaid FIR in the present case was registered on the basis of the directions issued by the learned Metropolitan Magistrate *vide* order dated 24.06.2019 in CT. CASES 7353/2017 titled as “Intec. Capital Ltd. v. Jaswinder Singh” wherein, the present petitioner was arrayed as accused in the said case on the basis of the complaint filed by the respondent No. 2 for



the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'NI Act'). After the registration of the said FIR, efforts were made to trace the present petitioner, however, he was untraceable. Subsequently, chargesheet was filed before the Court of competent jurisdiction on 05.12.2019 and the learned Trial Court *vide* order dated 22.01.2020 had taken cognizance of the offence alleged against the present petitioner and the file was consigned to record room. Thereafter, on 11.10.2022, learned ASJ, Saket Court, had granted anticipatory bail to the present petitioner on the ground of settlement with the complainant in the aforesaid complaint case.

4. *Vide* order dated 24.06.2019, learned Metropolitan Magistrate had passed the following order: -

“Present: Ld. Counsel for complainant.
None for accused despite repeated calls.
Process Server HC Arvind in person.
The process u/s 82 Cr.P.C. is duly executed but accused has not appeared. Statement of Process Server is recorded. In view of the statement of process server, accused Jaswinder Singh, S/o Sh. Atma Singh, R/o House No.96/D, SBP Homes, Chajju Majra, TehsileKharar, Mohali, Punjab; is declared absconder.
Issue notice to concerned SHO for registration of FIR under appropriate sections against the accused.
Put up on 22.07.2019.
Copy of this order and present complaint be also sent alongwith notice to SHO concerned for compliance.”

5. Learned counsel appearing on behalf of the petitioner submits that the main complaint under Section 138 of the NI Act has since been settled with the complainant/respondent No. 2 and draws the attention of this Court to order dated 11.10.2022 whereby, the petitioner was granted anticipatory bail by recording the fact that the matter has been settled with the respondent



No.2.

6. Learned counsel appearing on behalf of the respondent No. 2 does not dispute the aforesaid position and submits that the main complaint under Section 138 of the NI Act has been settled, and therefore, he has no objection if the present FIR is being quashed.

7. Learned APP for the State submits that irrespective of the fact the matter has been settled, Section 174A of the IPC being an independent cause of action cannot be quashed on the ground of settlement with the original complaint.

8. Heard learned counsel for the parties and perused the record.

9. It is a matter of record that the aforesaid FIR was registered against the present petitioner pursuant to the directions issued by the learned Metropolitan Magistrate in the aforesaid order. Subsequent thereto, on the filing of the chargesheet, cognizance was taken by the learned Trial Court *vide* order dated 22.01.2020.

10. At this stage, it is pertinent to note that a Coordinate Bench of this Court in **Amandeep Gill and Anr. v. State Govt. of NCT of Delhi, 2024 SCC OnLine Del 6542: 2024: DHC: 7224**, has held that cognizance of offence under Section 174A of the IPC could only be taken on complaint in writing of the public servant concerned, otherwise the bar under Section 195(1)(a)(i) of the CrPC would apply. The issue before the Bench therein, was a challenge to an order of framing of charge under Section 174A of the IPC which was challenged by the petitioner therein, before the learned Sessions Court. The learned Sessions Court dismissed the revision petition while relying upon a previous decision of another Coordinate Bench of this Court in **Maneesh Goomer v. State, 2012 SCC OnLine Del 66**, wherein it



was held that Section 174A of the IPC was not covered within the bar of Section 195 of the CrPC.

11. The facts of the **Amandeep Gill** (*supra*) were similar to the present case. The proceedings in the said case were arising out of the complaint Section 138 of the NI Act and after the process under Sections 82/83 of the CrPC was issued, directions were given by the learned Trial Court for registration of FIR for the offence punishable under Section 174A of the IPC. After discussing the various judicial precedents, learned Bench in **Amandeep Gill** (*supra*) has observed and held as under : -

“18. Aside from the obvious conflict between the decisions of the Single Judge in **Maneesh Goomer** (*supra*) and of **Sunil Tyagi** (*supra*), note is taken of the unanimous opinion of the other High Courts in the country.

19. Before assessing the various opinions, the pivot on which our analysis would rest is the decision of the Supreme Court in **C. Muniappan** (*supra*), which is binding on this Court. For offences under Section 188 IPC, the Supreme Court reiterated that there must be a complaint by a public servant whose lawful order has not been complied with, which must be in writing, since the provisions of Section 195 C.r.P.C were mandatory. It was stated that Court cannot assume cognizance of the case without such complaint and the trial/conviction was, therefore, void *ab initio*. Accordingly, it underscored that the law does not permit taking cognizance of an offence under Section 188 IPC, in view of the bar under Section 195 C.r.P.C, in absence of a complaint, as prescribed under the provision. Therefore, logically and fundamentally, Section 188 IPC being cognizable, the same reasoning would also apply to an offence under Section 174-A IPC, which is also cognizable.

20. Even though, the Supreme Court in **C. Muniappan** (*supra*) does not deal with Section 174-A directly, it would be difficult to draw an artificial distinction between Section 174-A IPC and Section 188 IPC, despite both being covered in the category of Sections 172-188, in Section 195(1)(a)(i) Cr.P.C. **Maneesh Goomer** (*supra*) does



not take into account the decision in *C. Muniappan* (supra), which was probably not brought to the attention of the Court and, therefore, in *Maneesh Goomer* (supra) an independent analysis and interpretation was done, reaching a conclusion that since Section 174-A IPC was the only cognizable offence in the category covered under Section 195 Cr.P.C., it was a conscious inclusion by the legislature and, therefore, would stand on its own footing. It would be difficult to support such an interpretation in view of *C. Muniappan* (supra).

21. To clarify the sequence of legislative activity in regard to Section 195 Cr.P.C. and Section 174-A of IPC it is to be noted that Section 195 & 195(1)(a)(i) Cr.P.C. has been on the statute book since 1973 and includes Section 172-188 IPC. By an amendment by 'Act 25 of 2005', Section 174-A was inserted w.e.f 23rd June, 2006. Therefore, on the date when section 174- A of IPC was inserted, if the legislature had to exclude it out of purview of section 195 Cr.P.C, it would have included that provision.

22. It is settled law that one cannot assume a careless omission by the legislature and proceed to fill in by judicial interpretation, a *casus omissus*. In any event the rule of strict and literal interpretation of statutes will prevail.

23. This is further buttressed by the fact that now in 2023, when the legislature has introduced a substantive new Act for substituting the IPC and the Cr.P.C., being BNS and BNSS, it has consciously made the exclusion for the equivalent provision of 174-A IPC (being Section 209 BNS) from the equivalent provision of Section 195 Cr.P.C (being Section 215 BNSS). Both these new provisions of the new statutes are reproduced as under:

Section 209 of The Bharatiya Nyaya Sanhita, 2023 ('BNS'):

"209. Whoever fails to appear at the specified place and the specified time as required by a proclamation published under sub-section (1) of section 84 of the Bharatiya Nagarik Suraksha Sanhita, 2023, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both, or with community service, 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.”

Section 215 of The Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS'):

“215. (1) No Court shall take cognizance—

(a) (i) of any offence punishable under sections 206 to 223 (both inclusive but excluding section 209) of the Bharatiya Nyaya Sanhita, 2023; or

(ii) of any abetment of, or attempt to commit, such offence;

or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate or of some other public servant who is authorised by the concerned public servant so to do;

(b) (i) of any offence punishable under any of the following sections of the Bharatiya Nyaya Sanhita, 2023, namely, sections 229 to 233 (both inclusive), 236, 237, 242 to 248 (both inclusive) and 267, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court; or

(ii) of any offence described in sub-section (1) of section 336, or punishable under sub-section (2) of section 340 or section 342 of the said Sanhita, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court; or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in subclause (i) or sub-clause (ii), except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant or by some other public servant who has been authorised to do so by him under clause (a) of sub-section (1), any authority to which he is administratively subordinate or who has authorised such public servant, may, order the withdrawal of the complaint and send a copy



of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the Principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate: Provided that—

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.”

(emphasis added)

24. It could be argued that, since now the legislature has sought to exclude the equivalent of Section 174-A IPC, the legislative intent even prior to BNS and BNSS was the same, although not specified in the statute in IPC/Cr.P.C. This, however, will remain in the realm of legislative speculation and it would be encroaching upon the legislative function by providing such interpretation by judicial *dicta*, which is not permissible. Reference may be made inter alia to Supreme Court's opinion in **Sangeeta Singh v. Union of India** (2005) 7 SCC 484.

25. The decision in **Maneesh Goomer** (supra) being differed with, by another Coordinate Bench of this Court in **Sunil Tyagi** (supra), but also specifically differed with, by the Division Bench of



High Court of Allahabad, Single Bench of the Punjab and Haryana High Court, Single Judge of the Madras High Court and Single Judge of the High Court of Himachal Pradesh, may not be considered as good law.

26. However, as noted above, possibly *Maneesh Goomer* (supra) does not take into account the decision in *C. Muniappan* (supra) which was prior in time and therefore a *de novo* interpretation was provided.”

12. Consequently, the order impugned in the said petition was set aside.

13. In the present case as well, the FIR has been registered in pursuance of the order dated 24.06.2019 passed by the learned Metropolitan Magistrate in absence of any complaint as required under Section 195(1)(a)(i) of the CrPC.

14. In view of the above, the present petition is allowed. FIR No. 374/2019, under Section 174A of the IPC, registered at PS Kalka Ji, along with all the proceedings emanating therefrom including the chargesheet pending in the Court of Mr. Akash Sharma, learned Metropolitan Magistrate, South-East District, Saket Courts, Delhi, is hereby quashed.

15. Pending applications, if any, also stand disposed of accordingly.

16. Copy of the order be sent to the concerned learned Trial Court for necessary information and compliance.

AMIT SHARMA, J

JANUARY 28, 2025/kr

Click here to check corrigendum, if any