Vishal Satinder Sood And Another vs State Of Haryana on 30 January, 2025

Neutral Citation No:=2025:PHHC:019738

CRM-M-62002-2023 -1-

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-62002-2023 (O&M)
Date of decision: 30.01.2025

Vishal Satinder Sood and another

... Petitioners

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sangram Singh Saron, Advocate,
Ms. Amisha Batra, Advocate,
Mr. Madhav Rao, Advocate
for the petitioners.

Mr. Vikas Bhardwaj, AAG, Haryana.

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HARPREET SINGH BRAR, J. (ORAL)

1. Present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') for quashing of FIR No.214 dated 08.03.2018 under Section 174-A of the Indian Penal Code, 1860 (for short 'IPC') [now Section 209 Bharatiya Nyaya Sanhita, 2023 (for short 'BNS')], registered at Police Station Sector-8, Faridabad, District Faridabad and all the consequential proceedings emanating therefrom.

2. Learned counsel for the petitioners, inter alia, contends that on account of dishonouring of a cheque, which was issued by the petitioners to discharge their legal liability, on 20.10.2015, a complaint bearing NACT No.4859/2015 was filed by the complainant under Section 138 of Negotiable Instruments Act, 1881 (for short 'NI Act') read with Section 142 of NI Act against the company M/s Catmoss Retail Pvt. Ltd. and its directors including the petitioners, who were arraigned as accused No.7 & 5 respectively, in which all the accused including the petitioners were summoned vide order dated 20.01.2016 (Annexure P-3) and without waiting for service of summons, non- bailable warrants were issued against the petitioners vide order dated 08.04.2016 (Annexure P-4). It is further contended that notice to petitioner No.2 was sent on the wrong address, due to which, the petitioners could not appear before learned trial Court. Ultimately, vide order dated 30.11.2017 (Annexure P-7), learned trial Court, without application of judicial mind, declared the petitioners as proclaimed persons and the intimation was further sent to SHO concerned to facilitate him to lodge an FIR against the proclaimed persons for commission of offence under Section 174-A of IPC (now Section 160 of BNS).

3. Learned State counsel opposes the prayer made by the petitioners on the ground that the petitioners did not put in appearance before learned trial Court intentionally and deliberately and consequently, FIR (supra) was 2 of 9 Neutral Citation No:=2025:PHHC:019738 registered.

4. I have heard learned counsel for the parties and perused the record of the case with their able assistance.

5. Section 174-A of IPC was introduced through the Amendment Act of 2005 and a corresponding amendment was made to Schedule 1 of the Cr.P.C., classifying this provision as a cognizable offence. However, no corresponding amendment was made to Section 195 of Cr.P.C. (now Section 215 of BNSS) to exclude Section 174-A of IPC from its scope. The proposition that Section 174-A of IPC (now Section 209 of BNS) is governed by the procedure as laid out in Section 195 of Cr.P.C. (now Section 215 of BNSS) is further supported by the fact that Section 174-A of IPC and the corresponding Section 209 of the Bhartiya Nyaya Sanhita 2023 are essentially identical. However, Section 209 of BNS has been explicitly removed from the purview of Section 215 of BNSS, which mirrors Section 195 of Cr.P.C. In its present form, thus, Section 195 of Cr.P.C. clearly encompasses Section 174-A of IPC, as the legislature in its wisdom this time has specifically excluded Section 209 of BNS from the ambit of Section 215 of BNSS. Furthermore, in 2006, an amendment was made to Section 195(1)(b) of Cr.P.C., but Section 195(1)(a)(i) of Cr.P.C. was left unchanged. Therefore, it is evident that Section 195 of Cr.P.C. applies to the offence under Section 174-A of IPC.

6. As it is conclusive that Section 174-A of IPC is governed by 3 of 9 Neutral Citation No:=2025:PHHC:019738 Section 195 of Cr.P.C., it would be apposite to emphasize that the drill of Section 195 of Cr.P.C. is mandatory in nature. This position is supported by the judgment of the Hon'ble Supreme Court's rendered in C. Muniappan & Others. Vs. State of Tamil Nadu, (2010) 9 SCC 567, wherein the following observations were made:

> "20. Section 195(a)(i) Criminal Procedure Code bars the court from taking cognizance of any offence punishable under Section 188 Indian Penal Code or abetment or

> attempt to commit the same, unless, there is a written complaint by the public servant concerned for contempt of his lawful order. The object of this provision is to provide for a particular procedure in a case of contempt of the lawful authority of the public servant. The court lacks competence to take cognizance in certain types of offences enumerated therein. The legislative intent behind such a provision has been that an individual should not face criminal prosecution instituted upon insufficient grounds by persons actuated by malice, ill-will or frivolity of disposition and to save the time of the criminal courts being wasted by endless prosecutions. This provision has been carved out as an exception to the general rule contained under Section 190 Criminal Procedure Code that any person can set the law in motion by making a complaint, as it prohibits the court from taking cognizance of certain offences until and unless a complaint has been made by some particular authority or person. Other provisions in the Criminal Procedure Code like sections 196 and 198 do not lay down any rule of procedure, rather, they only create a bar that unless some requirements are complied with, the court shall not take cognizance of an offence described in those Sections. (vide Govind Mehta v. The State of Bihar, AIR 1971 Supreme Court 1708; Patel Laljibhai Somabhai v. The State of Gujarat, AIR 1971 Supreme Court 1935; Surjit Singh & Ors. v. Balbir Singh, 1996(3) RCR (Criminal) 240 : (1996) 3 SCC 533; State of Punjab v. Raj Singh & Anr., 1998(1) RCR

 (Criminal) 576 : (1998) 2 SCC 391; K. Vengadachalam v. K.C. Palanisamy & Ors., (2005) 7 SCC 352; and Iqbal Singh Marwah & Anr. v. Meenakshi Marwah & Anr., 2005(2) RCR (Criminal) 178 : 2005(1) Apex Criminal 581).

21. The test of whether there is evasion or non-compliance of Section 195 Criminal Procedure Code or not, is whether the facts disclose primarily and essentially an offence for which a complaint of the court or of a public servant is required. In Basir- ul-Haq & Ors. v. The State of West Bengal, AIR 1953 Supreme Court293; and Durgacharan Naik & Ors. v. State of Orissa, AIR 1966 Supreme Court 1775, this Court held that the provisions of this Section cannot be evaded by describing the offence as one being punishable under some other sections of Indian Penal Code, though in truth and substance, the offence falls in a category mentioned in Section 195 Criminal Procedure Code Thus, cognizance of such an offence cannot be taken by mis-describing it or by putting a wrong label on it.

22. In M.S. Ahlawat v. State of Haryana & Anr., 1999(4) RCR (Criminal) 718 , this Court considered the matter at length and held as under :

> "....Provisions of Section 195 Criminal Procedure Code are mandatory and no court has jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing as required under that section." (Emphasis added)

23. In Sachida Nand Singh & Anr. v. State of Bihar & Anr., 1998(1) RCR (Criminal) 823 : (1998) 2 SCC 493, this Court while dealing with this issue observed as under :

> "7. ..Section 190 of the Code empowers "any magistrate of the first class" to take cognizance of "any offence" upon receiving a complaint, or police report or information or upon his own knowledge. Section 195 restricts such general powers of the magistrate, and the general right of a person to move the court with a complaint to that extent curtailed. It is a well- recognised canon of interpretation that provision curbing the general jurisdiction of the court must normally 5 of 9 Neutral Citation No:=2025:PHHC:019738 receive strict interpretation unless the statute or the context requires otherwise."(Emphasis supplied)

24. In Daulat Ram v. State of Punjab, AIR 1962 Supreme Court 1206, this Court considered the nature of the provisions of Section 195 Criminal Procedure Code In the said case, cognizance had been taken on the police report by the Magistrate and the appellant therein had been tried and convicted, though the concerned public servant, the Tahsildar had not filed any complaint. This Court held as under :

> "The cognizance of the case was therefore wrongly assumed by the court without the complaint in writing of the public servant, namely, the Tahsildar in this case. The trial was thus without jurisdiction ab initio and the conviction cannot be maintained. The appeal is, therefore, allowed and the conviction of the appellant and the sentence passed on him are set aside."(Emphasis added)

25. Thus, in view of the above, 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."

7. Section 195(1)(a)(i) of Cr.P.C. specifies that no Court shall take cognizance of any offence punishable under Sections 172 to 188 of IPC, unless a written complaint is made by the concerned public servant or another public servant to whom they are administratively subordinate. This provision serves as an explicit bar, stating that the Court cannot take cognizance of a matter based on a final report under Section 173 of Cr.P.C. (now Section 193 of BNSS) 6 of 9 Neutral Citation No:=2025:PHHC:019738 A complaint, as defined under Section 2(d) of Cr.P.C., excludes a police report or final report. Thus, cognizance can only be taken on a written complaint filed in Court under Section 200 of Cr.P.C. Further, Section 21(3) of IPC defines "public servant" to include every Judge or any person empowered by law to perform adjudicatory functions, either individually or as part of a body. As a result, from the plain language of Section 195 of Cr.P.C., it is clear that criminal prosecution under Sections 172 to 188 of IPC can only be initiated through a written complaint filed by the concerned public servant or another public servant to whom they are administratively subordinate. (See: Pardeep Kumar Vs. State of Punjab and another's case (supra), Jarnail Singh @ Rana Vs. State of Punjab, CRM-M-48718-2019 decided on 17.04.2024 and Charanjit Singh @ Channi CRM-M-453-2023 pronounced on 06.12.2023).

8. In the present case, learned Magistrate, being a public servant as defined under Section 21 of IPC, was required to follow the procedure prescribed by law, if he intended to initiate proceedings against the petitioners for the offence under Section 174-A of IPC. The proper course of action would have been to file a written complaint before the competent jurisdictional court. However, instead of adhering to this legal requirement, learned Magistrate merely forwarded a copy of its orders to the local police, directing them to initiate proceedings under Section 174-A of IPC, which effectively led to the registration of FIR (supra). Given the mandatory nature and scope of Section 7 of 9 Neutral Citation No:=2025:PHHC:019738 195 of Cr.P.C., such an approach is in clear violation of its provisions. Consequently, both; the order passed by the Magistrate directing the initiation of proceedings and the resulting FIR stand contrary to the procedural safeguards enshrined in Section 195 of Cr.P.C.

9. While the scheme of criminal justice system necessitates curtailment of personal liberty to some extent, it is of the utmost importance that the same is done in line with the procedure established by law to maintain a healthy balance between personal liberty of the individual-accused and interests of the society in promoting law and order. Such procedure must be compatible with Article 21 of the Constitution of India i.e. it must be fair, just and not suffer from the vice of arbitrariness or unreasonableness. Additionally, it is a settled law that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods are necessarily forbidden. Reference can be made to a judgment of the Hon'ble Apex Court in Dharani Sugars and Chemicals Ltd. Vs. Union of India, (2019) 5 SCC 480.

10. Moreover, learned counsel for the petitioners has taken a specific stand that the petitioners were declared as proclaimed persons without following the drill of Section 82 of Cr.P.C. (now Section 84 of BNSS). Since the proclamation was never served on the petitioners, all actions taken post non-execution of the proclamation stand vitiated.

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11. As an upshot of above discussion, present petition is allowed and FIR No.214 dated 08.03.2018 under Section 174-A of IPC (now Section 209 of BNS), registered at Police Station Sector-8, Faridabad, District Faridabad and all the consequential proceedings emanating therefrom, are ordered to be quashed qua the petitioners.

12. All the pending miscellaneous application(s), if any, shall stand disposed of.

[HARPREET SINGH BRAR]
JUDGE

30.01.2025
vishnu

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