Mukesh Sharma vs State Of Haryana on 25 February, 2025

Neutral Citation No:=2025:PHHC:027452

252(2) IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH
CRM-M-5706-2020 (O&M)
Date of Decision: 25.02.2025

MUKESH SHARMA
...Petitioner

V/S

STATE OF HARYANA AND ANOTHER ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rajesh Kumar, Advocate
for the petitioner.

Mr. S.K. Panwar, Addl. AG Haryana.

****

HARPREET SINGH BRAR J. (Oral)

1. The present petition has been filed under Section 482 of Cr.P.C. seeking quashing of FIR No. 123 dated 12.11.2016 registered under Section 174-A of Indian Penal Code at Police Station Panjokhra, District Ambala.

2. Learned counsel for the petitioner inter alia contends that learned Court below has erred in issuing directions for registration of FIR(supra) as, the drill of Section 195 Cr.P.C. has not been followed in the present case. Learned counsel further contends that matter has been amicably settled between the parties. Learned counsel further places reliance upon the judgment passed by this Court in Sonu vs. State of Haryana 2021 (1) RCR (Cri.) 319 and the Gujarat High Court in Govindbhai Patel Vs. State of Gujarat 2004 (4) RCR (Criminal) 830.

3. Per contra, learned State counsel supports the order passed by the learned Courts below and submits that the petitioner did not put in appearance before the trial Court intentionally and deliberately. Therefore, being left with no other option, proclamation was issued to secure his presence.

Neutral Citation No:=2025:PHHC:027452

4. I have heard learned counsel for the parties and perused the record of the case with their able assistance. With the consent of parties, the matter is taken up for final disposal.

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

6. As it is conclusive that Section 174-A IPC is governed by Section 195 Cr.P.C., it would be apposite to emphasize that the drill of Section 195 of the Cr.P.C. is mandatory in nature. This position is supported by the judgment rendered by a two Judge Bench of the Hon'ble 2 of 7 Neutral Citation No:=2025:PHHC:027452 CRM-M-5706-2020 (O&M) -3- Supreme Court's in C. Muniappan & Others. v. State of Tamil Nadu, (2010) 9 SCC 567, wherein speaking through Justice B.S. Chauhan, 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 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 the Cr.P.C. specifies that no court shall take cognizance of any offence punishable under Sections 172 to 188 of the 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. A complaint, as defined under Section 2(d) of the 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 the Cr.P.C. Further, Section 21(3) of the IPC defines "public servant" to include every judge or any person empowered by law to perform adjudicatory functions, either 4 of 7 Neutral Citation No:=2025:PHHC:027452 CRM-M-5706-2020 (O&M) -5- individually or as part of a body. As a result, from the plain language of Section 195 of the Cr.P.C., it is clear that criminal prosecution under Sections 172 to 188 of the 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, CRM-41656-2023 decided on 23.08.2023; 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, the learned Chief Judicial Magistrate, being a public servant as defined under Section 21 of the IPC, was required to follow the procedure prescribed by law if he intended to initiate proceedings against the petitioner for the offence under Section 174-A of the 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, the learned Courts below merely forwarded a copy of its orders to the local police, directing them to initiate proceedings under Section 174-A IPC, which effectively led to the registration of the impugned FIR. Given the mandatory nature and scope of Section 195 of the Cr.P.C., such an approach is in clear violation of its provisions. Consequently, both the orders passed by the Courts below 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 5 of 7 Neutral Citation No:=2025:PHHC:027452 CRM-M-5706-2020 (O&M) -6- 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 the judgment of the Hon'ble Apex Court in Dharani Sugars and Chemicals Ltd. v. Union of India reported in (2019) 5 SCC 480.

10. In the eventuality of his non-appearance, the presence of the accused first ought to have been secured by issuing summons or bailable warrants, and non-bailable warrants or proclamation should not generally be issued at the first instance. A perusal of the impugned orders reveal that the Courts below has issued a proclamation straight away, without recording any reasons to indicate that the petitioner has absconded or is concealing himself from the process of law. Conspicuously, no summons or bailable warrants were issued prior to issuance of the proclamation. This Court in the judgment passed in Major Singh @ Major Vs. State of Punjab 2023 (3) RCR (Criminal) 406; 2023 (2) Law Herald 1506 has held that the Court is first required to record its satisfaction before issuance of process under Section 82 Cr.P.C. and non-recording of the satisfaction itself makes such order suffering from incurable illegality. Furthermore, the learned counsel for the petitioner has taken a specific stand that the 6 of 7 Neutral Citation No:=2025:PHHC:027452 CRM-M-5706-2020 (O&M) -7- petitioner was declared to be a proclaimed person without following the drill of Section 82 Cr.P.C. Since the proclamation was never served on the petitioner, all actions taken post non-execution of the proclamation stand vitiated.

11. Learned State counsel has not been able to controvert the aforesaid facts and the position of law as laid down in the aforesaid judgment.

12. In view of the aforesaid facts and circumstances, the present petition is allowed and FIR No. 123 dated 12.11.2016 registered under Section 174-A of Indian Penal Code at Police Station Panjokhra, District Ambala is hereby quashed.

13. CRM(s), if any, are also disposed of accordingly.

(HARPREET SINGH BRAR)
JUDGE

25.02.2025
Ajay Goswami

Whether speaking/reasoned Yes/No

Whether reportable Yes/No