

Mukesh Gupta And Another vs State Of Punjab And Another on 28 February, 2025

Neutral Citation No:=2025:PHHC:028627

126 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-11253-2025
Date of decision: 28.02.2025

MUKESH GUPTA AND ANOTHER

...PETITIONERS

V/S

STATE OF PUNJAB AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Akash Deep Miglani, Advocate
for the petitioners.
petitioner

HARPREET SINGH BRAR,
BRAR J. (ORAL)

1. The present petition has been filed under Section 528 BNSS, 2023 for quashing of FIR No.253 No. dated 11.12.2023 2.2023 registered under Section 174-A A IPC at Police Station Division No.6, Ludhiana (Annexure P P-4) arising out of case bearing No.COMA/3669/2020 No. 2020 titled as 'Saurabh Goyal vs. M/s Cute Productss and others' registered under Section 138 NI Act before the learned Judicial Magistrate Ist Class, Jalandhar and all the subsequent proceedings arising out of the same.

2. The brief facts of the present case are that a complaint under Section 138 of Negotiable Negotiable Instruments Act, 1881 was filed against the petitioners,, wherein the petitioners petitioner were declared as proclaimed person persons vide order dated 07.10.2023 (Annexure P-3)

3) and subsequently, FIR ((supra) was registered.

3. Learned counsel for the petitioner petitioners submits that after the registration of FIR (supra), (), the petitioners surrendered before the learned trial Court and were granted the concession of bail vide order dated 05.09.2024 1 of 8 Neutral Citation No:=2025:PHHC:028627 CRM-M-11253 (Annexure P-5).

5). Further, the learned trial while granting the concession of bail, ail, also recalled the orders ofailable warrants/non warrants/non-bailable warrants/proclamation. He further submits that when the petitioners came to know about the FIR (supra), (), they immediately filed a petition seeking anticipatory bail and were granted interim bai bail on 11.09.2024, which was made absolute on 16.09.2024. Learned counsel furthermore submits that the petitionersss were never served and were declared proclaimed person persons without following the drill of Section 82 Cr.P.C. Further, the mandatory drill of Section 195 Cr.P.C. has also not been followed in its letter and spirit by the trial Court. In support of his arguments, counsel for the petitioner petitioners relies upon the judgment passed by this Court in Sonu vs. State of Haryana 2021 (1) RCR (Cri.) 319 and the judgment passed by the Gujarat High Court in Govindbhai Patel Vs. State of Gujarat 2004 (4) RCR (Criminal) 830.

4. Notice of motion.

5. Mr. Subhash Godara, Addl. A.G., Punjab, who is present in the Court, accepts notice on behalf of respondent No No.1-State and supports the order passed by the learned trial Court by contending that the petitioner petitioners did not put in appearance before the trial Court intentionally and deliberately and, therefore, having left with no other option, proclamation was issued to secure their presence.

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

7. Section 174-A 174 A of the IPC was introduced through the Amendment Act of 2005, and a corresponding amendment was made to 2 of 8 Neutral Citation No:=2025:PHHC:028627 CRM-M-11253 Schedule 1 of the Criminal Procedure Code (Cr (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 174 174-A IPC from its scope. The proposition that Section 174-A 174 A IPC is governed by the procedure as laid out in Section ection 195 Cr.P.C. is further supported by the fact that Section 174-A A IPC and the corresponding Section 209 of the Bhartiya Nyaya Sanhita 2023, are essentially identical. However, Section 209 has been explicitly removed from the purview of Section 215 of the Bhartiya Nag Nagarik Suraksha Sanhita, 2023 which mirrors Section 195 of Cr.P.C. In its present form, thus, Section 195 of the Cr.P.C.

Cr clearly encompasses Section 174
174-A IPC, as the

legislature in its wisdom this time has specifically excluded Section 209 of the Bhartiya Nyaya Sanhita from the ambit of Section 215 of the Bhartiya Nagarik Suraksha Sanhita.

Sanhita. Furthermore, in 2006, an amendment was made to Section 195(1)(b) of the Cr.P.C., but Section 195(1)(a)(i) was left unchanged. Therefore, it is evident thatt Section 195 of the Cr.P.C. applies to the offence under Section 174-A 174 IPC.

8. As it is conclusive c that Section 174 174-A IPC is governed by Section 195, it would be apposite to emphasize that the drill of Section 195 of the Cr.P.C. is mandatory in nature. This his position is supported by the judgment of the Hon'ble Supreme Court's rendered in C. Muniappan & O Others. v. State of Tamil Nadu, (2010) 9 SCC 567, 567 wherein the following observations were made:

"20. Section 195(a)(i)

(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 3 of 8 Neutral Citation No:=2025:PHHC:028627 CRM-M-11253 procedure in a case of contempt of the lawful authority of the public servant.

rvant. 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 pepersons actuated by malice, ill-will 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 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 : 200 2005(1) Apex Criminal 581).

21. The test of whether there is evasion or non non-compliance of Section 195 Criminal Procedure Code or not, is whether the facts disclose primarily and essentially an offence for w 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 provisi 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 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 4 of 8 Neutral Citation No:=2025:PHHC:028627 CRM-M-11253 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 knowledge.

magistrate, and the general right of a person to move the court with a complaint to that extent curtailed. It is a well 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. T 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.

jurisdiction."

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9. 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 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-M-

41656-2023 decided on 23.08.2023; Jarnail Singh @ Rana vs. State of Punjab, CRM-M M-48718-2019 decided on 17.04.2024 and Charanjit Singh @ Channi CRM-M M-453-2023 pronounced on 06.12.2023).

10. In the present case, the learned 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 Magistrate merely forwarded a copy of its orders to the local police, directing them to initiate proceedings under Section 174-A of the 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 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.

11. 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 the judgment of the Hon'ble Apex Court in Dharani Sugars and Chemicals Ltd. v.

Union of India reported in (2019) 5 SCC 480.

12. In the eventuality of his non-appearance, non appearance, the presence of the accused first ought to have been secured by issuing summons or bailable warrants, and non-bailable non bailable warrants or proclamation should not generally be issued at the first instance. A perusal perusal of the impugned order reveals that the trial Court has issued a proclamation straight away, without recording any 7 of 8 Neutral Citation No:=2025:PHHC:028627 CRM-M-11253 reasons to indicate that the petitioners petitioner have absconded or are concealing themselves 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 non recording of the satisfaction itself makes such order suffering from incurable illegality. Furthermore, the learned counsel for the petitioner petitioners has taken a specific stand that the petitioners pe s were declared to be a proclaimed persons without following the drill of Section 82 Cr.P.C. Since the proclamation was never served on the petitioner petitioners, all actions taken post non- execution of the proclamation stand vitiated.

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

14. In view of the aforesaid facts and circumstances, the present petition is allowed and the FIR No.253 dated 11.

11.12.2023 registered under Section 174-A A IPC at Police Station Division No.6, Ludhiana (Annexure P P-4) and all the consequential proceedings emanating therefrom, are hereby quashed qua the petitioners.

petitioner (HARPREET HARPREET SINGH BRAR BRAR) February 28, 2025 202 JUDGE manisha

(i) Whether speaking/reasoned Yes/No

(ii) Whether reportable Yes/No 8 of 8