

2023:PHHC:110479

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-41656-2023 (O&M)

Date of decision: 23.08.2023

Pardeep Kumar

....Petitioner

versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Prashant Bansal, Advocate for petitioner.

Mr. Dhruv Dayal, Additional A.G., Punjab.

Mr. Sumit Dua, Advocate for respondent No. 2.

ARUN MONGA, J.

Every other day, this Court is confronted with a dilemma of deliberating upon the merits of an FIR registered under Section 174-A of the Indian Penal Code (hereinafter referred to as 'IPC'). This predicament is particularly pronounced in cases, where the accused, after trial, has been acquitted in the principal offence. He is absolved of culpability either on merits of legal considerations or, in case of a private criminal complaint, its dismissal due to non-prosecution or its withdrawal, or even its dismissal through amicable settlement between the concerned parties. Nonetheless, the ancillary legal proceedings persist, unabated, much to the chagrin of the accused.

2. Instant case under consideration is yet another manifestation of the recurring phenomenon seeking indulgence to intercede and quash FIR No. 246, dated 18th September 2019 (hereinafter referred to as 'Annexure P-1'), registered under Section 174-A *ibidat* Police Station, City Rajpura, District Patiala. FIR has been lodged as a consequence of trial court order dated 31.08.2019, emanating from the criminal proceedings initiated in a complaint filed under Section 138 of the Negotiable Instruments Act.

3. Succinct facts first, as pleaded in the petition.

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3.1 Complainant-Bhagwan Dass (since deceased, now represented through LR-Ashwani Kumar-respondent No. 2 herein) filed a criminal complaint against the petitioner under Section 138 of the Negotiable Instrument Act, 1881(for short 'NIA Act'). The petitioner states that he never received any Court summons or warrant of arrest. Being unaware, he could not appear before the concerned Court. Consequently, learned trial Court, vide order dated 31.08.2019, declared the petitioner as proclaimed person. Said order led to registration of an FIR dated 18.09.2019 against the petitioner under Section 174-A of the IPC.

3.2. Petitioner surrendered before the trial Court on 28.09.2020.

3.3. Subsequently, main matter under Section 138 *ibid* was compromised. Statement of complainant, regarding compromise, was also recorded before the Court below on 28.09.2020. Complainant received cheque amount from the petitioner to his satisfaction. He stated before the Court that he did not want to press any charges against the petitioner. He, thus, did not proceed further with the main complaint under Section 138 of the NIA Act and withdrew the same. However, the proceedings against the petitioner arising out of FIR dated 18.09.2019 under Section 174-A of the IPC are continuing.

4. Learned counsel for petitioner argues that order dated 31.08.2019 declaring petitioner as a proclaimed person, was passed by learned Judicial Magistrate 1st Class, Rajpura without following the proper procedure prescribed under Sections 82 and 83 of the Code of Criminal Procedure, 1973. It is, thus, not sustainable.

5. He further urges that, even otherwise, no useful purpose would be served by continuing the proceedings/trial in the FIR under Section 174-A IPC, as main matter since stands settled and entire cheque amount was paid to the complainant.

6. Notice of motion.

7. On advance service of copy of petition, learned State counsel and learned counsel for respondent No. 2 appear and accept notice.

8. Learned counsel for the respondent No. 2 admits the factum of compromise. He agrees that main complaint under Section 138 of the Negotiable Instruments

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Act, 1881 was dismissed as withdrawn. Petitioner was, thus, acquitted in the complaint under Section 138 ibid filed against him.

9. Learned State counsel, however, opposes the instant petition. He submits that order declaring petitioner as a proclaimed person has rightly been passed. He further submits that the offence under Section 174-A IPC is independent of the main case. Merely because main case is compromised, the petitioner cannot go scot free in the FIR in question.

10. I have heard the competing arguments.

11. Petitioner was declared proclaimed person by the learned trial court, vide order dated 31.08.2019. Same being *apposite*, is also reproduced as under:

“Proclamation warrants issued against accused received back duly effected. The proclamation has been received by the court. Statement of serving official also recorded in this regard. Statutory period of 30 days has already elapsed from the date of execution of proclamation but accused has not appeared. Accordingly, the accused is declared as proclaimed person.

The complainant appeared and submitted that he has no knowledge about the property of the accused at present and he would intimate the court as and when he gets to know about property of the accused. Since accused has been declared as proclaimed person and list of property of accused has not been filed by the complainant, therefore, file is ordered to be consigned to the record room with a direction that the same be put up before the court as and when accused is arrested or surrenders in the court or list of property of accused is filed by the complainant.”

Impugned FIR shows that it was registered on the basis of order dated 31.08.2019 received from the learned Judicial Magistrate Ist Class, Rajpura, vide a separate order dated 13.09.2019. Said subsequent order dated 13.09.2019, also reproduced in the FIR, reads as under:

“Copy of order 31.08.2019 forwarded to SHO, PS City, Rajpura for information, necessary action against the accused and initiate proceedings u/s 174-A against the accused and send intimation to this court immediately. Copy of plaint attached herewith.”

12. Before proceeding further and commenting upon the aforesaid orders dated 31.08.2019 and 13.09.2019, passed by the learned Judicial Magistrate, it would be pertinent to firstly notice the relevant provisions of the Indian Penal Code (‘IPC’ for short)

and then those of the Code of Criminal Procedure ('the Code') as extracted here in below:-

INDIAN PENAL CODE

21. "Public Servant"

The words 'public servant' denote a person falling under any of the descriptions hereinafter following; namely:-

[***]

Third- Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

174A .Non-appearance in response to a proclamation under section 82 of Act 2 of 1974.

"Whoever fails to appear at the specified place and the specified time as required by a proclamation published under sub-section (1) of section 82 of the Code of Criminal Procedure, 1973 shall be punished with imprisonment for a term which may extend to three years or with fine or with both, 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."

CRIMINAL PROCEDURE CODE

"82. Proclamation for person absconding.—(1) *If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.*

(2) *The proclamation shall be published as follows:—*

(i) *(a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides; (b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village; (c) a copy thereof shall be affixed to some conspicuous part of the Court-house; (ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.*

(3) *A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.*

(4) *Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.*

(5) *The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1).]*

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.—

(1) No Court shall take cognizance—

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, (45 of 1860), 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;

x-x-x-x-x”

12.1. As would be seen, Section 195 (1)(a)(i) of the Code provides that no Court shall take cognizance of any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate.

12.2. Clause third of Section 21 of the Indian Penal Code states that the words “public servant” denote and include every judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions.

12.3. Clause(d) of Section 2 of the Code of Criminal Procedure defines “complaint” as any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, **but does not include a police report.**

12.4. Pertinently, vide explanation provided below Clause (d) *ibid* a report by a police officer shall be deemed to be a complaint in a case, which discloses the commission of a non-cognizable offence. But it must be preceded with an investigation. The police officer by whom such report is made, shall be deemed to be the complainant. According to the First Schedule of the Code, the offence under Section 174-A of IPC is cognizable. The aforesaid explanation is, thus, not applicable to the case in hand.

12.5. From the plain language of Section 195 of the Code of Criminal Procedure, it is obvious that offence under Section 174-A of IPC falls within its scope. Its cognizance cannot be taken by any Court except on the complaint in writing of the public servant/Judge concerned or of some other public servant/Judge to whom he is administra-

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tively subordinate. This being the position, after declaring the petitioner a proclaimed person, if at all the learned Magistrate had desired and decided to proceed against the petitioner for an offence under Section 174-A of IPC, the prescribed course for him was to institute a complaint in writing in the competent jurisdictional Court. Instead of that, the learned trial Court adopted a short but wrong cut and just sent a copy of his orders to the local police for initiation of proceedings under Section 174-A against the petitioner (obviously by registration of an FIR).

12.6. In my opinion, the orders passed and sent to the local police by the learned Magistrate directing for initiation of proceedings under Section 174-A against the petitioner and the impugned FIR, Annexure P-1, registered thereupon at Police Station, City, Rajpura are in violation of the relevant provisions of Section 195 of the Code, under which a criminal complainant had to be filed by the learned Magistrate in the jurisdictional Court. Orders dated 31.08.2019 and 13.09.2019 reproduced above directing initiation of proceedings under Section 174-A against the petitioner (obviously by registration of an FIR) are not legally sustainable. The impugned FIR, therefore, is liable to be quashed on that short ground alone.

12.7. However, my attention has been drawn to a contrary view rendered in a judgment by Delhi High Court in case titled *Maneesh Goomer v/s Govt. of NCT*¹, relevant para 9 thereof is as under :-

“9. As regards the next contention of the Petitioner that for a prosecution under Section 174-A IPC no cognizance can be taken on a charge-sheet but on a complaint under Section 195 Cr.P.C., it may be noted that Section 174- A IPC was introduced in the Code with effect from 23rd June, 2006. Section 195(1) Cr.P.C. provides that no Court shall take cognizance of offences punishable under Section 172 to 188 (both inclusive) of the IPC 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 Cr.P.C. has not been correspondingly amended so as to include Section 174-A IPC 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 174-A IPC is cognizable. Thus, the Police officer on a complaint under Section 174-A IPC 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.”

¹2012 SCC OnLine Del 66

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12.8 The reasoning given in *Maneesh Goomer's case*(*supra*)is that Section 195 Cr.P.C. has not been correspondingly amended so as to include Section 174-A IPC,asthe Legislature was conscious of the fact that the offence (under Section 174-A IPC) is cognizable. It may be noted here that Section 188 of IPC is also in Chapter X of IPC and is a cognizable offence. And yet, it was and is still specifically covered by the provisions of Section 195 of the Code of Criminal Procedure. On the logic of *Maneesh Goomer's case* (*supra*), in my opinion,Section 174-A IPC cannot be held excluded from the purview of Section 195 Cr.P.C. merely because it is cognizable.

12.9 Having given my thought further on the reasoning given in *Maneesh-Goomer's case* (*supra*), with utmost respect, I have a different take on the same. Notably, introduction of Section 174-A into the IPC was accompanied by a corresponding amendment in Schedule 1 of the Cr.P.C. This amendment classified the aforementioned offence as cognizable. However, Section 195 of the Cr.P.C. wasconsciously not amended correspondingly to exclude Section 174-A from its ambit, as is now being proposed through Section 215 of 'The Bhartiya Nagrik Suraksha Sanhita 2023 Bill'. Said Bill currently under consideration of the legislature.The omission of Section 174-A from the scope of Section 195 of the Cr.P.C cannot, therefore, be alsocharacterized as a mere oversight, especially in light of the deliberate amendment in Schedule-1, while Section 195*ibid*was conspicuously left untouched.

12.10 Intent of the legislature is clearly borne out from the now proposed/draft amendment through Section 215 of 'The Bhartiya Nagrik Suraksha Sanhita Bill 2023'. Said enactment is thoughstill pending, butfor the sake of discussion herein,the same [as well as now proposed Section 207 (same as earlier 174-A IPC) of 'The Bhartiya Nyaya Sanhita Bill- 2023'] and existing Section 195 Cr.P.C. along with 174-A IPC, being very relevant, are reproduced below for ready reference:-

EXISTING SECTION OF IPC	PROPOSED CORRESPONDING SECTION OF "THE BHARTIYA NYAYA SANHITA BILL, 2023"
174A- <i>Non-appearance in response to a proclamation under section 82 of Act 2 of 1974—</i>	SECTION 207-
<i>Whoever fails to appear at the specified place and the specified time as required by a proclamation</i>	<i>"Whoever fails to appear at the specified place and the specified time as required by a proclamation</i>

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<p>published under sub-section (1) of Section 82 of the Code of Criminal Procedure, 1973 shall be punished with imprisonment for a term which may extend to three years or with fine or with both, 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.</p>	<p>published under sub-section (1) of section 84 of the Bhartiya 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.”</p>
<p>EXISTING SECTION OF Cr.P.C. 195- Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence –</p>	<p>PROPOSED CORRESPONDING SECTION OF “THE BHARTIYA NAGRIK SURAKSHA SANHITA BILL 2023” SECTION 215-</p>
<p>(1) No Court shall take cognizance – (a) (i) of any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or (ii) of any abetment of, 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; (b) (i) of any offence punishable, under any of the following Sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, 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 Section 463, or punishable under section 471, section 475 or section 476, of the said Code, 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 sub-clause (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 authorize 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 under clause (a) of sub-section (1) any authority to which he is administratively subordinate 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, Provincial 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 ordinary lie from the appealable decrees or sentences of such former</p>	<p>(1) No Court shall take cognizance- (a) (i) of any offence punishable under sections 204 to 224 (both inclusive but excluding section 207) of the Bhartiya 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 Bhartiya Nyaya Sanhita, 2023, namely, sections 227 to 231 (both inclusive), 234, 235, 240 to 246 (both inclusive) and 265, 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 section 334, or punishable under section 337, section 340 or section 341 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 sub-clause (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, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.</p>

<p><i>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:</i></p> <p><i>Provided that-</i></p> <p>(a) <i>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;</i></p> <p>(b) <i>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.</i></p>	<p>(4) <i>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:</i></p> <p><i>Provided that—</i></p> <p>(a) <i>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;</i></p> <p>(b) <i>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.”</i></p>
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12.11. From comparison of the text as aforesaid, it is borne out that Section 174-A IPC and corresponding Section 207 of ‘The Bhartiya Nagrik Suraksha Sanhita Bill 2023’ are though verbatim, but it is now proposed to take Section 207 *ibid* out of the purview of Section 215 of ‘The Bhartiya Nagrik Suraksha Bill, 2023’ (corresponding to Section 195 of Cr.P.C.). Thus, in its current state, Section 195 of Cr.P.C., unequivocally encompasses Section 174A of the Indian Penal Code (IPC) within its legal framework. The earlier absence of corresponding amendment did perhaps give rise to a measure of bewilderment. However, the said conspicuous absence of a corresponding modification to Section 195 Cr.P.C. has now drawn the attention of the legislature in the form of the currently contemplated Bill.

12.12. Be that as it may, it is unmistakably evident that the omission of Section 174-A from the purview of Section 195 of the Cr.P.C. cannot be treated as a mere inadvertent oversight. It gets more particularly obvious, when viewed through the lens of the deliberate simultaneous legislative action taken to amend Schedule-1. This deliberate choice to eschew any alteration in Section 195 Cr.P.C. while making concurrent changes elsewhere in the same Code suggests a level of intentionality that cannot be readily discounted.

12.13. Having opined as above, I may also hasten to add here that non-inclusion of Section 174-A of IPC into the ambit of Section 195 of Cr.P.C in its current form, does

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though create some incongruity/legal inconsistency. To elucidate, let us consider an illustrative scenario: Imagine an individual accused of an offense falling under Section 174-A of the IPC. Being an offense classified as cognizable, the police have the authority to arrest the accused without a warrant. However, Section 195 of the Cr.P.C. bars any Court from taking its cognizance except on the complaint in writing made by the Court/Public servant concerned. This creates an anomalous situation where an individual who is accused under Section 174-A IPC could potentially be arrested without a warrant, yet the legal requirement for his prosecution for such an offense is by way of filing a complaint under Section 195 of the Cr.P.C.

12.14. The incongruity, if any, in the legal framework rather warrants a closer examination of legislative intent. The statutory insistence *ibid*, of filing of complaint by public servant/court concerned is in tune with fundamental right to personal liberty as enshrined under Article 21 of the Constitution of India. The same underscores the importance of aligning legal provisions to ensure that personal liberty of an individual is given paramount consideration, given that an individual who is declared as proclaimed person or offender, as the case may be, is a mere suspect/under trial and not yet a declared culprit. He is also equally entitled to procedural protection in exercise of his fundamental right under Article 21. Same has to be thus safeguarded. Justice has to be administered even to a suspect/under trial without any ambiguity or drawing inferences against him from legislative ambiguities. Thus the incongruity ought not to result in an asymmetry of rights and due process. Such an inconsistency underscores the critical need for clarity in legislation and ascertaining its intent through judicial interpretation in matters affecting personal liberty and justice.

12.15. Nevertheless, even if we were to entertain the notion that non-exclusion of Section 174-A of IPC from the purview of Section 195 Cr.P.C. was by an inadvertent oversight/omission in the legislation, it is crucial to recognize that any benefit arising from such an inadvertence or oversight would accrue to the advantage of the accused, rather than the prosecution. In the realm of criminal jurisprudence, matters pertaining to

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personal liberty hold a paramount position. Such matters pertaining to personal liberty should never be predicated upon inferences drawn against the accused from presumed intentions and/or inadvertent omissions on the part of the legislature. The sanctity of personal liberty demands nothing less than clear and categorical legislative provisions ensuring that justice is not compromised by inferences drawn against the accused from legislative ambiguity or oversights.

12.16. In conclusion, it is held that Section 195 of the Code of Criminal Procedure (CrPC), in its present form, encompasses Section 174-A of the Indian Penal Code (IPC) within its purview.

13. Turning now to the next issue i.e. procedural framework governing the issuance of proclamations, their publication, and the declaration of an individual as a "proclaimed person" or "proclaimed offender," alongside the attachment and sale of their assets. I find these provisions nestled within Chapter VI of the Code of Criminal Procedure, titled "Processes to Compel Appearance." It becomes evident that the overarching objective and purpose of these provisions are the ensuring and compelling the presence of the concerned individual, thus facilitating the expeditious adjudication of criminal cases by obviating undue delays.

13.1 The declaration of an individual as a proclaimed person or offender, as contemplated under Section 82 of the Code of Criminal Procedure (hereafter referred to as 'the Code'), carries with it the consequential implication of attachment and sale of his property as delineated in Sections 83, 84, and 85 of the Code. Furthermore, such a declaration triggers the criminal liability of the individual under Section 174-A of the Indian Penal Code, with a potential sentence of up to seven years of imprisonment, coupled with a monetary penalty. This, in turn, has profound and far-reaching ramifications, significantly affecting the fundamental rights to life, liberty and property of the concerned individual. Hence, it becomes imperative that the Courts meticulously adhere to the statutory requirements in letter and spirit both, duly reflecting their

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compliance on the record prior to pronouncing an individual as a proclaimed person or offender and invoking criminal liability under the aforementioned section.

13.2 Section 82(1) of the Code mandates that a proclamation shall require the concerned individual to appear at a specified place and time, with no less than thirty days' notice from the date of proclamation publication. Sub-Section (2) provides comprehensive guidance on the publication of proclamations, while sub-Section (3) firmly establishes that a written statement by the issuing Court shall be conclusive evidence of compliance with the requirements of this Section. Additionally, Section 83(1) empowers the Court, to order the attachment of any property, whether movable or immovable, belonging to the proclaimed individual, for reasons recorded in writing.

13.3 In cases where an accused person fails to appear even after publication of the proclamation under Section 82(1) of the Code, the Court can initiate action as per procedure outlined in Sections 83, 84, and 85 of the Code for the attachment and sale of their property. Furthermore, the Court may proceed with the examination of witnesses in the individual's absence, as stipulated in Section 299 of the Code.

13.4 It is worth noting that there is no mandatory prescription in the Code of Criminal Procedure requiring the Court to invariably initiate separate criminal proceedings for the offence under Section 174-A IPC in every instance where an individual fails to appear as summoned by way of proclamation. In the premise, it is desirable that even after the declaration of an individual as a proclaimed person or offender, the Court should act judiciously and exercise circumspection before embarking on the stringent path of instituting criminal proceedings under Section 174-A of IPC, which, as mentioned earlier, carries the heavy punishment of up to seven years' imprisonment and a fine. This cautious approach is essential as the institution of criminal proceedings under the Section *ibid* has profound and far-reaching consequences on the individual's life, liberty and property rights.

13.5 Conversely, envision a scenario where, following a trial for an offense under Section 174-A IPC, the Court remains unconvinced that the statutory requirements

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were carefully met in both letter and spirit, or that compliance thereof is not reflected in the record, prior to pronouncing the accused as a proclaimed person or offender. The inevitable outcome would be the acquittal of the accused, a verdict that could bring unwarranted embarrassment to the Court that initiated the complaint. Moreover, the undue hardship/harassment endured by the accused cannot be rectified in such a perplexing situation. Thus, it is all the more imperative that Courts diligently adhere to the relevant statutory requirements, meticulously documenting their compliance in both form and substance before pronouncing an individual as a proclaimed person or offender and initiating action under Section 174-A of the IPC.

14.1. In this context of issuance and publication proclamation vis-à-vis safeguards thereof, reference may be had to the guidelines and principles enunciated after threadbare analysis by Delhi High Court in a judgment rendered incase titled *Sunil Tyagi v/s Govt of NCT of Delhi and another*². Relevant thereof is below :-

“442. Proclamation only on deliberate concealment - The police has to submit a report before the Court that the person against whom the warrant was issued, has absconded or is concealing himself.

442. Concealment has to be deliberate - The concealment has to be deliberate for the purpose of avoiding arrest. The mere fact that the police could not find the accused, is not enough.

444. Mere non-availability at address is not sufficient - Mere non- availability at the address is not sufficient unless the concealment is deliberate to avoid arrest. A person who had gone abroad before the issue of the warrant of arrest cannot be said to be absconding or concealing. However, if the accused left India before proclamation but continues to remain outside India with a view to defeat or delay the execution of the warrant, he shall be taken to be absconding.

445. Affidavit/Status Report of the Police - The police officer shall file an affidavit/status report to disclose the addresses and phone numbers/email addresses (if available) of the accused against whom the warrants had been issued and the reasons for inability to secure the presence of the accused before the Court.

446. Pre-requisites to the issuance of a proclamation - Prior to issuance of a proclamation under Section 82(1) CrPC,

(i) The police officer may file an Affidavit/Status Report disclosing:

(a) All available addresses and phone numbers/email addresses (if available) of the person against whom the warrant has been issued along with proof of the said addresses, phone numbers/email addresses and any other details available in the information sheet with underlying documents demonstrating the same;

(b) particulars of proof of service of the arrest warrant at the said address (i) by post; (ii) by hand (iii) mobile number,

² (2021) 4 High Court Cases (Del) 723

(iv) email address (if any) and (v) service on a family member/neighbor along with credible proof of the same;

(c) In the event warrant has been affixed on a conspicuous part of the house where the person ordinarily resides, town/village/ courthouse, the police officer must annex a picture showing that warrant has been affixed in such manner along with his affidavit. The picture must be taken in a manner that makes it clear to the Court that the warrant has in fact, been affixed at the said house;

(d) Reasons for inability of the police officer in securing presence of the person against whom warrant is issued;

(ii) The Court must pass an order dealing with the contents of the Affidavit/Status Report and reasons given by the police officer for arriving at a conclusion that the person has absconded or is concealing" himself or reasons for inability of the officer in securing presence of the person.

447. Court to record satisfaction - Under Section 82 CrPC, the Court issuing proclamation shall record to its satisfaction that the accused had absconded or concealed himself. The expression 'reason to believe' in Section 82 CrPC means that the Court has to be subjectively satisfied from the materials before it that the person has absconded or has concealed.

448. Court to examine executing officer - Before issuing a proclamation, the Court shall examine the officer with respect to the measures taken by him to execute the warrants.

449. Issuance of arrest warrant a pre-condition - Issuance of an arrest warrant and the accused found absconding, are pre-conditions for issuing proclamation.

450. NBW and Section 82 CrPC not to be issued together - Simultaneous issuance of both the processes, namely, warrant of arrest and proclamation is ex-facie contradictory, since it is only after the former that the latter can be issued where the concerned person has absconded or is hiding.

451. Pre-requisites to the publication of a proclamation under Section 82(2)(ii) CrPC - Prior to publication under Section 82(2)(ii) CrPC the Police Officer may be mandatorily required to file an Affidavit disclosing: A picture showing that proclamation has been affixed in a conspicuous place of the house where the person resides. The picture must be taken in a manner that makes it clear to the Court that the proclamation has in fact, been affixed at the said house; The Court must pass an order dealing with the contents of the Affidavit and statement of the process server along with its reasons for directing publication under Section 82(2)(ii).

452. Publication by all three modes essential - Publication by all three modes namely (i) public reading in some conspicuous place of the town/village in such person ordinarily resides; (ii) affixation at some conspicuous part of the house or homestead and (iii) affixation at some conspicuous part of the court house are mandatory under Section 82(2) CrPC. The failure to comply with all the three modes of publication is to be considered invalid publication, according to law as the three sub-clauses (a) to (c) are conjunctive and not disjunctive.

453. Section 82 CrPC to be read as a whole - The three clauses

(a), (b) and (c) of Section 82(2)(i) CrPC are conjunctive and not disjunctive. The factum of valid publication depends on the satisfaction of each of these clauses. Clause (ii) of sub-Section (2) is optional; it is not an alternative to clause (i). The latter clause is mandatory.

454. Photograph of the affixation of proclamation - Prior to the publication under Section 82(2)(i) CrPC, the police shall file an affidavit along with the photographs of the affixation of proclamation on the conspicuous part of the resident of the accused. The police officer shall fill and submit performa in the format of Annexure C before the court at the stage of seeking proclamation.

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455. Upon publication of the proclamation under Sections 82/83 CrPC, copy of that newspaper be sent by the newspaper agency by post to the address of the accused as being done in Civil matters under Order 5 Rule 10 of CPC.”

15. In the light of aforesaid discussion, adverting now to the instant case, I am of the opinion that the orders dated 31.08.2019 and 13.09.2019 reproduced above directing registration of an FIR and the impugned FIR Annexure P-1 registered on their basis at Police Station, City, Rajpura do not show full compliance with the relevant statutory requirements in letter, spirit and substance for declaring the petitioner a proclaimed person.

15.1 The order dated 31.08.2019 is wholly silent as to when the proclamation under Section 82 Cr.P.C. against the petitioner was issued; what was the date specified therein for the petitioner to appear in Court; when the proclamation was actually published; whether it was publicly read in some conspicuous place of the town or village in which the petitioner ordinarily resided; whether it was affixed to some conspicuous part of the house or homestead in which the petitioner ordinarily resided or to some conspicuous place of such town or village; whether a copy thereof was also affixed to some conspicuous part of the court-house. Further, the order *ibid* does not contain a statement by the Court to the effect that the proclamation was duly published on a specified day and in the manner specified in clause (i) of Sub-Section (2). These facts were not even noticed in the order passed by the Court. It cannot, therefore, be said that they were present in mind of the Court, were taken into consideration and the Court had satisfied itself about the compliance of relevant requirements before passing the order dated 31.08.2019 declaring the petitioner a proclaimed person.

15.2 Even if it is assumed that the Court had satisfied itself about the compliance of relevant requirements before passing the order dated 31.08.2019 declaring the petitioner a proclaimed person, in my opinion, it should further have applied its mind to the relevant facts and circumstances, taken a conscious decision whether or not it was a fit case to invoke criminal liability of the petitioner for offence under section 174-A of IPC. As against this, in present case the Court, vide its cryptic two line order dated 13.09.2019, simply forwarded a copy of its earlier order 31.08.2019 with a copy of the

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complaint filed before it under section 138 of NI Act to SHO, Police Station City, Rajpura for information, necessary action against the petitioner and for initiating proceedings under Section 174-A IPC against him. To my mind, the order dated 13.09.2019 is totally non-speaking and does not at all show that while passing it, the Court had applied its mind to the relevant facts and circumstances and taken any conscious decision that it was a fit case to invoke criminal liability of the petitioner for offence under section 174-A of IPC. It was/is cryptic, non-speaking and mechanical order *sans* any reasons or application of mind.

15.3 As an upshot, it is held that the orders dated 31.08.2019 and 13.09.2019 passed by the learned Magistrate do not show full compliance with the relevant statutory requirements in letter and spirit, for declaring the petitioner a proclaimed person. The requisite application of mind by the Court while invoking criminal liability of the petitioner for offence under Section 174-A of IPC is also lacking herein. The said orders are not sustainable in law, form the basis of the registration of the FIR under Section 174-A of IPC against the petitioner, and are, therefore, fatal to the FIR in question.

16. Considering the aforesaid facts and circumstances, I am of the opinion that the impugned FIR and all subsequent proceedings emanating therefrom are liable to be quashed.

17. Resultantly, the petition is allowed and the impugned FIR No. 246 dated 18.09.2019 (Annexure P-1) under Section 174-A of IPC registered at Police Station, City, Rajpura, District Patiala and all consequential proceedings arising therefrom against the petitioner are quashed. The order dated 31.08.2019 declaring the petitioner a “proclaimed person” as also the order dated 13.09.2019 passed by the learned Judicial Magistrate and sent to SHO, PS City, Rajpura for initiating proceedings against the petitioner u/s 174-A IPC, are also quashed.

18. Pending application(s), if any, shall also be disposed of.

19. Before parting with the case, having had the benefit of judgment in Sunil Tyagi *supra*, it is considered desirable to frame guidelines for issuance of a proclamation

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under Section 82 of the Code of Criminal Procedure, it's publication, declaring the concerned person as 'proclaimed person' or 'proclaimed offender' and where considered necessary, to invoke criminal proceedings against person for offence under Section 74-A of IPC. Accordingly, the following guidelines are being framed:

Issuance of proclamation :

- i. Preceding the issuance of the proclamation under section 82 Cr.P.C., the Court must deliberate upon its previous efforts to secure the presence of the through other legally permissible means. These efforts encompass the issuance of summons, the execution of bailable and/or non-bailable warrants against the accused. The Court must thoroughly document the results stemming from these endeavours, accompanied by pertinent facts and comprehensive details. It is incumbent upon the Court to satisfactorily ascertain that the individual in question has indeed absconded or is concealing himself to evade execution of warrant of arrest.
- ii. The phrase "**reason to believe**," as articulated in Section 82 of the Code of Criminal Procedure, signifies that the Court must derive its belief from the available evidence and materials that the concerned person has absconded or is concealing himself to evade execution of warrant of arrest.
- iii. Furthermore, in the proclamation, it must be set forth as to where and when the concerned individual must present himself. A designated location and time must be stipulated. Importantly, the specified date and time for appearance should not be less than a thirty-day from the date of publication of the proclamation.

Publication of proclamation—

- iv. The publication of a proclamation, as outlined in Section 82(2) of the Code of Criminal Procedure, mandates adherence to all three prescribed modes, namely:
 - (a). The public reading of the proclamation in a conspicuous location within the town or village where the individual ordinarily resides.
 - (b). The affixation of the proclamation at a prominent spot at the individual's house or homestead.
 - (c). The display of the proclamation at a prominent location within the precincts of the court house.
- v. All the aforesaid three modes of publication of a proclamation have to be adhered to. Failure to follow all or any of them renders the proclamation invalid

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in the eyes of the law. This is because the three sub-clauses (a) to (c) are mutually exclusive.

- vi. If the Court so feels, in addition to the aforementioned trio of methods for securing the accused's presence, it may, at its discretion, also direct the publication of a copy of the proclamation in a daily newspaper circulating within the geographical area where the said individual ordinarily resides.
- vii. If the Court, in its discretion orders publication of proclamation in newspaper, it shall also direct that the newspaper agency, upon the publication of the proclamation in the newspaper, shall dispatch a copy thereof to the accused's address, as is the procedure observed in civil matters, in terms of Order 5 Rule 10 of the Code of Civil Procedure. In essence, this supplementary measure ensures that the accused is duly apprised of the legal proceedings against him.

Declaration as “proclaimed person” or “proclaimed offender:

- viii. Prior to the declaration of the concerned individual as a "proclaimed person" or "proclaimed offender," the Court shall pass a speaking order stating relevant facts and record its satisfaction that the proclamation has been duly and properly published in the prescribed manner.
- ix. Furthermore, it must ensure that a period of not less than thirty days has expired between the date of publication of the proclamation and the date indicated in the proclamation for the individual's appearance. If the interval between the proclamation's publication and the date specified therein for appearance falls short of thirty days, such a publication of the proclamation cannot serve as the foundation for designating the individual in question as a "proclaimed person" or "proclaimed offender."
- x. A person can be declared “Proclaimed offender” only where the proclamation published under sub-section (1) of section 82 Cr.P.C. is in respect of any of the offences as per table given below :-

OFFENCE UNDER IPC	PARTICULARS
302.	Punishment for murder
304.	Culpable Homicide not amounting to murder
364.	Kidnapping or abducting in order to murder.
367.	Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.
382.	Theft after preparation made for causing death, hurt or restraint in order to the
392.	Punishment for robbery.
393.	Attempt to commit robbery.
394.	Voluntarily causing hurt in committing robbery.
395.	Punishment for dacoity.
396.	Dacoity with murder.
397.	Robbery or dacoity, with attempt to cause death or grievous hurt.
398.	Attempt to commit robbery or dacoity when armed with

	deadly weapon.
399.	Making preparation to commit dacoity.
400.	Punishment for belonging to gang of dacoits.
402.	Assembling for purpose of committing dacoity.
436.	Mischief by fire or explosive substance with intent to destroy house, etc.
449.	House-trespass in order to commit offence punishable with death.
459.	Grievous hurt caused whilst committing lurking house-trespass or house-breaking.
460.	All persons jointly concerned in lurking house-trespass or housebreaking by night punishable where death or grievous hurt caused by one of them.

- xi. If person accused of the above offences fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.
- xii. In all other alleged offences, the concerned person can and shall be declared as a “proclaimed person”.

Invoking criminal liability for the offence under section 174-A of IPC:

- xiii. It is imperative to bear in mind that the primary purpose behind the issuance and publication of proclamations under Section 82, as well as the attachment and sale of an individual's property, is the securing/compelling the appearance of the concerned person, to facilitate the expeditious trial of criminal cases by obviating the often protracted delays which impede their disposal.
- xiv. It is noteworthy that the Code of Criminal Procedure does not prescribe an automatic or obligatory invocation of further criminal liability under Section 174-A of the Indian Penal Code, in every case where an individual fails to appear pursuant to he being declared as ‘proclaimed person’ or ‘proclaimed offender’ after the publication of the proclamation under subsection (1) of Section 82 of the Code.
- xv. Consequently, it follows that even subsequent to the formal declaration of an individual as a "proclaimed person" or "proclaimed offender," the Court still retains the discretion to determine whether it is judicious to initiate the rigorous criminal proceedings under Section 174-A of the IPC, being mindful that the offence carries a punishment of imprisonment for up to seven years, coupled with a fine.
- xvi. In arriving at such a pivotal decision, the Court should exercise due circumspection, once more apply its mind to the facts and circumstances of each case

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considering the majesty of law *vis-à-vis* the nature and gravity of the offence that triggered the publication of the proclamation under subsection (1) of Section 82 of the Cr.P.C.; the potential impact of said offence on the victim or society at large; steps, if any, taken for the attachment and sale of property of the person concerned and the result thereof; the stage/status of the ongoing trial, any mitigating factors that may favor the proclaimed person or offender, and conversely, any aggravating factors against them. It is thereafter, that the Court should pass a speaking and reasoned order for initiating criminal proceedings against the proclaimed person or offender for the offense under Section 174-A of the IPC.

- xvii. Once the Court decides to proceed against the petitioner for an offence under Section 174-A of the IPC, it is imperative to institute a formal written complaint in the competent jurisdictional court. This imperative arises from the prevailing provision of Section 195 of the Code of Criminal Procedure, which mandates that no Court shall take cognizance of any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate.

20. A copy of this order/judgment be sent to the Registry for circulating the same to all the learned District & Sessions Judges in States of Punjab, Haryana and U.T., Chandigarh, for onward communication to the learned Judicial Officers in District Judiciary, as well as the Director, Chandigarh Judicial Academy, Chandigarh to sensitise the trainee Judicial officers about these guidelines and also to upload this judgment on its website for the benefit of the trainee officers.

(ARUN MONGA)
JUDGE

23.08.2023

Ajay

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