

**IN THE COURT OF SH. VINEET KUMAR:
ADDITIONAL SESSIONS JUDGE-02; E COURT:
SHAHDARA: KARKARDOOMA COURT: DELHI.**

Unique Case ID No. 58/2023

State Vs. Salman
 S/o Nafish
R/o E-132, New Seema Puri,
 Delhi.
FIR No. 156/2019
P.S. Seema Puri
u/s 174A IPC

23.08.2023

ORDER ON SENTENCE

1. Arguments have been heard on the point of quantum of sentence from Sh. Parmod Kumar, Ld. Addl. PP on behalf of State and from Sh. Udaiveer Singh, Ld. Legal Aid Counsel (LAC) for convict Salman.
2. It has been argued by the Ld. LAC that convict Salman is aged about 29 years and he has to support his family including his old aged parents and younger siblings. Ld. LAC for convict Salman further argued that convict has been in Judicial Custody in this case since 07.04.2022 i.e. more than 16 months. Thus, it has been prayed that convict may be admonished for the offence u/s 174-A IPC by taking a lenient view against him in the light of overall circumstances, more so, as it has been contended by Ld. LAC that convict could not have been held guilty u/s 174-A IPC as no separate FIR was ever registered against him for the said offence, which is a requirement of law and also the aforesaid offence is exclusively triable by the court of

Magistrate 1st Class, therefore, this court did not have jurisdiction qua the said offence.

3. Per Contra, Ld. Additional PP for State has argued that this court does have jurisdiction to take cognizance and try an offence u/s 174-A IPC as the same has emanated out of the main offence u/s 392/394/397/34 IPC and earlier other sections were also imposed on the convict, but later on, upon failing of TIP, the convict was only charge sheeted for the offence of 174-A IPC. It is further argued that as per settled law, there is no mandatory requirement of separate FIR u/s 174-A IPC and that convict has pleaded guilty for the offence under Section 174-A IPC and even otherwise, he is found involved in multiple criminal cases, therefore, the convict does not deserve any leniency and he may be awarded maximum punishment for the said offence.
4. In addition to hearing the abovesaid arguments, this court has also perused the material available on record.
5. At the outset, it is worthwhile to mention that convict has only been convicted for the offence u/s 174-A IPC and since the said offence has nothing to do with the complainant/victim as the same pertains only to administration of justice, therefore, in the opinion of this court, there was no requirement of calling Victim Impact Report in compliance of Karan Vs. State NCT of Delhi, Crl. A. 352/2020. Accordingly, the same is dispensed with in the light of facts and circumstances of the present case.
6. Now, advertng to the aspect of sentencing. It has been contended by Ld. LAC for convict that convict could not

have been held guilty u/s 174-A IPC as no separate FIR was ever registered against him for the said offence, which as per him, is a requirement of law and also the aforesaid offence is exclusively triable by the court of Magistrate of 1st Class, therefore, this court did not have jurisdiction qua the said offence.

7. Pertinently, the contentions raised in the present matter by Ld. LAC does not have any force as the present offence in the peculiar facts and circumstances of the present case is an offshoot of the main offence and this court was well within the ambit of law to take cognizance of the offence u/s 174-A IPC and consequently frame a charge against the convict for the said offence. Also, it is settled law that a separate FIR is not always required for the purpose of prosecution of the said offence. Reliance in this regard can be placed upon the judgment passed by the Hon'ble High Court of Delhi in the matter of A. Krishna Reddy Vs. CBI Through Director Crl. M.C. 4031/2011, wherein it has been held that:

“.....29. In the present case, when the petitioner did not put appearance deliberately and was declared 'absconder', supplementary charge-sheet for commission of offence under Section 174A IPC was filed by the Investigating Agency. Offence under Section 174A IPC, though independent in nature is an off-shoot of the initial charge-sheet pending trial before the CBI Court. No separate investigation is required to be conducted as the orders of the Court declaring the petitioner to be Proclaimed Offender are part of the record in the main challan. Object and purpose to incorporate Section 174A IPC primarily is to ensure that the accused / suspects do not scuttle investigation or trial by remaining absconding without valid or sufficient reasons. In such a scenario, when the

suspects or accused abscond, possibility of valuable evidence to be washed away cannot be ruled out. Since CBI had jurisdiction to investigate the main offence, cognizance by the Court for commission of offence under Section 174A IPC, its fall out, cannot be termed illegal or without jurisdiction.

30. This Court in 'State vs. Proclaimed Offenders of Delhi and others', Crl.No.2021/2010, decided on 11.08.2010 held that supplementary charge-sheet under Section 174A IPC can be filed or the offence under Section 174A IPC can be added in the main charge-sheet. Apparently, no fresh investigation was required to be carried out.

31. Well settled position is that a 'case' and 'counter-case' one triable exclusively by the Sessions Court and the other not triable exclusively by the Court of Sessions can be tried by the Court of Sessions to avoid conflicting judgments. In 'Sudhir & Ors. Vs. State of MP', 2001 (2) SCC 688, it was categorically held that a Sessions Judge has the power to try any offence under the Indian Penal Code. It is not necessary for the Sessions Court that the offence should be one exclusively triable by the Courts of Sessions. This power of the Sessions Court can be discerned from a reading of the Section 26 of the Code.

32. Seeking analogy from the said judgment, it can well be inferred that the offence under Section 174A IPC which arises out of the proceedings conducted during the main case, can be tried and disposed of by the same Court. Lodging of separate FIR for commission of offence under Section 174 IPC is not always required."

8. In view of the aforesaid authority, suffice it to state that contentions raised on behalf of the convict does not hold any ground. Further, as far as the contention of Ld. LAC that convict may be admonished is concerned, the same does not have any force either due to his antecedents, as the convict is otherwise found involved in as many as ten criminal cases and has also been convicted in one case. Thus, this court is not too inclined to admonish the convict and the request of Ld. LAC is accordingly rejected.

9. Further, an affidavit has been filed on behalf of State for expenses incurred on prosecution to the tune of Rs.5,016/- (approx.). However, in view of the fact that convict has pleaded guilty at the time of framing of charge and also considering the facts and circumstances of the present case in totality, this Court does not deem it fit to grant litigation expenses to the State. Accordingly, said request is hereby declined.
10. Upon considering the mitigating as well as the aggravating factors brought forth by the Ld. LAC for the convict as well as Ld. Addl. PP for the State and considering the fact that the convict Salman has been convicted only for the offence u/s 174-A IPC and that he is in custody since 07.04.2022 in the present case i.e. more than 16 months, this Court deems it fit to extend the benefit of Section 428 Cr. PC to the convict and consequently, convict is sentenced to period already undergone for the offence under section 174-A IPC.
11. Jail Suptd concerned is directed that convict Salman be released, if not required in any other case. A copy of order on sentence be supplied to convict free of cost forthwith and information be sent to concerned jail for necessary compliance of this order.

Announced in the open
Court on 23.08.2023

(Vineet Kumar)
ASJ-02/E-Court/Shahdara
KKD/Delhi.