

HRFB030480132023



Presented on : 08-09-2023
Registered on : 08-09-2023
Decided on : 29-11-2024
Duration : 1 years, 2 months, 21 days

IN THE COURT OF
Judicial Magistrate - Ist Class
at Faridabad,
(Presided Over by Rajat Kumar Kanojia)

CHI/3742/2023

State Versus Manish Chawla S/o Jagannath Chawla R/o
H.No. 5A-104 NIT Faridabad.

...Accused

FIR No. 262 dated 25.07.2023
Under Section: 174A IPC
Police Station: Sadar Ballabgarh, Faridabad

Present:- Ms. Ekta, learned APP for the State.
Accused Manish Chawla in person represented by
counsel Sh. Shelender Singh.

ORDER:-

Today the case was listed for consideration on charge. Perusal of the file shows that challan has been presented against the above named accused for commission of offence punishable under Section 174-A of Indian Penal Code, 1860(here-in-after referred to as IPC) by the SHO of Police Station- Sadar Ballabgarh, Faridabad.

2. The brief facts as stated in the challan are that on 10.07.2023, accused was declared a proclaimed person in case titled

as “Basant Kumar Vs. Manish Chawla etc.”(CIS No: NACT/10900-2018). A copy of said order was received and present FIR was registered. Thereafter, accused was arrested. Statement of witnesses were recorded. After completion of usual formalities, challan against the accused was presented in the court under section 173(2) of Code of Criminal Procedure, 1973(hereinafter referred to as Cr.P.C).

3. While advancing the arguments, Ld. counsel for the accused argued that the above mentioned case in which the accused was declared proclaimed person vide order dated 10.07.2023 has already been settled between the parties. With these submissions, he prayed for the discharge of accused.

4. Before proceeding, further, it is relevant to refer to the provision laid down u/s. 195(1)(a) Cr.P.C. which reads as under:-“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; ”

5. It is also pertinent to refer to the law laid down by the Hon’ble Punjab and Haryana High Court in case titled as *Pardeep Kumar Vs. State of Punjab, CRM-M-41656-2023(O&M)*, wherein it was held that:

“xvii. Once the court decides to proceed against the petitioner for an offence under Section 174A 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, 1973 which mandates that no court shall take cognizance of any offence punishable under Section 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.”

6. Now, coming to the facts of present case, accused Manish Chawla was declared proclaimed person vide order dated 10.07.2023 in case titled as *Basant Kumar Vs. Manish Chawla etc.* On the basis of said order, FIR no. 262, dated 25.07.2023 was registered against the accused. Thereafter, challan was presented against the accused on 8.09.2023. However, the above mentioned legal provision and law laid down by the Hon’ble Punjab and Haryana High Court clearly indicates that the appropriate procedure for initiation of proceedings

u/s. 174A of IPC is to file a complaint by the competent jurisdictional court and as such the registration of FIR is not the right course of law.

7. In the light of the above discussion, the court is of view that procedure laid down u/s. 195 Cr.P.C. is mandatory in nature. In the present case, the correct procedure has not been followed and instead of a formal written complaint, the present case was instituted by lodging FIR against the accused. Therefore, in the opinion of court, no valid charge can be framed against the accused under section 174A of IPC. Hence, accused Manish Chawla is hereby discharged in the present case. File be consigned to record room after due compliance.

Announced in open Court.
Dated: **29.11.2024**

(Rajat Kumar Kanojia)
Judicial Magistrate Ist Class.
Faridabad. UID no. HR00635

Note:- This judgment contains **04 pages** and each page has been checked and signed by me.

Shilpa

(Rajat Kumar Kanojia)
Judicial Magistrate Ist Class.
Faridabad. **29.11.2024**

Present:- Ms. Ekta, learned APP for the State.
Accused Manish Chawla in person represented by
counsel Sh. Shelender Singh.

Arguments heard. Vide my separate order of even date,
accused Manish Chawla is hereby discharged in the present case. File,
after needful, be consigned to the records.

Rajat Kumar Kanojia
Judicial Magistrate Ist Class,
Faridabad UID no HR-00635