



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 12475 OF 2025 (482(Cr.PC) /
528(BNSS))

BETWEEN:

VISHWANATHA SHETTY
S/O KORAGA SHETTY,
60 YEARS,
HOSAVOKLU HOUSE,
KOWDUR VILLAGE,
KARKALA TALUK,
UDUPI DISTRICT- 574 102.

...PETITIONER

(BY SRI. NISHIT KUMAR SHETTY., ADVOCATE)

AND:

THE STATE BY
CHIEF MINISTERIAL OFFICER,
J.M.F.C. (II COURT),
MANGALURU, D.K. DISTRICT- 575003
REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BANGALORE- 560 001

...RESPONDENT

(BY SRI. CHANNAPPA EARAPPA, HCGP)

THIS CRL.P IS FILED U/S 482 CR.PC (FILED U/S 528
BNSS) BY THE ADVOCATE FOR THE PETITIONER PRAYING
THAT THIS HONOURABLE COURT MAY BE PLEASED TO ALLOW



THE PETITION AND QUASH THE ENTIRE PROCEEDING INITIATED AGAINST THE PETITIONER IN C.C.NO.4080/2016 (L.P.C NO.88/2023.) PENDING ON THE FILE OF J.M.F.C. (II COURT), MANGALURU FOR THE OFFENCE PUNISHABLE UNDER SECTION 174-A OF IPC.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: **HON'BLE MR. JUSTICE M.NAGAPRASANNA**

ORAL ORDER

The petitioner is before this Court calling-in-question the proceedings in C.C.4080/2016 which is registered for the offence punishable under Section 174-A of IPC.

2. 174-A of the IPC deals with non-appearance of the petitioner in Crime No.3/2016. Learned counsel for the petitioner submits in main case itself the petitioner is acquitted of the offence and would seek to place reliance upon the judgment of the Apex Court in 2025 SCC OnLine SC 1, to buttress his submission.

3. The Apex Court at paras 7 to 11 has held as follows:

"7. Having considered the law as laid down in the judgments above in respect of Section 82, at this stage we must also consider Section 174A IPC which lays down penal consequences for intentionally evading the process under Section 82 Cr. P.C. It reads as under:—



"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 Criminal Procedure Code, 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."

Now, let us consider the second question arising in this appeal, in reference to this provision is, whether the subsistence of the proclamation u/s 82 Cr. P.C. is necessary for the authorities to proceed against the accused person u/s 174A IPC. In other words, whether Section 174A IPC can stand independent of the proclamation u/s 82 Cr. P.C. or not?

7.1. The purpose of Section 82 Cr. P.C., as can be understood from a bare reading of the statutory text is to ensure that a person who is called to appear before a Court, does so. This Section appears as part of Chapter VI which is titled '*Process to Compel Appearance*'. Section 83 to 90 provide for the additional method of attachment of property to the end of securing appearance. Necessarily then some or the other proceeding has to be ongoing for which the presence of such person is necessary. The words of the Section dictate that it can be only issued in respect of a person against whom a warrant has been issued. Neither a warrant nor proclamation subsequent can be conjured up out of thin air.

7.2. Section 174A IPC, inserted by the 2005 Amendment to the Penal Code, 1860 inserts a substantive offence, prescribing punishment of three years or fine or both when such proclamation is issued under Section 82(1) Cr. P.C. and, seven years and fine if the said proclamation is under Subsection (4) thereof. The object and purpose of this Section is to ensure penal consequences for defiance of a Court order requiring a person's presence.



HC-KAR

7.3. Now, what happens if the status under Section 82 Cr. P.C. is nullified i.e., the person subjected to such proclamation, by virtue of subsequent developments is no longer required to be presented before a Court of law. Then, can the prosecution still proceed against such a person for having not appeared before a Court during the time that the process was in effect. The answer is in the affirmative. We say so for the following reasons:—

(i) The language of Section 174A, IPC says "*whoever fails to appear at the specified place and the specified time as required by proclamation...*". This implies that the very instance at which a person is directed to appear, and he does not do so, this Section comes into play;

(ii) What further flows from the language employed is that the instance of non-appearance becomes an infraction of the Section, and therefore, prosecution therefor would be independent of Section 82, Cr. P.C. being in effect;

(iii) So, while proceedings under Section 174A IPC cannot be initiated independent of Section 82, Cr. P.C., i.e., can only be started post the issuance of proclamation, they can continue if the said proclamation is no longer in effect.

(iv) We find that the Delhi High Court has taken this view, i.e., that Section 174A, IPC is a stand-alone offence in *Mukesh Bhatia v. State (NCT of Delhi)*; *Divya Verma v. State*; *Sameena v. State GNCT of Delhi*. For the reasons afore-stated, we agree with the findings made in these judgments/orders. At the same time, it stands clarified that we have not commented on the merits of the cases.

(v) Granted that the offence prescribed in Section 174A IPC is indeed stand-alone, given that it arises out of an original offence in connection with which proceedings under Section 82 Cr. P.C. is initiated and in the said offence the accused stands, subsequently, acquitted, it would be permissible in law for the Court seized of the trial under such offence, to take note of such a development and treat the same as a ground to draw the proceedings to a close, should such a prayer be made and the circumstances of the case so warrant.



8. In conclusion, we hold that Section 174A IPC is an independent, substantive offence, that can continue even if the proclamation under Section 82, Cr. P.C. is extinguished. It is a stand-alone offence. That being the position of law, let us now turn to the present facts. As we have already noted *supra*, the Appellant stands acquitted of the main offence.

9. The record speaks to the fact that an FIR under Section 174A IPC was registered against the Appellant, in connection with which, he was released on bail by the Judicial Magistrate, First Class, Bhiwani, *vide* order dated 19th December, 2022.

In the light of the issue standing completely unacceptable by the Apex Court, petition deserves to succeed.

Accordingly, the Criminal petition is ***disposed of.***

The impugned proceedings in C.C.No.4080/2016, (L.P.C.No.88/2023) pending on the file of the learned J.M.F.C. (II Court) Mangaluru, insofar it relates to the petitioner-accused No.2 herein, stands quashed.

Ordered accordingly.

SD/-
(M.NAGAPRASANNA)
JUDGE