Neutral Citation No. - 2024:AHC-LKO:59689

Court No. - 13

Case :- APPLICATION U/S 482 No. - 7630 of 2024

Applicant :- Ravi Dev Singh @ Ravidev Yadav And Another
Opposite Party :- The State Of U.P. Thru. Addl. Chief Secy. /Prin. Secy. Home, Lko.
Counsel for Applicant :- Rakesh Kumar Chaudhary,Aditya Kumar Pandey,Ayush Chaudhary,Gaurav Vishwakarma
Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania,J.

1. Heard learned counsel for the applicant and learned AGA for the State and perused the record.

2. Present application has been filed for the following main relief(s):-

> *"WHEREFORE, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to quash the entire as well as consequential proceedings of Case No. 44489/2024 titled: "State Vs. Ravidev Yadav and anr." pending in the Learned Court of Chief Judicial Magistrate, Lucknow, as well as the for quashing of the Section 82 Cr.P.C order issued by the learned CJM Court, Lucknow dated 30.10.2023 in case crime no.614/2023 under section 498A, 304B IPC and 3/4 of the D.P.Act; summoning order dated 07.05.2024 passed by Learned Court of Chief Judicial Magistrate,, Lucknow, thereby issuing summons against the Applicants under Sections 174-A IPC in aforesaid crime No. 766/2023 titled "State Vs. Ravidev Yadav and anr."; and also for quashing of the charge-sheet dated 06.01.2024 arising out of FIR No. 0766/2023 registered*

> *at Police Station- PGI, District- Lucknow against the Applicants under Sections 174-A IPC.*
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> *It is further prayed that the Hon'ble Court may be pleased to put in abeyance the effect, operation and implementation of the impugned summoning order, dated 07.05.2024 and also be pleased to stay the entire as well as consequential proceedings of Case No. 44489/2024 titled: "State Vs. Ravidev Yadav and anr." pending in the Learned Court of Chief Judicial Magistrate, Lucknow, during the pendency of the instant application."*

3. It is stated that the proceedings under Section 174-A IPC pending before the trial Court based upon the FIR is unsustainable in the eyes of law particularly in view of provisions as envisaged under Section 195 IPC.

4. It is further submitted that Division Bench of this Court in ***Criminal Misc. Writ Petition No. 17560 of 2023 (Sumit And Another vs. State of U.P. And 2 Others)*** held that proceedings under Section 174-A IPC can be initiated only on the basis of written complaint of the Court and not on the basis of Police report. Reference can be made to Para 8 to 23 of the judgment, which are extracted hereinunder:-

> *"8. Before dealing with the contention of learned counsel for the petitioners that the F.I.R. u/s 174-A I.P.C. is barred by Section 195 Cr.P.C., it will be appropriate to discuss the legal provision, involved in the present case. Section 195 Cr.P.C. which prohibits the Court from taking cognizance of any offence punishable u/s 172 to 188 I.P.C., is being quoted below:-*
>
> *"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;

(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 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 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 in situate: Provided that-

(a) 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;

(b) 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."

9. From perusal of Section 195(1)(a)(i) Cr.P.C., it is clear that the offences for which there is prohibition on court to take cognizance are non-cognizable offences from Section 172 to 187 I.P.C. while Section 188 I.P.C. is mentioned as cognizable offence under First Schedule of Cr.P.C. The definition of "cognizable offences" is provided u/s 2(c) Cr.P.C. which is being quoted as under:

"2(c). "cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant."

10. Therefore, it is clear that in cognizable offences, police can arrest the accused without warrant. It is also clear from perusal of Section 195 Cr.P.C. that offences, punishable u/s 172 to 188 I.P.C. are cognizable by the court only when a complaint in writing is filed by public servant concerned or his subordinate. As per Section 21 I.P.C., "public servant" includes every judge, including any person empowered by law to discharge any adjudicatory function. Therefore, the Magistrate who issues proceedings u/s 82 Cr.P.C. will be deemed to be public servant within the meaning of Section 195 Cr.P.C. The word "complaint" referred in Section 195 Cr.P.C. is defined u/s 2(d) Cr.P.C. which is being quoted below:

"2(d). " complaint" means 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.

Explanation.- A report made by a police officer in a case which discloses, after investigation, the commission of a non- cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant."

11. From perusal of Section 2(d) Cr.P.C., it is clear that though the complaint does not include police report but the explanation of Section 2(d) Cr.P.C. also provides that if after investigation of a case a police report is submitted by the police officer, regarding non-cognizable offence then same shall also be deemed to be "complaint". Therefore, apart from making allegation to Magistrate for taking action against a person who has committed an offence but also the police report/charge sheet of non-cognizable offence will also be deemed to be "complaint". From this fact, it is clear that police report of cognizable offence cannot be treated as a complaint by any stretch of imagination.

12. Section 174-A I.P.C. was inserted after Section 174 I.P.C. though Section 44(b) of the Code of Criminal Procedure (Amendment) Act, 2005 and by Section 42(c) of this amendment Act, Section 174-A I.P.C. was also included in the First Schedule of Cr.P.C. after the entry relating to Section 174 I.P.C. Sections 42(c) and 44(b) of the Code of Criminal Procedure (Amendment) Act, 2005 are being quoted as under:-

"42(c). after the entries relating to section 174, the following entries shall be inserted,

1.	*2.*	*3.*	*4.*	*5.*	*6.*
"174 A	*Failure to appear at specified place and specified time as required by a proclamation published under sub-section (1) of Section 82 of this Code*	*Imprisonment for 3 years, or with as fine, or with both*	*Cognizable*	*Non-bailable*	*Magistrate of the first class*
	In a case where declaration has been made under sub-section (4) of section 82 of this Code pronouncing a person as proclaimed offender	*Imprisonment for 7 years and fine*	*Ditto*	*Ditto*	*Ditto."*

44(b). after section 174, the following section shall be inserted, namely:-

"174A. 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."

13. After insertion of Section 174-A in I.P.C. as well as in First Schedule of Cr.P.C., further amendment was also made in the year 2006 in Section 195(1)(b) Cr.P.C., but no amendment was made in Section 195(1)(a)(i) Cr.P.C. Therefore, at the time of inserting Section 174-A in I.P.C. as well as in First Schedule of Cr.P.C. after Section 174, legislature was well aware about the category of offences u/s 195(1)(a)(i) Cr.P.C. and for this reason, while making amendment in Section 195(1)(b) Cr.P.C. in 2006, Section 195(1)(a)(i) Cr.P.C. was kept untouched knowingly by the legislature. The above position clearly reveals that while inserting Section 174-A I.P.C., legislature was well aware that in Section 195(1)(a)(i) Cr.P.C., apart from Section 188 I.P.C., one more cognizable offence i.e. 174-A I.P.C. is being inserted for providing the bar of cognizance on the part of court for offences mentioned in Section 195(1)(a)(i) Cr.P.C., except on the complaint.

14. In the judgement of Punjab and Haryana High Court delivered in Pradeep Kumar vs. State of Punjab and another (supra), relied upon by the counsel for the petitioners, above mentioned analysis of this Court was also considered and it was observed in paragraph Nos. 12.12 to 12.16 as under:-

"12.12. Be that as it may, it is unmistakably evident that the omission of Section 174A 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 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 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."

15. This Court is also of the view that proceedings u/s 174-A I.P.C. is initiated for providing punishment to the person who despite initiation of proceedings u/s 82 Cr.P.C. against him, failed to comply with the same and despite making the same as cognizable offence, it was included u/s 195(1)(a)(i) Cr.P.C. so as to prohibit the police from making unnecessary harassment of the accused as the police had already been proceeding against him u/s 82 Cr.P.C. Therefore, the sole purpose of legislature by putting Section 174-A in the category of offence mentioned in Section 195(1)(a)(i) Cr.P.C. is to make act of accused punishable for not honouring the process u/s 82 Cr.P.C. and also to protect the unnecessary violation of personal liberty of the accused because police is already free to arrest and take action against the accused person under the proceeding of Section 82 Cr.P.C. as well as pending N.B.W.

16. Though in cognizable offences police can arrest an accused without warrant but specific exception has been carved out by inserting Section 174-A I.P.C. in Section 195(1)(a)(i) Cr.P.C., despite being a cognizable offence.

17. So far as the judgement, relied upon by learned A.G.A., passed by the Delhi High Court in Maneesh Goomer (supra) as well as judgement of Allahabad High Court in Moti Singh Sikarwar (supra) are

concerned, same were based on the incorrect interpretation that all the offences, mentioned u/s 195(1)(a)(i) Cr.P.C., are non-cognizable offences ingnoring the fact that Section 188 I.P.C. is a cognizable offence. Paragraph-9 of the judgement passed by Delhi High Court in Maneesh Goomer (supra) is being quoted below:-

"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 intp 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."

18. Similarly, paragraph 21.1 of the judgement passed by Allahabad High Court in Moti Singh Sikarwar (supra) is being quoted as under:-

"21.1. It is to be noted that all the offences under Section 172 to 188 I.P.C. (both inclusive) are non-cognizable and bailable, whereas Section 174-A I.P.C. which provides for punishment upto 7 years imprisonment and fine, in case the offender fails to appear at the specified place and the specified time, as required by the proclamation published under Section 82 Cr.P.C., is cognizable and non-bailable. The legislature was conscious of this fact and that is why while introducing Section 174-A in the I.P.C. in the

year 2006, it made no corresponding amendment in Section 195(1)(a) Cr.P.C. so as to include Section 174-I.P.C. in between all the non-cognizable offences and bailable from Sections 172 to 188 I.P.C."

19. From perusal of aforesaid observations of Single Benches of Allahabad High Court as well as Delhi High Court, it is clear that the very basis of interpretation that Section 174-A I.P.C. being cognizable offence cannot be read as a section to be included in the category of cases mentioned in Section 195(1)(a)(i) Cr.P.C. is itself incorrect and does not lay down correct law. So far as the judgement of Apex Court in Jayant vs. State of Madhya Pradesh (supra) as well as Pradeep S. Wodeyar (supra) are concerned, in both the judgements controversy was entirely different and the Hon'ble Apex Court did not hold that Section 174-A I.P.C. is not part of Section 195(1)(a)(i) Cr.P.C.

20. In the case of Jayant vs. State of Madhya Pradesh (supra), the issue was regarding registration of F.I.R. under Mines and Minerals Act, 1957 as well as offence u/s 379, 414 I.P.C. As there is a bar u/s 22 of Mines and Minerals Act which provides that cognizance of the offence under Mines and Minerals Act will not be taken by the Court except upon a complaint by an authorized person. Therefore, Hon'ble Apex Court observed that apart from offences under Mines and Minerals Act, offences under I.P.C. have also been invoked, therefore, bar of Section 22 of Mines and Minerals Act will not be applicable. It was further observed that after completion of investigation the Magistrate will take cognizance of the offence under I.P.C. but the cognizance of offence under Mines and Minerals Act will be taken on the basis of complaint. Paragraph 13 of the of Jayant vs. State of Madhya Pradesh (supra) is being quoted as under:-

"13. After giving our thoughtful consideration in the matter, in the light of the relevant provisions of the MMDR Act and the Rules made thereunder vis-a-vis the Code of Criminal Procedure and the Penal Code, and the law laid down by this Court in the cases referred to hereinabove and for the reasons stated hereinabove, our conclusions are as under:

i) that the learned Magistrate can in exercise of powers under Section 156(3) of the Code order/direct the concerned In-charge/SHO of the police station to

lodge/register crime case/FIR even for the offences under the MMDR Act and the Rules made thereunder and at this stage the bar under Section 22 of the MMDR Act shall not be attracted;

ii) the bar under Section 22 of the MMDR Act shall be attracted only when the learned Magistrate takes cognizance of the offences under the MMDR Act and Rules made thereunder and orders issuance of process/summons for the offences under the MMDR Act and Rules made thereunder;

iii) for commission of the offence under the IPC, on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorised officer for taking cognizance in respect of violation of various provisions of the MMDR Act and Rules made thereunder; and

iv) that in respect of violation of various provisions of the MMDR Act and the Rules made thereunder, when a Magistrate passes an order under Section 156(3) of the Code and directs the concerned In-charge/SHO of the police station to register/lodge the crime case/FIR in respect of the violation of various provisions of the Act and Rules made thereunder and thereafter after investigation the concerned In-charge of the police tation/investigating officer submits a report, the same can be sent to the concerned Magistrate as well as to the concerned authorised officer as mentioned in Section 22 of the MMDR Act and thereafter the concerned authorised officer may file the complaint before the learned Magistrate along with the report submitted by the concerned investigating officer and thereafter it will be open for the learned Magistrate to take cognizance after following due procedure, issue process/summons in respect of the violations of the various provisions of the MMDR Act and Rules made thereunder and at that stage it can be said that cognizance has been taken by the learned Magistrate.

v) in a case where the violator is permitted to compound the offences on payment of penalty as per sub-section 1 of Section 23A, considering sub-section 2 of Section 23A of the MMDR Act, there shall not be any proceedings or further proceedings against the offender in respect of the offences punishable under the MMDR Act or any rule made thereunder so compounded.However, the bar under sub-section 2 of

Section 23A shall not affect any proceedings for the offences under the IPC, such as, Sections 379 and 414 IPC and the same shall be proceeded with further."

21. However, in the present case the petitioners are charged for the offence u/s 174-A I.P.C. only, cognizance of which is barred u/s 195 Cr.P.C. Therefore, the controversy in the present case is totally different from that of the judgement relied upon by learned A.G.A. Similarly, in the judgement of Pradeep S. Wodeyar (supra), relied upon by learned A.G.A., the controversy was regarding irregularity of the cognizance, therefore, controversy in that case is also different from the present one.

22. It is clearly established that Section 174-A I.P.C. was inserted by way of amendment in 2005 between Sections 172 to 188, therefore, it is clear that Section 174-A I.P.C. is part of the offences mentioned in Section 195(1)(a)(i) Cr.P.C. for which court is barred from taking cognizance except upon a complaint by the court.

23. It is also relevant to mention here that cognizable offence itself permits the police to arrest a person without warrant, therefore, registration of F.I.R. of cognizable offence itself will affect the personal liberty of a person protected by Article 21 of the Constitution of India. Therefore, if legislature had intended to invoke the provision of cognizable offence only on the basis of filing written complaint then permitting to register F.I.R. for direct offence will definitely amount to interfere/deprive the personal liberty of a person. Therefore, once Section 195(1)(a)(i) Cr.P.C prohibits the taking cognizance of the offence u/s 174-A I.P.C., except on the basis of written complaint, then permitting lodging of an F.I.R. u/s 174-A I.P.C. will amount to travesty of justice to the person concerned as the personal liberty under Article 21 of the Constitution cannot be deprived, except in accordance with law.

Conclusion

24. Therefore, if the court itself cannot take cognizance of the offence u/s 174-A I.P.C. on the basis of police report, then lodging the F.I.R. u/s 174-A I.P.C. is futile, and will be against the provision of Section 195(1)(a)(i) Cr.P.C. Therefore, proceedings u/s 174-A I.P.C. can be initiated only on the basis of

> *written complaint of the court which had initiated proceedings u/s 82 Cr.P.c. against the accused and F.I.R. is barred by Section 195(1)(a)(i) Cr.P.C.*
>
> *25. This Court also holds that judgement of Single Benches of Allahabad High Court in Moti Singh Sikarwar (supra) as well as of Delhi High Court in Maneesh Goomer (supra) have not laid down correct law regarding interpretation of Section 174-A I.P.C. read with Section 195(1)(a)(i) Cr.P.C."*

5. Considering the settled proposition of law as also the facts of the case that on the basis of FIR No. 0766 of 2023 dated 14.11.2023, registered at Police Station- P.G.I., Lucknow East (Commissionerate Lucknow), the proceedings under Section 174-A IPC were initiated against the applicant and are pending as Case No. 44489 of 2024 (State vs. Ravidev Yadav and Another) in the Court of Chief Judicial Magistrate, Lucknow, wherein the impugned summoning order dated 07.05.2024 has been passed, this Court finds that interference is required in the matter.

Accordingly, the instant application is **allowed** and proceedings in issue pending against the applicant are hereby quashed.

Office/Registry is directed to send the copy of this order to concerned Court forthwith.

Order Date :- 29.8.2024

Manoj K.