

(2016) 11 AHC CK 0089

In the Allahabad High Court

Case No : Criminal Misc. Application No. 31819 of 2015

Moti Singh Sikarwar

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 29-11-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 195(1)(a), Section 482
Penal Code, 1860 (IPC) — Section 174A

Citation : (2017) 98 ACrC 517 : (2017) 171 AIC 914 : (2017) 2 CriCC 219

Hon'ble Judges : Mrs. Vijay Lakshmi, J.

Bench : Single Bench

Advocate : G.A., Bhuvnesh Kumar Singh and Amit Srivastava, Advocate, for the Opposite Party; Dharmendra Singhal, Dinesh Kumar Yadav and Ankit Agarwal, Advocates, for the Applicant

Final Decision : Dismissed

Judgement

Mrs. Vijay Lakshmi, J. - By means of the instant application u/s 482 Cr.P.C. the applicant has prayed to quash the charge sheet No. 67 of 2015 dated 19.01.2015 as well as the entire proceedings of Criminal Case No.395/2015, arising out of Case Crime No.953 of 2014, under Section 174-A I.P.C., P.S. New Agra, District Agra, pending before Special C.J.M., Agra.

2. Heard arguments of Shri Ankit Agarwal Advocate, holding brief of Shri Dharmendra Singhal on behalf of the applicant, learned AGA and learned counsel for O.P. No. 2. Perused the record.

3. The facts of the present case, as reflected from a perusal of the certified copies of the application u/s 156(3) Cr.P.C. and the order of learned Magistrate dated 26.9.2014 passed on that application, (copies whereof have been filed by the applicant and also by O.P. No. 2 by means of supplementary affidavits), are that the applicant, who is an accused in Case Crime No. 606 of 2007, u/s 420, 406, 467, 468 and 447 I.P.C., was acquitted by the trial court i.e. Special C.J.M., Agra. Against the order of acquittal, the State filed Criminal Appeal No. 44 of

2013 which was decided by the court of Additional sessions Judge, Court No. 8, Agra, and the lower appellate court, on finding the applicant guilty of committing embezzlement of public money, reverted the judgment of acquittal, passed by the Magistrate and convicted the accused/applicant accordingly. However, the lower appellate court, instead of itself awarding the sentence to the accused/appellant, directed him to appear personally before the court of Special C.J.M. i.e. the trial court, on 21.4.2014 for the purpose of hearing on the question of sentence. The applicant did not appear before the trial court. Instead, he challenged the order of lower appellate court before this court by means of Criminal Revision No. 1246 of 2014 on the ground that the appellate court, while reverting the finding of acquittal, was itself empowered to award sentence to the accused and there was no need to direct the accused to appear before the trial court for hearing on the question of sentence.

4. This Court vide order dated 30.4.2014, allowed the aforesaid revision, but at the same time, it directed the applicant/ revisionist to appear before the lower appellate court i.e. the court of Additional Sessions Judge on 12.5.2014 for hearing on sentence. The applicant did not appear before the lower appellate court on the date fixed and moved a time extension application. This court, vide order dated 20.5.2014, granted him a further time of fifteen days and no more, to surrender before the lower appellate court. The applicant once again did not comply the order and moved second time extension application on 1.9.2014, which was rejected by this court vide order dated 10.9.2014, in wake of its previous order. As a result, coercive measures were taken against the applicant and ultimately due to his continuous abscondance, he was declared a proclaimed offender and a proclamation under section 82 Cr.P.C. was issued against him, which was affixed on his residential house.

5. Despite all these coercive measures, when the applicant did not appear before the court, the complainant/ respondent no. 2 tried to lodge a report against him u/s 174-A I.P.C., but it was not registered by the police on the ground that there was no order of the court concerned. Thereafter the complainant moved an application u/s 156(3) Cr.P.C. before the court of C.J.M., Agra, with prayer to direct the police to register the case u/s 174-A I.P.C. against the applicant as he had failed to appear in response to a proclamation u/s 82 Cr.P.C.

6. The learned Magistrate allowed the application and directed the police to register and investigate the matter. The police investigated the case and after investigation submitted charge sheet against the applicant on which the Magistrate took cognizance.

7. The legality of the aforesaid charge sheet and the order of cognizance has been questioned before this court by means of present application.

8. Learned counsel for the applicant has vehemently argued that a private person has no locus standi to lodge FIR or even a complaint in respect of the offence u/s 174A I.P.C. because the cognizance thereof is barred by section

195(1) (a) of the Cr.P.C. He has submitted that a conjoint reading of section 174A I.P.C. and section 195(1)(a) Cr.P.C. reveals that only a complaint u/s 174-A can be filed in respect of the offence u/s 174-A I.P.C. and that too by a public servant. As such, lodging of the FIR by a private person is clearly barred by the provisions of section 195(1)(a) Cr.P.C. It has been contended that the police in this case, without keeping in view this aspect, mechanically submitted charge sheet against the applicant and the learned Magistrate without application of mind, took cognizance on the said charge-sheet by just filling up the blanks. On the aforesaid grounds it has been prayed that the charge-sheet, the cognizance order and the entire consequential proceedings in pursuance of the charge sheet, pending against the applicant be quashed.

9. In support of his contentions learned counsel for the applicant has placed reliance on a judgment of Kerala High Court rendered in *Nazeem Bavakunju v. State of Kerala*, 1988 Cri LJ 487.

10. Learned AGA and learned counsel for O.P. No. 2/ complainant have vehemently opposed the application.

11. Learned counsel for O.P. No. 2 has submitted that the FIR against the applicant in this case has been lodged under the orders of the Magistrate, therefore, it cannot be said that the learned Magistrate mechanically and without application of mind has taken cognizance. He has drawn the attention of this court to the detailed order passed by the C.J.M., Agra, on the application of O.P. No. 2 moved u/s 156(3) Cr.P.C. whereby the learned C.J.M., Agra, has directed the police to register and investigate the case, after considering all the facts and circumstances.

12. With regard to the bar of Section 195(1)(a) Cr.P.C., learned counsel for O.P. No. 2 has contended that section 174A I.P.C. has been added by Act No. 25 of 2005 and has been made effective from 23.6.2006 whereas the Code of Criminal Procedure, 1973 came into force on 1.4.1974 and section 195 Cr.P.C. was embodied in it from the time of its introduction. Learned counsel has contended that due to the reason that no corresponding amendment has been brought in section 195(1)(a) Cr.P.C. after the addition of section 174A in the I.P.C., therefore, the bar of section 195(1)(a) Cr.P.C. will not apply on section 174A I.P.C. The learned counsel for O.P. No. 2, has placed reliance on a judgment of Delhi High Court rendered in *Maneesh Goomer v. State*, 2012(1) JCC 465 decided on 4.1.2012.

Considered the rival submissions of the parties.

13. The only point for determination, involved in the present case is

"whether the bar created by section 195(1)(a) Cr.P.C., in respect of offence u/s 172 to 188 I.P.C., would apply to the offence u/s 174-A I.P.C., which was added subsequently in I.P.C. by Amending Act of 2006?"

14. Before dealing with the issue involved in the present case, it appears

expedient to have a look on the relevant legal provisions as envisaged u/s 195(1) (a) Cr.P.C. and section 174-A I.P.C.

15. Section 195(1)(a)(i) Cr.P.C. provides that no Court shall take cognizance of any offence punishable u/s 172 to 188 (both inclusive) of I.P.C. except on a complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate.

16. Section 174A I.P.C. is quoted below:

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.

17. It may be noted that Section 174-A I.P.C. was introduced in the Code w.e.f. from 23rd June, 2006 and Section 195(1)(a) Cr.P.C., which provides that no court shall take cognizance of offences punishable under Sections 172 to 188 (both inclusive) of the I.P.C. or of the abatement or attempt to commit the said offence, except by complaint in writing by the public servant or of some other public servant to whom he is administratively subordinate, was a part of the Criminal Procedure Code since 1974 when the new Criminal Procedure Code came into force.

18. There is no dispute that no corresponding amendment was brought into section 195(1)(a) Cr.P.C. in the year 2006, when a new offence, by adding section 174-A was introduced in I.P.C. Now the question is whether Section 174-A would be deemed to be included between section 172 to section 188 I.P.C., as mentioned in section 195(1)(a) or not ?

19. After giving my thoughtful consideration to the rival arguments advanced by learned counsel for the parties and having perused the relevant legal provisions, I am of the considered view that section 174-A I.P.C. cannot be deemed to be included in between section 172 I.P.C. to section 188 I.P.C., as mentioned in section 195(1)(a) Cr.P.C. and the bar created by section 195(1)(a) Cr.P.C. will not apply to the provisions of Section 174-A I.P.C..

20. The reasons are as follows:

1. It is to be noted that all the offences under Section 172 to 188 I.P.C. (both inclusive) are non-cognisable 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 cognisable 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-A I.P.C. in between all the non-cognisable offences and bailable from Sections 172 to 188 I.P.C.

2. It cannot be said that due to inadvertence, the corresponding amendment in Section 195(1)(a) Cr.P.C., was left to be made by the legislature. It is noteworthy that Section 195(1)(b) has been correspondingly amended in the year 2006, by amending the exception clause of it. Had there been any intention on the part of the legislature to include Section 174-A I.P.C. in Section 195(1)(a) Cr.P.C. it would have definitely correspondingly amended Section 195 (1)(a) Cr.P.C. also.

3. Section 154 of Code of Criminal Procedure provides for information in cognisable cases and the concept of "locus standi" has been completely washed off by this section, as any person can set the law into motion, in case any cognisable offence is noticed by him, by registering a first information report. The public interest demands that criminal justice should be swift and sure and the court should not let the guilty scot free only on the basis of mere some technicalities. Section 460 Cr.P.C. is also based on the same principle.

4. The basic principle of law is that one, who seeks equity should do equity. In other words the persons, who seeks equitable reliefs, should come before the court with clean hands. The accused has no right to choose the mode by which he is to be prosecuted specially in the circumstances when he has failed to comply with the orders of the court and is prolonging the matter by filing one case after another.

5. The Hon"ble Delhi High Court in Maneesh Goomer's case (supra) has held that Section 195 Cr.P.C. has not been correspondingly amended so as to include section 174- A I.P.C., which was brought into the Penal Code with effect from 23rd June 2006 and there is no reason to deviate with the view of Hon"ble Delhi High Court.

21. In view of the above discussion, this court is of the considered view that the bar of Section 195 (1)(a) Cr.P.C. is not applicable to the present case and a private person is competent to lodge a complaint or even an F.I.R. under Section 174-A I.P.C..

22. The second contention of learned counsel for the applicant that the charge sheet has been mechanically submitted by the police and the cognizance on the said charge-sheet has been taken by the Magistrate without application of mind, also appears to be baseless, having no force, in view of the fact that the Magistrate has already applied its mind to the facts of the case while disposing of the application filed under Section 156 (3) Cr.P.C. and the F.I.R. in this case has been registered under the direction of learned Magistrate. Therefore, it cannot be said that by mechanical process, the charge sheet has been submitted and the cognizance has been taken by learned Magistrate without application of mind.

23. Considering all these facts and circumstances of this case, this application appears to be without any force. It lacks merit and is liable to be dismissed. No benefit from the judgment of the Hon"ble Kerala High court, cited by the learned counsel for the applicant, can be given to him because the facts of the case before the Hon"ble Kerala High Court are entirely different from the facts of the present case.

24. The application is accordingly dismissed. The applicant is directed to appear before the court concerned within 15 days from today. It is further directed that if the applicant surrenders before the court below and applies for bail, his bail application shall be considered and disposed of expeditiously in accordance with law.