

**(2023) 05 SHI CK 0031**  
**In the High Court Of Himachal Pradesh**  
**Case No : CR.MMO No. 112, 113 Of 2022**

Rahul Huddone And Others

APPELLANT

Vs

State Of H.P And Others

RESPONDENT

**Date of Decision :** 09-05-2023

**Acts Referred:**

Indian Penal Code, 1860 — Section 172, 173, 174, 174A, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211  
Code Of Criminal Procedure, 1973 — Section 173(2), 195(1), 195(1)(a)(i), 463, 471, 475, 476

**Citation :** (2023) 05 SHI CK 0031

**Hon'ble Judges :** Satyen Vaidya, J

**Bench :** Single Bench

**Advocate :** Mamta K. Bhtwan, Vinod Sharma, Mohinder Zharaick

**Final Decision :** Allowed

## Judgement

Satyen Vaidya, J

1. This order will dispose of Cr.MMO No. 112 of 2022 and Cr.MMO No. 113 of 2022 as these involve identical question of facts and law.
2. Petitioner herein was an accused in two separate complaints filed against him by complainants namely Jagdish and Aruna. The complaint filed by Shri Jagdish against the petitioner was numbered as 8-3 of 2016 in the Court of Additional Chief Judicial Magistrate, Rampur Bushahr and complaint filed by complainant Ms. Aruna was numbered 9-3 of 2016 in the same Court.
3. Petitioner was declared as proclaimed offender in both the complaints. Petitioner, however, approached this Court and he was allowed to furnish bail bonds before the learned trial Court. In compliance to order passed by this Court, learned trial Court accepted the bail bonds furnished by the petitioner. However, directions were issued to SHO Police Station Rampur Bushahr to register separate case under Section 174-A of the IPC against the petitioner. In

above background, FIR Nos. 229 of 2021 and 230 of 2021 came to be registered at Police Station Rampur Bushahr, District Shimla, H.P., on 15.12.2021.

4. By way of instant petitions, the petitioner has sought quashing of above noted FIR Nos. 229 and 230 of 2021, registered at Police Station Rampur Bushahr, dated 15.12.2021.

5. Status reports have been filed on behalf of the respondent-State in both the petitions and it has been stated that in both the FIRs, after completion of investigation, reports under Sections 173(2) of the Code of Criminal Procedure have been submitted before the Court of competent jurisdiction.

6. I have heard learned counsel for the parties and have also gone through the records carefully.

7. Sub-section (1) of Section 195 of the Code of Criminal Procedure 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;

(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."

8. Thus, there is clear mandate of law that no court shall take cognizance except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in this behalf or some other Court to which that Court is subordinate in case allegations are with respect to the commission of offences

under Sections 172 to 188 (both inclusive) of the IPC.

9. The facts of the case reveal that the cases against the petitioner have been registered under Section 174 -A of the IPC and such offence clearly falls within the scope of Section 195(1)(a)(i) of the Code of Criminal Procedure.

10. It is trite law that where the law bars any court from taking cognizance of the offence except on a complaint filed in particular manner, such court is precluded from taking cognizance in any other manner.

11. Thus, the police could not have registered the FIR for offence under Section 174-A of the IPC. The petitioner could have been prosecuted for such offence only on the basis of complaint to be filed in accordance with the provisions of Section 195(1) of the Code of Criminal Procedure. Since, no such procedure has been adopted, FIR Nos. 229 of 2021 and 230 of 2021, dated 15.12.2021 registered at Police Station Rampur Bushahr, cannot withstand the scrutiny of law. The further proceedings, i.e. investigation and filing of reports under Section 173(2) of the Code of Criminal Procedure are also rendered infructuous being in violation of law. Similarly, the cognizance or any further proceedings taken by the learned Magistrate concerned on the basis of reports submitted under Section 173(2) of the Code of Criminal Procedure also cannot continue being without jurisdiction.

12. In result, both the petitions are allowed and FIR Nos. 229 of 2021 and 230 of 2021, dated 15.12.2021, registered at Police Station Rampur Bushahr, District Shimla, H.P., under Section 174-A of the IPC, along with all criminal proceedings arising therefrom are ordered to be quashed.

13. Pending applications, if any, shall also stand disposed of.