* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on: 01st August, 2024***
Pronounced on: 19th September, 2024

\+ **CRL.M.C. 5219/2017 & CRL. M.A. 20512/2017**

AMANDEEP GILL & ANR .....Petitioners

Through: Mr. Harshvardhan Pandey, Adv.

versus

THE STATE GOVT OF NCT OF DELHI .....Respondent

Through: Mr. Pradeep Gahalot, APP for the State with Adv. Hanumanth Sakhuja Adv. Sunny Sharma Adv. Anubhav Jain Adv. Nayan Saini Adv.Shubham Kumar Adv. Dhruv Goyal Adv. Shristhi Setia Adv. Savi Abbot Adv. Deepankar Kataria, Advs. with SI Vineet, PS Neb Sarai.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This petition has been filed under section 482 of The Code of Criminal Procedure, 1973 ('**Cr.P.C.**') seeking setting aside of order dated 8th June 2017 ('**impugned order**'), passed by District & Sessions Judge (South), Saket, New Delhi.

2. By the said impugned order, the Sessions Judge dismissed the revision petition filed by the petitioners challenging the orders dated 12th August 2015 and 26th August 2015 passed by MM-03 (South District), Saket, New Delhi, as per which charges were framed against the petitioners under section 174-A of the Indian Penal Code, 1860 ('**IPC**').

3. The gravamen of the petitioners' challenge to the charges framed under section 174-A IPC was that cognizance of offence under the same could only be taken on a complaint in writing by the public servant concerned and the bar under Section 195(1)(a)(i) Cr.P.C. would apply.

4. The Sessions Court, in the impugned order, relied on the Judgment of a Single Bench of this Court in ***Maneesh Goomer v State*** 2012 SCC OnLine Del 66 which held that Section 174-A IPC was not covered by the bar of Section 195 Cr.P.C. The petitioners seek to argue otherwise, relying on various decisions of the Supreme Court and other High Courts.

Factual Background

5. A brief factual matrix is that a complaint case was filed under Section 138 of the Negotiable Instruments Act, 1881 ('**NI Act**') by M/s Tyagi Pipe Craft Pvt. Ltd. against the petitioners Amandeep Gill and Ekta Gill, who are directors of M/s Naturex Oil Pvt. Ltd.

6. Process under Section 82-83 Cr.P.C was issued against the accused/petitioners; subsequently registration of an FIR was directed by the Trial Court by order dated 17th May 2013 for offence under section 174-A IPC against the two accused persons/petitioners.

7. Chargesheet was submitted and cognizance of offences was taken *vide* order dated 5th March 2014. Arguments were heard on framing of charges and on 12th August 2015 the Trial Court rejected the contention of the accused/petitioners. The Court found sufficient material to proceed against the accused for the offence under section 174-A IPC and framed charges under the same on 26th August 2015.

8. In the revision petition, contention was pressed by the petitioners that cognizance of offence under section 174-A IPC was barred under Section 195 Cr.P.C. The Sessions Judge, however, relied on the decision in ***Maneesh Goomer*** (*supra*) and dismissed the said revision. For ease of reference, the provisions of Section 174-A IPC and Section 195 C.r.P.C are reproduced as under:

Section 174-A IPC :

> *"174-A. 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."*
>
> (emphasis added)

Section 195 Cr.P.C. :

> *"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 by such officer of the Court as that Court may authorise in writing in this behalf], 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 is 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."

(emphasis added)

9. Counsel for the petitioners, vehemently contended that a bare perusal of Section 195(1)(a)(i) Cr.P.C. applies to all offences punishable under Sections 172-188 IPC and cognizance cannot be taken except on a complaint

in writing of the concerned public servant or by such officer of the Court, as is authorized. He states that *ex facie* there is a statutory bar to taking cognizance and, therefore, the decision in ***Maneesh Goomer*** (*supra*) was *per incuriam*. For this purpose, it would be useful to turn to the decision of the Single Judge in ***Maneesh Goomer*** (*supra*) and the relevant analysis is extracted as under:

> *"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 into 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 noncognizable, 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*."
>
> (emphasis added)

10. The petitioner's counsel has underscored, the fact that ***Maneesh Goomer*** (*supra*) incorrectly noted that offences prescribed under Section 195 C.r.P.C are all non-cognizable and Section 174-A was introduced in C.r.P.C w.e.f. 23rdJune 2006 and the legislature was conscious of the fact that it was a cognizable offence, thereby mandating the Police Officer to register the FIR after investigation and after investigation file a chargesheet.

11. He stated that even Section 188 IPC, which is also covered under Section 195 C.r.P.C bar, is cognizable and, therefore, the test to determine whether it would fall within the bar contained in 195 Cr.P.C., is not relatable to whether the offence is cognizable or not.

12. For this, reliance was placed on the Supreme Court's finding in ***C. Muniappan & Ors v State of Tamil Nadu*** (2010) 9 SCC 567 which dealt with Section 188 IPC issue and held as under:

> *"35. Undoubtedly, the law does not permit taking cognizance of any offence under Section 188 IPC, unless there is a complaint in writing by the competent public servant. In the instant case, no such complaint had ever been filed. In such an eventuality and taking into account the settled legal principles in this regard, we are of the view that it was not permissible for the trial court to frame a charge under Section 188 IPC. However, we do not agree with the further submission that absence of a complaint under Section 195 CrPC falsifies the genesis of the prosecution case and is fatal to the entire prosecution case."*
>
> (emphasis added)

13. Counsel for the petitioners, therefore, contends that while Section 174-A IPC was inserted by an amendment in the year 2005, Section 195 C.r.P.C

was amended in 2006 by carrying out the substitution in sub-section (1)(b), but sub-section (1)(a)(i) remained untouched. Therefore, the legislature was obviously conscious of the insertion of Section 174-A IPC, but kept it within the purview of 195(1)(a)(i) C.r.P.C.

14. The petitioners counsel further highlights that various High Courts in the country have differed with the finding in ***Maneesh Goomer*** (*supra*) and have expressed a unanimous opinion in favour of Section 174-A IPC, being subject to the bar of 195 C.r.P.C. In this regard the following decisions have been adverted to:

14.1 The Division Bench of Allahabad High Court in ***Sumit and Another v State of UP and Ors***. (2024) SCC OnLine All 153 held that for a prosecution under section 174-A IPC**,** no cognizance could be taken by the Court on the basis of a charge-sheet and no FIR could be registered as well. The following paragraphs are instructive in this regard:

> *"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.

…

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.

…

17. So far as the judgment, relied upon by learned A.G.A., passed by the Delhi High Court in Maneesh Goomer (supra) as well as judgment 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 ignoring the fact that Section 188 I.P.C. is a cognizable offence.

…

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.

…

25. This Court also holds that judgment 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."

(emphasis added)

14.2 The High Court of Punjab and Haryana in ***Pradeep Kumar v. State of Punjab and Anr***. 2023:PHHC:110479 also differed with ***Maneesh Goomer*** (*supra*) and highlighted the exclusion of the coordinate Section of 174-A IPC in Bharatiya Nyaya Sanhita 2023 ('***BNS***') (being Section 209), from the provision equivalent to Section 195 Cr.P.C in Bharatiya Nagarik Suraksha Sanhita 2023 ('***BNSS'***) (being Section 215). The Court held as under:

"12.9 Having given my thought further on the reasoning given in Maneesh Goomer's case (supra), with the utmost respect, I have a different take on the same. Notably, the introduction of Section 174-A into the IPC was accompanied by a corresponding amendment in Schedule 1 of the Cr. P.C. This amendment classified the aforementioned offence as cognizable. However, Section

195 of the Cr. P.C. was consciously not amended correspondingly to exclude Section 174-A from its ambit, as is now being proposed through Section 215 of 'The Bhartiya Nagrik Suraksha Sanhita 2023 Bill'. Said Bill currently under consideration of the legislature. The omission of Section 174-A from the scope of Section 195 of the Cr. P.C. cannot, therefore, be also characterized as a mere oversight, especially in light of the deliberate amendment in Schedule-1, while Section 195 ibid was conspicuously left untouched."

...

12.12. Be that as it may, it is unmistakably evident that the omission of Section174-Afrom 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.

...

12.15. Nevertheless, even if we were to entertain the notion that the 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 Penal Code, 1860 (IPC) within its purview."

(emphasis added)

14.3 The Madras High Court in ***S.Brathibha v State*** decided on 24th July, 2015 in CRL.OP. 18476/2015, held as under:

"7. This Court has no quarrel with the proposition, since Section 174A IPC falls within the net of Section 195[1][a][i] of Cr.P.C and therefore, for the offence under Section 174A IPC, the public servant concerned must lodge a complaint, based on which only, a Court can take cognizance of the offence. In this case, no cognizance of the offence has been taken by the Court and the Court has merely forward the complaint under Section 156[3] Cr.P.C to the respondent Police for investigation."

(emphasis added)

14.4 The High Court of Punjab and Haryana in ***Sher Singh v State of Haryana*** decided on 02nd May, 2016 in CRR 2509/2014, held as under:

"6. The relevant part of provision of Section 195, Cr.P.C., is detailed as under:
"(I) 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),
xxxxxxx
[except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing

in this behalf, or of some other Court to which that Court is subordinate].
Admittedly in the case in hand, no complaint in writing has been made by the Court or by any of its Officers authorized to do so of whose order has allegedly been disobeyed by the accused (petitioner-herein). As per the case of prosecution, the case in hand was registered against accused (petitioner-herein) on the basis of some secret information.

7. Some of the case laws pertaining to above point in issue are asunder:-

i. Daulat Ram vs. State of Punjab, AIR 1962 Supreme Court 1206 (Full Bench).

In this case the accused was tried for the offence underSection 182, IPC. Report was made to Tehsildar with a view to take action against the accused which was found false. Tehsildar did not move any complaint as required under Section 195, Cr.P.C., for taking action against the accused. It was held that Section 195, Cr.P.C., contemplates that a complaint must be in writing by the public servant concerned. The cognizance of the case was held to be wrongly assumed by the Court, there being no complaint in writing of public servant namely Tehsildar. The trial was thus without jurisdiction ab-initio and the conviction cannot be maintained. The appeal was allowed.
The principles laid down in this case law were further followed by the Hon'ble Apex Court in another subsequent case law titled as C. Muniappan & Others vs. State of Tamil Nadu, 2010 AIR (SC) 3718.After discussing various case laws on the point in issue, the Hon'ble Apex Court further laid down as under:

xxxx

"the law can be summarised to the effect that there must be a complaint by the public servant whose lawful order has

not been complied with. The complaint must be in writing. The provisions of Section 195, Criminal Procedure Code, are mandatory. Non-compliance of it would vitiate the prosecution and all other consequential orders. The Court cannot assume the cognizance of the case without such complaint. In the absence of such a complaint, the trial and conviction will be void ab-initio being without jurisdiction."

ii. Raj Singh vs. State of Punjab, 1997(2) R.C.R. (Criminal)100, Punjab and Haryana High Court.

In this case, a person obtained a decree of Civil Court by impersonation. The police registered a case under Sections 467, 468,420/34, IPC. It was held that police cannot register the case and investigate the matter. Section 195, Cr.P.C., is a bar not only to the Court taking cognizance of the offence without a complaint in writing from the Court where the offence took place but the same is even applicable to the registration and investigation by the Police into the offence.

iii. Jagdish and Others vs. State of Haryana, 2015(4) R.C.R.(Criminal) 694, Punjab and Haryana High Court.

In this case FIR was registered under Section 188, IPC, for disobeying the order lawfully promulgated by public servant. No complaint in writing as required under section 195(1) Cr.P.C. was moved by the public servant concerned. The FIR was consequently quashed."

(emphasis added)

14.5 The High Court of Himachal Pradesh in ***Rahul Huddone v State of Himachal Pradesh*** 2023:HHC:5016 decided on 09th May 2023 which held as under:

"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."

(emphasis added)

14.6 This Court in ***Sunil Tyagi v. State*** (2021) SCC OnLine Del 3597 held as under:

"9. This Court is of the view that declaring a person as a proclaimed offender leads to a serious offence under Section 174-A IPC which is punishable for a period up to 3 or 7 years. It affects the life and liberty of a person under Article 21 of the Constitution of India and it is necessary to ensure that the process under Sections 82 and 83 CrPC is not issued in a routine manner and due process of law is followed. The second important aspect is that once a person has been declared as a proclaimed offender, it is the duty of the State to make all reasonable efforts to arrest him and attach his properties as well as launch prosecution under Section 174-A IPC.

…

131. The complainant shall also disclose additional addresses of the relatives of the accused even though service at those addresses may or may not be treated as due service upon the accused. (Agreed by CBI and DP)

…

Procedural compliance requirements of Section 195 CrPC requirements

351. In prosecution of cases of Section 174-A IPC, the procedural compliance required by Section 195 CrPC at the stage of cognizance needs to be adhered to. In absence of compliance to procedural necessity of complaint, as

envisaged under Section 195 CrPC, the prosecution of cases under Section 174-A IPC is not possible."

(emphasis added)

15. Aside from this issue of statutory bar, petitioners argued that there was no valid service of summons among the petitioners as per Section 68 C.r.P.C., since neither the officer serving the process was present in Court, nor his affidavit was filed, and the MM could not have formed a '*satisfaction*' required under Section 87 C.r.P.C, for the issue of warrant.

16. Further, there was no service of warrant as the petitioners were not residing with their father. Both petitioners being siblings had moved out from the parental house and were residing separately, as evident from their father's statement, as also an application filed by the petitioners for recall of NBWs against them.

17. Moreover, the petitioners were appearing in another case filed by the same complainant in Tis Hazari Courts and there was no reason for the petitioners not to appear in the present case before the MM.

Analysis

18. Aside from the obvious conflict between the decisions of the Single Judge in ***Maneesh Goomer*** (*supra*) and of ***Sunil Tyagi*** (*supra*), note is taken of the unanimous opinion of the other High Courts in the country.

19. Before assessing the various opinions, the pivot on which our analysis would rest is the decision of the Supreme Court in ***C. Muniappan*** (*supra*), which is binding on this Court. For offences under Section 188 IPC, the Supreme Court reiterated that there must be a complaint by a public servant

whose lawful order has not been complied with, which must be in writing, since the provisions of Section 195 C.r.P.C were mandatory. It was stated that Court cannot assume cognizance of the case without such complaint and the trial/conviction was, therefore, void *ab initio.* Accordingly, it underscored that the law does not permit taking cognizance of an offence under Section 188 IPC, in view of the bar under Section 195 C.r.P.C, in absence of a complaint, as prescribed under the provision. Therefore, logically and fundamentally, Section 188 IPC being cognizable, the same reasoning would also apply to an offence under Section 174-A IPC, which is also cognizable.

20. Even though, the Supreme Court in ***C. Muniappan*** *(supra)* does not deal with Section 174-A directly, it would be difficult to draw an artificial distinction between Section 174-A IPC and Section 188 IPC, despite both being covered in the category of Sections 172-188, in Section 195(1)(a)(i) Cr.P.C. ***Maneesh Goomer*** (*supra*) does not take into account the decision in ***C. Muniappan*** *(supra)*, which was probably not brought to the attention of the Court and, therefore, in ***Maneesh Goomer*** (*supra*) an independent analysis and interpretation was done, reaching a conclusion that since Section 174-A IPC was the only cognizable offence in the category covered under Section 195 C.r.P.C., it was a conscious inclusion by the legislature and, therefore, would stand on its own footing. It would be difficult to support such an interpretation in view of ***C. Muniappan*** (*supra*).

21. To clarify the sequence of legislative activity in regard to Section 195 Cr.P.C. and Section 174-A of IPC it is to be noted that Section 195 & 195(1)(a)(i) Cr.P.C. has been on the statute book since 1973 and includes Section 172-188 IPC. By an amendment by ‘Act 25 of 2005’, Section 174-A

was inserted w.e.f 23rd June, 2006. Therefore, on the date when section 174-A of IPC was inserted, if the legislature had to exclude it out of purview of section 195 Cr.P.C, it would have included that provision.

22. It is settled law that one cannot assume a careless omission by the legislature and proceed to fill in by judicial interpretation, a *casus omissus.* In any event the rule of strict and literal interpretation of statutes will prevail.

23. This is further buttressed by the fact that now in 2023, when the legislature has introduced a substantive new Act for substituting the IPC and the Cr.P.C., being BNS and BNSS, it has consciously made the exclusion for the equivalent provision of 174-A IPC (being Section 209 BNS) from the equivalent provision of Section 195 Cr.P.C (being Section 215 BNSS). Both these new provisions of the new statutes are reproduced as under:

Section 209 of The Bharatiya Nyaya Sanhita, 2023 ('BNS'):

> *"209. Whoever fails to appear at the specified place and the specified time as required by a proclamation published under sub-section (1) of section 84 of the Bharatiya Nagarik Suraksha Sanhita, 2023, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both, or with community service, 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."*

Section 215 of The Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS'):

> *"215. (1) No Court shall take cognizance—*

(a) (i) of any offence punishable under sections 206 to 223 (both inclusive but excluding section 209) of the Bharatiya Nyaya Sanhita, 2023; 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 or of some other public servant who is authorised by the concerned public servant so to do;
(b) (i) of any offence punishable under any of the following sections of the Bharatiya Nyaya Sanhita, 2023, namely, sections 229 to 233 (both inclusive), 236, 237, 242 to 248 (both inclusive) and 267, 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 sub-section (1) of section 336, or punishable under sub-section (2) of section 340 or section 342 of the said Sanhita, 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 by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.
(2) Where a complaint has been made by a public servant or by some other public servant who has been authorised to do so by him under clause (a) of sub-section (1), any authority to which he is administratively subordinate or who has authorised such public servant, 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 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 is 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."

(emphasis added)

24. It could be argued that, since now the legislature has sought to exclude the equivalent of Section 174-A IPC, the legislative intent even prior to BNS and BNSS was the same, although not specified in the statute in IPC/Cr.P.C. This, however, will remain in the realm of legislative speculation and it would be encroaching upon the legislative function by providing such interpretation by judicial *dicta*, which is not permissible. Reference may be made *inter alia* to Supreme Court's opinion in ***Sangeeta Singh v. Union of India*** (2005) 7 SCC 484.

25. The decision in ***Maneesh Goomer*** (*supra*) being differed with, by another Coordinate Bench of this Court in ***Sunil Tyagi*** (*supra*), but also specifically differed with, by the Division Bench of High Court of Allahabad, Single Bench of the Punjab and Haryana High Court, Single Judge of the Madras High Court and Single Judge of the High Court of Himachal Pradesh, may not be considered as good law.

26. However, as noted above, possibly ***Maneesh Goomer*** (*supra*) does not take into account the decision in ***C. Muniappan*** (*supra*) which was prior in time and therefore a *de novo* interpretation was provided.

27. Considering the analysis above, other submissions of the petitioners are not necessary to be adverted to.

28. The impugned order having solely relied on ***Maneesh Goomer*** (*supra*) for its conclusion, the said order cannot be sustained.

29. The petition is therefore, allowed and the impugned order is set aside. Pending applications (if any) are rendered infructuous.

30. Judgment be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

SEPTEMBER 19, 2024/RK/na