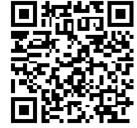


* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 26th NOVEMBER, 2024

IN THE MATTER OF:

\+ **CRL.A. 507/2024 & CRL.M.(BAIL) 1205/2024**

UBABUEZE CHIJIOKE EMMAUNLE @ JOJO .....Appellant

Through: Mr. Rohan J. Alva, Advocate (DHCLSC)

versus

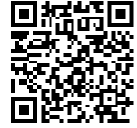
STATE (NCT OF DELHI) .....Respondent

Through: Mr. Tarang Srivastava, APP for the State.
Mr. Arnav Kumar, CGSC with Mr. Aranya Sahay, Advocate for FRRO and Inspector Satish Kumar, FRRO Unit.
SI Braj Lal, AGS/Crime Branch

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. Challenging the Judgment dated 04.04.2024, passed by the Special Judge, NDPS, Saket Courts, in SC No.7587/2016, by which the Appellant herein has been convicted for offences under Section 14 of the Foreigners Act and Section 174A IPC; and Order on sentence dated 10.05.2024 by which the Appellant herein has been sentenced to undergo 3 years of rigorous imprisonment for offences under Section 174A IPC and 3 years of rigorous imprisonment for offences under Section 14 of the foreigners Act along with fine of Rs.50,000/-, the Appellant herein has approached this Court with the following prayers:



"a) Set-aside the impugned Judgment dated 04.04.2024 and order on Sentence dated 10.05.2024 passed by Ld. Special Judge (NDPS), South District, Saket Courts, Delhi in SC No.7587/2016 in FIR No. 113/2015, PS: Crime Branch, U/S. Sec. 14 Foreigners Act and 174A IPC; and/or

b) acquit the appellant of all the charges framed against him or;

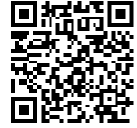
c) release the appellant, for the offence under section 14 Foreigners Act and 174A IPC for a period already undergone;

d) pass any other order or further orders as this Hon'ble Court may deem fit and proper on the facts and circumstances of the case and in the interest of justice."

2. The facts, in brief, leading to the present appeal are as under:

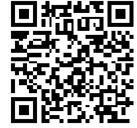
a) It is stated that on 25.07.2015 at about 02.00 AM, secret information was received by Inspector Prem Chand Khanduri, SWR, Crime Branch that the Appellant herein, who is a member of Nigerian drug syndicate, would come near Green Park Gurudwara for supply of cocaine to his customers. The information was reduced in writing vide DD No. 30 dated 25.07.2015, Crime Branch, Delhi and a raiding team was constituted.

b) It is stated that the raiding team along with the informer reached Green Park Gurudwara. It is stated that at about 3:15 AM, two persons, on one blue coloured Royal Enfield motorcycle bearing registration No. UP16AY9095, came from the side of Aurobindo Marg going towards Arjun Nagar and stopped near the Gurudwara. It is stated that the occupants of the motorcycle,



who were identified as the customers of the Appellant herein by the secret informer, were waiting for someone. It is further stated that after about five minutes, one more person, who was also identified as the customer of the Appellant herein, came there and stopped about 5-10 ft. away from the motorcycle. It is stated that at about 3:30 AM, the Appellant herein, as identified by the secret informer, came there from the side of Arjun Nagar and stopped on the road opposite to Gurdwara. It is stated that on seeing the Appellant herein, all the three persons crossed the road and went to the Appellant herein and started talking. It is stated that while talking, the Appellant herein took out something from his pocket and gave it to the persons who were waiting for him.

c) It is stated that all the four persons were apprehended by the raiding team. It is stated that apart from the Appellant herein, the three other persons, who had come there to purchase contraband substance from the Appellant herein were identified as Rahul Chaudhary, Ankit Batra, and Anshuman Tiwari. It is further stated that all the four persons were apprised for their legal rights and written notices under Section 50 NDPS Act were served to them. It is stated that the accused persons denied being searched before search Gazetted officer or Magistrate, upon which Inspector P.C. Khandoori conducted the search of the Appellant herein. It is stated that one polythene packet containing white coloured powder was recovered from the Appellant herein which was tested with drug testing kit and it

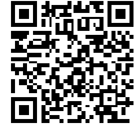


was found to be cocaine. It is stated that the packets given by the Petitioners herein to two of his customers were also tested and were also found to be cocaine. It is stated that the items were weighed on electronic weighing machine and the recovery made from the Appellant herein was found to be 60 gms, and the recovery from his customers was found to be 2.5 gms each. It is stated that the contraband was seized and samples were drawn and the present FIR, being FIR No. 113/15 dated 25.07.2015 was registered at PS Crime Branch for offences under Sections 21/29 NDPS Act and 14 Foreigners Act and all the accused persons were taken into custody.

d) It is stated that during investigation, the samples were sent to FSL Rohini for examination. It is stated that the expert's analysis report has been received wherein the expert has opined that on examination of the contraband recovered from the Appellant herein it was found that it contains cocaine.

e) After completion of the investigation, chargesheet has been filed against the Appellant herein and the co-accused Rahul Chaudhary, Ankit Batra, and Anshuman Tiwari for offences under Sections 21/29 NDPS Act, Section 14 of the Foreigners Act and Sections 468/471 IPC.

f) It is stated that the Trial Court *vide* order dated 09.11.2016 granted bail to the Appellant herein. It is further stated the Appellant herein jumped the bail and on 25.03.2019, Non-bailable warrants were issued against the petitioner. It is stated that notice under Section 82 CrPC was issued against the



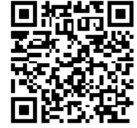
Appellant and the Appellant was declared a Proclaimed Offender *vide* order dated 14.10.2019.

g) It is stated that the Appellant was again arrested on 31.03.2021. It is stated that offence under Section 174A was framed against the Appellant herein on 01.05.2023 as he had absconded during trial.

h) It is stated that thereafter, the Appellant herein filed several bail applications, however, all the bail applications were dismissed by the Trial Court and this Court. The last such bail application was dismissed by this Court on 04.07.2023.

i) It is stated that after completion of investigation, the Trial Court *vide* Judgment dated 04.04.2024 acquitted the Appellant herein for offences under Section 21(b) NDPS Act, however, the Trial Court convicted the Appellant herein for offences under Section 14 of the Foreigners Act and Section 174A IPC. *Vide* Order on sentence dated 10.05.2024, the Trial Court has sentenced the Appellant to undergo three years Rigorous Imprisonment for the offence punishable under Section 174A IPC. Further, the Appellant has also been sentenced to undergo three years of Rigorous Imprisonment for the offence punishable under Section 14 Foreigners Act along with a fine of Rs.50,000/-, in case of default in payment of fine, the Appellant was to further undergo Simple imprisonment for a period of three months.

j) It is this Order which has been challenged by the Appellant in the present appeal.



3. The present appeal is, therefore, limited only to conviction under Section 14 of the Foreigners Act and Section 174A IPC.

4. Notice was issued on 28.05.2024. Status Report has been filed. Since the Appellant is a foreign national, this Court *vide* Order dated 22.07.2024 impleaded FRRO as a party to the present petition. On 24.07.2024, the learned Counsel appearing for the FRRO stated that the visa of the Appellant has expired and the Appellant will have to be deported. As per the Status Report filed by the FRRO, it is stated that the Appellant arrived in India on 27.06.2012 on the strength of Nigerian Passport which was valid till 13.01.2016 and an Indian Medical Visa which was valid till 03.09.2012. It is stated in the Status Report that the Appellant did not approach any hospital for his treatment and after expiry of his visa on 03.09.2012, the Appellant did not approach any FRRO Office for registration or further extension of visa.

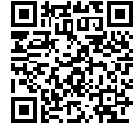
5. Material on record also indicates that the Appellant departed from India on 20.07.2012 and there is no record of any subsequent entry of the Appellant in India, which shows that he has entered India illegally.

6. Section 14 of the Foreigners Act prescribes for penalties for contravention of the provisions of the Foreigners Act. Undisputedly, the Appellant herein arrived in India on a medical visa on 27.06.2012 and the medical visa of the Appellant was valid till 03.09.2012 and the Appellant's passport was valid till 13.01.2016. The Appellant was arrested on 25.07.2015, however, there is neither any endorsement in the Passport of the Appellant nor any document in the possession of the Appellant to show that the Appellant had a valid visa at the time of his arrest. The Appellant was granted bail on 09.11.2016 and the Appellant was in the country without a

valid passport and without visa. On being released on bail, the Appellant did not approach any FRRO Office in the country seeking extension of visa which had already expired. The Appellant resided in India without visa and a valid passport and, therefore, the Appellant is an illegal migrant under the Indian Citizenship Act.

7. Section 3(2)(a) of the Foreigners Act gives power to the Central Government to make Orders with respect to the entry and departure of foreigners into India. In terms of the powers conferred on the Government of India under Section 3(2)(a) of the Foreigners Act, the Government of India has brought out the Foreigners Order, 1948. Clause 3(1)(a) of the Foreigners Order mandates that no foreigner shall enter India otherwise than at such port or other place of entry on the borders of India as a Registration Officer having jurisdiction at that port or place may appoint in this behalf without the leave of the civil authority having jurisdiction at such port or place. Clause 3(2) of the Foreigners Order prescribes that leave to enter India shall be refused if the foreigner is not in possession of a valid passport or visa for India or has not been exempted from the possession of a passport or visa. Clause 3B of the Foreigners Order provide that a foreigner shall hold a valid passport or other valid travel document relating to passport, as the case may be, while living in India. Clause 3B of the Foreigners Order along with the explanation reads as under:

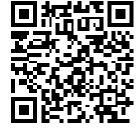
> "*3B. Requirement of holding a valid passport or other valid travel document while living in India. [Inserted by Notification No. S.O. 1027(E), dated 8.3.2022 and published in the Gazette of India, Extra., Part II, Section 3(ii), dated 9.3.2022, p. 2, No. 996.*



> *- Save as otherwise provided in terms of this Order or Rule 4 of the Passport (Entry into India) Rules, 1950, a foreigner shall hold a valid passport or other valid travel document relating to passport, as the case may be, while living in India.*
> *Explanation. - For the purpose of this paragraph, "other valid travel document" includes emergency certificate or certificate of identity or such other document which has been issued by or under the authority of the Government of a foreign country satisfying the conditions specified in the Passport (Entry into India) Rules, 1950 as made under the Passport (Enter into India) Act, 1920 (34 of 1920)"*

8. From the facts, which are not in dispute, it is clear that the Appellant has been residing in India without having valid documents and, therefore, the Appellant has violated Foreigners Act. The deposition given by PW-7 corroborates the fact that the Appellant departed from India on 20.07.2012 and there is no record of his subsequent entry in India and that the Appellant has entered India illegally.

9. In view of the above, this Court does not find any infirmity in the Judgment dated 04.04.2024, by which the Appellant has been convicted for offences under Section 14 of the Foreigners Act and Order on sentence dated 10.05.2024 by which the Appellant has been sentenced to undergo 3 years of rigorous imprisonment for offences under Section 14 of the foreigners Act along with fine of Rs.50,000/-. However, in view of the fact that the Appellant was in custody and was not in a position to get his documents, this Court is of the opinion that the Appellant's sentence must be reduced to one already undergone.

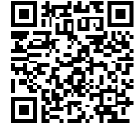


10. The Appellant has also been charged for offences under Section 174A IPC. The allegation against the Appellant is that during the pendency of the trial, the Appellant absconded while on bail and *vide* Order dated 25.03.2019 non-bailable warrants were issued against the Appellant and proceedings under Section 82 CrPC were initiated against the Appellant. The Trial Court examined the process server as CW-1 and on being satisfied that even after being served notice under Section 82 Cr.P.C, the Appellant has failed to appear before the Trial Court, the Appellant was declared as a Proclaimed Offender *vide* Order dated 14.10.2019. It was only on 31.03.2023, when the Appellant was re-arrested by PW-23, SI Gautam on the basis of a secret information. The Trial Court has held that the Appellant has not lead evidence to show that the proclamation issued against the Appellant was not proper.

11. It was contended by the learned Counsel for the Appellant that in the absence of any complaint under Section 195 Cr.P.C, the Trial Court could not have taken cognizance under Section 174A IPC.

12. At this juncture, it is pertinent to reproduce Section 174A IPC and the same reads as under:

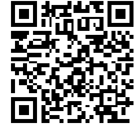
> "*Section 174A. Non-appearance in response to a proclamation under section 82 of Act 2 of 1974.*
>
> *Whoever fails to appear at the specified place and the specified time as required by a proclamation published under sub-section (1) of section 82 of the Code of Criminal Procedure, 1973 shall be punished 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."

13. Section 195 Cr.P.C provides for Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. Section 195 Cr.P.C reads as under:

> "*Section 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;

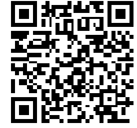
(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed."

14. Section 195(1)(a)(i) Cr.P.C mandates that no Court shall take cognizance of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code except on the complaint in writing of by a public servant or of some other public servant to whom the public servant is subordinate. Section 174A IPC is covered under Section 195(1)(a)(i). In the present case, no complaint has been filed.

15. Learned Counsel for the Appellant places reliance on the Judgment of the Apex Court in C. Muniappan v. State of T.N., **(2010) 9 SCC 567,** and more particularly on paragraphs No.27 to 33 of the said Judgment which reads as under:

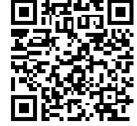
"**27.** *Section 195 CrPC reads as under:*

"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 Penal Code, 1860, or*
>
> ***
>
> *except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;"*

28. Section 195(1)(a)(i) CrPC bars the court from taking cognizance of any offence punishable under Section 188 IPC or abetment or attempt to commit the same, unless, there is a written complaint by the public servant concerned for contempt of his lawful order. The object of this provision is to provide for a particular procedure in a case of contempt of the lawful authority of the public servant. The court lacks competence to take cognizance in certain types of offences enumerated therein. The legislative intent behind such a provision has been that an individual should not face criminal prosecution instituted upon insufficient grounds by persons actuated by malice, ill will or frivolity of disposition and to save the time of the criminal courts being wasted by endless prosecutions. This provision has been carved out as an exception to the general rule contained under Section 190 CrPC that any person can set the law in motion by making a complaint, as it prohibits the court from taking cognizance of certain offences until and unless a complaint has been made by some particular authority or person. Other provisions in CrPC like Sections 196 and 198 do not lay down any rule of procedure, rather, they only create a bar that unless some requirements are complied with, the

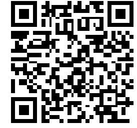


court shall not take cognizance of an offence described in those sections*. (Vide Govind Mehta v. State of Bihar [(1971) 3 SCC 329 : 1971 SCC (Cri) 608 : AIR 1971 SC 1708] , Patel Laljibhai Somabhai v. State of Gujarat [(1971) 2 SCC 376 : 1971 SCC (Cri) 548 : AIR 1971 SC 1935] , Surjit Singh v. Balbir Singh [(1996) 3 SCC 533 : 1996 SCC (Cri) 521] , State of Punjab v. Raj Singh [(1998) 2 SCC 391 : 1998 SCC (Cri) 642] , K. Vengadachalam v. K.C. Palanisamy [(2005) 7 SCC 352 : 2005 SCC (Cri) 1673] and Iqbal Singh Marwah v. Meenakshi Marwah [(2005) 4 SCC 370 : 2005 SCC (Cri) 1101] .)*

29*. The test of whether there is evasion or non-compliance with Section 195 CrPC or not, is whether the facts disclose primarily and essentially an offence for which a complaint of the court or of a public servant is required. In Basir-ul-Haq v. State of W.B. [(1953) 1 SCC 637 : AIR 1953 SC 293 : 1953 Cri LJ 1232] and Durgacharan Naik v. State of Orissa [AIR 1966 SC 1775 : 1966 Cri LJ 1491] , this Court held that the provisions of this section cannot be evaded by describing the offence as one being punishable under some other sections of IPC, though in truth and substance, the offence falls in a category mentioned in Section 195 CrPC. Thus, cognizance of such an offence cannot be taken by misdescribing it or by putting a wrong label on it.*

30*. In M.S. Ahlawat v. State of Haryana [(2000) 1 SCC 278 : 2000 SCC (Cri) 193 : AIR 2000 SC 168] this Court considered the matter at length and held as under : (SCC p. 282, para 5)*

> *"5. ... Provisions of Section 195 CrPC are mandatory and no court has jurisdiction to take cognizance of any of the offences mentioned*



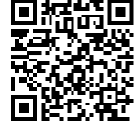
> *therein unless there is a complaint in writing as required under that section."(emphasis added)*

***31**. In Sachida Nand Singh v. State of Bihar [(1998) 2 SCC 493 : 1998 SCC (Cri) 660] this Court while dealing with this issue observed as under : (SCC pp. 497-98, para 7)*

> *"7. ... Section 190 of the Code empowers 'any Magistrate of the First Class' to take cognizance of 'any offence' upon receiving a complaint, or police report or information or upon his own knowledge. Section 195 restricts such general powers of the Magistrate, and the general right of a person to move the court with a complaint is to that extent curtailed. It is a well-recognised canon of interpretation that provision curbing the general jurisdiction of the court must normally receive strict interpretation unless the statute or the context requires otherwise…."(emphasis supplied)*

***32**. In Daulat Ram v. State of Punjab [AIR 1962 SC 1206 : (1962) 2 Cri LJ 286] this Court considered the nature of the provisions of Section 195 CrPC. In the said case, cognizance had been taken on the police report by the Magistrate and the appellant therein had been tried and convicted, though the public servant concerned, the Tahsildar, had not filed any complaint. This Court held as under : (AIR pp. 1207-08, paras 4-5)*

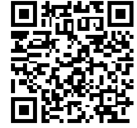
> *"4. ... The cognizance of the case was therefore wrongly assumed by the court without the complaint in writing of the public servant, namely, the Tahsildar in this case. The trial was thus without jurisdiction ab initio and the conviction cannot be maintained.*



> *5. The appeal is, therefore, allowed and the conviction of the appellant and the sentence passed on him are set aside."(emphasis added)*
>
> ***33. Thus, in view of the above, 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 CrPC are mandatory. Non-compliance with 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**."* (emphasis supplied)

16. A perusal of the abovementioned Judgment shows that there must be a complaint by the public servant whose lawful order has not been complied with and the complaint must be in writing and that the provisions of Section 195 CrPC are mandatory and Non-compliance with it would vitiate the prosecution and all other consequential orders. It is pertinent to mention that the said Judgment arose when the principal offence was one under Section 302 IPC and along with it the accused therein was also charged with offence under Section 188 IPC.

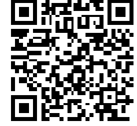
17. Learned Counsel for the Respondent also places reliance on the Judgment passed by a co-ordinate Bench of this Court in Maneesh Goomer v. State, **2012 SCC Online Del 66**, wherein it has been held that Section 174A IPC does not fall within the scope of Section 195(1)(a)(i) Cr.P.C. The said Judgment has been followed by co-ordinate Benches of this Court in A. Krishna Reddy v. CBI, **2017 SCC Online Del 7266**; Purushottam Dev Arya



v. CBI, **2017 SCC Online Del 7267**. He, therefore, states that the Judgment passed by the co-ordinate Bench of this Court in Maneesh Goomer (supra) would be binding on the present case.

18. At this juncture, it is pertinent to extract the relevant portions of the Judgment passed by the co-ordinate Bench of this Court in Maneesh Goomer (supra) and the same reads as under:

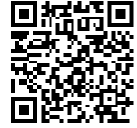
> "***9***. *As regards the next contention of the Petitioner that for a prosecution under Section 174-A IPC no cognizance can be taken on a charge-sheet but on a complaint under Section 195 Cr.P.C., it may be noted that Section 174-A IPC was introduced in the Code with effect from 23rd June, 2006. Section 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.*
>
> ***10***. *Adverting to the last contention of the learned counsel for the Petitioner that the process under*



> *Section 82 Cr.P.C. was illegal as the proclamation was not in the newspaper as directed by the Court but in the other newspaper, it may be noted that Section 82(2) Cr.P.C. provides for the procedure for publishing the proclamation. Clause (i) of Sub-Section (2) is mandatory in nature as it directs that the proclamation shall be publically read in some conspicuous place of the town in which the person ordinarily resides, shall be affixed in some conspicuous place of the house in which the person ordinarily resides, and shall be affixed in some conspicuous part of the Court-house. However, Clause (ii) of Section 82(2) Cr.P.C. is not mandatory and it states that the Court may also if it thinks fit direct a copy of the proclamation to be published in a daily newspaper circulated in the place in which such person ordinarily resides. Since Clause (ii) is not mandatory in nature, the non-adherence to the strict compliance thereon will not vitiate the process under Section 82 Cr.P.C. The abovementioned FIR for offence punishable under Section 174-A IPC is an independent cause of action and merely because the complaint case under Section 138 NI Act is settled, there is no reason that the abovementioned FIR be also quashed."*

19. It is pertinent to mention at this juncture that the Judgment passed by the Apex Court in C. Muniappan (supra) has not been brought to the notice of the Co-ordinate Bench of this Court.

20. Learned Counsel for the Appellant also places reliance on the Judgment passed by other High Courts, namely, Sumit & Anr. v. State of U.P. & Ors., **2024 SCC OnLine All 153**; Pradeep Kumar v. State of Punjab & Anr., **2023:PHHC:110479**; Rajinder Ghazta v. State of H.P., **2024 SCC Online HP 261**; holding that the Judgment passed by the coordinate Bench

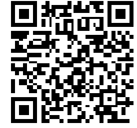


of this Court in Maneesh Goomer (supra) does not lay down the correct position of law qua Section 174A IPC and Section 195 Cr.P.C.

21. Learned Counsel for the Appellant also states that 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.

22. The said argument cannot be accepted for the reason that Section 195 Cr.P.C. includes all offences punishable under Sections 172-188 IPC (both inclusive) and, therefore, insertion of Section 174A IPC does not warrant any consequential amendment because Section 174A IPC would automatically have been included under the ambit of Section 195 Cr.P.C. In any event, it cannot be said that the Legislature has committed mistake by keeping Section 195(1)(a)(i) Cr. P.C. untouched. The Apex Court in Nalinakhya Bysack v. Shyam Sunder Haldar, **(1953) 1 SCC 167,** has held as under:

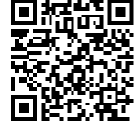
> "***17***. *It must always be borne in mind, as said by Lord Halsbury in Commissioners for Special Purposes of Income Tax v. Pemsel [Commissioners for Special Purposes of Income Tax v. Pemsel, 1891 AC 531 at p. 549 (HL)] , that it is not competent to any court to proceed upon the assumption that the legislature has made a mistake. The court must proceed on the footing that the legislature intended what it has said. Even if*



> *there is some defect in the phraseology used by the legislature the court cannot, as pointed out in Crawford v. Spooner [Crawford v. Spooner, (1846-49) 6 Moo PC 1 : (1846-50) 4 Moo IA 179 : 13 ER 582 : 1846 SCC OnLine PC 7] , aid the legislature's defective phrasing of an Act or add and amend or, by construction, make up deficiencies which are left in the Act. Even where there is a casus omissus, it is, as said by Lord Russell of Killowen in Hansraj Gupta v. Official Liquidators of Dehra Dun-Mussoorie Electric Tramway Co. Ltd. [Hansraj Gupta v. Official Liquidators of Dehra Dun-Mussoorie Electric Tramway Co. Ltd., (1932-33) 60 IA 13 : (1933) 37 LW 445 : AIR 1933 PC 63 : 1932 SCC OnLine PC 71] , for others than the courts to remedy the defect.”*

23. Similarly, the Apex Court in Nathi Devi v. Radha Devi Gupta, **(2005) 2 SCC 271,** has observed as under:

> “***13***. *The interpretative function of the court is to discover the true legislative intent. It is trite that in interpreting a statute the court must, if the words are clear, plain, unambiguous and reasonably susceptible to only one meaning, give to the words that meaning, irrespective of the consequences. Those words must be expounded in their natural and ordinary sense. When the language is plain and unambiguous and admits of only one meaning, no question of construction of statute arises, for the Act speaks for itself. Courts are not concerned with the policy involved or that the results are injurious or otherwise, which may follow from giving effect to the language used. If the words used are capable of one construction only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In considering whether there is ambiguity, the court must look at the statute as a whole*



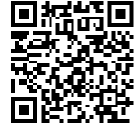
and consider the appropriateness of the meaning in a particular context avoiding absurdity and inconsistencies or unreasonableness which may render the statute unconstitutional.

***14**. It is equally well settled that in interpreting a statute, effort should be made to give effect to each and every word used by the legislature. The courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. A construction which attributes redundancy to the legislature will not be accepted except for compelling reasons such as obvious drafting errors. (See State of U.P. v. Dr. Vijay Anand Maharaj [AIR 1963 SC 946 : (1963) 1 SCR 1] , Rananjaya Singh v. Baijnath Singh [AIR 1954 SC 749 : (1955) 1 SCR 671] , Kanai Lal Sur v. Paramnidhi Sadhukhan [AIR 1957 SC 907 : 1958 SCR 360] , Nyadar Singh v. Union of India [(1988) 4 SCC 170 : 1988 SCC (L&S) 934 : (1988) 8 ATC 226 : AIR 1988 SC 1979] , J.K. Cotton Spg. and Wvg. Mills Co. Ltd. v. State of U.P. [AIR 1961 SC 1170] and Ghanshyamdas v. CST [AIR 1964 SC 766 : (1964) 4 SCR 436] .)*

***15**. It is well settled that literal interpretation should be given to a statute if the same does not lead to an absurdity.*

***16**. In Nasiruddin v. Sita Ram Agarwal [(2003) 2 SCC 577] this Court stated the law in the following terms: (SCC p. 589, para 37)*

> *"37. The court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of the*

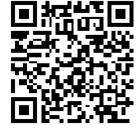


provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of the legislation must be gathered from the language used. It may be true that use of the expression 'shall or may' is not decisive for arriving at a finding as to whether the statute is directory or mandatory. But the intention of the legislature must be found out from the scheme of the Act. It is also equally well settled that when negative words are used the courts will presume that the intention of the legislature was that the provisions are mandatory in character."

***17**. Even if there exists some ambiguity in the language or the same is capable of two interpretations, it is trite that the interpretation which serves the object and purport of the Act must be given effect to. In such a case the doctrine of purposive construction should be adopted. (See Swedish Match AB v. Securities & Exchange Board of India [(2004) 11 SCC 641 : (2004) 7 Scale 158] .)"*

24. In Sri Ram Saha v. State of W.B., **(2004) 11 SCC 497**, the Apex Court has observed as under:

"***19**. It is well-settled principle of interpretation that a statute is to be interpreted on its plain reading; in the absence of any doubt or difficulty arising out of such reading of a statute defeating or frustrating the object and purpose of an enactment, it must be read and understood by its plain reading. However, in case of any difficulty or doubt arising in interpreting a provision of an enactment, courts will interpret such a*



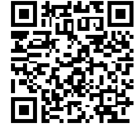
provision keeping in mind the objects sought to be achieved and the purpose intended to be served by such a provision so as to advance the cause for which the enactment is brought into force. If two interpretations are possible, the one which promotes or favours the object of the Act and purpose it serves, is to be preferred. At any rate, in the guise of purposive interpretation, the courts cannot rewrite a statute. A purposive interpretation may permit a reading of the provision consistent with the purpose and object of the Act but the courts cannot legislate and enact the provision either creating or taking away substantial rights by stretching or straining a piece of legislation.

***20**. This Court in CST v. Parson Tools and Plants [(1975) 4 SCC 22 : 1975 SCC (Tax) 185] has taken the view that if the legislature did not, after due application of mind, incorporate a particular provision, it cannot be imported into it by analogy, observing that: (SCC p. 27, para 15)*

> *"An enactment being the will of the legislature, the paramount rule of interpretation, which overrides all others, is that a statute is to be expounded 'according to the intent of them that made it'."*

***21**. Further in para 16 of the said judgment, this Court has observed thus: (SCC p. 28)*

> *"16. If the legislature wilfully omits to incorporate something of an analogous law in a subsequent statute, or even if there is a casus omissus in a statute, the language of which is otherwise plain and unambiguous, the court is not competent to supply the omission by engrafting on it or introducing in it, under the guise of interpretation, by analogy or implication,*



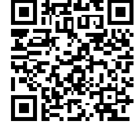
something what it thinks to be a general principle of justice and equity. To do so 'would be entrenching upon the preserves of legislature' (at p. 65 in Prem Nath L. Ganesh Dass v. Prem Nath L. Ram Nath [AIR 1963 Punj 62 : 64 Punj LR 975] per Tek Chand, J.), the primary function of a court of law being jus dicere and not jus dare."

***22**. Further para 23 of the same judgment reads: (SCC p. 29)*

> *"23. We have said enough and we may say it again that where the legislature clearly declares its intent in the scheme and language of a statute, it is the duty of the court to give full effect to the same without scanning its wisdom or policy, and without engrafting, adding or implying anything which is not congenial to or consistent with such expressed intent of the lawgiver;"*

***23**. In Sankar Ram & Co. v. Kasi Naicker [(2003) 11 SCC 699] this Court in para 7 has stated thus: (SCC pp. 704-05)*

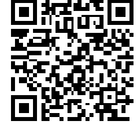
> *"7. It is a cardinal rule of construction that normally no word or provision should be considered redundant or superfluous in interpreting the provisions of a statute. In the field of interpretation of statutes, the courts always presume that the legislature inserted every part thereof with a purpose and the legislative intention is that every part of the statute should have effect. It may not be correct to say that a word or words used in a statute are either unnecessary or without any purpose to serve, unless there are compelling reasons to say so looking to the scheme of the statute and having*



regard to the object and purpose sought to be achieved by it.'"

25. In view of the abovementioned Judgments, it cannot be said that the legislation has committed a mistake by not making any consequential amendment in Cr.P.C. In fact, a co-ordinate Bench of this Court in Amandeep Gill v. State (NCT of Delhi), **2024 SCC OnLine Del 6542**, has observed as under:

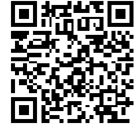
> "***20***. *Even though, the Supreme Court in C. Muniappan (supra) does not deal with Section 174-A directly, it would be difficult to draw an artificial distinction between Section 174-A IPC and Section 188 IPC, despite both being covered in the category of Sections 172-188, in Section 195(1)(a)(i) 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

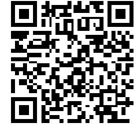
(ii) of any abetment of, or attempt to commit, such offence; or

(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.



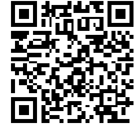
(2) Where a complaint has been made by a public servant or by some other public servant who has been authorised to do so by him under clause (a) of sub-section (1), any authority to which he is administratively subordinate or who has authorised such public servant, may, order the withdrawal of the complaint 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.

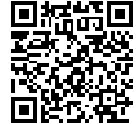
(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the Principal Court 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.*"

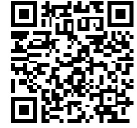
26. Though, the coordinate Bench of this Court in Amandeep Gill (supra) has proceeded ahead to quash the complaint but this Court is of the opinion that in view of the cleavage between Maneesh Goomer (supra) & Amandeep Gill (supra) and in view of the law laid down by the Apex Court in C. Muniappan (supra), this question must be referred to a larger Bench to resolve the issue.



27. Accordingly, the Registry is directed to place this matter before the Hon'ble the Chief Justice for constitution of a Bench at the earliest to decide the issue as to whether a cognizance of offences under Section 174A IPC can be clubbed with the charges under other offences under the IPC and can the Court proceed ahead without a complaint under Section 195 Cr.P.C or not.

28. This Court is not going into the issue as to whether the Appellant must be kept in detention centre or not and it is for the FRRO to take a decision in this regard in accordance with law. It is always open for the Appellant to challenge any decision taken by the FRRO by relying on the Judgment passed by the co-ordinate Bench of this Court in Prince Ben Nnaka v. State (NCT of Delhi), **2024 SCC OnLine Del 534**, wherein this Court has observed as under:

> "***15****. Following the aforementioned judgments as well as another judgment of this Court in Bathlomew Lkechukwu @ Charles v. Union of India, W.P. (Crl.) 2146/2019, decided on 30.01.2020, another Co-ordinate Bench of this Court in Charles Kingsley Okakso (supra), held that once the Applicant was released from prison after having undergone his sentence, he could not be kept in a detention centre indefinitely. The Court directed the release of the Applicant forthwith from the detention centre and further directed that the FRRO shall take a decision with regard to the visa application of the Applicant taking into account that he may be wanted in another criminal cases in India. Relevant paragraphs are as under:—*
>
> > *"12. In Bathlomew Lkechukwu @ Charles v. Union of India, W.P. (Crl.) 2146/2019, a Co-ordinate Bench of this Court vide order dated*



30th January, 2020, while dealing with a foreign national who was being kept in a detention centre, despite having been acquitted of the charges, observed that the foreigner could not be kept in a detention centre indefinitely. The relevant observations of the Court are set out below:

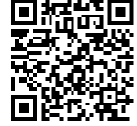
"3. Plainly, the petitioner cannot be detained indefinitely. Even if it is found that the petitioner's presence is required in India on account of the appeal filed by NCB, an appropriate visa is required to be issued to him.

4. The petitioner has been in the said deportation camp since 03.12.2018. The petitioner is either required to be issued a visa or is required to be deported. In any event, he cannot remain in a deportation camp indefinitely."(Emphasis Supplied)

***13**. In light of the aforesaid judgments, once the applicant has been released from prison after having undergone his sentence, he cannot be kept in a detention centre. Continuing to hold the applicant in a detention centre would amount to violation of his rights under Article 21 of the Constitution of India. The applicant cannot be detained in a detention centre indefinitely.*

***14**. Taking into account that the applicant may be wanted in other criminal cases in India and having regard to the other facts and circumstances, the FRRO shall take a decision with regard to the visa application of the applicant.*

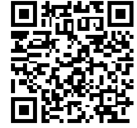
***15**. It is directed that the applicant be forthwith released from the detention centre. At the time of his*



release, the applicant shall furnish his permanent address and mobile number(s) to the FRRO."

16*. From a conspectus of the aforementioned judgments, the only inexorable conclusion that can be drawn is that Courts cannot, as a part of the order enlarging a foreign national on bail or acquitting/discharging or as in this case convicting but sentencing for the period of imprisonment undergone, simultaneously pass a direction to detain the person at a deportation centre. As observed in Emechere Maduabuchkwu (supra), detention centre is not a place for judicial custody but a place where foreign national is detained on an Executive order and this is the prerogative of the Competent Authority under the Foreigners Act. In light of this observation of the Co-ordinate Bench coupled with the observation that Courts cannot as a part of enlarging foreign national on bail direct the person to be sent to a detention centre, the argument of the learned ASC that there is no challenge to the order dated 07.04.2021 passed by learned M.M., South District, Saket Courts has no merit. Once the Petitioner was enlarged on bail, he cannot be detained without cause and due process of law. Pendency of trial in case FIR No. 481/2016 also, in my view, cannot be a reason enough to detain the Petitioner, as he is yet to be proved guilty post-trial. Therefore, counsel for the Petitioner is right in contending that the detention of the Petitioner in the deportation centre, in the present circumstances of this case, is illegal.*

17*. In view of the aforementioned facts and the judgments, it is directed that Petitioner be released forthwith from the deportation centre, subject to the Petitioner furnishing his permanent address and mobile number(s) to FRRO. The mobile phone shall be kept operational and active at all times. Petitioner will*



> *continue to report to the local police station every Saturday at 10 : 00AM. Since the Court is apprised that passport of the Petitioner, which is valid till 27.03.2028, is lying deposited with the Trial Court, no further direction is required in this respect at this stage. It is an uncontroverted position that Petitioner has already furnished bail bonds in the sum of Rs. 20,000/- to the satisfaction of the Trial Court. Insofar as the visa of the Petitioner is concerned, it is stated by Ms. Richa Dhawan, on instructions, from the officer of the FRRO department, present in Court, that Petitioner will have to make a fresh application as the earlier application filed by him is no longer valid in view of the rule position that the application remains valid only upto four months from the date of application. Counsel for the Petitioner submits that Petitioner will make a fresh application for visa. If and when such an application is filed by the Petitioner, the decision will be taken by the FRRO, in accordance with law.*"

29. The Registry is directed to place the matter before Hon'ble the Chief Justice for constituting an appropriate larger Bench to consider the issue.

SUBRAMONIUM PRASAD, J

NOVEMBER 26, 2024
Rahul