

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

% **Date of Decision: 7th February, 2017**

+ **CRL.M.C. 4703/2014 & CrI. M.A. 15996/2014**

DEEPAK KUMAR @ DEEPAK SAHA Petitioner

Through: Mr.Sandeep Kumar, Ms.Priya
Hingorani, Mr.Akhand Pratap &
Mr.Chandra Bhushan Advocates.

versus

STATE Respondent

Through: Ms.Kusum Dhalla, APP for State with
Investigating Officer

CORAM:
HON'BLE MR. JUSTICE I.S.MEHTA

I.S. MEHTA, J.

1. By virtue of present petition filed under Section 482 Cr.P.C. the petitioner seeks to quash three orders dated 07.12.2010, 04.02.2011 and 10.10.2013 passed by learned CMM, Patiala House Courts, New Delhi, by which process under Sections 82 and 83 Cr.P.C. were issued against the petitioner and he was declared to be a proclaimed offender respectively.
2. The brief facts stated are that an FIR No. 69/07 dated 08.10.2007 under Sections 384/506/34 IPC was registered at Police Station Special Cell, Lodhi Colony, New Delhi. Consequently, one Brijesh Singh and Tribhuvan Singh were arrested. The co-accused Deepak Saha and Sanjay Singh could not be arrested and Non-

bailable warrants (NBWs) were issued against them. Thereafter, Head Constable Sunil Gaur and Ajay Kumar executed the process under Sections 82 and 83 Cr.P.C. against the present petitioner. The Statement of process server under Section 82 Cr.P.C. was recorded by the learned CMM and subsequently, issued process under Section 83 Cr.P.C. qua against the present petitioner vide order dated 06.04.2011.

3. Thereafter, Sub Inspector Mr.Mukesh Singh and Head Constable Sunil Gaur visited the house of the petitioner Deepak Kumar for the execution of the process under Section 83 Cr.P.C. against him but the same could not be executed for want of property in the name of the petitioner.
4. This Court vide order dated 21.03.2012 directed the petitioner to surrender before the trial Court.
5. The petitioner filed Special Leave Petition before the Hon'ble Supreme Court of India and the said SLP was dismissed on 13.03.2013.
6. In the meanwhile, Investigation Officer filed a supplementary chargesheet dated 31.08.2013 under Sections 384/387/419/420/467/468/471/474/174A/506/120B/34 IPC.
7. Thereafter, the petitioner filed an anticipatory bail application before the learned ASJ, New Delhi District and the learned ASJ after considering the application granted anticipatory bail in favour of the present petitioner on the basis of pendency of the present proceedings on 25.06.2016 .

Hence the present petition.

8. The learned counsel for the petitioner has submitted that Deepak Kumar was declared to be a proclaimed offender on 10.10.2013 by the learned CMM Patiala House Courts and has strongly urged that the Investigating Officer had no power to add Section 174A IPC in the supplementary chargesheet dated 31.08.2013 prior to declaring the petitioner a Proclaimed Offender by the trial Court.
9. The learned counsel for the petitioner has further submitted that the petitioner is already been released on anticipatory bail vide order dated 25.06.2016 passed by learned ASJ, New Delhi and the supplementary chargesheet qua against the petitioner was filed on 31.08.2013.
10. The learned counsel for the petitioner has further submitted that the process initiated qua against the petitioner is without the knowledge of the petitioner as the impugned order itself indicates that process under Section 83 Cr.P.C. could not be completed for want of the property.
11. The learned counsel for the petitioner has further submitted that since the petitioner has joined the trial and the chargesheet is already been filed the impugned orders be set aside.
12. On the other hand, the learned APP for State opposes the contention of the learned counsel for the petitioner and has pointed out that the chargesheet filed qua against the present petitioner is dated 31.08.2013 under Sections 384/387/419/420/467/468/471/474/174A/506/120B/34 IPC and

further submitted that Section 174A IPC is a substantive offence and it requires trial.

13. The whole question hinges around whether Section 174A IPC could be added by the Investigating Officer before declaring the petitioner to be a proclaimed offender?

The answer is NO.

14. The petitioner was declared to be a proclaimed offender vide order dated 10.10.2013 which is reproduced hereunder:

*"FIR No. 69/07
u/s 384/387/419/420/467/468/471/474/174A/506/120-B/34 IPC
PS Special Cell*

*State Vs. 1. Tribhuwan @ Pawan Kumar Singh
2. Deepak Kumar @ Deepak Shah
3. Sanjay Partap Singh @ Sanjay Singh
4. Brajesh 10.10.2013.*

10.10.2013

*Present: None for State
Sh. Rajiv Mohan, ld. SPP for State is not present. IO SI Om Bir Singh is present along with Process Server H.C. Sunil Gaur.*

Accused Brajesh (accused in the main charge sheet) is present in J.C. with Sh. Dinesh Singh, Ld. Advocate.

Accused Tribhuwan @ Pawan Kumar Singh (accused in the supplementary charge sheet as filed on 31.8.2013) is present in J.C. with ld. counsel Sh. Akhand Pratap Singh.

Accused Deepak Kumar @ Deepak Shah and Sanjay Partap Singh @ Sanjay Singh are absent and are absconding.

Process Server H.C. Sunil Gaur qua accused Deepak Kumar @ Deepak Shah and Sanjay Partap Singh @ Sanjay Singh is present. Process Server submits that his statement with respect to the execution of process under section 82 Cr.P.C upon the accused persons has already been recorded on 04.01.2011 and the report is on record.

Heard and record perused.

The reports on process under section 82 Cr.P.C are Exh. CW1/A and Ex CW2/A respectively.

Accused Deepak Kumar @ Deepak Shah and Sanjay Partap Singh @ Sanjay Singh had not appeared despite proper publication of process u/s 82 Cr. P.C and lapse of statutory period. There is also no possibility of early apprehension of accused persons, hence, accused Deepak Kumar @ Deepak Shah s/o Late Sh. Surender Shah and Sanjay Partap Singh @ Sanjay Singh s/o Late Jagdish Singh are declared as Proclaimed Offender.

Adjournment has been prayed for.

As prayed, matter is adjourned for consideration on charge on 08.11.2013. Return on 24.10.2013 and 07.11.2013.

IO be present on date fixed.

*Amit Bansal
CMM/ND
10.10.2013"*

15. Section 174A of the Indian Penal Code reads as under:

" 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."

16. The supplementary chargesheet filed by the Investigating Officer is dated 31.08.2013 under Sections 384/387/419/420/467/468/471/474/174A/506/120B/34 IPC. The

bare reading of Section 174A IPC makes it crystal clear that proceeding under Section 174A IPC could only start after declaring the petitioner as a proclaimed offender by the Competent Court of Law and not by the Investigating Officer as instant is one of the case.

17. The petitioner is declared as a proclaimed offender vide impugned order dated 10.10.2013 and prior to that the Investigating Officer could not have added Section 174A IPC in the chargesheet.
18. In the instant petition, petitioner while challenging the impugned orders has already joined trial and is released on anticipatory bail vide order dated 25.06.2016. The purpose of the proceedings under Sections 82 and 83 Cr.P.C. is to initiate the proceeding qua against accused person for joining the investigation and in the instant case the purpose of Sections 82 and 83 Cr.P.C proceedings have already met.
19. In these circumstance, I quash the impugned orders dated 07.12.2010, 04.02.2011 and 10.10.2013 passed by the learned CMM, Patiala House Courts, New Delhi and reliance is placed on ***Minipal Singh v. State, I (2007) DLT (CRL.) 382.***
20. Consequently, the present petition is allowed. Let one copy of this judgment be sent to the concerned Court(s).

No order as to costs.

I.S.MEHTA, J

FEBRUARY 07, 2017