



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

Judgment delivered on: 26.04.2022

+ CRL.M.C. 1114/2022, CRL.M.A. 7095/2022 & 4831/2022
AHMED KHAN & ORS. Petitioners

Through: Mr.Syed Hasan Isfahani and
Mohd.Hassan, Advocates.

versus

STATE OF NCT OF DELHI Respondent

Through: Mr.M.P. Singh, APP for the
State with SI Lokendra, P.S.:
Crime Branch.

CORAM:
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

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J U D G M E N T

ANOOP KUMAR MENDIRATTA, J (ORAL)

1. The present petition has been filed on behalf of the petitioners under Section 482 Cr.P.C. for setting aside the order dated 24.02.2022 passed by learned C.M.M., New Delhi District, Patiala House Court in FIR No.169/2021 dated 26.08.2021 registered at Police Station: Crime Branch.

2. In brief, an FIR No.169/2021 dated 26.08.2021 was registered at Police Station: Crime Branch, New Delhi under Sections 170/419/420/384/120B/34 I.P.C. Accused Sharukh Khan was arrested and in his disclosure named the petitioners. The Investigating Officer moved an application before the learned trial court for initiating the proceedings under Section 82 of Cr.P.C. since the accused/petitioners were untraceable.



A written proclamation under Section 82 of Cr.P.C. was accordingly issued and published in the newspaper thereby fixing the date for appearance for 24.02.2022, before the learned trial court.

3. As per the case of the petitioners, on coming to know regarding the initiation of proceedings, an application was moved on 10.02.2022 before the learned trial court with a request to drop the proceedings initiated under Section 82 of Cr.P.C. The said application was posted for 24.02.2022. On 24.02.2022, petitioners claim to have joined the proceedings through video-conferencing but the application was dismissed by learned trial court after hearing the counsel.

4. The order passed by learned C.M.M. may be reproduced for reference:

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FIR No.169/2021

P.S CRIME BRANCH NEW DELHI

UNDER SECTION 170/419/420/384/120B/34 IPC

24.02.2022

Present : Shri Vikas Ld. APP For the State

Ld. Counsel for the applicant

An application has been moved seeking dropping of proceeding under section 82 Cr.P.C accused persons namely Ahmed khan, Iqbal, Aamir Khan, Rijwan, Rajjak, and Asam Khan.

It is submitted by the Ld. Counsel that accused person are very much residing on the given address and never received any notice or warrant issued by the 10. Therefore, process U/S 82 Cr.P.C was initiated against them and same was published in newspapers from where accused persons came to know regarding the proclamation issued against them. All have deep roots in the society and they are



ready to join investigation as directed by the 10. The 10 has replied that in the instant FIR Sharukh Khan and Iqbal was arrested and subsequently chargesheeted. Shahrukh Khan disclosed the name of his maternal cousins namely Ahmed, Iqbal, Amir, Rijwan, Rajjak, and Asam in the sextortion racket. These accused persons were not found at their address and their NBWs were obtained and their house was visited but they were not found. Thereafter, process under section 82 Cr.P.C was obtained which is returnable on 24.02.2022.

It is submitted that Mobile Phones, SIM Cards, Bank Accounts used in the alleged crime and to be recovered and account holders are to be identified which are used for sextortion racket operation.

Heard Perused.

Since the accused persons have been evading as NBWs remained unexecuted at their address, and their custodial interrogation appears to necessary, this court sees no justification in dropping the provision under section 82 Crpc against all the accused persons.

Hence application is accordingly dismissed.

*CMM Patiala House Court
New Delhi.”*

5. Learned counsel for the petitioners aggrieved by the aforesaid order submits that the proceedings under Section 82 of Cr.P.C. were not dropped in terms of the prayer made in the application in a mechanical manner.



Reliance is also placed upon the judgment passed by Hon'ble Supreme Court in 'State of Madhya Pradesh vs. Pradeep Sharma' (2014) 2 SCC 171, wherein it has been observed as follows:

“when the relief of anticipatory bail is curtailed, as a consequence of an order passed under Section 82 of the Code, declaring a person absconder, the said order cannot be passed in mechanical manner without recording satisfaction and reasons nor can the same be passed without following the procedure as laid down in the Code. In view of the aforesaid circumstances and the consequence one has to face, the Court has to be very cautious while issuing an order under Section 82 of the Code.”

Reference is also made to 'Vimlaben Ajitbhai Patel vs. Vatslaben Ashokbhai Patel and Ors.' (2008) 4 SCC 649, wherein it was observed:

“The provisions contained in the Section 82 Cr.P.C. were put in the statute book for certain purpose. It was enacted to secure the presence of accused. Once the said purpose is achieved, the attachment shall be withdrawn.”

6. Learned counsel for the petitioners further contended that a fresh process under Section 82 Cr.P.C. has been again issued against the petitioners by learned CMM on 25.02.2022, fixing the date for appearance for 22.04.2022.

7. On the other hand, the petition has been vehemently opposed by the learned APP for the State. It is submitted that the petitioners had been intentionally evading the service and the process adopted by the learned trial



court is in accordance with law. On merits, it is submitted that accused/petitioners are part of racket of sextortion from senior functionary of the Government and SIM-Cards, phone etc. are to be recovered from accused/petitioners.

Learned APP admits that a fresh process under Section 82 of Cr.P.C. has been issued against the accused/petitioners on 25.02.2022, returnable for 22.04.2022 and the same was pasted at the respective residences of the accused/petitioners on 19.03.2022 and published in the local newspapers on 20.03.2022.

8. I have given considered thought to the contentions raised. It is settled that the moment a proclaimed offender is arrested or he appears at the place and time required by the Court or surrenders before the Court or authority issuing warrants of proclamation, as the case may be, the order of declaration of proclaimed offender would cease to be operative.

9. So far as the order dated 24.02.2022 passed by learned C.M.M. is concerned, it may be observed that on filing of application for dropping of proceedings under Section 82 Cr.P.C., dated 10.02.2022, the petitioners clearly conveyed their intention for appearance on 24.02.2022 in compliance to process under Section 82 Cr.P.C. Further on the joining of proceedings, through video-conferencing, as claimed by learned counsel for the petitioners, the only option before the learned C.M.M. on 24.02.2022 was to either accept the application or pass necessary orders for surrender appearance of the accused/petitioners for taking the accused in custody. However, accused/petitioners could no longer be assumed as absconders without giving an opportunity to surrender and continue the proceedings under Section 82 of Cr.P.C as directed by impugned order.



10. Further the grievance of the learned counsel for the petitioners is that in case of dismissal of application for dropping of proceedings under Section 82 of Cr.P.C., the fresh directions could not be issued by the learned trial court vide order dated 25.02.2022 for initiating proceedings under Section 82 of Cr.P.C. on an application filed by the Investigating Officer. It may be noticed that a copy of the order dated 25.02.2022, whereby the proceedings under Section 82 of Cr.P.C. were issued afresh, has not been filed on record, but the same are admitted by learned APP.

I am of the considered view that the learned trial court in the absence of the physical appearance of the accused/petitioners on 24.02.2022 before the learned trial court, wrongly adopted the procedure for issuing the fresh proceedings under Section 82 of Cr.P.C. on application of Investigating Officer on 25.02.2022, since the petitioners could not be treated as absconders. It has already been observed that the petitioners ought to have been given an opportunity to surrender/appear before the Court for having dealt with in accordance with law.,

In the facts and circumstances, the order passed by the learned trial court continuing the proceedings under Section 82 of Cr.PC and initiating fresh proceedings under Section 82 of Cr.P.C. vide order dated 25.02.2022, appears to be absolutely in disregard of provisions of law. The order passed by learned C.M.M. on 25.02.2022 is accordingly set aside.

The petitioners may either appear or surrender before the learned C.M.M. or before the Investigating Officer for the purpose of investigation, and on appearance be dealt with in accordance with provisions of law. Considering the grave nature of allegations of sextortion against senior



functionary of the Government, I am not inclined to grant any interim protection to the accused/petitioners.

Petition is accordingly disposed of.

A copy of this order be forwarded to learned C.M.M. for information and compliance.

**ANOOP KUMAR MENDIRATTA
(JUDGE)**

APRIL 26, 2022
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