



2024:DHC:6551



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

%

Reserved on: 24th July, 2024

Pronounced on: 27th August, 2024

+ **CRL.M.C. 1980/2020, CRL.M.A. 14187/2020, CRL.M.A. 14189/2020**

PRIYA RANJAN SINHA @ PRIYARANJANPetitioner

Through: Mr. Chayan Sarkar and Mr.
Shailendra Kumar, Advocates.

versus

STATE OF NCT OF DELHI

...Respondent

Through: Ms. Richa Dhawan, APP for the State
with Inspector Pradeep (Cyber Cell)
Crime Branch (IO) SI Gulshan
Kumar, Cyber Cell (Crime Branch).

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Petition under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C., *hereinafter*) has been filed for quashing the Order dated 10.10.2018 vide which the petitioner, Priyan Ranjan Sinha @ Priyaranjan has been declared as a Proclaimed Offender in FIR No.133/2017, by the learned CMM, Delhi.
2. *Briefly stated*, crypto-currency by the name of 'Kashhcoin' was launched in 2016 with the consent of all the investors including the complainant. An *e-wallet* was opened in the name of the investors and coins were allotted to them. However, the crypto currency is based on demand and supply and because of the falling supply, the value of Kashhcoin started



falling. The complainant lodged the present *FIR No.133/2017 in P.S.Crime Branch, Delhi.*

3. The petitioner was issued a Notice under Section 41A Cr.P.C. He joined investigations on 26.09.2017 and thereafter, twice in the month of October, 2017 and once on 05.11.2017. The Chargesheet has been filed in the Court.

4. The cognizance of the Chargesheet was taken by the learned Trial Court on 15.02.2018 but it nowhere records about the issuance of warrants against the petitioner on the given date. Thereafter, the publication under Section 82 was made on 08.09.2018. Thereafter, a straight jacket Order was passed on 10.10.2018, by the learned Trial Court declaring the petitioner as *Proclaimed Offender* ignoring that the petitioner had already joined and cooperated in the investigations.

5. The Order dated 10.10.2018 declaring the petitioner as Proclaimed Offender has been challenged on the grounds that the Order dated 15.02.2018 by which cognizance was taken on the Chargesheet, does not mention about issuance of warrants against the petitioner. That the warrants if any, issued against the petitioner were without application of mind and by ignoring that he had already joined investigations four times during the investigations.

6. The petitioner has claimed that he is ready to cooperate in any investigations as required by law. All the other co-accused are already on bail and there is no reason for the petitioner to be remanded to judicial custody. Co-accused *Baljeet Saini* has already been granted *ex-parte* bail by the Apex Court vide order dated 29.11.2019 in W.P(Criminal) No.330/2019. The other co-accused namely *Asif Malkani, Ashok Goel and Pradeep Arora*



have also been granted *ex-parte* bail by the Apex Court vide order dated 13.01.2020.

7. The petitioner has placed reliance on Nirujogi Appala Naidu and Ors. Vs. Smt. Nirujogi Roja 2006 CrI.LJ 3230 to state that issuance of warrants is a pre-conditions for compliance of Section 82 Cr.P.C. Further reliance is placed on Md. Nazrul Islam vs. State of Assam, 2008 CrI.LJ 3374 and Rohit Kumar @ Raju vs. State of NCT and Ors, 2007 (98) DRJ 714 to substantiate its assertion that issuance of warrants is a *sine qua non* for an action under Section 82 Cr.P.C.

8. Reliance has also been placed by the petitioner on MSR Gundappa vs. State of Karnataka and Ors, 1977 SCC Online Kar 6; Gurjeet Singh Johar vs. State of Punjab and Anr, 2019 SCC Online P&H 2606; Raghuvansh Dewanchand Bhasin Vs. State of Maharashtra (2012) 9 SCC 791; Mohd. Rustam Alam and Ors. Vs. State of Jharkhand CRL. MP. 2722 of 2019 and Vikas Vs. State of Rajasthan (2014) 3 SCC 321.

9. **The State has submitted its Status Report** wherein it is stated that the investigations revealed that the petitioner was one of the Organiser of the events at different cities for promotion of crypto-currency Kashhcoin. Aside from specific allegations against the petitioner of inducement and collection of huge sum of cash from the investors on behalf of the crypto-currency, the accused along the co-accused Pradeep Arora had given receiving of Rs.25 lakhs to Om Prakash Sangwan and of Rs.25 lakhs to Kuldeep Singh on stamp paper. He has also received cheated amount of Rs. 5 lakhs through RTGS in his account from Om Prakash Sangwan and Rs.8 lakhs through RTGS from Sh. Kuldeep Singh. He had also issued PDCs



from his account in Axis Bank to Om Prakash Sangwan and Kuldeep Singh, the investors which bounced, on presentation.

10. Admittedly, the petitioner joined the investigation on 26.09.2017 but he presented himself as a victim. Subsequently during the course of investigations when the facts were verified and his associates were arrested, the complicity of the petitioner and his nexus in the commission of the crime surfaced. Ample opportunity was given to the petitioner to join the investigation. Notice under Section 41A Cr.P.C. was served but he preferred to escape from the process of law. Thereafter, NBWs were obtained on 15.02.2018, returnable on 15.04.2018 against the petitioner. The publication of Section 82 Cr.P.C. was effected in the National Dailies twice i.e. firstly on 31.05.2018 and secondly on 08.09.2018, directing him to appear before the learned CMM, Delhi on 10.10.2018. Finally, when he failed to appear and was found absconding, he was declared a Proclaimed Offender *vide* Order dated 10.10.2020. It is claimed that due process had been followed before the declaration of Proclamation under Section 82 Cr.P.C. against him. The petition is, therefore, devoid of merit and is liable to be dismissed.

11. The petitioner has filed the written submissions wherein he has reiterated the submissions made in the petition.

12. **Submissions heard and record perused.**

13. The petitioner has challenged the Order dated 10.10.2018 whereby the learned CMM has declared him an offender under Section 82 of Cr.P.C. The procedure as detailed under Section 82 of Cr.P.C. reads as under:

"Section 82. Proclamation for person Absconding

1. If Any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant



cannot be executed, such Court may publish a written proclamation requiring him to appear at a specific place and at a specified time not less than thirty days from the date of publishing such proclamation.

2. The proclamation shall be published as follows—

(i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or home-stead in which such person ordinarily resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the Court house; (ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

3. A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of Sub-Section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

4. Where a proclamation published under Sub-Section (1) is in respect of a person accused of an offence punishable under section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code (45 of 1860) and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.

5. The provisions of Sub-Sections (2) and (3) shall apply to a declaration made by the Court under Sub-Section (4) as they apply to the proclamation published under Sub-Section (1)."

14. It mandates that in case the accused absconds or conceals himself so that the warrants cannot be executed, written proclamation be issued requiring him to appear at a specific place and at a specific time not less than 30 days from the date of publication.



15. *In the present case*, it has been explained in the status report that while admittedly he appeared on four dates in 2017, but he represented himself as a victim. Thereafter, when his associates were arrested and further investigations were carried out, the complicity and the nexus of the petitioner emerged. Consequently, Notice under Section 41A Cr.P.C. dated 05.01.2018 was issued to him to appear before the IO on 06.01.2018.

16. Admittedly, the petitioner failed to appear before the IO. Though he has claimed that there is no proof of service of this Notice but the fact remains that all earlier Notices sent at the same address were responded to and admittedly the petitioner had joined the investigations. It is only when his complicity in the offence got revealed and he was summoned in the capacity of an accused, he evaded his appearance before the IO. The non - appearance and non-joining of the petitioner in the investigations prompted the IO to obtain his NBWs on 15.02.2018.

17. Pertinently, while the investigations were ongoing against him as he had evaded arrest, the Chargesheet got filed on the same date i.e. 15.02.2018 against the accused Narender Kumar in respect of which the Order sheet dated 15.02.2018 was recorded by the learned CMM. It is quite apparent that the Order dated 15.02.2018 on which such emphasis has been placed by the petitioner pertained only to the Chargesheet. As per the usual practice, it is evident that the NBWs had been obtained by the IO on a separate Application since he was still under investigation and no chargesheet had been filed against him.

18. Even though there are circumstances to justify issuance of NBW, two addresses of the petitioner, one of Rajouri Garden and other of his permanent address in Chapra, Bihar was known to the I.O. as is evident



from the perusal of the Non-bailable warrants which mentions both the addresses.. There is no report filed by the State to corroborate that the NBWs had been issued at both the addresses and that they were returned unexecuted. The copy of the NBW placed on record is of the issuance of the warrants but the report on the said warrants, has not been placed on record. In the absence of the report on the warrants, the bald assertions of the IO that the warrants were returned unserved, cannot be believed. There is absolutely neither a mention nor any document to show that the warrants were ever sent to Chapra, Bihar for execution. With the NBWs not having been shown to have been returned unexecuted, there can be no conclusion that petitioner was concealing himself or avoiding to join the investigations; IO could not have proceeded further to seek proclamation in the Newspapers.

19. According to the IO, once the NBWs were not executed he got the Proclamations issued in the National Dailies i.e. “*The Hindu*” on 31.05.2018 English edition and in the Hindi newspaper on 31.05.2018. Another publication in the Newspaper had been carried out on 08.09.2018 directing the petitioner to appear before the learned CMM on 10.10.2018.

20. Pertinently in all these publications, the address of the petitioner is indicated of J-55, Rajouri Garden, New Delhi. There has been no endeavour whatsoever to get the Publication carried out at the permanent residence of which the petitioner, in Chapra, Bihar. Such publications therefore, cannot be considered to be in accordance with law.

21. Further, *Section 82(2)* of Cr.P.C. provides that the Proclamations shall be publicly read in some conspicuous place of the town or village in which the person ordinarily resides, and shall also be affixed on some conspicuous



part of the house or home-stead in which such person ordinarily resides or on a conspicuous place of such town or village. The copy shall also be affixed on some conspicuous part of the Court house.

22. *In the present case*, there is not a word mentioned in any of the documents that the Proclamation as detailed in Section 82 (2) Cr.P.C., has been effected. No document or report has been filed to show that the pasting of the Proclamation had been done at the two residential addresses of the petitioner or in the Court premises or in the village or town where the petitioner ordinarily resides.

23. The process server ASI Sant Ram may have deposed in his statement recorded in the Court by the Ld. CMM on 10.10.2018 that he has followed due procedure, in have gone to the address of the petitioner at Rajouri Garden where he did not find him available and thereby pasted the copy of process on the conspicuous place of the given address which could be seen by every person and also got the munadi done in the area. He took two photographs of the said address which were Ex.C-2 and C-3. He also pasted the copy of the process outside the Court. His detailed report dated 08.09.2018 was Ex.C-1 which bears his signature.

24. First and foremost, there are no document placed on record to show that the Munadi as claimed had been carried out nor is there any proof of pasting of Notice done in the Court premises. However, even if the statement of ASI Sant Ram is accepted, it cannot be overlooked that no such procedure had been followed at the residence of Chapra, Bihar which was well within the knowledge of the investigating officer. It cannot be said that there was a complete satisfaction of the petitioner absconding or concealing himself. A Proclamation under Section 82 Cr.P.C. thus made on 10.10.2018



2024:DHC:6551



by the learned CMM, cannot be said to be in accordance with the procedure as laid down in Section 82 Cr.P.C. and is hereby, quashed.

25. Accordingly, the petition is allowed. All the pending applications are disposed of.

**(NEENA BANSAL KRISHNA)
JUDGE**

**AUGUST 27, 2024
rk**