

ORDER SHEET
HIGH COURT OF SINDH AT KARACHI

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C. P. No.7146 of 2019

Date
PRIORITY

Order with signature of Judges

1. For orders on office objection.
2. For hearing of CMA No.36301/2019
3. For hearing of main case.

20.10.2021.

Waqar Zaka, Petitioner in person.

Mr. Irshad Ali, Assistant Attorney General.

Ms. Seema Kamil, Deputy Governor, Mr. Raza Mohsin Qizlibash, Director Legal, Mr. Sohail Jawaid, Executive Director, Mr. Alam Zaib, Law Officer and Mr. Atif Uddin, Legal Counsel, State Bank of Pakistan.

Mr. Asif Iqbal, Director, Mr. Ibrar Saeed, Legal Head, Mr. Imran Ali Shamsi, Deputy Director Law, and Syed Ebad, Law Officer, Security and Exchange Commission of Pakistan.

Mohammad Karim Khan Agha, J. In essence the petitioner wants to open the business concerning crypto currency exchange in Pakistan. Vide order dated 04.10.2021 we had called Deputy Governor, State Bank of Pakistan, Secretary, Finance Department, Government of Pakistan, Director, Security and Exchange Commission of Pakistan and Director, FIA, Cyber Crimes, Karachi in order to assist this Court in this matter. Regrettably, Director, FIA, Cyber Crimes, Karachi has not put in an appearance.

2. It appears from submissions made in Court today that prima facie at this point in time it is very difficult or indeed impossible to carry out business concerning crypto currency largely based on circulars which were issued by State Bank of Pakistan. The State Bank of Pakistan have candidly conceded that crypto currency is not legal tender in Pakistan. They have stressed that the use of the crypto currency in any form is also a difficult task to regulate and that at this point in time no such regulations exist and that under the law it has not even been made clear whether any trade in crypto currency which is not legal tender is allowable. In this regard, it is noted that the FIA has lodged FIRs against persons transacting crypto currency business and crypto miners for being in violation of State Bank of Pakistan circulars.

3. It appears to us that the first issue which needs to be decided is whether Pakistan will or will not allow any

trade/transaction of any kind in crypto currency. It is noted that a number of countries are allowing such trade and since Pakistan is a progressive country and needs to keep up with global banking practices it might want to consider the legality of certain types of crypto currency being transacted in this country provided that a proper regulatory frame work is put in place. Since use of crypto currency is a relatively new form of banking / business transaction and much thought and consideration needs to be taken as to whether any form of crypto currency is to be permissible we hereby set-up a committee to be chaired by Ms. Seema Kamil, Deputy Governor, State Bank of Pakistan which shall also constitute the Secretary, Finance or Additional Secretary, Finance Department, Government of Pakistan who is well conversant with crypto currency, Chairman, SECP or any senior officer of SECP well conversant with crypto currency, Chairman, PTA or any senior officer of PTA well conversant with crypto currency, Secretary or any other senior officer, Ministry of Information & Technology, Government of Pakistan, Director General, Financial Monitoring Unit (FMU), State Bank of Pakistan and Petitioner Mr. Waqar Zaka, who is seeking to open a crypto currency exchange business in Pakistan.

4. The first meeting of the aforesaid committee shall be held on Monday 25th October, 2021 at the offices of the State Bank of Pakistan in Karachi and thereafter on fortnightly basis. At least 03 days prior to the committee meetings, copy of its Agenda shall be circulated amongst all the members of the committee as well as the petitioner. Initially the committee shall be addressed by the petitioner Mr. Waqar Zaka, who is very much in favour of crypto currency in Pakistan and has expertise in this field who shall give a full presentation and briefing on the reason why crypto currency in some form should be allowed in this country and how it might be regulated. The Committee shall consider the presentation and proposals made by the petitioner Mr. Waqar Zaka and come back with their own response to the same on the next meeting which should enable an open and informal discussion whether or not it is advisable that Pakistan allow trade in crypto currency in any form, whatsoever. It is emphasized that the petitioner is only on the Committee in order to assist it in making its recommendations to the Ministry of Finance, Government of Pakistan on the viability of crypto currency business in Pakistan. After fully considering all

aspects of the advisability of allowing in any form of trade in crypto currency in Pakistan, keeping in view Article 18 of the Constitution which concerns freedom of trade business or profession and is a fundamental right, if it is of the view that it would not be so advisable the committee shall forward such recommendations to the Secretary, Ministry of Finance, Government of Pakistan with its reasoning why. If the Committee is of the view that some kind of crypto currency business may be permissible in Pakistan once again it shall forward its recommendations to the Ministry of Finance along with such regulatory frame work in draft form which might be considered appropriate subject to fine tuning. It shall then be for the Ministry of Finance thereafter to take-up such recommendations and consider whether it deems it both viable and appropriate that any kind of law in this regard should be promulgated, keeping in view Article 18 of the Constitution which is a fundamental right. It is made clear that the decision whether or not to allow any form of crypto currency business in Pakistan shall be a policy decision which shall be made by the Federal Government.

5. We appreciate the passion and vision of the petitioner in attempting to introduce this form of banking in Pakistan, however, we make it clear that the meetings of the Committee, minutes of the meetings and all documents and other material discussed therein shall remain secret/confidential and that no member of the Committee shall make any press release statement or social media activity or any other kind of disclosure in respect of the same. The prime object and purpose of the Committee is only to consider whether it is both viable and advisable whether perhaps as a matter of policy the Government of Pakistan might consider introducing some kind of crypto currency business in Pakistan. The petitioner's role is to facilitate discussion to ensure that both sides are heard and fully appreciated before the committee makes any recommendations. If any member of the Committee is not available then this shall not stop the Committee from proceeding and the person who is unavailable from the relevant authority, shall send its representative, who is well conversant with crypto currency in his place. In our view if such business is already being carried out underground in this country it would be better if it was regulated to avoid the possibility of money laundering and terrorist

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financing or other illegal activities through such business practices.

6. To come up on **12.01.2022 at 10:00 a.m** when all the members of the Committee shall be present before this Court along with the petitioner Mr. Waqar Zaka when they shall place before this Court their initial report regarding feasibility of introduction of crypto currency in any form in Pakistan.
7. A copy of this order shall be sent through facsimile to Deputy Governor, State Bank of Pakistan, Secretary, Finance Department, Government of Pakistan, Director, Security and Exchange Commission of Pakistan, Secretary, PTA, Government of Pakistan, Secretary, Ministry of Information & Technology, Government of Pakistan, Director, FIA, Cyber Crimes, Karachi and all members of the aforesaid Committee for compliance.
8. In the meantime, despite the absence of the Director, FIA, Cyber Crimes we hereby direct him and the officers working under him to act strictly in accordance with law in respect of those persons who might be seeking to indulge in the business of crypto currency and if deemed necessary seek guidance from the State Bank of Pakistan on this issue especially insofar as it relates to its circulars. Copy of this order shall be sent through facsimile to Director, FIA, Cyber Crimes, Karachi for compliance.