

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
CRIMINAL APPELLATE JURISDICTION.**

Criminal Application No. 3939 Of 2015.

Vinayak Shankar Shinde.

Age : 30 Years., Occ.: Labourer.

R/o.: Sumbha,

Taluka & District – Osmanabad.

}

Applicant.

Versus

The State of Maharashtra.

}

Respondent.

Appearance =>

Mr. Satej Jadhav, Advocate for the Applicant.

Mr. A.S. Shinde, Additional Public Prosecutor for the State of Maharashtra.

CORAM : V.M. DESHPANDE, J.

DATE : 7th AUGUST, 2015.

ORAL JUDGMENT :-

Rule. Rule made returnable forthwith. With consent of learned counsel for the parties, Criminal Application is taken up for final hearing.

[2] Heard Mr. Satej Jadhav, learned counsel for the Applicant and Mr. A.S. Shinde, learned Additional Public Prosecutor for the State of Maharashtra.

[3] By the present application, the Applicant who is facing prosecution in Special Case No.13/2012 (M.C.O.C.A.) pending on the file of the learned Special Judge, M.C.O.C.A., Aurangabad, District – Aurangabad is praying that his application for discharge which is still pending before the court below, be heard and dispose of in accordance with law.

[4] The learned counsel for the Applicant has placed on record the photostat copies of certified copy of Rojnama of Special Case No. 13/2012 (M.C.O.C.A.).

Rojnama starts on 17th July, 2012; where-as last Rojnama is written on 8th April, 2015. According to the learned counsel for the Applicant though the application for discharge was filed on 30th September, 2014, without there being any decision on merit of the said application, Charge is framed and, therefore, according to him, matter needs to be remanded to the trial court, in so far as present Applicant is concerned, for consideration of his application for discharge.

[5] Order sheet dated 30th September, 2014 shows that application under Section 227 of the Code of Criminal Procedure is filed by the present Applicant – Vinayak before the court below. Said application is at Exhibit – 7. Application is filed on record of this court at Exhibit - “A”. Left hand column of said application shows order dated

30/09/14 passed by the Special Judge to the effect “PP. to Say”. Order sheet dated 15th October, 2014 and 17th December, 2014 show that matter was fixed for filing of the Say on behalf of the Prosecutor on application Exhibit – 7. Order sheet dated 1st January, 2015 shows that, Mr. Mugdiya, learned Additional Public Prosecutor has filed his say to application Exhibit – 7 and case is fixed for argument on application Exhibit – 7. Till 18th February, 2015, matter was adjourned on two occasions and on every occasions, matter was kept for argument on application Exhibit – 7.

Thereafter on 3rd March, 2015, it appears that Charge is framed vide Exhibit – 11. However, case was fixed on 18th March, 2015 for argument on application Exhibit – 7 which is application for discharge. Then matter was posted on 18th March, 2015. On 18th March, 2015, written notes of argument on behalf of present Applicant was accepted in support of application Exhibit – 7. Those written notes of argument are at Exhibit – 14. Then matter was fixed for argument on application Exhibit – 7 and next date given as 8th April, 2015. Again on 8th April, 2015 matter was kept on 23rd April, 2015 and stage is the same i.e. argument on Exhibit – 7.

[6] Though the order sheet from 23rd April, 2015 onwards is not filed on record, Mr. Satej Jadhav, learned counsel for the Applicant submitted that, till today, application Exhibit – 7 is not decided by the learned Special Judge. Statement is accepted.

[7] The learned Special Judge, M.C.O.C.A., Aurangabad, District – Aurangabad, in my view has committed procedural error by framing the Charge on 3rd March, 2015 especially when application Exhibit – 7 was not decided. The stage of framing of Charge as contemplated in Section 228 of the Code of Criminal Procedure is subsequent to the consideration of application filed on behalf of the Accused for discharge.

Thus, in my view, the learned trial court has committed procedural irregularity.

[8] In that view of the matter, said procedural irregularity can be cured by directing the learned trial court to decide application Exhibit – 7 i.e. application for discharge in accordance with law and then to frame the Charge afresh against the present Applicant, if occasion arises. That leads me to pass the following order :-

ORDER

(i) Criminal Application is allowed.

(ii) The Special Judge, M.C.O.C.A., Aurangabad, District – Aurangabad is directed to decide application Exhibit – 7 filed in Special Case (M.C.O.C.A.) No.13 Of 2012, in accordance with law, as expeditiously as possible and in any case, within a

period of ONE MONTH from the date of receipt of this order, after giving opportunity of hearing to both the sides.

(iii) After deciding application Exhibit – 7 in accordance with law, the learned trial court should frame the Charge afresh against the present Applicant, if occasion arises.

(iv) Rule is made absolute.

(v) With this Criminal Application is allowed and same is disposed of accordingly.

(V.M. DESHPANDE, J.)