

ISM

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****CRIMINAL APPELATE JURISDICTION****CRIMINAL APPLICATION NO. 1529 OF 2018****IN****CRIMINAL APPEAL NO. 112 OF 2018**

Lt. Col. Prasad Purohit

.....Applicant

V/s.

National Investigation Agency  
and another

.....Respondents

Mr. Shrikant Shivade i/b Mr. Amit P. Ghag for applicant  
Mr. Sameer Kulkarni in person in Appeal no. 71 of 2017 and 96 of 2018  
Mr. J. P. Mishra a/w Mr. Prashant Maggu for appellant in Appeal no. 107 of 2018  
Mr. Sandesh Patil i/b Anand Sukhdev PP for N.I.A.

**CORAM : S. S. SHINDE AND**  
**MRS. MRIDULA BHATKAR, JJ.**

**DATE : SEPTEMBER 4, 2018.**

**P.C.**

This is an application for quashing the order of the Special Court with following prayer clause:

*(a) The order passed by the Learned Special Judge dated 29/08/2018 rejecting the application for framing of Charge be deferred be quashed and set aside.*

2 The learned counsel appearing for the applicant/appellant invites our attention to the impugned order and submits that, it was specifically brought to the notice of the Special Court that the Supreme Court while deciding the Special Leave to Appeal (Crl.) Nos. 611-613/2018 **Lt. Col. Prasad Shrikant Purohit Versus The State of Maharashtra etc.** has passed the order as follows:

### **O R D E R**

*“Mr. Harish Salve, learned senior counsel appearing on behalf of the petitioner submitted that the observations made by this Court in the order deciding the bail application shall not be totally brushed aside but shall be considered during framing of charges and the trial and the High Court shall decide the same on its own merits without being influenced by observations in respect of sanctions in para 19 of the order dated 21.8.2017.*

*We order accordingly.*

*The special leave petitions stand disposed of.*

*Pending applications stand disposed of.”*

The learned counsel has pointed out para 10 of the impugned order wherein the learned Special Judge has made observations that charge cannot be read over and explained since accused no. 10 was absent. He further submitted that the Supreme Court has made it clear that while framing the charge the said Court to consider the objection of the appellants on the point of sanction under Section 45 (2) of the Unlawful Activities (Prevention) Act, 1967, i.e. before reading over the charge.

3 On the other hand, the learned counsel appearing for the National Investigation Agency submits that the stage of framing the charge is yet to arrive and the appellant can again bring to the notice of the Special Court that the Supreme Court in its order dated 20/04/2018 has made the observations that the point of sanction under Section 45 (2) of the Unlawful Activities (Prevention) Act, 1967, be considered during framing of charge.

4 We have given due consideration to the rival submissions. We have carefully perused the order passed by the Supreme Court dated 20/04/2018 and also the order impugned in this application.

5 Since the Supreme Court has directed to expedite the trial before the Special Court, it may not be appropriate to stay the trial. However, before framing the charge, the Special Court is bound to consider the order passed by the Supreme Court on 20/04/2018 and to consider and decide the objection to sanction under Section 45 (2) of the Unlawful Activities (Prevention) Act, 1967 taken by the defence after affording a reasonable opportunity of hearing to the parties and then proceed further.

6 With above observations, application stands disposed of.

Parties to act on authenticated copy of this order.

**[MRS. MRIDULA BHATKAR, J.]**

**[S. S. SHINDE, J.]**

Iresh  
Siddharam  
Mashal

Digitally signed  
by Iresh  
Siddharam  
Mashal  
Date: 2018.09.04  
18:46:35 +0530