

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 688 / 2021

Mahesh Babu Tota

.. Appellant

Versus.

The State of Maharashtra

.. Respondents

Mr. Raviraj R. Paramane, Advocate for the Appellant.

Mr. S.S. Hulke, APP for State.

CORAM : SANDEEP K. SHINDE J.

DATE : 14th SEPTEMBER, 2021.

P.C. : -

1. This appeal under Section 11 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999, challenges the order of framing of charge and order passed below Exhibit-4 both dated 29th July, 2019.

2. Facts essential for decision of this petition are as under;

Appellant is accused in MPID Case No. 11/2019, which arose from Crime No. 80/2019 registered under Section 420, 406 of IPC and Section 3 and 4 of MPID Act. Appellant was arrested on 23rd April, 2019. On 15th July, 2019, he was granted bail, subject to condition that he would submit/file a bank guarantee of Rs. 25 Lakhs. For want of compliance of condition, he was not actually released and thus, Appellant remained in judicial custody, therefore the learned Additional Sessions Judge, Thane issued a production warrant on 22nd July, 2019 to produce Appellant on 5th August, 2019. However, the Appellant - Accused was produced on 29th July, 2019. Prosecution filed charge-sheet on 29th July, 2019. On the same day, a copy of charge-sheet was served on him. Whereafter, on the same day i.e. 29th July, 2019, the learned Additional Sessions and Special MPID Judge framed the charge below Exhibit - 02. The Appellant - Accused vide an application below Exhibit - 4 requested the trial Court, not to frame

the charge because a copy of charge-sheet running into 400 pages, was served on him on the same day and he could not go through it. However, the learned Judge proceeded to frame the charge and declined to recall the order of framing the charge under Section 4 of MPID r/w Section 420 of IPC. In these circumstances, the Appellant has preferred this appeal. In consideration of the facts of the case and the manner, in which, the charge was framed, this Court at the stage of admission of appeal, granted the stay to the proceedings in the trial in MPID Case No. 11/2019.

3. Indisputably, a copy of final report was served on Appellant on 29th July, 2021, when he was produced on production warrant from the jail AND on the same day, charge was framed against him. From the Chronology of events and narration aforesaid, it is manifest that Appellant was not heard, although the Cr.P.C. obliges that in warrant and the Sessions

trial hearing before charge is mandatory requirement. This valuable right has been denied to Appellant-Accused. It is material irregularity committed by the learned Sessions Judge in exercise of his jurisdiction.

4. In consideration of these facts, order framing the charge was clearly not sustainable. In consequence, the order framing the charge in the MPID Case No. 11/2019 passed below Exhibit - 02 and order passed Exhibit - 04 both dated 29th July, 2019, are quash and set aside. Resultantly, the learned Special Judge shall frame the charge on 4th October, 2021 in accordance with law.

5. Appeal is allowed and disposed of in the aforesaid terms.

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(SANDEEP K. SHINDE, J.)