

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

CRIMINAL APPLICATION NO. 188 OF 2017

Mohammad Shamim Badgujar And Ors.	...Applicants
Versus	
The State Of Maharashtra And Anr.	...Respondents

**WITH
CRIMINAL APPLICATION NO. 319 OF 2017**

Vipin Sanklecha And Ors.	...Applicants
Versus	
The State Of Maharashtra And Anr.	...Respondents

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Mr. Krupashankar N. Pandey, Advocate for the Applicants in Criminal Application No.188 of 2017.

Ms. Neha Patil, Advocate for Respondent No.2 in Criminal Application No.188 of 2017.

Mr. Kapil Dave, Advocate for the Applicants in Criminal Application No.319 of 2017.

None for respondent No.2 in Criminal Application No.319 of 2017.

Mr. S. R. Agarkar, APP for the Respondent – State in both matters.

Mr. P. M. Rasam (PSI) Malad Police Station, Present.

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CORAM	:	PRAKASH D. NAIK, J.
DATE	:	20th SEPTEMBER, 2022.

PER COURT:

1. The applicants except applicant No.3 in Criminal Application No.188 of 2017 are prosecuted in C.C. No. 3163/PW/2016 pending before the Court of learned Metropolitan Magistrate 24th Court,

Borivali, Mumbai, arising out of C.R. No.228 of 2015 registered with Malad Police Station, Mumbai for offences punishable under Sections 420 & 406 r/w Section 34 of Indian Penal Code (for short "IPC"). Subsequently Sections 465, 467, 468 & 471 of IPC were added. The applicants were arrested and granted bail. On completing investigation, charge-sheet has been filed.

2. The applicants had initially challenged the charge-sheet before this Court. However, considering the fact that the charge was framed against the applicants, the application was amended and the order framing charge has been challenged in this application.

3. The learned Advocates for the applicants submitted that the charge was framed against the applicants except applicant No.3 in Criminal Application No.188 of 2017 on 19.11.2016 during the visit of the learned Magistrate in the jail, where the applicants were detained. He relied upon rojnama dated 19.11.2016 which refers to the fact that, all the accused are produced before jail Court and charge is framed. The order dated 19.11.2016 framing charge has been annexed to these applications. It is submitted that the learned Magistrate had instantly proceeded to frame the charge. Advocate for the applicants were not present. They were not given copies of

charge-sheet. They did not get any opportunity to move before the Magistrate for discharge. Hence, order framing charge may be set aside. It is also pointed out that, pursuant to order framing charge, the trial has not proceeded further. No witnesses are examined so far and the order framing charge is set aside by not giving opportunity to apply for discharge.

4. Learned APP submitted that the charge is already framed. There is no reason to set aside the order framing charge. Charge sheet was filed against the accused. There is no infirmity in the impugned order. The trial must proceed.

5. Learned Advocate for respondent No.2 in Criminal Application No.188 of 2017 submitted that the charge sheet was filed on completing the investigation. The applicants had initially approached this Court challenging the charge-sheet, where it was pointed that the charge has been framed. The application was amended and prayer is sought for setting aside the order. The trial is pending since 2016. The proceedings are delayed. There is no infirmity in the impugned order. Reliance is placed on the decision of this Court delivered in Writ Petition No.3527 of 2021 dated 26.07.2022. It is submitted that the Court framed the charge on the basis of material against the applicants. No case is made out

for setting aside the order of framing charge.

6. On perusal of the rojnama dated 19.11.2016, it is apparent that all the accused were produced before the jail Court. The charge was framed. Accused pleaded not guilty. The order framing charge dated 19.11.2016 indicate that the charge was framed for offences under Sections 465 r/w 34 of IPC, 467 r/w 34 IPC, 471 r/w 34 IPC, and 420 r/w 34 and 406 r/w 34 of IPC. It is submitted that the next date before the trial Court is on 01.11.2022. The applicants may be permitted to file application on 01.11.2022.

7. From the rojnama dated 19.11.2016 it is apparent that, while the learned Magistrate on visit to jail, the charge was framed. The Advocate for the accused were not present. There was no opportunity for the applicants to move an application for discharge. In these circumstances, to enable the applicants/accused to prefer an application for discharge, the impugned order dated 19.11.2016 is required to be set aside. It is made clear that the order is not set aside on merits but only considering the fact that the applicants/accused had no opportunity for applying for discharge.

ORDER

- i. Criminal Application Nos.188 of 2017 and 319 of 2017 are allowed;

- ii. The order dated 19.11.2016 framing charge passed by Additional Chief Metropolitan Magistrate, 24th Court, Borivali, Mumbai, in C.C. No.6163/PW/16 is set aside.
- iii. The applicants are permitted to prefer application for discharge on 01.11.2022.
- iv. The learned Magistrate shall decide the application for discharge uninfluenced by order framing charge dated 19.11.2016 within four weeks from 01.11.2022.
- v. Trial is expedited.
- vi. Criminal Application Nos. 188 of 2017 and 319 of 2017 are disposed off accordingly.

(PRAKASH D. NAIK, J.)