

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

***CRIMINAL APPEAL NO.1064 OF 2021
WITH
CRIMINAL APPEAL NO.1065 OF 2021***

Nadeem Abdul Sattar Lakdawala ...Appellant

Versus

The State of Maharashtra ...Respondent

Mr. Sayaji D. Nangre, for the Appellant in both the appeals.

Mr. A. R. Kapadnis, A.P.P for the Respondent – State in both the appeals.

***CORAM : REVATI MOHITE DERE &
V. G. BISHT, JJ.***

DATE : 4th JULY 2022

P.C. :

1. On 22nd June 2022, the aforesaid appeals were closed for orders. However, whilst going through the papers, it was observed that charge was already framed in the said case, as against the appellant under the Maharashtra Control of Organized Crime Act (M.C.O.C. Act) as well as under the other provisions of law. The fact, that charge has been framed has also been stated by the respondent – State i.e. Mr. Shashank P. Sandbhor, Assistant Commissioner of Police, D (Special), D.C.B., C.I.D., Mumbai, in the affidavit dated 5th May

2022 in para 33 on page 261 of Criminal Appeal No.1064 of 2021. It is stated that the learned Special Judge, M.C.O.C. Act, For Greater Mumbai has on 6th January 2022 framed charges in the said case, as against the appellant and other accused for the offence punishable under Sections 387, 120B of the Indian Penal Code r/w Sections 3 (1) (ii), 3(2) and 3(4) of the M.C.O.C. Act.

2. It is pertinent to note, that the Apex Court in the case of *Bharat Parikh vs. C.B.I. & Ors.*¹, has held that proceedings, after charges have been framed, cannot be re-opened on the basis of the documents produced by the prosecution on the order of the Court, as the Magistrate has no power to discharge the accused, after an order framing charge against the accused.

3. Similarly, in the case of *Ratilal Bhanji Mithani vs. State of Maharashtra & Ors.*², the Apex Court, in para 28, has observed as under :

¹ (2008) 3 SCC (Cri.) 609

² (1979) 2 SCC 179

“28. Once a charge is framed, the Magistrate has no power under Section 227 or any other provision of the Code to cancel the charge, and reverse the proceedings to the stage of Section 253 and discharge the accused. The trial in a warrant case starts with the framing of charge; prior to it, the proceedings are only an inquiry. After the framing of the charge if the accused pleads not guilty, the Magistrate is required to proceed with the trial in the manner provided in Sections 254 to 258 to a logical end. Once a charge is framed in a warrant case, instituted either on complaint or a police report, the Magistrate has no power under the Code to discharge the accused, and thereafter, he can either acquit or convict the accused unless he decides to proceed under Section 349 and 562 of the Code of 1898 (which correspond to Sections 325 and 360 of the Code of 1973).”

4. Considering the aforesaid and that charge has been framed as against the appellant for the offence under the M.C.O.C. Act, the question of considering the challenge in the aforesaid appeals does not survive.

5. The appeals are dismissed in the aforesaid terms and are accordingly disposed of.

6. It is made clear, we have not gone into the merits of the appeals. The learned Judge to decide the case on its own merits, in accordance with law, uninfluenced by the dismissal of the appeals.

V. G. BISHT, J.

REVATI MOHITE DERE, J.