

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 328 OF 2023

1. Mohammad Afsar Sayyad @ Aandu
2. Aziz Hafi Sayed @ Irani ...Appellants

Versus

The State of Maharashtra ...Respondent

Mr. Nitin Sejpal for the Appellants.

Mr. S.S.Pednekar, A.P.P for the Respondent-State.

**CORAM : REVATI MOHITE DERE &
SHARMILA U. DESHMUKH, JJ.**
DATE : 27th MARCH, 2023

P.C. :

1. Heard learned Counsel for the parties.
2. By this appeal, preferred under Section 12 of the Maharashtra Control of Organized Crime Act, 1999 ('MCOC Act' for short), the appellants seeks the following substantive relief;

“(b) That this Hon’ble Court, in exercise of jurisdiction of this Hon’ble Court under Section 12 of the MCOC Act, 1999, be pleased to call for the records and proceedings of MCOC Special Case No. 9 of 2019 pending in the file of the learned Special Judge for Greater Mumbai at Mumbai and upon perusing the legality, validity and propriety thereof, both impugned Order dated 2nd February, 2023 passed by the learned Special Judge under MCOC Act, 1999 for Greater Mumbai at Mumbai below Exhibit 34 in MCOC Special Case No. 9 of 2019 be quashed and set aside and this Hon’ble Court be further pleased to delete the charges framed against the Appellants under the MCOC Act, 1999 vide charge Exhibit 14th in MCOC Special Case No. 9 of 2019.”

3. Mr. Sejpal, learned Counsel for the appellants submits that the appellants cannot be tried twice for the same offence. He submits that once the appellants were chargesheeted in the Bhoiwada case for the offences punishable under the Indian Penal Code as well as for the offences under the MCOC Act, the very same appellants could not have been prosecuted under the MCOC Act by the Agripada Police Station, which offence had taken place first in point of time. In this connection, learned Counsel for the appellants relied on the judgment of the Apex Court in the case of ***Ms. P xxx Vs. State of Uttarakhand & Another***¹.

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4. Learned APP opposes the appeal. He submits that no interference is warranted at this stage, having regard to the fact, that the trial in the case pertaining to Agripada Police Station has commenced and that, till date, the prosecution has examined four witnesses. He submits that it is always open for the appellants to raise said ground before the trial Court at the time of final arguments in the said case.

5. Perused the papers. It appears that an FIR was registered as against the appellants being C.R.No. 255 of 2018 with the Agripada Police Station for the alleged offences punishable under Section 392 r/w 34 of the Indian Penal Code on **20th October, 2018** i.e. on the date of the incident. It appears that subsequently, another FIR was registered by the Bhoiwada Police Station, being C.R.No. 336 of 2018 as against the very same appellants, for the very same offences punishable under Section 392 r/w 34 of the Indian Penal Code. The said C.R. was with respect to an incident which took place on **4th**

October, 2018. In the said incident, the appellants were apprehended on the spot by the Bhoiwada Police. In the said case i.e. in the Bhoiwada case prior approval was granted by the authority on 31st January, 2019 and Sanction on 28th February, 2019, for MCOCA offences. Thereafter, chargesheet was filed in the said case (Bhoiwada case) against the appellants, both, under the provisions of the Indian Penal Code as well as under the MCOC Act. It appears that again in the Agripada case, the Agripada Police invoked the MCOC Act as against the appellants. In the said case, prior approval was granted by the concerned authority on 29th March, 2019 and Sanction on 25th April, 2019. According to the learned Counsel for the appellants, the invocation of MCOC Act in the Agripada case, was not maintainable.

6. It is not in dispute that charge was framed in the said case i.e. the Agripada case on 8th November, 2021. Pursuant thereto, the appellants filed an application seeking their discharge from the said case (Exhibit-34) and sought deletion of the MCOC Act. It was contended that the charge under the MCOC Act in the Agripada case

was wrongly framed, without application of mind and without considering the fact that the MCOC Act was already invoked in the Bhoiwada case. The trial Court vide order dated 2nd February, 2023 rejected the said application by a reasoned order. The said order is at 'Exhibit – G' at page 133 of the aforesaid appeal.

7. It is not in dispute that the present appeal was filed on 20th February, 2023 and that during the pendency of this appeal, the trial Court has framed charge and that, till date, the prosecution has examined four witnesses in the Agripada case. Considering that the trial has commenced and that four witnesses have been examined, till date, we do not deem it appropriate to interfere at this stage.

8. Considering the aforesaid, the appeal is dismissed.

9. Needless to state, that the trial Court to conduct the trial on its own merits, uninfluenced by the dismissal of this appeal.

10. We make it clear that we have not examined the merits/grounds raised by the learned Counsel for the appellants in this appeal and as such, all contentions raised in the aforesaid appeal, on merits, are kept open, before the learned Judge, whilst deciding the case. The learned Judge to decide the issues raised in this petition, uninfluenced by its earlier order dated 2nd February, 2023.

11. With the aforesaid observations, the appeal stands disposed of.

12. All concerned to act on the authenticated copy of this order.

SHARMILA U. DESHMUKH, J.

REVATI MOHITE DERE, J.