

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 412 OF 2022

Pintoo Sultanali Keswani

...Appellant

Versus

The State of Maharashtra

...Respondent

Mr. Aabad Ponda, Sr. Advocate a/w Mr. Mithilesh Mishra i/b Mr. Vikram Sutaria, for the Appellant.

Mr. V.B.Konde Deshmukh, A.P.P for the Respondent-State.

**CORAM : REVATI MOHITE DERE &
SHARMILA U. DESHMUKH, JJ.**
DATE : 25th APRIL, 2023

P.C. :

1. Heard learned Counsel for the parties.
2. By the aforesaid appeal, the appellant seeks quashing and setting aside of the impugned order dated 20th December, 2021, passed by the learned Additional Sessions Judge and Special Judge under the MCOC Act, and as such, seeks his discharge from MCOCA Special Case No. 500 of 2021, arising out of C.R.No. 50 of 2015, registered with the Sewree Police Station, Mumbai, alleging offences

punishable under Sections 461, 427, 285, 411, 395, 467, 468, 471, 420 r/w 34 of the Indian Penal Code; Section 15(2) of the Petroleum and Mineral Pipeline Act, 1962; Section 3 of the Prevention of Damage to Public Property Act, 1984 and Sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act, 1999.

3. Learned Senior Counsel for the appellant submits that after the appellant's discharge application was rejected by the learned Special Judge vide order dated 20th December, 2021, the very same Court acquitted all the accused under the MCOC Act in the said case vide Judgment and Order dated 29th January, 2022, after observing that no offence was made out under the said MCOC Act, although, the accused convicted therein were under the IPC Sections.

4. Learned APP opposes the aforesaid prayer seeking discharge. He submits that the matter can be remitted back to the trial Court for fresh consideration in view of the Judgment and Order dated 29th January, 2022, passed by the learned Special Judge under the MCOC Act,

5. Perused the papers. It appears that the appellant had filed a discharge application before the learned Special Judge under the MCOC Act and the learned Special Judge vide order dated 20th December, 2021, rejected the said application. By the said application, the appellant was seeking his discharge only from the provisions of the MCOC Act. It appears that subsequently, in the trial conducted by the trial Court as against other co-accused, the learned Judge acquitted all the accused in the very same case only under the MCOC Act, vide Judgment and Order dated 29th January, 2022. In this connection, learned Senior Counsel relied on the observations in para Nos. 61 to 63 of the said Judgment i.e. the findings of the learned Judge with respect to the applicability of the provisions of MCOC Act.

6. Considering that there is a change in circumstance, we deem it appropriate to set aside the impugned order dated 20th December, 2021, passed by the learned Special Judge and remit the matter back to the learned Special Judge for fresh consideration, in accordance with law.

7. Accordingly, we set aside the impugned order dated 20th December, 2021 and restore the appellant's application, filed for discharge, back to its original file.

8. The learned Judge to decide the said application as expeditiously as possible, uninfluenced by its earlier order dated 20th December, 2021.

9. We make it clear that we have not gone into the merits of this appeal and as such, all contentions of all parties are kept open.

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

SHARMILA U. DESHMUKH, J.

REVATI MOHITE DERE, J.