



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

CRIMINAL APPEAL NO.1290 OF 2022

Arun Namdeo Ghorpade

...Appellant

Versus

State of Maharashtra

...Respondent

Mr. Mandar Goswami for the Appellant.

Mr. K. V. Saste, APP for the State.

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.**

DATE : 28th AUGUST 2023

ORAL JUDGMENT: (Per : Revati Mohite Dere, J.)

1. Heard learned counsel for the parties.
2. Admit. By this appeal, the appellant has impugned the order dated 8th June 2022 passed by the learned Special Judge (under the MCOC Act), Nashik, below Exhibit 365 in Special (MCOC) Case No. 1 of 2016 and consequently, the order framing charge dated 8th June 2022, passed by the Special Judge (MCOC Act) Nashik below Exhibit 372, on the very same day.

3. The grievance of the learned counsel for the appellant is that the order passed in the discharge application filed by the appellant is not a reasoned order and that the learned Judge has not considered the submissions advanced by the appellant's Advocate in support of his discharge. He further submits that without giving an opportunity to the appellant to challenge the order of discharge, the trial court immediately proceeded to frame charges against the appellant and other co-accused on the very same day, soon after rejecting the appellants discharge application (Exhibit 372) by an order which can hardly be said to be a speaking order. He submits by the said action, the provision of Section 227 seeking discharge is rendered otiose, by the learned Judge.

4. Learned APP states that charge has now been framed. Learned APP when confronted with the order rejecting the appellant's discharge, fairly states that that the order can hardly be said to be on merits. Learned APP also does not dispute the fact, that pursuant to framing of charge, no steps have been taken for recording of evidence/otherwise.

5. We have perused the order dated 8th June 2022 passed by the learned Special Judge (under the MCOC Act), Nashik, below Exhibit 365 i.e. the discharge application, filed by the appellant. The learned Judge in the one page order, in paragraph 3 whilst rejecting the appellant's discharge application, has observed, that the chargesheet was filed in the year 2016 and the matter was posted for framing of charge; and that there is a prima facie case against the accused, more particularly, when there is a sanction order granted by the Competent Authority under Section 23(2) of the MCOC Act.

6. It prima facie appears that none of the submissions as to applicability of the MCOC Act have been considered by the learned Judge whilst rejecting the appellant's application seeking discharge (Exhibit 365). It is not in dispute, that soon after the said application (Exhibit 365) was rejected by the learned Special Judge under the MCOC Act, immediately thereafter, the learned Special Judge proceeded to frame charge below Exhibit 372 as against all the accused including the appellant.

7. Considering that the order dismissing or rejecting the appellants discharge application is a cryptic order and having regard to the mandate of Section 227 and 228 of the Cr.PC, it would be appropriate, in the peculiar facts of this case, to quash the charge (Exhibit 372) framed against the accused in Special MCOC Case No. 1 of 2016 as well as the order dated 8th June 2022 passed by the learned Special Judge, (below Exhibit 365) on the discharge application filed by the appellant. Accordingly both the orders i.e. the order framing charge and the order rejecting the appellant's discharge application are quashed and set aside.

8. Accordingly Exhibit 365 i.e. the discharge application filed by the appellant is restored back to its original file. The learned Special Judge to decide the said application (Exhibit 365) afresh, after hearing the parties on its own merits, uninfluenced by its earlier order dated 8th June 2022.

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

10. We make it clear, that we have not gone into the merits of the discharge application so filed and as such the learned Judge to decide the said application, on its own merits, in accordance with law.

11. All parties to act on the authenticated copy of this order.

GAURI GODSE, J.

REVATI MOHITE DERE, J.