

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

CRIMINAL APPLICATION NO. 1608 OF 2023

Kadiri Muhammad Ali

..Applicant.

Versus

State of Maharashtra

..Respondent

Mr. Kamran S. Shaikh a/w. Changdev Shingade, for Applicant.
Ms. Sangita D. Shinde, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 19 DECEMBER 2023

PC :

1. The Applicant has challenged the order dated 31.05.2023 passed by the 2nd J.M.F.C., Satara, framing the Charge against the applicant U/s.420 and 231 r/w. 34 of the I.P.C. The order mentions that the contents of the charge were read over and explained to the accused in vernacular through video conferencing. On that date, the applicant had pleaded not guilty to the charges. However, he was produced through the video conferencing and there was no signature obtained. He was subsequently produced on 27.07.2023. Again he pleaded not guilty, but he refused to sign.

2. The allegations against the present applicant are that, he had cheated the first informant Sachin. The F.I.R. was lodged on 12.09.2020 vide C.R.No.719 of 2020, at Satara City police station. It is the case of the first informant that, some unknown persons approached him in Satara and showed interest in making the investment in a project. It was represented to the first informant that, those persons were related to the dignitaries from a foreign country. They had brought some foreign currency, however, it was not in the original form. They represented that, to get those currency in the original form, some chemical was required to be applied. The first informant invested his part, but for using that chemical and getting those chemicals, the accused extracted huge amount from time to time. Between March 2018 to November 2018 they obtained Rs.1,27,46,000/- for that purpose. The entire transaction was fraudulent and the first informant lost that money. The investigation was carried out and the charge-sheet was filed.

3. Learned counsel for the applicant submitted that, he is not arguing this case on merits of the matter. He has restricted his argument to non compliance of Section 239 and 240 of the Cr.P.C.

He submitted that, those provisions were not followed. Neither the prosecution nor the accused nor their counsel were heard before framing of charge. This was a clear violation of those provisions and, therefore, on that ground alone the charge is required to be set aside. He further submitted that the noting shows that the charge was explained to the applicant in vernacular. It is quite clear that the accused is a foreign national and, therefore, he would not have understood anything regarding the charge when it was explained to him in vernacular.

4. Learned APP, on instructions, accepted that, before framing of the charge neither APP nor counsel for the accused nor the accused himself was heard and the learned Magistrate proceeded to frame the charge.

5. I have considered these submissions. Since no arguments are advanced on the merits of the matter, I am not discussing the merits of the matter. However, on the procedural aspect, I find substance in the submission of learned counsel for the applicant. The provisions of Section 239 and 240 of the Cr.P.C. are relevant;

which read thus:

239. When accused shall be discharged – If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

240. Framing of charge – (1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.

6. Both these sections required that, before framing of charge, an opportunity must be given to the prosecution and the accused of being heard and then only the next step of either discharging the accused or framing charge against the accused can be taken by the Court. In the present case, as accepted by the learned APP, no such step was taken and, therefore, the charge

which is framed in the present form is liable to be set aside. However, that does not mean that the applicant would be automatically discharged. The learned Magistrate will have to follow the procedure U/s.239 and 240 of the Cr.P.C. for taking the next step.

7. Hence, the following order:

O R D E R

- i) The charge framed against the applicant in R.C.C.No.279 of 2022 on 31.05.2023 by the 2nd J.M.F.C., Satara, is set aside.
- ii) The learned Magistrate shall ensure compliance with the provisions of Sections 239 and 240 of the Cr.P.C. to take the next step.
- iii) It is open to the learned Magistrate to decide as to whether Charge is to be framed. He shall ensure compliance of Sections 239 and 240 of the Cr.P.C.
- iv) If the charges are framed, it has to be explained to the applicant.
- v) Learned counsel for the applicant states that, if

the Court decides to frame charge, the applicant shall not create any disturbance while signing his plea.

vi) It is made clear that, this Court has not expressed its opinion on the merits of the matter.

vii) The question of framing of charge shall be decided by the learned Magistrate, in accordance with law.

viii) With these observations, the application is disposed of.

(SARANG V. KOTWAL, J.)