

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

Criminal Application No.210 of 2025

Rakesh Rajinderkumar Malhotra
Age: 61 years, Occ: Business, Residing at
Flat No.5, New Rubens Apt, Setalwad Road,
Mumbai 40006, presently residing at London ... Applicant

versus

The State of Maharashtra
(through Government Pleader) ... Respondent

Mr Carl Patel, a/w. Mr Gaurav Begani, for the applicant.
Ms Sangita E Phad, APP, for the respondent/ State.

**Coram: R.N. Laddha, J.
Date: 19 March 2025.**

P.C.:

Heard Mr Carl Patel, the learned Counsel appearing on behalf of the applicant, and Ms Sangita Phad, the learned Additional Public Prosecutor representing the respondent/ State.

2. Rule. The rule is made returnable forthwith, with the consent of the parties and taken up for final disposal.

3. By this application, the applicant has impugned the order

dated 24 June 2022 passed by the learned Metropolitan Magistrate, 40th Court, Girgaon, Mumbai, whereby the learned Magistrate framed a charge against the applicant and recorded his plea.

4. The learned Counsel for the applicant submits that the learned Magistrate has proceeded to frame a charge against the applicant without complying with the provisions of Chapter XIX of the Code of Criminal Procedure, 1973 ('CrPC'). The learned Counsel, drawing this Court's attention to the trial Court's roznama, further submits that on the very first date of the applicant's appearance, the learned Magistrate framed the charge against the applicant for the alleged offence punishable under Section 408 of the Indian Penal Code ('IPC').

5. The learned APP does not dispute the fact that on the very first date of the appearance of the applicant, i.e., on 24 June 2022, the learned Magistrate framed the charge against the applicant/ accused.

6. Upon perusing the records, more particularly the roznama annexed to the application, it appears that the applicant is arraigned as an accused in Criminal Case No.364/PW/2021, pending before the learned Metropolitan Magistrate, 40th Court, Girgaon, Mumbai, for the offence punishable under

Section 408 IPC. After investigation, a charge sheet was filed against the applicant on 25 August 2021, and summons were issued on the same date. Admittedly, the applicant appeared before the learned Magistrate on 24 June 2022. On that day, the applicant furnished his bail bonds, and the learned Magistrate proceeded to frame the charge against him under Section 408 IPC and recorded his plea.

7. Chapter XIX of CrPC, consisting of Sections 238 to 243, lays down the procedure for the trial of warrant cases by Magistrates in the cases instituted on a police report. The stage of framing a charge arises after the Magistrate is satisfied that the accused cannot be discharged under Section 239. Section 240 provides for the framing of the charge. Before framing a charge, the Magistrate must consider the police report under Section 173 and the documents sent along with it and hear both the prosecution and the accused. Thereafter, the Magistrate, after determining whether *prima facie* grounds exist to presume that the accused has committed an offence, shall proceed to frame a charge against the accused. Granting an opportunity of hearing to the accused at the stage of framing a charge is a mandatory requirement under the law. At this juncture, this is the only right available to him. A reference in this regard can be made to the decision of the Hon'ble Supreme

Court in *State Anti-Corruption Bureau, Hyderabad Vs. P. Suryaprakasam, 1999 SCC (Cri) 373*.

8. The term “hearing” appearing in Section 240 of CrPC must be construed to mean affected persons presenting oral arguments/ submissions before the Magistrate before he decides whether a charge ought to be framed or not against the accused. An accused, who is an affected person, ought to be given an opportunity to be heard before the charge is framed against him.

9. The roznama of the trial Court, as placed on record, neither indicates that an opportunity was granted to the parties to present their arguments prior to the framing of the charge nor that the Magistrate examined the report or heard the applicant before proceeding to frame the charge.

10. In light of the above, the impugned order dated 24 June 2022, relating to the framing of charge against the applicant/ accused, is quashed and set aside, with a direction to hear the parties as contemplated under the provisions of CrPC and pass an appropriate order in accordance with the law.

11. The application stands disposed of accordingly.

12. It is made clear that this Court has not examined the merits of the case, and all contentions of the parties are left open.

(R.N. Laddha, J.)