



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 579 OF 2023

The State of Maharashtra ...Appellant
Versus
Shiva Rishipal Tusambad @ Tusamad ...Respondent

Mr. Raja Thakare, Senior Advocate a/w Mr. Siddharth Jagushte & Ms. P.P.Shinde, for the Appellant-State.

Mr. Veerdhawal Deshmukh, Appointed Advocate for the Respondent.

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.**
DATE : 17th AUGUST, 2023

ORDER (PER REVATI MOHITE DERE J.) :

1. Heard learned Counsel for the parties.
2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal.
3. By this appeal, preferred by the State of Maharashtra, the

appellant seeks the following reliefs;

“(b) Record and proceedings of above mentioned Remand Report Dated 25.04.2023 passed by the Learned Special Judge (MCOC), Thane in respect of the Respondent/Orig.Accused in Remand Report Dated 25.04.2023 in C.R.No.I 61/2023, registered with Dombivali Police Station, Dist.:Thane, be called for;

(c) the impugned Order dated 25.04.2023 passed by the Learned Special Judge (MCOC), Thane in respect of the Respondent/Orig. Accused in Remand Report Dated 25.04.2023 in C.R.No. I 61/2023, registered with Dombivali Police Station, Dist. : Thane be quashed and set aside and the police custody of the Respondent / accused may be granted for interrogation purpose to the investigating agency forthwith.”

4. Mr. Thakare, learned Senior Counsel appearing for the appellant – State states that at the stage of remand, no such order could have been passed by the learned Special Judge, MCOC, Thane, discharging the respondent from the offences punishable under the MCOC Act. He submits that the said order, therefore, is contrary to Section 11 of the MCOC Act. He submits that in this view of the matter, the impugned order dated 25th April, 2023 passed by the learned Special Judge (MCOC) Thane, to the extent that it observes / holds that “no case is made out as against Shiva Rishipal Tusambad @

Tusamad for the alleged offences under MCOC Act and thus, he needs to be discharged from the said offences” ought to be quashed and set aside.

5. Perused the papers. On 12th May, 2023, this Court (Coram: Amit Borkar & Kamal Khata, JJ.) passed the following order;

“1. Issue notice to respondent No.1 returnable on 19th June, 2023.

2. Perusal of the impugned order dated 25th April, 2023, it appears that the learned Special Judge based on validity of approval has recorded a finding of fact that the approval is granted based on single crime registered in the year 2022. According to the appellant there are four offences registered against Respondent No.1 in the year 2022 and 2023. It appears that the learned Special Judge has virtually discharged the respondent No.1, at the stage of remand. Learned APP has placed on record the chart indicating involvement of appellant in atleast four offences. The four offences registered against the appellant are as under :-

| <i>Sr. No.</i> | <i>Police Station</i> | <i>Offences</i> | <i>Date of Registration</i> | <i>Status</i> |
|----------------|-----------------------|---|-----------------------------|----------------------------|
| <i>1</i> | <i>Dombivali</i> | <i>C.R.No. I 61 of 2023 u/s. 392, 397, 506-II & 34 of IPC</i> | <i>14.02.2023</i> | <i>Under investigation</i> |
| <i>2</i> | <i>Dombivali</i> | <i>C.R.No. I 165 of 2022</i> | <i>28.04.2022</i> | <i>Pending for trial</i> |

| | | | | |
|---|------------------|---|---------------------------------|------------------------------|
| | | <i>u/s. 392 & 34 of IPC</i> | | |
| 3 | <i>Manpada</i> | <i>C.R.No. I 234 of 2023 u/s. 395 & 34 of IPC</i> | <i>01.04.2023</i> | <i>Pending investigation</i> |
| 4 | <i>Dombivali</i> | <i>C.R.No. I of 08 of 2022</i> | <i>From chart at page No.35</i> | <i>Pending</i> |

3. *Therefore, prima facie, it appears that the impugned order is based on factually incorrect reason. Hence, the appellant has made out the case for grant of ad-interim relief.*

4. *Till 19th June, 2023, there shall be ad-interim relief in terms of prayer clause (d).*

5. *In view of the aforesaid order, the Investigating Agency is permitted to apply for the Police custody of respondent No.1.”*

6. In our Order dated 21st July, 2023, we have recorded that though the respondent Shiva Rishipal Tusambad @ Tusamad, lodged in Aadharwadi Jail, Kalyan, was served with a copy of the petition, none appeared on his behalf and hence, again notice was issued notice to the respondent, making the same returnable on 31st July, 2023. The respondent was put to notice that the appeal would be heard on the next date, even if, none appeared on his behalf. The appellant – State

of Maharashtra (through its officer) was permitted to serve the respondent through the Superintendent of Aadharwadi Jail, Kalyan and to take acknowledgment of the said notice.

7. On 31st July, 2023, though the respondent was served, none appeared on his behalf and hence, we appointed Mr. Veerdhawal Deshmukh from the list of Panel Lawyers of the High Court Legal Services Committee, Mumbai, to espouse the case of the respondent.

8. Learned Counsel for the respondent states that no offence under the MCOCA is made out/disclosed against the respondent. Learned Counsel for the respondent, however, does not dispute the fact that at the remand stage, no order discharging the respondent/accused could have been passed.

9. The short question that arises for consideration in the aforesaid appeal is, whether at the stage of remand, the learned Judge could have been discharged the respondent/accused from the case i.e. of the offences under the MCOC Act even before cognizance of the

offence was taken. Section 11 of the MCOC Act reads as under;

“Section 11. Power to transfer cases to regular Courts. - Where, after taking cognizance of an offence, a Special Court is of the opinion that the offence is not triable by it, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for trial of such offence to any Court having jurisdiction under the Code and the Court to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence.”

10. It is, therefore, evident that at the stage of remand, before cognizance is taken the respondent/accused could not have been discharged as done in the present case.

11. It is pertinent to note, that pursuant to the interim relief granted by this Court vide order dated **12th May, 2023**, the appellant – State of Maharashtra, took Police custody of the respondent. Thereafter, sanction was obtained under Section 23(2) of the MCOC Act and chargesheet has now been filed as against the respondent/accused.

12. In view of the aforesaid, the appeal stands allowed and the

impugned order, to the extent, that it discharges the respondent/accused from the offences punishable under the MCOC Act, is quashed and set aside.

13. We make it clear that we have not heard the petition, as to whether the provisions of MCOC Act have been correctly invoked or not, *qua* the respondent/accused and as such, it is open for the respondent to file an appropriate application / petition, as maintainable in law, before the appropriate Court.

14. The Petition is accordingly disposed of.

15. Registry to forthwith communicate a copy of this order to the respondent, who is lodged in Aadharwadi Jail.

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

GAURI GODSE, J.

REVATI MOHITE DERE, J.