

(Corrected)
ITEM NO.301 COURT NO.2 SECTION II-A
S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CRIMINAL) Diary No(s). 33164/2022

(Arising out of impugned final judgment and order dated 14-10-2022 in CRLA No. 136/2017 14-10-2022 in CRLA No. 137/2017 passed by the High Court Of Judicature At Bombay At Nagpur)

THE STATE OF MAHARASHTRA Petitioner(s)

VERSUS

MAHESH KARIMAN TIRKI & ORS. Respondent(s)

Date : 15-10-2022 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE M.R. SHAH
HON'BLE MS. JUSTICE BELA M. TRIVEDI

For Petitioner(s) Mr. Tushar Mehta, SG
Mr. Siddharth Dharmadhikari, Adv.
Mr. Aditya A. Pande, AOR
Mr. Hrishikesh Chitale, Adv.
Mr. Kanu Agarwal, Adv.
Ms. Gunjan Mangla, Adv.
Mr. Abhikalp Pratap Singh, Adv.
Mr. Bharat Bagla, Adv.
Mr. Suyog Deshpande, Adv.
Mr. Kaustubh Kadasne, Adv.
Mr. Pratyush Shrivastava, Adv.

For Respondent(s) Mr. R. Basant, Sr. Adv.
Mr. Jawahar Raja, Adv.
Mr. Chinmay Kanojia, Adv.
Mr. Akshay Sahay, Adv.
Mr. Archit Krishna, Adv.
Ms. Varsha Sharma, Adv.
Ms. Mooksha Sharma, Adv.
Mr. Manu Krishnan, Adv.
Mr. Vishnu P., Adv.
Mr. N.Sai Vinod, AOR

UPON hearing the counsel the Court made the following
O R D E R

Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the High Court discharging the accused mainly on the ground of irregular and/or invalid sanction to

prosecute Accused Nos. 1 to 5 and no sanction to prosecute at the time of taking cognizance by the learned trial Court, so far as A-6 and not deciding the appeals on merits, the State of Maharashtra has preferred the present Special Leave Petition(s).

We have heard Mr. Tushar Mehta, learned Solicitor General, appearing on behalf of the State of Maharashtra and Mr. R. Basant, learned Senior Advocate, appearing on behalf of Accused No.6 (G.N. Saibaba) at length.

We have also gone through the judgment and order of conviction passed by the learned trial Court as well as the impugned judgment and order passed by the High Court.

At the outset, it is required to be noted that the learned trial Court, by a detailed judgment and order and on appreciation of the entire evidence on record, convicted the accused for the offences punishable under Sections 13, 18, 20, 38 and 39 of Unlawful Activities (Prevention) Act, 1967 read with Section 120-B of the IPC.

The judgment and order passed by the learned trial Court was the subject-matter of the appeals at the instance of the respective accused including A-6. By the impugned judgment and order, the High Court has discharged the Accused No.1-5 (except Accused No.2, who died during the pendency of the proceedings), *inter alia*, on the ground that the sanction to prosecute those accused was vitiated and was invalid sanction as there was non-application of mind on the part of the sanctioning/review authority inasmuch as some material was not before the authority and no reasons were assigned while granting the sanction. Accused No.6 has been

discharged on the ground that, at the time of taking cognizance and/or framing the charge, there was no sanction to prosecute A-6 at all.

It is required to be noted that, even according to Accused No.6, the appeals were argued on merits, the High Court has not entered into the merits of the case and considered anything on merits of the judgment and order of conviction and sentence passed by the learned trial Court.

Thus, it is an admitted position and even otherwise, it cannot be disputed that, while discharging the accused, the learned High Court has not at all gone into the merits of the case and the findings recorded by the learned trial Court, recorded while convicting the accused for the aforesaid offences.

Having heard learned counsel for the respective parties and having gone through the material on record, including the impugned judgment and order passed by the High Court and even the trial Court, the following important questions of law and facts arise to be determined/considered in the present Special Leave Petition by this Court.

1. Whether considering Section 465 Cr.P.C. whether after the conclusion of the trial and the accused is convicted on merits and on appreciation of evidences whether the appellate Court is justified in discharging the accused (so far as Accused Nos. 1 to 5 are concerned) on the ground of irregular sanction, if any?
2. In a case where the learned trial Court has convicted the accused on merits on appreciation of the evidences on record

and thereafter having found the accused guilty for the offences for which they are tried, whether the appellate court is justified in discharging the accused on the ground of want of sanction and/or irregular sanction, more particularly, when the objection with respect to no sanction was not specifically raised by an appropriate application during the trial and trial was permitted to be proceeded further and thereafter the trial Court has convicted the accused on appreciation of evidences on record?

3. What will be consequences of not raising the dispute with respect to sanction during the trial and thereafter permitting the trial Court to proceed further, and despite the opportunities given to the accused even at the stage of recording the further statement under Section 313 Cr.P.C. when no objection to the want of sanction at the time of taking cognizance was taken?

The aforesaid are the broad questions on which this Court is required to consider in detail.

Then the next question which is posed at present is whether the impugned judgment and order passed by the High Court discharging the accused is required to be suspended at this stage or not.

We have heard Mr. Tushar Mehta, learned Solicitor General, appearing for the State of Maharashtra and Mr. R. Basant, learned Senior Advocate, appearing for Accused No.6 (G.N. Saibaba) at length on whether the impugned judgment and order passed by the

High Court discharging the accused is required to be suspended at this stage or not.

It cannot be disputed and it is not in dispute that even considering Section 390 of the Cr.P.C. and the decision of this Court in the case of State of U.P. vs. Poosu and Another, (1976) 3 SCC 1, the appellate court in an appeal against acquittal may/can even suspend the order of acquittal/discharge passed by the appellate Court. Therefore, it is not disputed that this Court can suspend the judgment and order passed by the High Court acquitting/discharging the accused.

On merits, Shri Mehta, has vehemently submitted that looking into the seriousness and gravity of the offences for which the accused were convicted by the learned trial Court and this Court is *prima facie* of the opinion that a detailed scrutiny is required so far as the impugned judgment and order passed by the High Court is concerned and as the High Court has not at all dealt with and/or considered anything on merits, more particularly, the seriousness and gravity of the offences for which the accused were convicted and that during the pendency of the appeal, the accused were in jail, except for a short time that too in the year 2015 on medical grounds and thereafter the application filed by A-6 to suspend the sentence under Section 389 Cr.P.C. was specifically rejected by the High Court in the year 2020 including on the medical ground which was pressed into service before the High Court, it is prayed to suspend the impugned judgment and order passed by the High Court in the peculiar facts and circumstances of the case.

Shri R. Basant, learned Senior Advocate, appearing for A-6 has submitted that Accused No.6 is aged 55 years; he was a professor in the University; he has a family staying in Delhi; his medical condition is such that he is required to be released on bail; that he is on wheel-chair; earlier also this Court specifically observed in the order dated 04.04.2016 in SLP (Cr1.) No. 249 of 2016 that a case is made out for bail considering the medical condition of Accused No.6 and that the accused are ready and willing to furnish bail bond as per Section 437-A of the Cr.P.C. and even the High Court, while passing the impugned judgment and order has also directed the accused to furnish the fresh bond and therefore the presence of the accused is secured, it is prayed not to suspend the judgment and order passed by the High Court. It is further submitted by Mr. Basant, learned Senior Advocate, that even the petitioner may be released on bail on any condition that may be imposed by this Court looking to the medical condition of A-6.

Having heard learned counsel for the respective parties and on whether in the facts and circumstances of the case, the impugned judgment and order passed by the High Court is required to be suspended or not and giving our anxious thoughts, for the reasons stated hereinbelow, we are of the opinion that this is a fit case to exercise powers under Section 390 Cr.P.C. and to suspend the impugned judgment and order passed by the High Court.

1. That the accused are convicted for the offences punishable under Sections 13, 18, 20, 38 and 39 of Unlawful Activities (Prevention) Act, 1967 read with Section 120-B of the IPC by the learned trial Court, after detailed analysis of the

evidences on record and on re-appreciation of the entire evidences on record;

2. The offences for which the accused were convicted by the learned trial Court are very serious and if ultimately they are tested by the High Court on merits and on merits the State succeeds and the judgment and order passed by the learned trial Court is upheld, the offences are very serious against the sovereignty and integrity of the country;
3. the High Court has not at all dealt with and considered anything on the merits of the judgment and order passed by the learned trial Court, though even according to the learned counsel appearing on behalf of A-6, the detailed submissions were made on behalf of the Accused on merits of the appeal and on the judgment and order of conviction and sentence imposed by the learned trial Court;
4. The High Court has discharged the accused Nos. 1-5 only on the ground that the sanction was invalid, mainly on the ground that some material which was placed before the appropriate authority at the time of sanction/review were placed were available on the very day and that no reasons are given while granting sanction. The same is required to be considered in detail considering provision of Section 465 Cr.P.C. So far as the A-6 is concerned, the accused has been discharged on the ground that there was no sanction the day on which the learned trial Court took cognizance and even framed the charge. However, the same question is required to be considered in detail, more particularly, on the ground

stated hereinabove.

Now, so far as the prayer on behalf of A-6 to release him on bail and/or not to suspend the impugned judgment and order passed by the High Court is concerned and the reliance placed upon some observations made by this Court in the order dated 04.04.2016 in SLP (Cr1.) No.249 of 2016 is concerned, at the outset, it is required to be noted that the observations made by this Court in the order dated 04.04.2016 were prior to the A-6 was convicted by the learned trial Court. Thereafter, the A-6 has been convicted by the learned trial Court on merits and on appreciation of evidences. Thereafter, an application under Section 389 Cr.P.C. was made by the A-6 which had been rejected by the High Court. In the recent order dated 28.07.2020 while considering the request made by the A-6 to release him on bail during the pendency of the appeal on medical ground, the same came to be dismissed/rejected by the High Court by a detailed order. The medical ground also came to be considered by the High Court and in para 8, it is observed as under:

"8. As regards worsening medical condition of the applicant as sought to be urged by him, we find that in the application moved by the applicant except for narrating the ailments said to be suffered by him, there are no further details given. It has not been pointed out in the application that after 25.03.2019 when the application under Section 389 of the Code was rejected, the applicant has further contracted ailments as alleged. In any event, we find from the reply filed by the Chief Medical Officer, Central Prison Nagpur that appropriate medical aid is being provided to the applicant. The treatment being rendered and the applicant's examination by experts is also evident on record."

In view of the above, we are of the firm opinion that the

impugned judgment and order passed by the High Court is required to be suspended.

For the reasons stated above, the impugned judgment and order passed by the High Court is ordered to be suspended till further orders.

Issue notice, returnable on 08.12.2022.

Shri N. Sai Vinod, learned AOR, accepts service of notice on behalf of A-6 (G.N. Sai Baba). For rest of the respondents, *dasti*, in addition, is permitted.

Counter, if any, be filed on behalf of A-6 within a period of four weeks from today. Counter on behalf of rest of the accused be filed within 4 weeks from service of notice of the present order.

(R. NATARAJAN)
ASTT. REGISTRAR-cum-PS

(NISHA TRIPATHI)
ASSISTANT REGISTRAR

ITEM NO.301

COURT NO.2

SECTION II-A

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For Respondent(s) Mr. R. Basant, Sr. Adv.
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We have heard Mr. Tushar Mehta, learned Solicitor General, appearing on behalf of the State of Maharashtra and Mr. R. Basant, learned Senior Advocate, appearing on behalf of Accused No.6 (G.N. Saibaba) at length.

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The judgment and order passed by the learned trial Court was the subject-matter of the appeals at the instance of the respective accused including A-6. By the impugned judgment and order, the High Court has discharged the Accused No.1-5 (except Accused No.2, who died during the pendency of the proceedings), *inter alia*, on the ground that the sanction to prosecute those accused was vitiated and was invalid sanction as there was non-application of mind on the part of the sanctioning/review authority inasmuch as some material was not before the authority and no reasons were assigned while granting the sanction. Accused No.6 has been

discharged on the ground that, at the time of taking cognizance and/or framing the charge, there was no sanction to prosecute A-6 at all.

It is required to be noted that, even according to Accused No.6, the appeals were argued on merits, the High Court has not entered into the merits of the case and considered anything on merits of the judgment and order of conviction and sentence passed by the learned trial Court.

Thus, it is an admitted position and even otherwise, it cannot be disputed that, while discharging the accused, the learned trial Court has not at all gone into the merits of the case and the findings recorded by the learned trial Court, recorded while convicting the accused for the aforesaid offences.

Having heard learned counsel for the respective parties and having gone through the material on record, including the impugned judgment and order passed by the High Court and even the trial Court, the following important questions of law and facts arise to be determined/considered in the present Special Leave Petition by this Court.

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On merits, Shri Mehta, has vehemently submitted that looking into the seriousness and gravity of the offences for which the accused were convicted by the learned trial Court and this Court is *prima facie* of the opinion that a detailed scrutiny is required so far as the impugned judgment and order passed by the High Court is concerned and as the High Court has not at all dealt with and/or considered anything on merits, more particularly, the seriousness and gravity of the offences for which the accused were convicted and that during the pendency of the appeal, the accused were in jail, except for a short time that too in the year 2015 on medical grounds and thereafter the application filed by A-6 to suspend the sentence under Section 389 Cr.P.C. was specifically rejected by the High Court in the year 2020 including on the medical ground which was pressed into service before the High Court, it is prayed to suspend the impugned judgment and order passed by the High Court in the peculiar facts and circumstances of the case.

Shri R. Basant, learned Senior Advocate, appearing for A-6 has submitted that Accused No.6 is aged 55 years; he was a professor in the University; he has a family staying in Delhi; his medical condition is such that he is required to be released on bail; that he is on wheel-chair; earlier also this Court specifically observed in the order dated 04.04.2016 in SLP (Cr1.) No. 249 of 2016 that a case is made out for bail considering the medical condition of Accused No.6 and that the accused are ready and willing to furnish bail bond as per Section 437-A of the Cr.P.C. and even the High Court, while passing the impugned judgment and order has also directed the accused to furnish the fresh bond and therefore the presence of the accused is secured, it is prayed not to suspend the judgment and order passed by the High Court. It is further submitted by Mr. Basant, learned Senior Advocate, that even the petitioner may be released on bail on any condition that may be imposed by this Court looking to the medical condition of A-6.

Having heard learned counsel for the respective parties and on whether in the facts and circumstances of the case, the impugned judgment and order passed by the High Court is required to be suspended or not and giving our anxious thoughts, for the reasons stated hereinbelow, we are of the opinion that this is a fit case to exercise powers under Section 390 Cr.P.C. and to suspend the impugned judgment and order passed by the High Court.

1. That the accused are convicted for the offences punishable under Sections 13, 18, 20, 38 and 39 of Unlawful Activities (Prevention) Act, 1967 read with Section 120-B of the IPC by the learned trial Court, after detailed analysis of the

evidences on record and on re-appreciation of the entire evidences on record;

2. The offences for which the accused were convicted by the learned trial Court are very serious and if ultimately they are tested by the High Court on merits and on merits the State succeeds and the judgment and order passed by the learned trial Court is upheld, the offences are very serious against the sovereignty and integrity of the country;
3. the High Court has not at all dealt with and considered anything on the merits of the judgment and order passed by the learned trial Court, though even according to the learned counsel appearing on behalf of A-6, the detailed submissions were made on behalf of the Accused on merits of the appeal and on the judgment and order of conviction and sentence imposed by the learned trial Court;
4. The High Court has discharged the accused Nos. 1-5 only on the ground that the sanction was invalid, mainly on the ground that some material which was placed before the appropriate authority at the time of sanction/review were placed were available on the very day and that no reasons are given while granting sanction. The same is required to be considered in detail considering provision of Section 465 Cr.P.C. So far as the A-6 is concerned, the accused has been discharged on the ground that there was no sanction the day on which the learned trial Court took cognizance and even framed the charge. However, the same question is required to be considered in detail, more particularly, on the ground

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Counter, if any, be filed on behalf of A-6 within a period of four weeks from today. Counter on behalf of rest of the accused be filed within 4 weeks from service of notice of the present order.

(R. NATARAJAN)
ASTT. REGISTRAR-cum-PS

(NISHA TRIPATHI)
ASSISTANT REGISTRAR