

[2023 LiveLaw \(SC\) 438](#)

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
M.R. SHAH; J., C.T. RAVIKUMAR; J.**

April 19, 2023

CRIMINAL APPEAL NOS. 1184-1185 OF 2023 (Arising out of SLP (Crl.) Nos. 11072-11073/2022)

THE STATE OF MAHARASHTRA versus MAHESH KARIMAN TIRKI & ORS.

Unlawful Activities (Prevention) Act, 1967 - The Supreme Court set aside an order of the Bombay High Court acquitting former Delhi University professor and activist G.N. Saibaba as well as others over their alleged Maoist links and remanded the matter back to the high court to be considered afresh by a different bench.

For Appellant(s) Mr. S.V. Raju, ASG Mr. Siddharth Dharmadhikari, Adv. Mr. Aaditya Aniruddha Pande, AOR Mr. Hrishikesh Chitalay, Adv. Mr. Shrirang B. Varma, Adv. Mr. Kanu Agarwal, Adv. Mr. Abhikalp Pratap Singh, Adv. Mr. Bharat Bagla, Adv. Mr. Saurav Singh, Adv. Mr. Suyog Despande, Adv. Mr. Pratush Shrivastava, Adv. Mr. Vijay Kari Singh, Adv.

For Respondent(s) Ms. Nitya Ramakrishnan, Sr. Adv. Mr. Shadan Farasat, AOR Mr. Ashwath Sitaraman, Adv. Mr. Shourya Dasgupta, Adv. Ms. Nitya Mehrotra, Adv. Ms. Hrishika Jain, Adv. Ms. Mreganka Kukreja, Adv. Mr. Aman Naqvi, Adv. Ms. Natasha Maheshwari, Adv. Mr. R. Basant, Sr. Adv. Mr. Jawahar Raja, Adv. Mr. N. Sai Vinod, AOR Mr. Archit Krishna, Adv. Mr. Barun Kumar, Adv. Mr. Akshay Sahay, Adv. Mrs. Varsha Sharma, Adv.

ORDER

1. Leave granted.
2. Feeling aggrieved and dissatisfied with the impugned common judgment(s) and order(s) dated 14.10.2022 passed by the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Criminal Appeal Nos. 136 & 137 of 2017, by which the High Court has allowed the said Appeals preferred by the accused-respondents, the State has preferred the present Appeals.
3. Shri S.V. Raju, learned ASG, has appeared on behalf of the appellant-State of Maharashtra and Shri R. Basant and Ms. Nithya Ramakrishnan, learned Senior Advocates and Mr. Shadan Farasat, learned Advocate have appeared on behalf of the respective accused-respondents herein.
4. As by the impugned judgment and order, the High Court has discharged/acquitted the accused solely on the ground of invalid sanction and in absence of sanction in the case of one of the accused and the High Court has not at all considered and/or decided the Appeals on merits, learned Senior Advocates/Advocate appearing on behalf of the accused have stated at the Bar that they have no objection if the impugned common judgment(s) and order(s) passed by the High Court are set aside and the matters are remitted back to the High Court to decide the Appeals afresh on merits including the question of valid sanction and/or no sanction (in case of one of the accused).
5. Shri S.V. Raju, learned ASG, has prayed that suitable observations be made that it will be open for the State to contend before the High Court that once the accused are convicted by the trial Court, the question with respect to the sanction may not be relevant and/or may not be gone into which may also be considered by the High Court. Learned Advocates appearing for the respective parties have requested to make suitable observations that this Court has not expressed anything on merits in favour of either parties and the High Court to decide and dispose of the Appeals strictly in accordance with law and on its own merits and even without in any way being influenced by any of the

observations made in the impugned common judgment(s) and order(s), which otherwise are being set aside by this Court, pursuant to the present order.

6. In view of the above broad consensus between the respective parties recorded hereinabove and without further entering into the merits of the case and/or expressing anything on merits in favour of either of the parties, with the consent of learned counsel for the respective parties, we set aside the impugned common judgment(s) and order(s) passed by the High Court in Criminal Appeal Nos. 136 and 137 of 2017. The matters are remitted back to the High Court to decide the said Appeals afresh in accordance with law and on its own merits, including the question of sanction. It will be open for the State to contend that once the accused are convicted after conclusion of the trial, the validity of the sanction and/or no sanction in case of one of the accused cannot be gone into and/or the same would become insignificant and as and when such issues are raised, the same be considered by the High Court in accordance with law and on its own merits. It will be open for the accused to counter the same. We have also specifically observed that all the contentions and the defences, which may be available to the respective parties are kept open to be considered by the High Court in accordance with law and on its own merits and on the basis of the evidence, which is already on record before the learned trial Court.

7. We request the High Court to decide and dispose of the Appeals on merits at the earliest and preferably within a period of 4 months from the date of receipt of the present order. It is also observed that the propriety demands that, on remand, the Appeals be placed before another Bench so as to avoid any further apprehensions. Therefore, we request the Hon'ble Chief Justice of the High Court to see that the Appeals are placed for final hearing before the Bench other than the Bench, which passed the impugned judgment(s) and order(s).

The present appeals are, accordingly, allowed.

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