

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Crl A(D) No. 52/2022

Mohd Mustafa Khan & Ors.

.....Appellant(s)

Through :- Mr. Ajaz Choudhary, Advocate

v/s

UT of J&K through NIA

.....Respondent(s)

Through :- Mr. Vishal Sharma, DSGI

**CORAM: HON'BLE MR. JUSTICE TASHI TABSTAN, JUDGE
HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE**

**ORDER
03.03.2023**

Per Chowdhary J

1. Appellants through the medium of this appeal have challenged the order dated 29.10.2022 passed by the Special Court constituted under NIA Act (3rd Additional Sessions Judge) Jammu, in a case titled 'UT of J&K vs Mubashir Farooq Bhat & Or's, by virtue of which, the charge against the appellant has been framed under sections 17,18,20,21,38 & 40 of the Unlawful Activities Prevention Act, with further prayer that the appellants be discharged from the commission of afore-mentioned offences.
2. Learned counsel for the respondent-UT of J&K submits that the appeal does not lie against the order impugned with regard to the framing of charge against the appellants, which is not a final order, as such, the appeal under section 21 of the NIA Act is non-maintainable.
3. Heard arguments and considered.
4. The law is no longer *res integra*. The constitutional courts including the Apex Court of the Country has considered this matter in several cases. The

order framing charge, as is the impugned order in this Appeal, has been held to be neither final nor interlocutory order but an intermediate order. Such orders are not appealable.

5. A Coordinate Division Bench of this Court, in a case titled “Ayaz Ahmed & Anr vs Union Territory of J&K” vide judgment dated 16.02.2023, passed in CrlA(S) No. 13/2022, surveyed the judgments in cases titled “S.K.Mahajan & Ors v Municipality”, reported as **1982 Cr.L.J 646**, “Sanjay Kumar Rai v State of U.P”, reported as **AIR 2021 SC 2351** passed by a 3-Judge Bench of the Apex Court, “Asian Resurfacing of Road Pvt. Ltd. & Anr v. Central Bureau of Investigation”, reported as **2018(16) SCC 299**, “Madhu Limaye v. State of Maharashtra”, reported as **1997 (4) SCC 551**, “V. C Shukla v. State through CBI”, reported as **1980(Supp) SCC 92** passed by the Hon’ble Apex Court and “Londhoni Devi v. State through National Investigating Agency”, reported as **2013 (4) Gauhati Law Reports, 897** passed by a Division Bench judgment of Gauhati High Court. While interpreting section 21 of the National Investigating Agency Act, 2008, the Coordinate Bench, after thorough discussion, has held that framing of charge or the order altering or refusing to alter the charge, passed by the Special Court under NIA Act is an interlocutory order, not appealable under sub-section (1) of section 21 of the NIA Act and further held the appeal against such order, as ‘non maintainable’.
6. Having have advantage of the law laid down by the Coordinate Bench, which has passed the judgment after complete survey of the law laid down by this Court as well as by the Apex Court of the Country on the subject, the instant appeal against the order of framing charge, is held to be non-

maintainable. However, on a submission made by the learned counsel for the appellants, it is ordered that this appeal be converted into proceedings under section 482 of CrPC to be considered and dealt with by a Single Bench of this Court. The Registry shall register this petition, accordingly and list it on **27.03.2023** before the learned Single Bench having the roster.

(M A Chowdhary)
Judge

(Tashi Rabstan)
Judge

JAMMU
03.03.2023
Vijay

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No

