

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl.App. 638/2007**

% Date of reserve: 22.07.2009
Date of decision: 31.07.2009

STATE ... APPELLANT
Through: Mr. Arvind Kr. Gupta, APP for state

Versus

SHARAFTA SHEIKH & ORS. ...RESPONDENTS
Through: Mr. Hari Guin, R-1&2, Mr. Sumeet
Verma, amicus curiae for R-3.

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers
may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be
reported in the Digest? Yes

MOOL CHAND GARG, J.

1. **Crl.M.A. 11593/2007**

Delay is condoned. Application is allowed.

Crl.App. 638/2007

2. This order shall dispose of an appeal filed by the State under Section 12 of the Maharashtra Control of Organized Crime Act 1999 (hereinafter referred to as "the MCOCA") against the order dated 20.02.2007 passed by the Addl. Sessions Judge in Sessions Case No. 1405/05 in which the respondents no. 1-3 are facing trial for offences under Section 20 of the MCOCA.

3. During the pendency of these proceedings an application was filed on

behalf of the appellant requesting for attachment of certain properties, bank accounts, etc. pertaining to the accused persons and their wife on the allegations that the property and bank accounts belonging to the accused person and their near relatives were acquired by them out of the money illegally begotten by them while being involved in organized crime or by helping other accused persons in conducting such illegal transactions. It was prayed that in view of Section 20(2) of the MCOCA the Special Court should pass an order that all the properties (movable or immovable) belonging to accused person during the relevant period shall be attached.

4. In this regard it was also submitted that a reading of Section 20 of the MCOCA goes to show that the powers vested under the Special Court entitles the said Court to attach the properties belonging to the accused persons which would also include properties belonging to their near relations which had been purchased/acquired by the accused persons out of their own funds. As such, it was submitted that the properties which were sought to be attached but which was not being attached by the Additional Sessions Judge by the impugned order should also have been attached by the Additional Sessions Judge and to that extent the orders passed by the Additional Sessions Judge needs to be reversed.

5. Section 20 of the MCOCA reads as under:-

20. Forfeiture and attachment of property.

(1) Where a person has been convicted of any offence punishable under, this Act, the Special Court may, in addition to awarding any punishment, by order in writing, declare that any property, movable or immovable or both, belonging to the accused and specified in the order, shall stand forfeited to the State Government, free from all encumbrances.

(2) Where any person is accused of any offence under this Act, it shall be open to the Special Court trying him, to pass on order that all or any properties, movable or immovable or both belonging to him, shall, during the period of such trial, be attached, and where such trial ends in conviction, the properties so attached shall stand forfeited to the State Government free from all encumbrances.

(3)(a) If, upon a report in writing made by an investigating police officer with the approval of the supervisory officer referred to in subsection (1) of section 14, any Special Court has reason to believe that any person, who has committed an offence punishable under this Act has absconded or is concealing himself so that he may not be apprehended, such Court may, notwithstanding anything contained in section 82 of the Code, publish a written proclamation requiring him to appear at a specified place and at a specified time not less than fifteen days but not more than thirty days from the publication of such proclamation.

Provided that, if the investigating police officer concerned fails to arrest the accused, who has absconded or is concealing himself, within a period of three months from the date of registering the offence against such person, the officer shall, on the expiry of the said period, make a report to the Special Court for issuing the proclamation.

(b) The Special Court issuing a proclamation under clause (a) may, at any time, order the attachment of any property, movable or immovable or both; belonging to the proclaimed person, and thereupon the provisions of sections 83 to 85 of the Code shall apply to such attachment as if such attachment were made under that Code.

(c) If, within six months from the date of attachment, any person, whose property is, or has been, at the disposal of the State Government under sub-section (2) of section 85 of the Code, appears voluntarily or is apprehended and brought before the Special Court by whose order the property was attached, or the Court to which such Court is subordinate, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding apprehension and that he had not received such notice of the proclamation as to enable him to attend within the specified time therein, such property or, if the same has been sold, the net proceeds of the same and the residue of the property, shall, after satisfying therefore all costs incurred in consequence of the attachment, be delivered to him.

6. In the application dated 11.09.2006 it was mentioned:

During investigation, the following insurance policies of Sharafat policies of Sharafat Sheikh, Mrs. Najma Sheikh and Mrs. Zohra Sheikh were traced at LIC of India Branch Office No. 12G, Nehru Place, Delhi – 110019.

i. LIC Insurance Policy No. 113641835 for a sum assured Rs. 30 lacs in the name of Sharafat Sheikh with half-yearly premium of Rs. 99617/-

ii. LIC Insurance Policy No. 113641836 in the name of Sharafat Sheikh for a sum assured Rs. 2.5 lacs and paid one time premium of Rs. 2,42,825/- on 28.06.2002 to be matured in May 2007

iii. LIC Insurance Policy No. 113641742 for a sum assured Rs. 20 lacs in the name of Najma Begum W/o Sharafat Sheikh with half-yearly premium of Rs. 65167/-

iv. LIC Insurance Policy No. 113641743 for an assured

sum of Rs. 20 lacs in the name of Zohra Sheikh w/o Sharafat Sheikh with half-yearly premium of Rs. 65167/-.

From the investigation conducted so far it has been established that accused Sharafat Sheikh along with his wives and associates has generated a huge amount of wealth from his crime syndicate/illegal trade in Narcotics and purchased above mentioned moveable and immoveable properties from that wealth. From the intelligence inputs received so far revealed that accused Sharafat Sheikh, his wives and associates are trying to dispose off these properties and also trying to destroy the vital evidence. It is also evident from the conduct of accused Sharafat Sheikh who was withdrawn Rs. 12 lacs from his A/c No. 10314 of Bombay Merchantile Bank, Mahim, Mumbai on 11.10.05 through his wife Zohra Sheikh, while he was in judicial custody. This heavy amount was deposited in FDFCR A/c No. 5093 of Mrs. Zohra Sheikh w/o Sharafat Sheikh at Bombay Merchantile Bank, Mahim, Mumbai. During investigation it was also found that Mrs. Zohra Sheikh had also withdrawn Rs. 8,80,000/- from her SB A/c No. 9585, J&K Bank, Lajpat Nagar after the arrest of accused Sharafat Sheikh.

7. And thus it was prayed:

It is therefore requested that attachment orders in r/o above said properties may please be issued with direction to the concerned authorities not to allow any further transaction/transfer in any manner so that accused persons are unable to dispose off these properties. There is every likelihood that trial of the case will be concluded in the conviction of the accused persons.

8. The learned Addl. Sessions Judge has passed the following orders:

After hearing the submissions of both the parties and going through the material on record I find that the allegations against accused Sharafat Sheikh are that he is running organized crime syndicate in conspiracy with both his wives and other accused persons who are not only abetting the accused Sharafat Sheikh to commit the aforesaid crime but also knowingly facilitating the commission of the organized crime. Prima facie nothing has been brought on record by the accused persons as to how accused Sharafat Sheikh and his both wives namely Najma and Zohra have amassed wealth or what was their source of income. IN the circumstances, the unaccountable wealth possessed by the accused persons prima-facie leads to the inference that it has been accumulated through organized crime. As such I find no reason for defreezing/ releasing of all the properties freezed during the investigation. There is a strong presumption against the accused persons that the

properties mentioned in the application of the prosecution are generated through illegal means. Hence, the properties mentioned at Srl. No.1 to 20 are allowed to be attached during the pendency of the trial, besides, the bank accounts appearing at serial no. 1 to 16, 19 in the application are further allowed to be attached during the pendency of the trial.

So far bank account numbers appearing at serial no. 17 and 18 mentioned in the application are concerned, there is hardly any amount in the accounts, as such they are not required to be attached.

so far bank account numbers appearing at serial no. 20 and 21 are concerned, they are in the name of the children of accused Sharaft Sheikh and his wives, therefore since the children are not to be punished for the illegal acts of their parents and they cannot be made accomplice with them, moreover considering that they have to sufficient funds for their survival, out of both these accounts, leaving a sum of Rs. 3 lakhs in each account, the rest of the amount be attached.

So far the prayer of the prosecution to attach the LIC policies of accused Sharafat Sheikh, accused Najma and accused Zohra Sheikh are concerned, the same is disallowed.

With these observations, all these three applications are disposed off.

9. The learned counsel for the appellant is basically aggrieved of the order passed by the Addl. Sessions Judge for having not attached the LIC policies of the accused Najma and Zohra Sheikh. It has been submitted that the amounts contributed by the aforesaid persons, who are the wives of the respondents and have not come forward to show any source of income for paying the huge sums of money for procuring the LIC policies within the relevant period, prima facie, goes to show that the premium for these policies have been paid by the accused persons, namely, respondent no. 1-3 and therefore taking into consideration the provisions contained in Section 20 Sub-Clause 3 of the MCOCA, those policies should also be allowed to have been forfeited by the State.

10. The respondents have opposed the request made by the Public

prosecutor but they have not been able to show as to what is the source of income of Sharafat Sheikh, Mrs. Najma Sheikh and Mrs. Zohra Sheikh for contributing huge sums of premium for purchasing LIC policies in question such as payment of Rs. 99,617/- which is 6 monthly contribution for LIC policy no. 113641835 purchased for a sum of Rs. 30 lakhs and payment of Rs. 2.5 lakhs and Rs. 2.4 to 2.5 lakhs as one time premium on 28.06.2002 which has been matured in May 2007. Similarly, no explanation has been furnished about the premium paid for the other two policies.

11. In view of the aforesaid, I have no hesitation but to hold prima facie that the subscription which has been paid by the policy-holders, who are no one else but the members of the families of the accused persons, leaves no room for doubt that those payments have been made out of the illegal begotten money and therefore, the policies are also liable to be attached/ forfeited to the State. Accordingly, the order dated 20.02.2007 of the Addl. Sessions Judge is modified to that extent.

12. The appeal is accordingly allowed.

13. Fee of Mr. Sumeet Verma, who was appointed as an amicus curiae for respondent No.3 is fixed at Rs.3,000/-

14. Copy of the order be sent to the Additional Sessions Judge concerned.

MOOL CHAND GARG, J.

JULY 31, 2009
ag/dc