

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

+ **CRL.A. 544/2010**

Date of Decision: 19th May, 2010

JAGMOHAN @ MOHAR SINGH Appellant
Through: Mr. A.S. Dateer, Advocate

versus

STATE Respondent
Through: Mr. Manoj Ohri, APP

**CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI**

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| 1. Whether the Reporters of local papers may :
be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? : | No |
| 3. Whether the judgment should be reported :
in the Digest? | No |

% **JUDGMENT (Oral)**

VIPIN SANGHI, J

1. The present appeal has been filed by the appellant under section 12 of the Maharashtra Control of Organized Crime Act, 1999 (MCOCA) as extended to the NCT of Delhi, read with section 227 of the Code of Criminal Procedure, 1973 to impugn the order on charge dated 26.03.2010 passed by the Additional Sessions Judge/Special Judge, New Delhi, Sh. J.R. Aryan, ordering framing of charge against the appellant under section 3(2) and 3(4) of the MCOCA along with section 186/353 IPC and section 25/27/59 of the Arms Act in Sessions Case No.181/2008 arising out of FIR No.521/2005 registered at police station Connaught Place, New Delhi.

2. The case of the prosecution is:
- (i) That on the basis of secret information that the appellant, who is a notorious criminal and a declared offender of police station Darya Ganj, would come in a Qualis Van in front of Regal Cinema towards Gol Dak Khana at about 4:00 p.m. and that he would be carrying illegal fire arm. The secret information was to the effect that, if raided, the appellant could be apprehended with an illegal weapon which he had been using to extort money from the area. It was also informed that the Toyota Qualis Van in which he would be travelling, was wanted in a case registered at police station Connaught Place.
 - (ii) On the basis of this secret information, a raid was conducted by the police near Hanuman Mandir at about 4:00 p.m. on 13.09.2005. The appellant was found to be driving a Qualis vehicle bearing registration No.HR-55-A-3776. As the vehicle was stopped, the appellant allegedly took out a pistol from his left dub and pointed towards the police Sub Inspector. A constable immediately snatched the pistol from his hand which had four live cartridges of 7.65 bore loaded in the magazine. The same was seized by the police.
 - (iii) On being questioned, the appellant could not produce any paper or proof regarding his ownership of the vehicle. On examining the vehicle, it was found that the vehicle was

wanted in case FIR No.168/2003 under section 420/406 IPC of police station Connaught Place, being stolen property. The vehicle was taken in possession under section 302 Cr PC. The FIR was registered on the basis of the Rukka prepared with information as above. The appellant was remanded to judicial custody.

- (iv) On investigation being taken up in case FIR No.521/2005 by SI Pankaj Yadav, it was revealed that the appellant along with his brothers had been indulging in organized crime. The proceedings for invoking the provisions of MCOCA were taken up. Approval under section 23(1)(a) of MCOCA was granted by the Additional Commissioner of Police (ACP) on 15.09.2005 on the basis of materials placed before him and consequently sections 3(2) and 3(4) of MCOCA were added to the FIR and further investigation under Sections 3(2) & 3(4) of MCOCA was undertaken.
- (v) The brief history of the appellant accused showed that various criminal cases were registered against him in the year 1995 and thereafter, continuously till the year 2003. The case registered in 2003 was under Section 406/420 IPC, registered at police station Connaught Place bearing FIR No.168/2003. Thereafter, the FIR in question was registered. The entire material was placed before the ACP for grant of approval under section 23(2) of MCOCA. Being satisfied on the basis of the material placed before him, sanction under section 23(2)

MCOCA was granted on 10.02.2006. The same has been made a part of the charge sheet.

- (vi) The appellant Jagmohan was charge sheeted. The evidence and material collected by the ACP comprising documentary material and statement of witnesses referred under section 161 Cr PC were produced. The said material and evidence has been referred to in the charge sheet along with brief history of criminal cases in which accused Jagmohan was found involved. The same was annexed as Annexure A with the charge sheet.

3. The learned ASJ/Special Judge Sh. J.R. Aryan heard the counsels for the appellant as well as Sh. Jeet Singh, counsel, the public prosecutor and the special public prosecutor and proceeded to pass the impugned order.

4. Mr. Dateer, learned counsel for the appellant has made the following three submissions in support of the appeal. He firstly submits that on 13.09.2005 itself, Sections 3(2) and 3(4) of the Act had been invoked by the police even without seeking the approval from the competent authority for invoking MCOCA, which was in violation of section 23(1)(a) of the said Act. In support of his submission, Mr. Dateer placed reliance on a certified copy of the FIR which had been obtained in the case. On the said FIR, the provisions of MCOCA, besides other offences under IPC and Arms Act were mentioned.

5. He further submits that there was no material placed before

the competent authority at the time when the approval was accorded. He also submits that the competent authority while granting sanction under MCOCA did not apply its mind. The evidence and material collected by the police and placed before the competent authority for grant of sanction could not be said to have nexus to the alleged offence under MCOCA. He submits that all the previous cases against the appellant had ended in acquittal of the appellant, after a full-fledged trial and therefore, the appellant could not be said to be guilty of commission of the crime as mentioned in section 2(e) of MCOCA.

6. Mr. Dateer submits that the appellant already stood acquitted in case FIR No.168/2003 under section 411 IPC vide judgment dated 07.07.2009 passed by Sh. Jitendra Mishra, MM, New Delhi. Therefore, the respondents could not possibly have relied upon the said case. In any event, the said case pertained to dishonestly receiving or retaining stolen property knowing or having reason to believe the same to be stolen property and the said offence could not be said to be one, which MCOCA seeks to prevent or control.

7. Mr. Dateer submits that the offences under sections 186/353/411 IPC slapped by the police in the FIR in question cannot be said to be "*any unlawful means*" within the meaning of the said expression used in the definition of the term "organized crime" and that the said alleged offences do not have a direct nexus to the commission of crime, which MCOCA seeks to prevent or control. In support of his submissions, learned counsel for the appellant placed reliance on the Supreme Court decision in ***Ranjitsing Brahmjeetsing***

Sharma v. State of Maharashtra, AIR 2005 SC 2277.

8. He refers to the statement of objects and reasons of MCOCA, which to the extent necessary, read as follows:

“Organised crime has for quite some years now come up as a very serious threat to our society. It knows no national boundaries and is fueled by illegal wealth generated by contract killings, extortion, smuggling in contrabands, illegal trade in narcotics, kidnappings for ransom, collection of protection money and money laundering, etc. the illegal wealth and black money generated by the Organised crime is very huge and has serious adverse effect on our economy. It is seen that the Organised criminal syndicates make a common cause with terrorist gangs and foster narcotics terrorism which extend beyond the national boundaries. There is a reason to believe that Organised criminal gangs are operating in the State and thus, there is immediate need to curb their activities. It is also noticed that the Organised criminals make extensive use of wire and oral communications in their criminal activities. The interception of such communications to obtain evidence of the commission of crimes or to prevent their commission is an indispensable aid to law enforcement and the administration of justice.

2. The existing legal frame work i.e. the penal and procedural laws and the adjudicatory system are found to be rather inadequate to curb or control the menace of Organised crime. Government has, therefore, decided to enact a special law with stringent and deterrent provisions including in certain circumstances power to intercept wire, electronic or oral communication to control the menace of the Organised crime”.

and submits that the alleged offences falling under Sections 186/353/411 IPC do not qualify as offences that MCOCA seeks to prevent.

9. Mr. Ohri, learned APP, on the other hand, has opposed the admission of this appeal by placing strong reliance on the decision of the Division Bench of this Court in ***Jag Mohan @ Mohar Singh v.***

Commissioner of Police & Ors., 2007 (1) JCC 292 decided on 01.12.2006. He submits that, inter alia, the petitioner had filed Writ Petition (Crl.) No.45/2006 to challenge the FIR No.521/2005 dated 13.09.2005 registered at police station Connaught Place, New Delhi, (which is the FIR in question) and to seek a writ of habeus corpus to challenge his detention under MCOCA as extended to Delhi, on various grounds.

10. Mr. Ohri points out that the Division Bench had considered the issue whether the FIR under MCOCA had been validly recorded and whether, on the basis of the allegations against the petitioners, which included the present appellant, offence under section 3 of MCOCA was made out. He submits that all the submissions made by the appellant before the Special Judge, and which are now sought to be urged before this Court, have already been considered by the Division Bench and rejected. He extensively read out the aforesaid decision of the Division Bench.

11. Having heard learned counsels and considered the impugned order directing framing of charge against the appellant and the submissions and case laws relied upon by the parties, I am of the view that there is no merit in this appeal and the appellant has not made out a case for admission of the appeal. In my view, the same deserves to be dismissed at this preliminary stage itself.

12. So far as the submission of Mr. Dateer that in the certified copy of the FIR obtained by him, which was registered on 13.09.2005,

the provisions of MCOCA had been invoked even without the approval of the competent authority (which approval came only on 15.09.2005) is concerned, I find no merit in the same as the said issue cannot be determined at the stage of framing of the charge. The trial court in the impugned order, while rejecting the aforesaid submission has referred to the carbon copy of the FIR filed along with the charge sheet, which only refers to the offences under the IPC and the Arms Act. The basis for registration of the FIR was the Rukka prepared in that case and this Rukka was also a part of the charge sheet. From the impugned order it appears that the Rukka mentions only the offences under the IPC and the Arms Act and, accordingly, the FIR was registered only in respect of offences under the IPC and the Arms Act. This factual finding is not assailed in this appeal.

13. A perusal of the judgment of the Division Bench shows that while dealing with the submission of the petitioner that a new FIR should have been registered under MCOCA, and that the provision of MCOCA could not have been added later in case FIR No.521/2005, the Division Bench had observed as follows:

“So far as the point that a new FIR should be registered is concerned, we fail to see how the petitioners are prejudiced by mentioning MCOCA in the FIR No. 521/05 itself because whether there was one FIR or two, investigation has to be done in respect of the initial offence, i.e., under Sections 186/353/411 IPC as well as for offence of MCOCA. When the FIR is initially registered only the information provided by the informer or the complainant is available with the police and initially only those offences are registered which are indicated by the report of the informer. This cannot, at all,

mean that if during investigation the police discovers evidence disclosing commission or existence of other offences, the said offences cannot be added to the same FIR and, therefore, new FIRs are required to be registered on disclosure of every new offence”.

14. From the judgment of the Division Bench it is also seen that after the registration of the FIR on 13.09.2005, the proposal for invoking of MCOCA was placed before the ACP, Crime, Delhi. He approved the invocation of MCOCA on 15.09.2005 and accordingly further investigation into offences under section 3(2) and 3(4) of MCOCA were undertaken. On 21.09.2005, ACP Special Team, Crime Branch moved a petition in the Court of Sh. A.K. Garg, ASJ, Special Court, Patiala House, New Delhi seeking production warrant against the appellant Mor Singh for taking him in police custody and remand for recoveries under MCOCA. In this application, along with sections of IPC and Arms Act as mentioned in the FIR No.521/2005, section 3(2) and 3(4) MCOCA had also been mentioned.

15. From the aforesaid sequence of events, it cannot be said at this stage, without a trial, that the prosecution had invoked the provisions of MCOCA even without the approval from the ACP, which was obtained on 15.09.2005.

16. The submission of learned counsel for the appellant that he had been acquitted in all previous cases after full-fledged trial, and that the evidence and material collected by the police and placed before the competent authority for grant of sanction did not have any nexus to the offence under MCOCA, also does not survive in view of the

detailed judgment of the Division Bench.

17. Reference in this regard may be made to paragraphs 14 to 19 and 23 to 29 of the decision of the Division Bench, which read as follows:

"14. The main thrust of the argument on behalf of Mohar Singh has been that MCOCA has been wrongly applied. In most of the cases registered against Jag Mohan a verdict of acquittal was returned. If these cases are excluded from consideration it will be difficult to bring the case under MCOCA. Now as the definition of continuing unlawful activity goes under Section 2(d) of MCOCA, the requirement is that the activity is undertaken as a member of an organized crime syndicate in respect of which more than one charge-sheet has been filed within the preceding period of ten years. The definition does not carve out any distinction between charge-sheets which end in acquittal and those which end in conviction. It is contended that since the petitioner was acquitted in all the cases punishable with imprisonment for three years or more if those cases are taken into consideration the petitioner would be put to double jeopardy which is not permissible under Article 20 of the Constitution of India. At the same time it is submitted that Section 2(d) having used the words charge-sheets have been filed and court has taken cognizance which would mean that those charge-sheets are still pending. In other words, the contention is that if the decided cases were to be taken into consideration the language used would have been "charge-sheets had been filed" and "court had taken cognizance of such offences".

15. Learned Counsel for the petitioner is categorical that he is not challenging the virus of the Act. If Section 2(d) is not ultra virus it has to be given the effect to in the same sense in which it has been framed. In our opinion, the language of the section cannot be interpreted in this manner. It cannot be said that simply because the language used is "charge-sheets have been filed" and "court has taken cognizance" the section has to be

interpreted as only referring to charge-sheets pending. The language of the section clearly indicates that all such offences in respect of which charge-sheets have been filed and courts have taken cognizance have to be considered. When a case is decided there is either acquittal or conviction. There is no dispute that if the cases end in conviction they would indicate that an accused had been involved in the past 10 years in unlawful activity. However, if the interpretation of the petitioner's counsel is accepted, even those cases in which a conviction have been secured, would have to be excluded from consideration. This is not at all the intent of the legislature. The purpose of the Act is to control organized crime and hence if a person is convicted and hence proved to be a criminal, his further criminal activity is what comes under scrutiny by virtue of this Act.

16. So far as the objection to taking into account the cases in which an acquittal has taken place in view of bar of Article 20 of the Constitution of India is concerned one has to keep in mind that the accused/petitioner is not being asked to stand trial for those cases. Those cases are cited only to say that he has been accused in the past.

17. In fact the very definition shows that before a case under MCOCA is registered there should be previous charge-sheets and cognizance taken thereon. In case, petitioners interpretation of Article 20 being applicable is accepted, entire definition of the offence would be hit by Article 20 and, therefore, should be struck down. Although, the petitioner's counsel is categorical that he is not challenging the constitutionality of the Act but he wants to protect his client under Article 20. The Bombay High Court dealt with the question of virus of the Act in the light of the fundamental rights of the citizens and in that connection also came to examine whether the result of the previous prosecutions had any effect on the current FIR or prosecution. The Bombay High Court came to the same conclusion that the result of the previous charge-sheet is not material for our present purpose. While holding the definition of Section 2(1)(d) to be constitutionally valid High Court of Bombay in the case of Bharat Shantilal Shah and Ors. v. The State of Maharashtra Criminal Writ Petition No. 27/2003, observed as under:

27. We also do not find substance in the challenge that the equality clause in the Constitution is violated because the definition ropes in anyone charged more than once, irrespective of whether the charge resulted in an acquittal or conviction. The circumstances

that followed the charge are not material. The provision only defines what is continued unlawful activities and refers to whether a person has been charged over a period of ten years for the purpose of seeing whether the person is charged for the first time or has been charged often. The circumstance of conviction or acquittal that followed the charge are not material. The limited purpose is to see antecedents of the person. Not to convict.

18. The definition of the offence, i.e., continuing unlawful activity and organized crime under Section 2(d) & (e) of MCOCA, pre-supposes an earlier trial with filing of the charge-sheet and cognizance being taken by the Court. The acquittal or conviction is not determinative of commission of the offence. Rather, the filing of the charge-sheets and cognizance by the Court are regarded as demonstrative of indulging in and having propensity in unlawful activity or organized crime, which is actionable under the Act.

19. Learned Counsel for the petitioners had laid considerable emphasis in urging that the facts of the cases in which petitioners have been acquitted cannot be taken into account for the purposes of invocation of MCOCA. As noted earlier, the conviction is not a sine qua non for invocation of the offence under Section 2(d) & (e) of MCOCA. The ingredients of the offence to be satisfied are filing of more than one charge-sheet before the Competent Court against a member of the organized crime syndicate and taking of cognizance. The requirement of conviction has understandably not been made one of the ingredients of the offence considering the object sought to be achieved. Respondents have sought to demonstrate the chain and sequence of events, where acquittals have followed witnesses turning hostile or the non-availability of witnesses. Understandably, petitioners cannot be permitted to take advantage of these acquittals, especially which have followed witnesses turning hostile or evidence being obliterated.

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23. The respondent/State has given the details of unlawful activity of the petitioner Mohar Singh in the reply affidavit. On 4.11.1995, an FIR was registered being No.

435/95 at P.S. Darya Ganj in which Jag Mohan and Madan as well as Brij Mohan @ Pappu were accused of stabbing and injuring one Raju. Raju had been working at a Dhaba of Gulshan Gulati at Darya Ganj. The injured had asked the accused to pay their outstanding bill of Rs. 70,000/- for food they had consumed at the Dhaba over a long period of time. The second case is of murdering one person doing 'pairvi' in the first case. The allegation in this case is that Pawan Gulati, Omkar Gulati, Charanjeet Gulati and Rajkumar Gulati were doing pairvi in the case and in order to prevent them from doing pairvi the accused sprayed bullets at them killing Pawan Gulati and injuring Charanjeet Gulati and Omkar Gulati. The FIR registered over the incident is No. 853/96 dated 19.8.1996 under Section 302/307/34 IPC at P.S. Kotwali. The third case is intimidating a witness. Witness in the case Omkar Gulati was beaten up at the Tis Hazari Courts, Central Hall and over this incident an FIR against the petitioners, Jag Mohan and his brothers was registered being FIR No. 30/98 dated 23.1.1998 under Sections 323/506/34 IPC at P.S. Subzi Mandi. Omkar Gulati was a witness to the two previous cases against Mohar Singh and his brothers. The witness Omkar Gulati was eventually killed. It is not known whether any FIR over his killing is registered. Mohar Singh was acquitted in the case of murder of Raju. The State alleges that the acquittal could be secured because the witness above named Rajkumar Gulati and Charanjeet Gulati turned hostile on account the threats of Mohar Singh.

24. The fourth case, viz., the FIR No. 350/96 dated 19.8.1996 under Section 506 IPC was registered against the petitioner Mohar Singh and his brothers for having threatened Prabhu Dayal, a tenant in House No. F-230, Mangal Bazar, Laxmi Nagar, New Delhi, purchased by Mohar Singh. The case, however, ended in acquittal as the witness turned hostile. The fifth case, FIR No. 853/96 (over murder of Pawan Gulati) also ended in acquittal on 28.4.1998 on account of witnesses turning hostile.

25. The sixth case, FIR No. 427/96 dated 29.8.1996 under Sections 392/397 was registered against Jag Mohan for having robbed Shri Ramesh Kumar of his Maruti car at gun point. This offence incidentally was committed on the same day on which Pawan Gulati was murdered. This case also ended in acquittal as witnesses including the complainant turned hostile. The FIR No. 30/98 (assaulting witnesses) mentioned above also ended in acquittal for similar reasons.

26. The seventh case in which petitioner Jag Mohan was an accused in case FIR No. 366/98 dated 20.5.1998 under

Section 302 for murder of one Satish Kohli, who had dared to depose against him in an earlier FIR being FIR No. 64/94 dated 3.3.1994 under Sections 452/506/323/34 IPC at P.S. Darya Ganj. This case also similarly ended in acquittal on account of witnesses turning hostile. Incidentally Satish Kohli had already got the FIR No. 198/98 dated 25.5.1998 under Sections 506/34 IPC registered alleging threats from Mohar Singh. This case met the same fate as the others mentioned above.

27. Case FIR No. 428/00 dated 5.8.2000 was registered at P.S. Darya Ganj under the Wild Life Protection Act against Mohar Singh. He was arrested again on 29.12.2001 from Gulab Vatika for being in possession of a loaded .35 bore country made pistol with one live round. He was arrested in the case in hand, i.e., FIR No. 521/05 P.S. Connaught Place and was thereafter also arrested in case FIR No. 168/03 under Sections 406/420 IPC for being in possession of Toyota Qualis which was the case property which he was driving when the present offence was committed. Two cases more than 10 years old have also been listed by the respondent/state.

28. The case of the state is that the economic advantage which the petitioner sought to gain by his crime is also clear from this narration of the sequence of crime. The first crime in the sequence mentioned above is the murder of Raju which was caused to prevent him from demanding the sum of Rs. 70,000/- which was due to the Dhaba of Pawan Gulati. The arrest of the petitioner in this case led him to commit subsequent offence of intimidating and killing of witnesses. Therefore, these offences also were committed to gain pecuniary advantage. The threatening of a tenant Prabhu Dayal was done with an intention of removing him from the house in which he was lawfully living as a tenant. therefore, the pecuniary advantage sought from the alleged offence is clear. The offence of robbery committed in 1996 do not call for any analysis in this regard. The aim of the fraud in which the Toyota Qualis was obtained was also to gain pecuniary advantage.

29. The petitioners allege that there is no continuity in the unlawful activity. There is a long gap between the present case and the previous cases registered against them. This argument cannot be accepted in view of the definition of the term "continuing unlawful activity". What is required is more than one case in the preceding period of ten years. Thus if there are two cases in 1996, MCOCA can be invoked in the year 2006. This definition does not require the prosecution to prove that the unlawful activity has continued from day to day. In fact what the

prosecution is required to show is not his unlawful acts or offences but that more than one charge-sheets have been filed against the petitioners in the last ten years. The continuing unlawful activity is made out from the above sequence of cases. Apart from the FIR registered in 1995, 1996, 1998 for heinous offences like murder he was also arrested for offence under Section 25 of Arms Act in 2001 and was found involved in a case of fraud in the year 2003. The present case was registered in 2005”.

18. Therefore, it is seen that the continuing unlawful activity, in respect of which more than one charge sheets have been filed before the competent court within the preceding ten years, of which the concerned courts have taken cognizance include the offences under the Arms Act. Therefore, it is not correct for the petitioner to contend that the offences under which FIR No.521/2005 have no nexus with the offences under MCOCA. It cannot be said at this stage that the invocation of the provisions of MCOCA in the petitioners was not justified. Reliance placed on **Ranjitsingh** (supra) appears to be misplaced in view of the facts of this case, as discussed herein above.

19. Even the argument that the registration of the FIR and invocation of MCOCA is malafide and politically motivated was considered and rejected by the Division Bench in paragraphs 30 to 32 of the judgment, which read as follows:

“30. On the point of mala fides, it is submitted by the petitioners that the police is intending to damage the increasing popularity of the petitioners, particularly Jag Mohan amongst the Valmiki community. Photographs showing the petitioners, particularly Jag Mohan @ Mohar Singh organizing rallies and receiving important political figures of the country have been placed on the record to show that the petitioners do have some political clout and are well known amongst the people whom they profess to lead. It is further alleged that while the petitioners are

politically active and are available in various public functions, non-bailable warrants against them have been obtained with the sole motive to malign them. The petitioners cite this as indicating malafides.

31. What, however, we have to see is whether the investigation/ prosecution is right in registering the offence of MCOCA against the petitioners. At this stage malice or personal vendetta is not at all a factor which is required to be gone into. The Apex Court in *M.Narayandas v. State of Karnataka* MANU/SC/0734/2003 : 2004CriLJ822 , relied upon the following observation from the case of *State of Haryana v. Bhajan Lal* MANU/SC/0115/1992 : 1992CriLJ527:

108. No doubt, there was no love lost between Shri Bhajan Lal and Dharam Pal. Based on this strained relationship, it has been then emphatically urged by Mr. K.Parasaran that the entire allegations made in the complaint due to political vendetta are not only scurrilous and scandalous but also tainted with mala fides, vitiating the entire proceedings. As it has been repeatedly pointed out earlier the entire matter is only at a premature stage and the investigation is not yet proceeded with except some preliminary effort taken on the date of the registration of the case, that is on 21-11-1987. The evidence has to be gathered after a thorough investigation and placed before the court on the basis of which alone the court can come to a conclusion one way or the other on the plea of mala fides. If the allegations are bereft of truth and made maliciously, we are sure, the investigation will say so. At this stage, when there are only allegations and recriminations but on evidence, this Court cannot anticipate the result of the investigation and render a finding on the question of mala fides on the materials at present available. Therefore, we are unable to see any force in the contention that the complaint should be thrown overboard on the mere unsubstantiated plea of mala fides. Even assuming that Dharam Pal has laid the complaint only on account of his personal animosity, that, by itself, will not be a ground to discard the complaint containing serious allegations which have to be tested and weighed after the evidence is collected. In this connection, the following view expressed by Bhagwati, C.J. in *Sheonandan Paswan v. State of Bihar* MANU/SC/0206/1986

It is a well established proposition of law that a criminal prosecution, if otherwise justifiable and based upon adequate evidence does not become vitiated on account of mala fides and political vendetta of the first informant or the complainant.

32. If the prosecution is able to produce sufficient evidence to prove that the petitioners in the last ten years have been involved in more than one case of the type which is covered by the definition of continuing unlawful activity, their action in having taken action against the petitioners for the offence under Sections 3 & 4 of MCOCA cannot be faulted with”.

20. In view of the aforesaid discussion, I find no illegality or other infirmity in the impugned order passed by the learned ASJ/Special Judge Sh. J.R. Aryan dated 26.03.2010 ordering framing of charge against the appellant, inter alia, under section 3(2) and 3(4) of MCOCA. Accordingly, I dismiss this appeal.

MAY 19, 2010

sr/rsk

VIPIN SANGHI, J.