

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

+ CRL.Rev.P.No.42/2012 & Crl.M.A.No.975/2012

% Judgment reserved on :01st March, 2012
Judgment delivered on: 23rd April,2012

STATE GOVT OF NCT OF DELHI

..... Petitioner

Through : Mr.Dayanu Krishnan, ASC with
Mr.Nikhil A Menon, Adv.

versus

KHALIL AHMED

..... Respondent

Through : Mr.Rakesh Khanna, Senior Advocate
with Mr.Rahul Tyagi, Mr.C. P. Tyagi &
Mr.V.V.P.Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide instant petition, the State – petitioner has sought to quash the impugned order dated 16.11.2011 passed by learned Additional Sessions Judge-01, (Central) Delhi whereby learned Trial Judge found no sufficient evidence to make out *prima facie* case against respondent Khalil Ahmed for the offence punishable under Section 3(2), 3(4) and Section 4 of the Maharashtra Control of Organised Crime Act (hereinafter referred to as the MCOCA). Thus, learned Trial Judge discharged the respondent for the offences alleged therein.

2. It is pertinent to mention here that the charge-sheet was filed against the petitioner for the offences punishable under Sections 384/387/506/467/

468/471 Indian Penal Code, 1860 and Section 3(2), 3(4) and Section 4 of MCOCA. However, finding *prima facie* offences punishable under Section 386/387/506-II and Section 467/468/471 Indian Penal Code, 1860, which are triable by the Court of learned Magistrate, the matter has been sent back, accordingly.

3. The facts in brief of the case are that complainant namely Sh.Qmar Ahmad has been running a trading company in the name of M/s A.S. Traders at Khari Baoli, Delhi. On 16.02.2009, when he was present at his shop along with his business partner namely Sanjeev Bhist, two persons came at his shop at about 02:30 PM. One of them handed over his mobile phone to him and forced to talk with Khalil Ahmed/respondent , a notorious criminal of the area. It was alleged that respondent had threatened him & demanded ₹ 10.00 Lacs. Also threatened in case of non-payment, he should be ready to face the music and in that eventuality he would eliminate him and his family. Respondent asked him to reach Darya Ganj immediately. Complainant expressed his inability to reach there immediately, he asked him to come to Tis Hazari on the next day at about 11:00 AM. One of the persons picked up the visiting card also from his shop. It was further alleged that while leaving the shop, both the persons threatened the complainant that in case extortion amount was not paid, complainant would have to face the consequences. It was further alleged that he was so terrified that he did not report the matter to the police.

4. On 17.02.2009, when the complainant along with Sanjeev were getting the complaint prepared at Karkardooma Court, complainant had received a call on his mobile phone bearing no. 931063391 from a mobile

phone bearing no.9210459185, respondent was caller and he rebuked him for not reaching at Tis Hazari and again terrorized him. Complainant disconnected the phone. Though, complainant had received 2-3 more calls from the said number yet complainant did not attend the same. It was stated that at about 11:50 AM, complainant had again received a call from the same number, but this time it was attended by Sanjeev posing himself as driver of complainant and when Sanjeev told that '*sahib* (complainant) had gone inside the court' respondent infuriated and threatened him. Complainant continued to receive numerous calls from the above number and another number i.e. 9871144610, but he did not attend the calls. At about 02:00PM, respondent alongwith 8-10 persons visited his shop and intimidated his servant Imran, who told the same to the complainant on phone.

5. On the statement of complainant, an FIR for the offences punishable under Sections 384/506 Indian Penal Code, 1860 was got registered. Upon lodging of the FIR, it was alleged that the complainant reached his shop in the evening. The respondent came there and threatened the complaint that he would have to face the music of lodging the FIR against him. On 26.02.2009, respondent was apprehended from near India Habitat Centre, Lodhi Road, New Delhi, when he along with his associate came there on a bike. Though his associate had managed to escape, yet police succeeded in apprehending the respondent.

6. From the respondent, two mobile phones bearing Nos.9210459185 and 9871144610 were recovered. It was alleged that said phones were used in threatening the complainant. One Lancer car bearing registration No.DL-

3C-S-1209 was also recovered at the instance of respondent. It was alleged that original papers of several properties and other incriminating documents were recovered from the said car. During the search of house of respondent located at F-2 Andrew Ganj, New Delhi, 12 cheque books, one pass book and photostate papers of many properties were recovered.

7. During interrogation respondent had confessed his guilt of extortion of ₹ 10.00 Lacs from complainant but respondent did not reveal the name of his associates who visited the shop of complainant and threatened him. It is further revealed that respondent was a notorious extortionist of the area and was found involved in 34 cases of extortion, dacoity, kidnapping, assault, intimidation, murder, attempt to murder etc. He was allegedly running an organized crime syndicate with the help of his associates to terrorize the businessmen and shopkeepers of walled city area and used to extort money from them.

8. Considering the above revelation, on 23.03.2009, after taking the prior approval of Joint Commissioner of Police, Special Cell, Delhi, provisions of MCOCA were invoked against the respondent. During investigation, it was surfaced that respondent had many bank accounts, debit and credit cards of various banks and he had acquired number of properties in his name in a few years, despite the fact that he had no source of regular income. During scrutiny of said documents of 19 properties – which were recovered from his house - out of those, six properties were found disputed. It was alleged that respondent had tried to terrorize one party at the behest of another one with some consideration, sometimes directly and sometimes behind the scene. Papers of six disputed properties had been placed on

record of learned Trial Judge; whereas the documents pertaining to other 13 properties have not been produced. Original documents of some properties were also recovered from the house of respondent.

9. It is further revealed that respondent had got transferred property bearing No.503/22 Zakir Nagar, Okhla, New Delhi by preparing forged documents as the stamp of vendor of non-judicial paper and stamp of notary on the transfer documents were found fake. The owner of property Rehena Begum was untraced. Accordingly, Sections 467/468/471 Indian Penal Code, 1860 were added in the challan. It was alleged that property bearing No.113A, Khasra No.159 village Adhchini, New Delhi was sold by one Riazuddin to Asfaq and documents of said transaction were got prepared by respondent and the stamp of notary on the said documents was found fake. It was alleged that part of the said property was forcibly occupied by respondent and from which respondent is running his office of tour and travels in the name of 'M/s.Creative International'. It was alleged that Asfaq had not received the document from respondent despite making the payment for the property. It was also alleged that in one case, Asfaq was forced to give a receipt of ₹ 12.50 lac in the name of respondent despite the fact that no payment was made to Asfaq.

10. Further allegations against the respondent are that he had purchased an industrial plot bearing No.S-18, Handloom Complex Industrial Estate, Loni, Ghaziabad, UP from 'UP Financial Corporation and made a payment of ₹ 9.50 Lacs 'UP Financial Corporation' through various cheques and demand drafts during the period 2000 to 2002. He had purchased the said

lancer car for the sum of ₹ 5.00 lac from one Mukesh. He had also procured a three storied house bearing No.503/22 Zakir Nagar, Okhla, New Delhi.

11. Further, it is alleged that the present market value of above properties and car is about ₹ 1.00Crore, which is beyond the known source of income of respondent. Thus, it was alleged that respondent had acquired the above properties by extortion and other fraudulent means by running an organized crime syndicate, accordingly Section 4 of MCOCA was added in the challan.

12. During investigation, it is further revealed that four bank accounts of the respondent existed; out of which two bank accounts of his wife Reshma Khalil and one bank account in the name of her daughter namely Ms. Ananta Khalil, were surfaced and scrutiny of transactions revealed that substantial amount have been involved which is beyond the known source of respondent.

13. Further it is alleged that he had procured mobile connection bearing No.9210459185 by using the ID of Avinash Chader Chawla; whereas, mobile connection bearing No.9871144610 was procured in the name of Razia Rajesh, sister in law of respondent. It was further alleged that on scrutiny of calls detail of both the phones, revealed that location of respondent on 17.02.2009 was found in the area of Khari Baoli, Delhi. It is further alleged that respondent was found involved in more than 34 cases and details of cases wherein cognizance had been taken during the last 10 years have been placed before learned Trial Judge.

14. Further it is alleged that the remaining associates of respondent could not be identified due to his non-co operation in the investigation.

15. Since the allegations against respondent is that he alongwith his associates has been running an organized crime syndicate in Delhi with an intention to get pecuniary gain by committing various crimes by threat, extortion, murder, attempt to murder, kidnapping assault etc; therefore, after obtaining sanction under Section 23 of MCOCA, accordingly *challan* was filed for the offence punishable under Sections 3(2), 3(4) and Sec.4 of MCOCA and under sections 384/386/506/467/468/471 Indian Penal Code, 1860.

16. Thereafter, supplementary *challan* also filed on the allegations that market value of property bearing No.S-18, Handloom Complex Industrial Estate, Loni, Ghaziabad was found ₹ 60,90,000/-; whereas the market value of property bearing No.503/22, Zakir Nargar, Okhla, New Delhi was found ₹8,14,650/-. The respondent had purchased many items worth of ₹5,48,681/- by using his different five credit cards during the period 2006 to 2009. It was also alleged that respondent had filed his Income Tax Returns under two different PAN which is not permissible. Beside that investigating officer also filed the FSL result on the record.

17. Learned Trial Judge in the impugned order has observed that to make out a *prima facie* case against respondent under MCOCA, first of all, the prosecution has to establish that respondent was either a member of the organized crime syndicate or gang or was acting on behalf of such syndicate or gang.

18. Learned Trial Judge has referred the 'Statement of Object', Section 2(e), 2(d) and 2(f) of MCOCA and recorded that in the charge-sheet, it is alleged that the respondent was running a organized crime syndicate with the help of his associates, yet the investigating officer failed to describe the alleged syndicate. Even the investigating agency failed to identify or nab the associates of respondent on the ground that he did not cooperate during investigation.

19. Here, learned Trial Judge recorded that right to remain silent is the fundamental right of the accused, thus the reason furnished by the investigating agency for not ascertaining the identity of his alleged associates is not justifiable.

20. Admitted case of the prosecution is that respondent was found involved in more than 34 criminal cases. Even some cases, respondent had been charge-sheeted along with other persons. Despite that no efforts were made to find out whether his earlier co-accused were the persons to whom he had sent at the shop of complainant for the demand of extortion of ₹ 10.00 lacs. Investigating officer could easily show the dossier of earlier co-accused of respondent to the complainant and other witnesses to ascertain as to whether his earlier companions were the persons who had threatened the complainant on behalf of respondent. But no such efforts were made in this regard.

21. It is further recorded that the investigating officer has filed the list of 34 cases showing the involvement of respondent since 1985 to 2009. In the year 1996, respondent was charge-sheeted for the offence punishable under

Sections 392/397/34 Indian Penal Code, 1860 in case FIR No.30/96 registered at police station Keshav Puram, Delhi and again charge-sheeted for the offence punishable under Sections 387/506/34 Indian Penal Code, 1860 in case FIR No.39/08 PS Spl. Cell lodged at PS-Spl. Cell. In case FIR no. 39/08, respondent was charge-sheeted along with one Amit Vaish @ Jugnu whereas in case FIR No.30/96 said Amit Vaish @ Jugnu was not an accused. In all the 34 cases, either respondent is alone charge-sheeted or if there is any co-accused, then that person was not charge-sheeted in subsequent cases. Thus, there is no common accused in more than one case.

22. In these circumstances, learned Trial Judge was of the opinion that it cannot be said that respondent was running any syndicate or gang or acting on behalf of any such syndicate or gang.

23. Similarly, there is no evidence on record that persons who had threatened the complainant on behalf of respondent were the persons who ever associated with the respondent in any criminal activity.

24. Learned Trial Judge on the aspect of approval and sanction order passed by Mr.P.N.Aggawal, Joint Commission of Police, Special Cell, New Delhi observed that the approval was granted on 19.03.2009 whereas; sanction order was passed on 11.06.2009. When the investigation was not concluded, approval was granted stating therein respondent was running a crime syndicate for committing organised crime, who was planning to harm the lives and property of Shri Qmar Ahmed and his family with the help of his associates/syndicate members. When investigation was completed, sanction to prosecute the respondent was accorded stating that respondent

was engaged in illegal acts of murder, attempt to murder, criminal intimidation, extortion and kidnapping etc and have been continuing in unlawful activities as a member of an organised crime syndicate.

25. Learned Trial Judge has further recorded that approval order and sanction order are paradoxical because as per approval, respondent was running an organised crime syndicate, whereas as per sanction order, he was merely a member of the organised crime syndicate. It means that after investigation, investigating officer found that respondent was not running an organised crime syndicate but he was merely a member of said syndicate. There is nothing in charge-sheet to show who was running the organised crime syndicate, of which respondent is merely a member.

26. Therefore, learned Trial Judge was of the opinion that investigating agency failed to collect sufficient evidence to show *prima facie* that respondent was either running an organised crime syndicate or was member of any such syndicate.

27. On the contentions relating to - whether the charge-sheet filed against respondent, satisfied the conditions of Section 2(d) MCOCA or not? In order to satisfy the condition of Section 2(d) of the Act, prosecution has relied upon the list of 34 criminal cases, which were filed against the respondent during the period 1985 to 2009. These 34 cases includes present one. Scrutiny of the cases reveals that prosecution has not filed the copy of charge-sheet of 20 cases, thus these 20 cases cannot be considered at the time of considering the continuous unlawful activities of the respondent because in the absence of charge-sheet, learned Trial Judge was unable to

ascertain as to whether the offence committed therein was related to organised crime or not. Out of remaining 16 cases, two cases (FIR No.183/2006 and 96/2006) pertained to the offence punishable under Section 25 of the Arms Act, 1959. One case (FIR No. 09/2004) pertained to Section 20 of NDPS Act.

28. Learned Trial Judge was of the opinion that by no stretch of imagination, the offences allegedly committed under the above FIRs can be considered as an offence committed either as a member of an organised crime syndicate or on behalf of such syndicate.

29. I note, learned Trial Judge has recorded that the contents of three cases i.e. FIR Nos.34/1992, 395/2001 and 85/1986, on considering all the facts of these three cases and involvement of respondent therein, learned Trial Judge was of the view that prosecution has failed to show *prima facie* that above three cases were committed by respondent as a member of organised crime syndicate or on behalf of such syndicate. Thus, he was of the opinion that said three cases do not qualify the requirements of Section 2(d) of the Act.

30. While dealing with the contention regarding to so called huge properties acquired by the respondent, according to the prosecution, respondent had acquired three immovable properties namely 503/22, Zakir Nagar, Okhla, New Delhi (property no.1), 113A-Village, Adhchhini, New Delhi (property no.2) and S-18, Handloom Complex, Industrial Estate, Loni, Ghaziabad (property no.3) and one movable property i.e lancer car (property no.4). The prosecution case is that respondent had acquired the said

properties by doing unlawful activities and occupied the properties being the member of an organised crime syndicate.

31. I find, learned Trial Judge discussed the links of the properties and the investigation thereon and came to the conclusion that there is no evidence on record whatsoever that value of the said property in the year 2000 was more than ₹ 70,000/- or respondent had forced the vendor to sell the property against her wishes at just throw away prices. Moreover, there is no allegation against the respondent that respondent had acquired the said property by committing an offence as a member of an organised crime syndicate or on behalf of such syndicate. The mere allegation is that he acquired the property by doing unlawful activities/offences, which is not sufficient.

32. Qua property No.2, learned Trial Judge opined that there is no allegation that Riazuddin had not received the payment of said transaction qua the aforesaid property. There are no allegations that there was any dispute between the vendor and vendee. Secondly, the documents of seized by the police reveals that vendor Riazuddin had sold the property to vendee in the sum of ₹ 2,75,000/- on 05.01.2008, on payment so received by Riazuddin. Since the property was sold by Riazuddin to Ashfaq, there was no occasion for Ashfaq to make payment to the respondent. Moreover, there is no allegation that Riazuddin had not received the payment of said transaction. Moreso, it is clear if the respondent had occupied a portion of said premises forcibly then why no action initiated against respondent.

33. Therefore, learned Trial Judge was of the opinion that neither there is

allegation nor it can be culled out by any stretch of imagination that the said act could fall within the purview of an organised crime.

34. Qua property No.3, learned Trial Judge opined that if the value of the plot is appreciated during 1999 to 2009, then what is the fault of respondent. It appeared to learned Trial Judge that appreciated value has been mentioned in the charge-sheet to mislead the court, otherwise there was no occasion to mention the estimated present market value of the plot when the exact value of the plot is undisputed.

35. Qua property No.4, i.e. lancer car, learned Trial Judge has opined that when the value of the car is depreciated even just after buying being labelled as 'second hand car'. This shows that the investigation has not been conducted fairly and impartially.

36. Learned Trial Judge has recorded that to invoke the Section 4 of the MCOCA, the prosecution has to show *prima facie* that respondent was holding the above properties either being the member of an organised crime syndicate or on behalf of any member of such syndicate. Thus, learned Trial Judge was of the opinion that prosecution has failed to make out a prima-facie case for the offence punishable under Section 4 of the MCOCA.

37. Learned Trial Judge has also in the impugned order recorded on maintaining four bank accounts; out of them two accounts were maintained by his wife while, his daughter was maintaining one bank account. By totalling the debit and credit balance, investigating officer has mentioned the amount in the charge-sheet, which is not the proper method to analysis an account of a person.

38. Learned Trial Judge has further recorded in the impugned order that during the course of arguments, neither learned Public Prosecutor nor investigating officer able to point out any entry or specific period which appeared doubtful. The analysis of all the bank accounts filed by the prosecution on record reveals that respondent had deposited minimum ₹ 400 and maximum ₹ 60,000/- in the accounts. It is admitted case of the prosecution that respondent was running a Tours and Travels business, in such type of business maximum transactions take place in cash. In the absence of any contrary evidence, learned Trial Judge finds no reason to disbelieve the contention of learned defence counsel that the credit entry in the bank accounts pertain to the sale proceeds of the said business. Moreover, it looks quite absurd that a person of criminal mind would deposit the booty in the bank account. If prosecution version is believed, it means that all credit entries such as ₹ 400/-, ₹ 1000/- ₹ 2000/-, ₹ 2500/- and so on were part of booty amount. Therefore, learned Trial Judge was of the opinion that it would amount to illogical inference.

39. On the basis of above, learned Trial Judge opined that prosecution failed to make out a *prima facie* case against the respondent for the offence punishable under Section 3(2), 3(4) and Section 4 of the MCOCA. Thus, discharged respondent from the above charges.

40. Being aggrieved, the State has filed instant petition wherein it is stated that learned Trial Judge has discharged the respondent from the Sections of MCOCA on the grounds that there is no evidence to show that respondent was a member of organized crime syndicate allegedly being run by him. Learned Trial Judge pointed out that prosecution failed to identify the

members of alleged organized crime syndicate who were suspectedly involved in the instant case.

41. Further, learned Trial Judge observed that:- *‘Approval order and Sanction order are paradoxical because as per approval respondent Khalil Ahmed was running an organised crime syndicate whereas as per sanction order he was merely a member of the organised crime syndicate. It means that after investigation, investigating officer found that respondent was not running an organised crime syndicate but he was merely a member of said syndicate. There is nothing in charge-sheet to show who was running the organised crime syndicate, of which respondent Khalil Ahmed is merely a member.’*

42. Learned Trial Judge observed that prosecution could not prove that alleged offences committed by respondent were committed as a member of organized crime syndicate with an objective to pecuniary gains or undue economic advantage. That although, prosecution had given the list of 34 criminal cases of respondent, certified copy of 14 charge-sheets and cognizance taken by the Court, details of associates/ members of organized crime syndicate arrested with respondent in 10 criminal cases but prosecution could not establish that these offences were committed being member of organized crime syndicate or on behalf of such syndicate.

43. Learned counsel for the petitioner further submitted that learned Trial Judge observed that prosecution could not prove that three properties, one lancer car, money deposited in various bank accounts held by respondent and his family members and money used in purchase of various items

through various debit/credit cards have been earned through crime proceeds.

44. Mr. Dayanu Krishanan, learned Additional Standing Counsel submitted that learned Trial Judge did not appreciate the evidence collected by the prosecuting agency and ignored contentions submitted which were fully supported by the concrete evidence. Rather, learned Trial Judge chose to appreciate the contentions of defence counsel despite the fact that he did not produce any documentary or reliable evidence in support of his claim.

45. As per contention of learned counsel for petition, learned Trial Judge did not consider the following aspects of investigation in judicious manner;

46. Learned Trial Court believed the contentions of defence counsel without any supportive documents like rental income of respondent from the plot at Loni.

47. Learned Trial Judge failed to appreciate the *modus operandi* of respondent to change his associates frequently and not to repeat them in subsequent offences to avoid invocation of MCOCA. Out of 34 cases, the list of which has been provided, cases of robbery, dacoity, extortion, theft NDPS etc are property offences which were evidently committed by respondent for pecuniary gain. Other offences of murder, attempt to murder kidnapping, hurt, assault, intimidation etc were committed to dominate the world of crime to spread terror/fear in the public to extort money or to settle scores of old rivalry / personal enmity etc. Respondent has been continuously and consistently committing crime at regular interval since the year 1985 as evidence from the list of cases.

48. Ld. Counsel submitted that respondent was charge sheeted and cognizance was taken by the Courts in seven cases during the last ten years while the requirement of MCOCA is only in more than 01 case cognizance taken by the Court during the last ten years.

49. Before proceeding further, it is would in place to mention that both learned counsel for parties, relied upon even on same decisions; hence, first the submission of respondent is being taken and thereafter, reliance of both learned counsel shall be dealt with.

50. Mr.Rakesh Khanna, learned Senior Advocate appearing on behalf of respondent submitted that learned Trial Judge has passed a correct order which does not require any interference. The allegation as made in the charge-sheet clearly shows commission of offence under Indian Penal Code, 1860 and not MCOCA. The sanction order, charge-sheet and approval order are contrary to each other. The prosecution initially alleged that respondent is a head of crime syndicate and at later stage, respondent has been projected as member of the syndicate.

51. He further submitted that the case as has been presented by prosecution before this Court is being argued for the first time. All the grounds and contentions raised by learned Additional Standing Counsel neither pleaded before learned Trial Judge nor same are part of the charge-sheet. Hence, in the revision petition no fresh grounds or contentions can be entertained and instant petition is liable to be dismissed.

52. After hearing both learned counsel for parties, before adverting to the

merits of the matter, reliance of both the parties can be recapitulated as follows.

53. To support his contention, learned counsel for petitioner, relied upon **Jagmohan @ Mohar Singh v. Commission of Police & Ors.(Delhi) : 2007 (1) JCC 292** wherein Division Bench of this Court on Section 2(d) of the MCOCA observed as under:-

“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.”

54. Learned counsel for respondent relied upon on para Nos.19 & 39 of the above cited case, wherein it has been observed as under:-

“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.

39. Thus existence of a crime syndicate could be inferred by the Joint Commissioner of Police when he granted sanction for including MCOCA in FIR No.525/05. At the time when the sections of MCOCA were included in the FIR, there were allegations of their continuing involvement in crime syndicate particularly in offences of extortion and intimidation. Evidence of the main accused and the brothers having amassed wealth by means of their criminal activities was also being discovered. It is not necessary that every activity of extortion or other offence of violence gets registered in the form of an FIR. Since the allegations are that the brothers are indulging in unlawful criminal activity, even those activities for which no FIR had been registered till then could be taken into account. Thus,

the FIR being registered on the basis of available material as discussed above cannot be quashed on the ground that subsequent investigation did not yield any evidence against all the four or against anyone of the four. The sufficiency of the evidence for the purpose of charge can be examined either at the time of summoning of the accused or at the time of framing of charge. When FIR has been rightly registered the police has a right to proceed to arrest the accused. The arrest of the four petitioners, namely, Jai Chand @ Munna, Brij Mohan @ Pappu, Khoob Singh and Sher Singh, have been kept in abeyance and they have been interrogated by the investigation without arrest. The embargo against their arrest is accordingly removed and the State can proceed against them as per law as warranted.”

55. On the aspect of sanction, learned counsel for petitioner relied upon **Ganesh Nivrutti Marne v. The State of Maharashtra** **Crl.Appeal No.930/2009 on 07.05.2010** by Division Bench of Mumbai High Court wherein it has been held as under:-

“15. At the outset, we must state that we are unable to accept the argument that the approval order or the sanction must specifically state the charges and the role of each accused. Neither the approval order nor the sanction order is expected to be like a treatise. It cannot be equated with a charge-sheet. Undoubtedly, it is necessary for the investigating authority to place adequate material before the authority which grants approval and sanction and the approval order and the sanction order being not a mechanical exercise must disclose application of mind. But they are not expected to be verbose. It is wrong to hold that prolixity is indicative of application of mind. We have carefully read and the approval order. It refers to the proposal and relevant papers submitted by the Kothrud Police Station. It states the names of the accused, who are members of the organized crime syndicate. It states

that after perusal of the material it appears that the accused are indulging in continuing unlawful activities for gaining pecuniary undue economic and other advantages and, therefore, it is necessary to initiate action under the provisions of the MCOCA and, therefore, the approval is being given for that purpose. The approval order, in our opinion, is issued after proper application of mind.”

56. Learned counsel for respondent in addition to above para, relied upon the observation of Division Bench in para Nos.2, 12, 16 & 17 which reads as under:-

“2. The prosecution case needs to be shortly stated. It is as under:

The appellant along with other accused hatched conspiracy and committed murder of Sandeep Mohol (for convenience, "the deceased") on 4/10/2006 at about 11.30 a.m. while he was proceeding in his four wheeler near a traffic signal near Paud Flyover Bridge, Paud Road, Pune. The appellant and others committed murder of the deceased with the aid of chopper, sickle, revolver, etc. on account of previous enmity and rivalry between the two gangs. The appellant heads the Ganesh Marane Gang and all the accused are members of the said gang. The appellant and other members of the organized crime syndicate have committed several offences of similar nature in the past to gain an edge over the rival gang and to achieve supremacy in the local area. The appellant and other accused acting in a synchronized manner planned and conspired to murder the deceased on 4/10/2006. The accused came on motorcycles and surrounded the four wheeler in which the deceased was sitting. They broke the glasses of the windows of the four wheeler of the deceased and attacked the deceased in a well planned manner. After successfully commissioning the crime, they fled away. Offences punishable under Sections 302, 307, 143, 147,

148, 149, 120-B and 109 of the Indian Penal Code (for short, "the IPC") and Section 3(25) of the Arms Act were registered vide C.R. No.562 of 2006 at Kothrud Police Station, Pune on the complaint lodged by Mr. Prakash Dagdu Karpe against five named accused and 3-4 unknown persons. During the course of investigation, police came to the conclusion that the appellant and other accused are members of organized crime syndicate headed by the appellant and they were indulging in organized crime with a view to gaining pecuniary benefits. Therefore, after obtaining approval under Section 23(1) of the MCOCA, offences under Sections 3(1), 3(2) and 3(4) of the MCOCA came to be added. Thereafter, sanction under Section 23(2) of the MCOCA was obtained from the Competent Authority. The appellant and others came to be arrested on 25/10/2006. The application preferred by the appellant praying for discharge has been rejected vide the impugned order and, hence, the appellant has preferred this appeal.

12. Mr. Chitnis strenuously urged that since the facts involved in the co-accused's case are identical and similar arguments were advanced in both the matters, judicial propriety demanded learned Special Judge to follow the view taken in the similar matter by his predecessor and discharge the appellant. Ordinarily if the role of the accused is identical and all the facts are similar, a court would follow the view taken by a coordinate court. However, before us the entire matter is at large. We will have to consider the case of the present appellant independently. The view taken by a coordinate trial court is not binding on us. We must also bear in mind that the present appellant heads the gang. The gang is named after him. We would, therefore, consider his case independently. We must however note our dissatisfaction about the conduct of the investigating

agency. It is not understood how if it was desirous of challenging the order discharging the co-accused Taru, it slept over the matter for such a long time. The Director General of Police, State of Maharashtra needs to look into this matter.

16. It is pertinent to note that the sanction order begins by saying that the Assistant Commissioner of Police, Crime-I has submitted official note sheets dated 20/3/2007 and 28/3/2007 along with papers of investigation of C.R.No.562 of 2006 and proposal for sanction under Section 23(2) of the MCOCA. It states the names of the accused. It refers to the evidence collected during investigation and states that it reveals that the accused are members of the organized crime syndicate. It states that the investigation has revealed that the appellant and his associates run an organized crime syndicate with a view to gaining pecuniary benefits and other advantages for themselves by use of violence, intimidation and other coercive means. It states that the evidence clearly establishes that the appellant and his associates in furtherance of the activities of their organized crime syndicate have committed offence in question by using firearms voluntarily to establish their supremacy over their rival gang.

17. We are, therefore, of the opinion that the sanction order has been issued after perusing the proposal as well as two official note sheets. It is not as if the sanction order has been issued on the basis of a cryptic note placed before the sanctioning authority. The averments made in the sanction order indicate that it is issued after application of mind.”

57. On count of 'pecuniary gain' learned counsel for petitioner relied upon **Vinod G. Asrani v. State of Maharashtra : 2007 (3) SCC 633**

wherein the Apex Court in Para Nos. 7 to 9 observed as under:-

“7. According to Mr. Altaf Ahmed, the non-inclusion of the petitioner's name in the approval granted under Section 23 (1) (a) is of no consequence since during investigation his complicity was established and thereafter sanction was sought to prosecute him along with the others under Section 23 (2) of MCOCA. Mr. Ahmed submitted that the allegations against the petitioner were sufficient to charge sheet him under the provisions of MCOCA along with other accused as being part of an organized crime syndicate involved in the commission of organized crimes.

8. We have carefully considered the submissions made on behalf of the respective parties and the relevant provisions of MCOCA and we are of the view that the High Court did not commit any error in dismissing the petitioner's writ application. We are inclined to accept Mr. Altaf Ahmed's submissions that non-inclusion of the petitioner's name in the approval under Section 23 (1) (a) of MCOCA was not fatal to the investigation as far as the petitioner is concerned. On the other hand, his name was included in the sanction granted under Section 23 (2) after the stage of investigation into the complaint where his complicity was established. The offences alleged to have been committed by the petitioner has a direct bearing and/or link with the activities of the other accused as part of the Chhota Rajan gang which was an organized crime syndicate.

9. As pointed out by Mr. Ahmed, this Court in the case of Kari Choudhary vs. Mst. Sita Devi &

Ors.,(2002) 1 SCC 714, had while considering a similar question observed that the ultimate object of every investigation is to find out whether the offences alleged have been committed and, if so, who had committed it. The scheme of the Code of Criminal Procedure makes it clear that once the information of the commission of an offence is received under Section 154 of the Code of Criminal Procedure, the investigating authorities take up the investigation and file charge sheet against whoever is found during the investigation to have been involved in the commission of such offence. There is no hard and fast rule that the First Information Report must always contain the names of all persons who were involved in the commission of an offence. Very often the names of the culprits are not even mentioned in the F.I.R. and they surface only at the stage of the investigation. The scheme under Section 23 of MCOCA is similar and Section 23 (1) (a) provides a safeguard that no investigation into an offence under MCOCA should be commenced without the approval of the concerned authorities. Once such approval is obtained, an investigation is commenced. Those who are subsequently found to be involved in the commission of the organized crime can very well be proceeded against once sanction is obtained against them under Section 23 (2) of MCOCA.”

58. On the aspect whether ‘other advantage’ has to be read with ‘gaining pecuniary advantage’ in Section 2(e) of MCOCA, learned counsel for petitioner relied upon **State of Maharashtra v. Jagain Gagensingh Nepali @ Jagya & Ors** : **Crl. Appeal No.20/2011** decided by Full Bench of Bombay High Court in August, 2011 wherein it has been observed as under:-

“Since the Division Bench of this Court vide its order dated 26th April 2011 passed in Criminal Appeal No.20/2011 has disagreed with the view taken earlier by two Division Benches of this Court in Sherbahadur Akram Khan v. State of Maharashtra, 2007 ALL MR (Cri) 1 and Madan Ramkisan Gangwani, 2009 ALL MR (Cri)1447 that the term “other advantage” used in Section 2(e) of the Maharashtra Control of Organized Crime Act,1999 (“MCOCA” for short) has to be read ejusdem generis with the words “for pecuniary benefits and undue economic”, the matter is placed before us.

2. The question, therefore, that we are called upon to answer is “as to whether the term “other advantage” has to be read as ejusdem generis with the words “gaining pecuniary benefits, or gaining undue economic advantage” or whether the said term “other advantage” is required to be given a wider meaning”.

3. We have heard Mrs.A.S.Pai, learned Addl. P.P. and Mr.Amit Desai, learned senior counsel in support of the proposition that the term “other advantage” is required to be given wider meaning and Mr.S.R. Chitnis, learned senior counsel, Mr.A.H.H.Ponda and Mr.Shrikant Shivade, learned counsel in support of the proposition that the term “other advantage” is required to be read as ejusdem generis with the words “gaining pecuniary benefits, or gaining undue economic advantage.

20. The perusal of section 2(e) would reveal that after the words “gaining pecuniary benefits” there is a “comma” followed by the words “or gaining undue economic or other advantage”. We have already reproduced hereinabove the dictionary meaning of “pecuniary” and “economic”. To a

pertinent query as to what the words “other advantage” could mean, if the principle of ejusdem generis was to be applied. Mr. Ponda, learned counsel stated that other advantage would mean and include financial, material, monetary profit, corruption, controlling market, parallel market and enrichment of participation. It can, thus, clearly be seen that all these would encompass within the term either “pecuniary” or “economic”. It would, thus, be clear that the class or category of “pecuniary benefit” and “economic advantage” will stand exhausted. As such one of the essential conditions for applying the principle of ejusdem generis, would not be available. Since the preceding words do not constitute mere specification of the genus but constitute description of complete genus, the rule of ejusdem generis will have no application as held by the Apex Court in Amar Chandra Chakraborty v. Collector of Excise, Tripura & Tribhuban Parkash v. Union of India (cited supra). It is a settled principle of law that the rule has to be applied with care and caution. It is not inviolable rule of law but it has only permissible inference in the absence of any indication to the contrary. For the reasons to be discussed herein-after we also find that even the legislative intent would not permit such a narrow construction. If the construction as put forth by the respondents has to be accepted, then the term “other advantage” would become otiose. The Apex Court in the case of Grasim Industries Ltd. v. Collector of Customs, Bombay, (2002) 4 SCC 297 has observed thus :

10. No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no

word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sentential legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided. As stated by the Privy Council in *Crawford v. Spooner* "we cannot aid the Legislature's defective phrasing of an Act, we cannot add or mend and, by construction make up deficiencies which are left there ". In case of an ordinary word there should be no attempt to substitute or paraphrase of general application. Attention should be confined to what is necessary for deciding the particular case. This principle is too well settled and reference to few decisions of this Court would suffice. [See: *Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. v. Custodian of Vested Forests*, 1990 Supp SCC 785; AIR 1990 SC 1747, *Union of India v. Deoki Nandan Aggarwal*, 1992 Supp (1) SCC 323, *Institute of Chartered Accountants of India v. Price Waterhouse*, (1997) 6 SCC 312 and 29 *Harbhajan Singh v. Press Council of India*, (2002) 4 SCC 275] (emphasis supplied)"

59. On Para Nos.11, 34, 35, 37, 38, & 42 of the same decision has been relied upon by respondent, which reads as under:-

“11. From the perusal of section 2(e), it can be seen that the following ingredients will be necessary to make out the case of an organised crime: (i) that there has to be a continuing unlawful activities; (ii) that such an activity will have to be by an individual, singly or jointly; (iii) that such an activity is either by a member of an organised crime syndicate or on behalf of such syndicate; (iv) that there has to be use of violence or threat of violence or intimidation or coercion or other unlawful means; (v) that such an activity has to be with an objective of gaining pecuniary benefits or gaining undue economic or other advantage for the person who undertakes such an activity or any other person or promoting insurgency. The ingredients of continuing unlawful activities would be: (i) that such an activity should be prohibited by law for the time being in force; (ii) that such an activity is a cognizable offence punishable with imprisonment of three years or more (iii) that such an activity is undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate; (iv) that in respect of such an activity more than one charge-sheet must have been filed before a competent Court; and (v) that the charge-sheets must have been filed within a preceding period of ten years; and (vi) that the Courts have taken cognizance of such offences.”

34. It can, thus, clearly be seen that the purpose behind enacting the MCOCA was to curb the activities of the organised crime syndicates or gangs. The perusal of the Preamble and the

Statement of Objects and Reasons and Preface, in our considered view, does not lead to any narrower meaning that MCOCA has been enacted only for the purpose of curbing activities which involve pecuniary gains or undue economic advantages. The mischief which is sought to be cured by enactment of MCOCA is to curb and control menace of organised crime. The law has been enacted with the hope that the elements spread by the organised crime in the Society can be controlled to a great extent and for minimizing the fear spread in the society. If a narrower meaning as sought to be placed is accepted, it will frustrate the object rather than curing the mischief for which the Act has been enacted.

35. For appreciating this issue, it would also be relevant to refer to subsection (4) of section 3 of MCOCA. It can be seen that the said provision also provides for punishment only by virtue of a person being a member of the organised crime syndicate. If the contention advanced by the respondents is to be accepted, subsection (4) of section 3 will be rendered redundant. We are also of the considered view that there could be various “unlawful continuing activities” by a member of “organised crime syndicate” or by any person on behalf of such a syndicate which can be for the advantages other than economic or pecuniary. We will consider some illustrations.

(i) A politician is murdered by a member of organised crime syndicate or gang on its behalf at the behest of rival political leader. In the facts of a given case, this was without any pecuniary or economic consideration, it was to gain an advantage in the nature of political patronage to the said organised crime syndicate by the political leader at whose behest the murder has taken place.

- (ii) If a member of an organised crime syndicate or any person on its behalf murders or kills the leader of another syndicate or rival gang in order to get supremacy in the area, there may be no direct economic or pecuniary advantage by that particular unlawful activity. However, in the long term by the very fact of having supremacy in the area, the organised crime syndicate would be in a position to get economic or pecuniary advantage.
- (iii) A witness in the trial against the member of an organised crime syndicate may be killed. There may not be any pecuniary advantage in such an activity, however, advantage of assuring acquittal of member of the syndicate could be there.
- (iv) A member of an organised crime syndicate murders another member of such syndicate. There may be no pecuniary or economic benefit by such an activity, however, there may be advantage to a person committing murder of getting a stronghold or supremacy in the 'organised crime syndicate' of which he is a member.

These could be some of the few illustrations which may come in the term "other advantage". There can be many more.

37. The answer to this question lies in the observations of the Apex Court, in the case of Sanjay Dutt (cited supra), that merely because the statute is likely to be abused cannot be a ground for upsetting its constitutionality or construction. In this respect, it will also be necessary to refer to the judgment of the Apex Court in the case of Ranjitsing Brahmajeetsing Sharma (supra); wherein the Apex Court has observed thus:

23. Interpretation clauses contained in Sections 2 (d) 2(e) and 2(f) are inter-related. An 'organised

crime syndicate' refers to an 'organised crime' which in turn refers to 'continuing unlawful activity'. As at present advised, it may not be necessary for us to consider as to whether the words "or other lawful means" contained in Section 2(e) should be read "ejusdem generis"/ "noscitur-a-sociis" with the words (i) violence, (ii) threat of violence, (iii) intimidation or (iv) coercion.

We may, however, notice that the word 'violence' has been used only in Section 146 and 153A of the Indian Penal Code. The word 'intimidation' alone has not been used therein but only Section 506 occurring in Chapter XXII thereof refers to 'criminal intimidation'. The word 'coercion' finds place only in the Contract Act. If the words 'unlawful means' is to be widely construed as including any or other unlawful means, having regard to the provisions contained in Sections 400, 401 and 413 of the IPC relating to commission of offences of cheating or criminal breach of trust, the provisions of the said Act can be applied, which prima facie, does not appear to have been intended by the Parliament.

24. The Statement of Objects and Reasons clearly state as to why the said Act had to be enacted. Thus, it will be safe to presume that the expression 'any unlawful means' must refer to any such act which has a direct nexus with the commission of a crime which MCOCA seeks to prevent or control. In other words, an offence falling within the definition of organized crime and committed by an organized crime syndicate is the offence contemplated by the Statement of Objects and Reasons. There are offences and offences under the Indian Penal Code and other

penal statutes providing for punishment of three years or more and in relation to such offences more than one charge-sheet may be filed. As we have indicated hereinbefore, only because a person cheats or commits a criminal breach of trust, more than once, the same by itself may not be sufficient to attract the provisions of MCOCA. The Apex Court had held that it will be safe to presume that the expression 'any unlawful means' must refer to any such act which has a direct nexus with the commission of a crime which MCOCA seeks to prevent or control.'

The Apex Court had held that it will be safe to presume that the expression 'any unlawful means' must refer to any such act which has a direct nexus with the commission of a crime which MCOCA seeks to prevent or control.

38. It is difficult to accept the contention that if the wider meaning is given to the provision of section 2(e), provisions of MCOCA would be invoked even for petty offences. In case of *Sherbahadur Akram Khan v. State of Maharashtra* (cited supra), some of the offences resulted from the quarrel at public water tap. In the said matter, as in many of the cases, the accused had assaulted the injured with a fist blow. By no stretch of imagination, such an activity could be construed to be the one for which MCOCA could be invoked. If there are some altercations between two businessmen within four corners of a shop and, as a result of which one of them slaps the other, by no stretch of imagination it can be said to be an offence for which MCOCA is to be invoked. Similarly, a dispute between two brothers on some property issue and even assault and that too by a

deadly weapon would not come in the ambit of MCOCA.

The legislative intent is clear, that MCOCA is for curbing the organised crime. Unless there is prima facie material, firstly, to establish that there is an organised crime syndicate and, secondly, that organised crime has been committed by any member the organised crime syndicate or any person on behalf of such syndicate, the provisions of MCOCA cannot be invoked. In the earlier paragraph we have discussed in detail as to what are the so as to constitute an offence of “organised crime”.

The prosecution will, therefore, have to firstly establish that there is an organised crime syndicate. It will have to satisfy that there exist the ingredients of “continuing unlawful activity”.

*It will thereafter have to satisfy that the ingredients of the “organised crime” as spelt out by us hereinbefore exist, prior to invoking the provisions of MCOCA. We are, therefore, unable to accept the contention that if the wider meaning is given, the MCOCA can be invoked even for sundry offences. As held by the Apex Court in the case of *Ranjitsing Brahmajeetsing Sharma* (supra), merely because the person who cheats or commits a criminal breach of trust more than once, the same by itself may not be sufficient to attract the provisions of MCOCA. By the same analogy, if a person commits murder more than once, would not by itself be sufficient to attract the provisions of MCOCA. At the cost of repetition, we make it clear that unless all the ingredients to constitute the offence punishable under MCOCA are available, it will not be permissible to invoke the provisions of MCOCA.*

42. For the reasons aforesaid, we answer the issue that the term “other advantage” cannot be read as ejusem

generis with the words “pecuniary benefits” and “undue economic”.

60. Learned counsel for petitioner relied upon **Govind Sakharam Udhe v. State of Maharashtra : 2009 (3) Bombay CR (Crl.) 144** wherein Division Bench of Mumbai High Court observed as under:

“34. Therefore, the MCOCA contemplates a situation where a group of persons as members of organized crime syndicate indulge in organized crime. That is, they indulge in use of violence, threats of violence, intimidation, etc. to gain pecuniary benefit or undue economic or other advantage for themselves or any other person. These activities as per the definition of organized crime are continuing unlawful activity prohibited by law.

35. It is now necessary to go to the definition of ‘continuing unlawful activity’. Section 2(1)(d) defines ‘continuing unlawful activity’ to mean an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly as a member of an organized crime syndicate or on behalf of such syndicate in respect of which more than one charge- sheet have been filed before a competent court within the preceding ten years and that court have taken cognizance of such offence. Thus, for an activity to be a ‘continuing unlawful activity’ -

- a) the activity must be prohibited by law;*
- b) it must be a cognizable offence punishable with imprisonment of three years or more;*
- c) it must be undertaken singly or jointly;*

d) it must be undertaken as a member of an organized crime syndicate or on behalf of such syndicate

e) in respect of which more than one charge-sheet have been filed before a competent court.

36. The words 'in respect of which more than one charge-sheet have been filed' cannot go with the words 'a member of a crime syndicate' because in that case, these words would have read as 'in respect of whom more than one charge-sheet have been filed'.

37. But even otherwise, if all provisions are read together we reach the same conclusion. Section 2(1)(d) which defines 'continuing unlawful activity' sets down a period of 10 years within which more than one charge-sheet have to be filed. The members of the crime syndicate operate either singly or jointly in commission of organized crime. They operate in different modules. A person may be a part of the module which jointly undertakes an organized crime or he may singly as a member of the organized crime syndicate or on behalf of such syndicate undertake an organized crime. In both the situations, the MCOCA can be applied. It is the membership of organized crime syndicate which makes a person liable under the MCOCA. This is evident from section 3(4) of the MCOCA which states that any person who is a member of an organized crime syndicate shall be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine, subject to a minimum of fine of Rs.5 lakhs. The charge under the MCOCA ropes in a person who as a member of the organized crime syndicate commits organized crime i.e. acts of extortion by giving threats, etc. to gain economic advantage or

supremacy, as a member of the crime syndicate singly or jointly. Charge is in respect of unlawful activities of the organized crime syndicate. Therefore, if within a period of preceding ten years, one charge-sheet has been filed in respect of organized crime committed by the members of a particular crime syndicate, the said charge-sheet can be taken against a member of the said crime syndicate for the purpose of application of the MCOCA against him even if he is involved in one case. The organized crime committed by him will be a part of the continuing unlawful activity of the organized crime syndicate. What is important is the nexus or the link of the person with organized crime syndicate. The link with the 'organized crime syndicate' is the crux of the term 'continuing unlawful activity'. If this link is not established, that person cannot be roped in.

38. In order to substantiate our construction of Section 2(1)(d) of the MCOCA, we will take hypothetical example of accused 1(A), accused 2(B), accused 3(C) and accused 4(D), who are members of the organized crime syndicate and who have committed crimes within preceding ten years. Insofar as accused A is concerned, it is alleged that he has committed an offence resulting in the death of any person which is punishable with death or imprisonment for life as described in Section 3(1) of the MCOCA. Accordingly, one charge-sheet is filed against him. Insofar as accused B is concerned, it is alleged that he has committed an offence resulting in the death of any person which is punishable with death or imprisonment for life as described in Section 3(2) of the MCOCA. Accordingly, one charge-sheet is filed against him. Likewise, insofar as accused C is concerned, it is alleged that he has committed an

offence resulting in the death of any person which is punishable with death or imprisonment for life as described in Section 3(3) of the MCOCA. Accordingly, one charge-sheet is filed against him. Finally, it is alleged that accused D is a member of organized crime syndicate as described in Section 3(4) of the MCOCA and as such has indulged in organized crime and against whom also one charge-sheet is filed.

39. The submission on behalf of the appellant is that even though all the four accused namely, A, B, C and D may be members of the organized crime syndicate since against each of the accused not more than one charge- sheet is filed, it cannot be held that they are engaged in continuing unlawful activity as contemplated under Section 2(1)(d) of the MCOCA. Apart from the reasons which we have given hereinabove as to why such a construction is not possible, having regard to the object with which the MCOCA was enacted, namely to make special provisions for prevention and control of organized crime syndicate and for coping with criminal activity by organized crime syndicate, in our opinion, Section 2(1)(d) cannot be so construed. Such a construction will defeat the object of the MCOCA. What is contemplated under Section 2(1)(d) of the MCOCA is that activities prohibited by law for the time being in force which are punishable as described therein have been undertaken either singly or jointly as a member of organized crime syndicate and in respect of which more than one charge-sheets have been filed. Stress is on the unlawful activities committed by the organized crime syndicate. Requirement of one or more charge-sheet is qua the unlawful activities of the organized crime syndicate.

45. *Mr.Desai's submission that inasmuch as the appellant's name is not mentioned in the approval granted under Section 23(1)(a) of the MCOC Act, the prosecution qua the appellant is vitiated, must also be rejected. In its judgment in Vinod Asrani v. State of Maharashtra (Special Leave Petition (Cri.) No.6312 of 2006 dated 21/2/2007, the Supreme Court has considered the same submission and observed that non inclusion of the accused in the approval under Section 23(1)(a) of the MCOC Act is not fatal to the investigation qua that accused. The Supreme Court observed that Section 23(1)(a) provides a safeguard that no investigation into an offence under the MCOC Act should be commenced without the approval of the concerned authorities. Once such approval is obtained, an investigation is commenced. The Supreme Court further observed that those who are subsequently found to be involved in the commission of the organized crime can very well be proceeded against once sanction is obtained against them under Section 23(2) of the MCOC Act.”*

61. Learned counsel for petitioner also relied upon **The State of Maharashtra v Rahul Ramchandra Taru** **Crl.Appeal No.239/2011 decided on 06.05.2011 by Division Bench of Bombay High Court** wherein para No.14 held as under:-

“14. The learned APP placed reliance on unreported judgment in the case of Ganesh Nivrutti Marne vs. The State of Maharashtra in Criminal Appeal No. 930 of 2009 decided on 07th May, 2010. That appeal also had arisen from the Special Case No. 02 of 2007 which was filed by the accused no.7 whose application for discharge was

rejected by the Special Judge, Special Court, Pune. It appears that the appellant in the said case was operating his own gang called as "Ganesh Marne Gang". Allegations against him were that he was operating a crime syndicate and committed several offences of similar nature in the past to gain an edge over the rival gang and to achieve supremacy in the local area. The Division Bench in the case (supra) examined the facts in Special Case No. 2 of 2007 qua the appellant before analysing expressions "continuing unlawful activity", "organised crime" and "organized crime syndicate". A reference was made to the judgment of the Division Bench of this court in the case of Sherbahadur Akram Khan vs. State of Maharashtra (2007 ALL MR (Cri.) 1) and held that Sherbahadur Akram Khan's case must be restricted to its own facts. The Division Bench while rejecting appeal laid great emphasis on the decision in the case of Anil Sadashiv Nanduskar vs. State of Maharashtra [2008 (3) MAH. L.J. (CRI) 650]. In the cases of Ganesh Nivrutti Marne as well as Anil Nanduskar, the question which was addressed by the Division Bench was whether expressions "other advantage" occurring under section 2(1)(e) are to be construed "ejusdem generis" with the earlier terms or it should be given wider meaning. The Division Bench in the case of Ganesh Nivrutti Marne has also made reference to the Supreme Court decision in the case of Ranjeetsingh Brahmajeetsing Sharma vs. State of Maharashtra (Supra) and observed that "the Supreme Court has expressly kept this question open."

62. Reliance has been placed upon above decision on behalf of respondent on Nos.4, 6 & 15; wherein it has been observed as under:-

“4. The respondent submitted an application vide Exh. 99, seeking his discharge from the offence punishable under section 3(i), 3(ii), 3(iii) and 3(iv) of the MCOCA. It was submitted that the material placed on record does not disclose any offence under the provisions of MCOCA. There is no evidence to show that the respondent-accused was at any point of time was a member of the organized crime syndicate. The State resisted this application. The learned Special Judge after considering the rival submissions, held that the material placed on record does not disclose offence punishable under the MCOCA. He therefore, discharged the respondent-accused from the offences punishable under the MCOCA. Being aggrieved, by this order, the State has preferred this appeal.

6. Similar submissions were advanced before the learned Special Judge, Special Court, Pune. As regards two previous chargesheets, one being Sessions Case No. 418 of 2006 under section 395, 143, 147, 148 of the IPC and other being regular Criminal Case No. 120 of 2000 under sections 324, 323, 504 read with 34 of the IPC, the learned Special Judge observed that these offences were not committed by the organized crime syndicate. As regards the allegations in special case no. 02 of 2007, the offence with which the respondent-accused and others have been charged have not been committed with an objective of gaining pecuniary benefits or gaining undue economic or other advantage to the respondent-accused. Therefore, he discharged the respondent-accused.

15. We propose to clarify that to address the question which is posed in this appeal, interpretation of expressions "or other advantage" and "or other unlawful means", occurring under

section 2(1)(e) of MCOCA, is not strictly necessary. Even if, both the terms are given wider meaning, the prosecution is not absolved of its duty to prove that within the preceding period of 10 years more than one chargesheets, alleging commission of cognizable offence punishable with imprisonment of three years or more, have been filed and further to prove that in such charge-sheets, it has been alleged that the accused either singly or jointly and as a member of organized crime syndicate or on behalf of such syndicate committed the unlawful activity. This follows that merely alleging that more than one charge-sheet in respect of cognizable offence punishable with imprisonment of three years or more have been filed, is not sufficient. This does not satisfy requirements of law. This is what precisely held by the Supreme Court in the case of Ranjeetsingh Brahmajeetsing Sharma (supra). The unlawful activity alleged in the previous chargesheets should have nexus with the commission of the crime which MCOCA seeks to prevent or control. An offence falling within the definition of organized crime and committed by organized crime syndicate is the offence contemplated by the Statement of Objects and Reasons under the MCOCA.”

63. Learned counsel for respondent relied upon **Prafulla v. State of Maharashtra** : **Crl.Appeal No.664/2002 decided on 18.11.2008** by Division Bench of Bombay High Court wherein it has been held as under:-

“43. This fortifies the conclusion that mere proof of filing charge sheets in the past is not enough. It is only one of the requisites for constituting offence of organized crime. If only the past charges sheets were to be enough to constitute offence of organized crime, it could have the offended the

requirement of Article 20(1) of the Constitution and possibly Article 29(2) as well, (and in any case Section 300 Cr. P.C.). Had these judgments of the Supreme Court and Division Benches of this Court been cited before the learned Single Judge deciding Amarsingh Vs. State (2006 ALL MR (Cri) 407, the learned Single Judge, without doubt, would not have held that the matter was simply one of an arithmetical equation. The said judgment cannot be reconciled with the judgments of Division Benches in Jaisingh Vs. State (2003) ALL MR (Cri) 1506 and Bharat Shah Vs. State 2003 ALL MR (Cri) 1061, which I am bound to follow.

44. It is not necessary to go into the implications of the expression 'prosecuted and punished' used in Article 20(2) of the Constitution. Section 300 Cr. P.C. itself clearly bars a fresh trial for the same offence. Section 21 of the MCOCA which prescribes modified applications of the Code to offences under MCOCA does not make provisions of Section 300 Cr.P.C. inapplicable. Therefore, since the previous criminal history of the applicants denotes that they had been or are being separately charged / tried for those offences before competent Courts, there is no question of such offences constituting offences of organized crime."

64. Further relied upon **State of Maharashtra v. Lalit Somdatta Nagpal & Ors : 2007(4) SCC 171** wherein the Apex Court observed as under:-

"62.However, we are in agreement with the submission that having regard to the stringent provisions of MCOCA, its provisions will have to be very strictly interpreted and the concerned authorities would have to be bound down to the strict observance of the said provisions. There can

be no doubt that the provisions of the MCOCA have been enacted to deal with organized criminal activity in relation to offences which are likely to create terror and to endanger and unsettle the economy of the country for which stringent measures have been adopted. The provisions of the MCOCA seek to deprive a citizen of his right to freedom at the very initial stage of the investigation, making it extremely difficult for him to obtain bail. Other provisions relating to the admission of evidence relating to the electronic media have also been provided for. In such a situation it is to be seen whether the investigation from its very inception has been conducted strictly in accordance with the provisions of the Act.

63. As has been repeatedly emphasized on behalf of all the parties, the offence under MCOCA must comprise continuing unlawful activity relating to organized crime undertaken by an individual singly or jointly, either as a member of the organized crime syndicate or on behalf of such syndicate by use of coercive or other unlawful means with the objective of gaining pecuniary benefits or gaining undue economic or other advantage for himself or for any other person or for promoting insurgency. In the instant case, both Lalit Somdutt Nagpal and Anil Somdutt Nagpal have been shown to have been involved in several cases of a similar nature which are pending trial or are under investigation. As far as Kapil Nagpal is concerned, his involvement has been shown only in respect of CR No.25/03 of Rasayani Police Station, Raigad, under Sections 468,420,34, Indian Penal Code and Sections 3, 7,9 & 10 of the Essential Commodities Act. In our view, the facts as disclosed justified the application of the provisions of the MCOCA to Lalit Nagpal and Anil

Nagpal. However, the said ingredients are not available as far as Kapil Nagpal is concerned, since he has not been shown to be involved in any continuing unlawful activity. Furthermore, in the approval that was given by the Special Inspector General of Police, Kolhapur Range, granting approval to the Deputy Commissioner of Police (Enforcement), Crime Branch, C.I.D., Mumbai to commence investigation under Section 23 (1) of MCOCA, Kapil Nagpal has not been mentioned. It is only at a later stage with the registering of CR No.25/2003 of Rasayani Police Station, Raigad, that Kapil Nagpal was roped in with Lalit Nagpal and Somdutt Nagpal and permission was granted to apply the provisions of the MCOCA to him as well by Order dated 22nd August, 2005.

64.

In addition to the c

Nagpal, Kapil Nagpal and one Parasnath Ramdular Singh will reveal that such permission was being sought for, as far as Kapil Nagpal is concerned, in respect of an offence allegedly under Section 63 of the Sales Tax Act, which in our opinion would not attract the provisions of the MCOCA.

65.

We, therefore, have

66.

Since we have already

of the MCOCA for offences under Sections 3 & 7 of the 1955 Act as well as the 1981 Act, we are left with the question as to whether the same had been applied to the case of Lalit Nagpal and Anil Nagpal strictly in accordance with the provisions of the MCOCA 1999. Having regard to the stringent provisions of the MCOCA, Section 23 (1) (a) provides a safeguard to the accused in that notwithstanding anything contained in the Code of

Criminal Procedure, no investigation of an alleged offence of organized crime under the MCOCA, 1999 can be commenced without the prior approval of a police officer not below the rank of Deputy Inspector General of Police. An additional protection has been given under Sub-section (2) of Section 23 which prohibits any Special Court from taking cognizance of any offence under the Act without the previous sanction of a police officer not below the rank of Additional Director General of Police.

67. In the instant case, though sanction had been given by the Special Inspector General of Police, Kolhapur Range, on 31st August, 2004, granting permission under Section 23 (1) (a) of the MCOCA 1999 to apply its provisions to the alleged offences said to have been committed by Anil Nagpal, Lalit Nagpal and Vijay Nagpal, such sanction reveals complete non- application of mind as the same appears to have been given upon consideration of an enactment which is non est. Even if the subsequent approval order of 22nd August, 2005 is to be taken into consideration, the organized crime referred to in the said order is with regard to the alleged violation of Sales Tax and Excise Laws, which, in our view, was not intended to be the basis for application of the provisions of the MCOCA 1999. To apply the provisions of MCOCA something more in the nature of coercive acts and violence is required to be spelt out so as to bring the unlawful activity complained of within the definition of "organized crime" in Section 2 (a) of MCOCA .

68. In our view, both the sanctions which formed the very basis of the investigation have been given mechanically and are vitiated and cannot be

sustained. In taking recourse to the provisions of the MCOCA 1999, which has the effect of curtailing the liberty of an individual and keeping him virtually incarcerated, a great responsibility has been cast on the authorities in ensuring that the provisions of the Act are strictly adhered to and followed, which unfortunately does not appear to have been done in the instant case.

69. We are not, therefore, inclined to interfere with the decision of the High Court though for reasons which are entirely different from those given by the High Court.”

65. I heard learned counsel for parties.

66. Law has been settled in **Ganesh Nivrutti Marne (Supra)** that it is necessary for the investigating authority to place adequate material before the authority which grants approval and sanction and the approval order and the sanction order being not a mechanical exercise must disclose application of mind. They are not expected to be verbose. In the aforesaid case, the appellant heads the Ganesh Marane Gang and all the accused were members of the said gang. The appellant and other members of the organized crime syndicate have committed several offences of similar nature in the past to gain an edge over the rival gang and to achieve supremacy in the local area. Whereas in the present case the prosecution failed to establish that the petitioner belongs to which gang and gang on behalf of any syndicate.

67. In the case mentioned above, the appellant and other accused found members of organized crime syndicate headed by the appellant and they

were indulging in organized crime with a view to gaining pecuniary benefits. However, facts are different in case in hand.

68. It is also settled that the person must heads the gang and he is part of the gang and committing offences with the gang members or on behalf of the gang when these facts are established, only thereafter, the provisions of MCOCA are attracted. The prosecution had to establish that respondent herein and his associates in furtherance of the activities of their organized crime syndicate have committed offence in question.

69. The Scheme under Section 23 of MCOCA is similar and Section 23 (i) (a) provides a safeguard that no Investigation into an offence under MCOCA should be commenced without the approval of the concerned authority. Once such approval is obtained, the investigation is commenced. Those who are subsequently found to be involved in the commission of the organized crime can very well be proceeded against once sanction is obtained against them under Section 23 (2) of MCOCA. I am conscious in a case of *Jagain Gagensingh Nepali @ Jagya & Ors. (Supra) the term “other advantage”* used in section 2(e) of the Maharashtra Control of Organized Crime Control of Organized Crime Act, 1999 has been read as “*ejusdem generis*” with the words “for pecuniary benefits and undue enonomic”.

70. While referring the case of Apex Court in *Chandra Chakraborty Vs. Collector of Tripura (Supra)*, wherein it is held that principle of law that the rule has to be applied with care and caution.

71. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. Every statute has an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sentential legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided. As stated by the **Privy Council** in *Crawford v. Spooner* "we cannot aid the Legislature's defective phrasing of an Act, we cannot add or mend and, by construction make up deficiencies which are left there". In case of an ordinary word, there should be no attempt to substitute or paraphrase of general application.

72. On perusal of Section 2 (e), it can be seen that there has to be continuing unlawful activities and such activities will have to be by an individually singly or jointly either by a member of organized crime syndicate or on behalf of such syndicate. Therefore, there has to be use of violence there has to be use of violence or threat of violence or intimidation or coercion or other lawful means and such an activity has to be with an objective of gaining pecuniary benefits or gaining undue economic or other advantage for the person who undertakes such an activity or any other person or promoting insurgency.

73. The purpose behind enacting the MCOCA was to curb the activities of the organised crime syndicates or gangs. On perusal of Preamble and Statement of Objects and Reasons and Preface, it does not lead to any narrower meaning that MCOCA has been enacted only for the purpose of curbing activities which involve pecuniary gains or undue economic advantages. The mischief which is sought to be cured by enactment of MCOCA is to curb and control menace of organised crime. The law has been enacted with the hope that the elements spread by the organised crime in the Society can be controlled to a great extent and for minimizing the fear spread in the society.

74. It can be seen that the said provision also provides for punishment only by virtue of a person having a trade of organized crime syndicate. There can be various unlawful continuing activities by a member of organized crime syndicate or by any persons on behalf of such a syndicate which can be for the advantages other than economic or pecuniary.

75. For example, if a member of an organised crime syndicate or any person on its behalf murders or kills the leader of another syndicate or rival gang in order to get supremacy in the area, there may be no direct economic or pecuniary advantage by that particular unlawful activity. However, in the long term by the very fact of having supremacy in the area, the organised crime syndicate would be in a position to get economic or pecuniary advantage.

76. The above stated proposition has been answered by the Apex Court in case of Sanjay Dutt vs. State of Maharashtra,, that merely because the

statute is likely to be abused cannot be a ground for upsetting its constitutionality or construction. In the judgment of Apex Court in *Ranjitsing Brahmajeetsing Sharma* (supra) it is observed that Interpretation clauses contained in Sections 2(d), 2(e) and 2(f) are inter-related. An 'organised crime syndicate' refers to an 'organised crime' which in turn refers to 'continuing unlawful activity'.

77. As such Statement of Objects and Reasons clearly state as to why the said Act had to be enacted.

78. The expression 'any unlawful means' must refer to any such act which has a direct nexus with the commission of a crime which MCOCA seeks to prevent or control. In other words, an offence falling within the definition of organized crime and committed by an organized crime syndicate is the offence contemplated by the Statement of Objects and Reasons. If a person cheats or commits a criminal breach of trust, more than once, the same by itself may not be sufficient to attract the provisions of MCOCA.

79. It would be safe to presume that the expression any lawful means, it would be safe to presume that the expression 'any unlawful means' must refer to any such act which has a direct nexus with the commission of a crime which MCOCA seeks to prevent or control.

80. Section 2(e) of MCOCA cannot be invoked for petty offences. The legislative intent is clear that MCOCA is for curing the organized crime unless there is a prima facie material to establish that there is an organized crime syndicate and prima facie material, firstly, to establish that there is an

organised crime syndicate and, secondly, that organized crime has been committed by any member of the organized crime syndicate or any person on behalf of such syndicate, the provisions of MCOCA cannot be invoked.

81. Therefore, the prosecution need to firstly establish that there is an organized crime syndicate. It will have to satisfy that there exists the ingredients of continuing unlawful activities. Finally, the Full Bench of Bombay High Court answers the issue that the term other advantage cannot be read as “*ejusdem generis*” with the words “*gaining pecuniary benefits or undue economic advantage*”

82. More so, in case of **Govind Sakharam Udhe (Supra)**, it is observed that the words in respect of much more than one charge-sheet has been filed cannot go with the words Member of organized crime syndicate because in that case, these words would have read as in respect of whom more than one charge-sheet have been filed. A person should be a part of the module which jointly undertakes an organized crime or he may singly as a member of the organized crime syndicate or on behalf of such syndicate undertake an organized crime. In both the situation MCOCA can be applied.

83. It is also observed that in the case mentioned above, that the organized crime committed by a person will be a part of continuing unlawful activity of the organized crime syndicate. The important factor is the nexus or the link of a person with organized crime syndicate. The link with the organized crime syndicate is the crux of the term continuing unlawful activity. If this link is not established, that person cannot be roped in. Section 23(1) (a) of the MCOCA provides a safeguard that no investigation of an offence under

the MCOCA Act should be commenced with the approval of the concerned authorities. Once such an approval is obtained, investigation is commenced. Those who are subsequently found to be involved in the commission of the organized crime can very well be proceeded against once sanction is obtained against them under Section 23 (2) of MCOCA.

84. Therefore, the offence under MCOCA must comprise continuing unlawful activity relating to organized crime undertaken by an individual singly or jointly, either as a member of the organized crime syndicate or on behalf of such syndicate by use of coercive or other unlawful means with the objective of gaining pecuniary benefits or gaining undue economic or other advantage for himself or for any other person or for promoting insurgency.

85. In the case in hand, to satisfy the condition of Section 2(d) of the Act, prosecution has relied upon a list of 34 Criminal Cases which are filed against the respondent during the period 1985 to 2009. These 34 cases includes present one. The prosecution failed to ascertain as to whether the offences committed therein was related to organized crime or not. Out of remaining 16 cases 2 cases vide FIR No.183/2006 and 96/2006 pertain to the Offence punishable under Section 25 of the Arms Act, 1959. One case vide FIR No.09/04 pertain to Section 20 of NDPS Act. Therefore, the prosecution failed to establish that the respondent has committed an offence either as a member of organized crime syndicate or on behalf of such syndicate. As regards the properties to invoke Section 4 of the MCOCA, the prosecution failed to show prima facie that the respondent was holding the properties referred above either having a member of organized crime syndicate or on behalf of member of any such syndicate.

86. In view of the above discussion, submission of Id. Counsel appearing on behalf of the parties and settled law, I find no infirmity in the order passed by Id. Trial Judge while discharging the respondent from the provisions of MCOCA. Therefore, I conquer the same.

87. Accordingly, Crl. Rev. 42/2012 is dismissed.

88. In view of above order, the interim order granted vide order dated 24.01.2012 in Crl.M.A.No.975/2012 (Stay) stands vacated and MA stands disposed of.

89. No order as to costs.

SURESH KAIT, J

APRIL 23, 2012

Mk/jg