

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

+ CRL.M.C. No. 4341/2011

% *Judgment reserved on : 30th January, 2012*
Judgment delivered on: 26th March, 2012

SHIV MURAT DWIVEDI @ SHIVA Petitioner
Through: Mr. Majeed Menon, Sr.Adv.
with Mr. Sunil Kumar and Mr. Zafar
Siddiqui, Adv.

Versus

STATE Respondent
Through: Mr. Navin Sharma, APP for
State.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J

1. Vide the instant petition, the petitioner has sought to quash the charge-sheet arising out of FIR No. 54/10 under Section 3 MCOCA registered at PS-Saket, New Delhi and also sought to set aside the order on charge dated 03.08.2011 and framing of charge dated 10.08.2011 passed by Id. Addl. Sessions Judge-01, South District, Saket Court, New Delhi.
2. The brief facts of the case are that on information being received that there was a racket of prostitution in the area, involving Immoral Trafficking, therefore informers were deputed to develop this information.
3. On 25.02.2010, while the SHO was present in the Office, informer came at the office at 8.40 PM and informed that pimps would be coming in

Honda cars at PVR Saket Complex around 10 PM and would offer girls to the customers for prostitution. This information was passed on to Sh. Meher Singh, ACP, Hauz Khas, who directed to constitute a raiding party immediately. Accordingly, a raiding party comprising of Sh. Pankaj Singh, SHO of PS-Saket, Inspector Dharam Dev, Inspector Ram Kumar, SI Dalip Kumar, SI Praveen Kumar, SI Sanjay Sharma along with other staff, was formed.

4. Accordingly, SI Sanjay Sharma was detailed as decoy customer and SI Dalip Kumar was detailed as shadow witness. Accordingly, the raiding party took their position. At around 10 PM, one Honda City Car, bearing registration no. DL-7CF-2115 and Honda Civic Car vide registration no. DL-4CAA-0300, came and stopped opposite PVR. For the purpose, SI Sanjay Sharma was deputed and nothing left with him, except five notes of denomination of Rs.1,000/- were handed over and was briefed accordingly, to strike a deal with the pimps for procuring girls and to make a signal after the deal is finalized.

5. At around 10.30 PM SI Sanjay Kumar made a signal on which two males and 6 females were apprehended from the above mentioned cars. They were identified as (1) Shiv Murat Dwivedi @ Shiva @ Rajeev @ Swamiji (2) Praveen Kumar (3) Shalini Gautam (4) Shashi Pabha (5) Raina Singh (6) Riya Sharma (7) Seema Chakravarti, (8) Ashu Dubey.

6. In the Honda City Car no. DL-7CF-2115, Shiv Murat Dwivedi / petitioner was along with three girls namely Shashi Prabha, Shalini Gautam and Raina Singh, and in Honda Civic Car no. DL-4CAA-0300 Praveen Kumar was present with girls namely Seema Chakravarty, Ashu Dubey and

Riya Shrma. SI Sanjay Sharma, the decoy customer stated that first he went to Honda City Car and asked for two girls from petitioner, who offered three girls, sitting in the Car, for sexual purpose and demanded Rs.15/15 thousand each for Shashi Prabha and Raina Singh and Rs.25,000/- for Shalini Gautam. All the above mentioned girls offered themselves for sex and assured to satisfy sexually.

7. The aforesaid decoy customer chose Shalini Gautam and then Shiv Murat Dwivedi / petitioner asked him to chose a girl from Honda Civic Car no. DL-4CAA-0300, parked nearby. Praveen Kumar was present in the car and offered three girls namely Seema Chakravarty, Ashu Dubey and Riya Sharma for sexual purpose and told him that to have sex with them Rs.10,000/- each would be charged. These three girls also offered to have sex with them and assured complete sexual satisfaction. SI Sanjay Sharma, decoy customer accordingly, chose Ashu Dubey.

8. Accordingly, a case for the offences punishable under Sections 4,5,8 of Immoral Trafficking Act was registered through Ct. Sheoda vide FIR no. 47/2010, at PS-Saket. The investigation of the case was assigned to SHO and all the above mentioned persons were arrested.

9. During the course of investigation, Section 3 & 6 of ITP Act were also added. After the arrest of the petitioner and his associates, criminal activities of these persons were studied. It was observed that petitioner has been found indulged in continuing unlawful activities in an organized manner and he has generated a huge wealth to the tune of about Rs.1.5 Crores by these activities. Petitioner was also found involved in the following cases along with his associates:

S. NO.	FIR No. & Date	Under Section & PS
1.	705/1999	3/4/5/8 of ITP Act, PS-Lajpat Nagar.
2.	183/1988 dated 05.03.1998	3/4/5/8 of ITP Act, PS-S.N. Puri, New Delhi.
3.	303/1998 dated 23.09.1998	395/412 IPC, PS-Badarpur
4.	167/2003 dated 30.07.2003	2/3 Gangster Act PS-Sec. 24 NOIDA
5.	341/2003 dated 18.07.2003 Sec. 20 re-registered as 160/03 at Sec. 24 NOIDA	3/4/5/6/7/8 ITP Act, PS-Sector 24, NOIDA

10. As per the prosecution, out of these cases Court of competent jurisdiction has taken cognizance in all these cases and especially in the case bearing (i) FIR no. 341/2003 registered on 08.09.2003 and (ii) FIR no. 167/03 registered on 04.11.2003. Cases within last preceding 10 years. All these offences are cognizable offences punishable with imprisonment of 3 years or more undertaken by the petitioner as an operator of organized crime syndicate.

11. The petitioner is a habitual criminal and is continuously indulged in these activities for pecuniary gains. The involvements as mentioned above being the activities of this syndicate within the scope and objects for which MCOCA was enacted.

12. The activities of the petitioner and his associates clearly falls in the definition of 2(d), 2(e), 2(f) read with aim and objective for which MCOCA was enacted. Hence the proposal was initiated and forwarded the same to competent authority. Vide order dated 06.03.2010, competent authority

granted approval to apply Section 3 of Maharashtra Control of Organized Crime Act.

13. After the completion of investigation and obtaining the sanction from the Competent Authority on 16.08.2010, charge-sheet dated 16.08.2-011 was filed before the designated court.

14. Ld. Counsel for the petitioner has submitted that these offences under ITP Act, use of violence, threat of violence, intimidation or coercion is not one of the ingredients. Nor the accrual of pecuniary benefit out of the offence ITP Act ever intended to promote violence, endangering and unsettling the economy of the country or for promoting insurgency.

15. It is further submitted that the use of coercion method viz. violence, threat of violence, intimidation and objective of gaining pecuniary benefits or gaining undue economic or other advantage thereby endangering and unsettling the economy of the country are two most essential and crucial ingredients of organized crime and then only provisions of MCOCA can be invoked.

16. It is argued by ld. Counsel for the petitioner that it is important to note that there is no material on record which suggests existence of organized crime syndicate since last 10 years and indulging in activities of organized crime in as much as involvement of co-accused Praveen Kumar @ Ankit was not shown in the previous charge sheet nor the previous charge-sheet shows group of same two persons for at least 10 years indulging in organized crime and hence provisions of MCOCA will not be applicable in the present case.

17. Ld. Counsel for the petitioner has also asserted that the offences shown at serial no. 4 & 5 of the charge-sheet mentioned above in the present case relates to offences under Gangster Act and ITP Act registered NOIDA, UP where MCOCA has not been extended / enforced, therefore these two cases cannot be taken into consideration for counting the charge sheet pending against the organized crime syndicate alleged to have been formed by the petitioner and his associates.

18. Ld. Counsel has further submitted that Addl. Sessions Judge vide its order dated 03.08.2011 held that prima facie case under Section 3 (i) of MCOCA is made out against the petitioner and prima facie a case under Section 3(ii) of MCOCA against co-accused mainly on the ground that petitioner was allegedly carrying flesh trade in an organized manner by constituting a syndicate for the purposes of pecuniary gains and two cases of similar alleged unlawful activity against the petitioner i.e. charge sheet in FIR no. 341/2003 dated 18.07.2003 of ITP Act and other charge sheet in case FIR No. 47/10 registered at PS-Saket, New Delhi which is pending before Id. Magistrate.

19. It is further submitted that Id. designated Judge has further held that since both the cases are under ITP and hence it can be held that petitioner was continuing is unlawful activities in organized manner for economic gains.

20. Ld. Counsel has further submitted that Id. Designated Judge totally ignore the fact that offence under ITP Act does not involve the use of force, violence, threat of violence, intimidation as necessary ingredients to be fulfilled. Nor the offence under ITP Act has the effect of endangering or

unsettling the economy of the country. Thus the organized crime as defined in the MCOCA, is not applicable to the offences under the ITP Act.

21. Ld. Counsel for the petitioner has referred Section 2 (d) and 2 (f) whereby any person singly or jointly as a member of organized crime syndicate is the first and most requirement of the Section mentioned above. As submitted above, the petitioner and his associate/s indulged in continuing unlawful activities in an organized manner and generated huge wealth in the tune of Rs.1.5 Crore and find petitioner and his associates involved in various cases as mentioned above.

22. As alleged the petitioner and his associates have no legal source of income even they are accumulating a large wealth. The activities of the petitioner and his associates clearly falls in the definition of 2(d), 2(e) and 2(f) read with aim and object for which MCOCA was enacted.

23. It is further submitted that vide order dated 06.03.2010, the approval to apply Section 3 of MCOCA was granted on the basis of that petitioner was continuing the criminal activities along with his associates who are professionally engaged in crime and functioning in an organized way as a syndicate.

24. Ld. Counsel for the petitioner has submitted that the aforesaid Order dated 06.03.2010 passed by Joint Commissioner of Police did not mention the name of any syndicate and prosecution approval is only qua the petitioner, but no other associates and syndicates.

25. The petitioner was in judicial custody since 25.02.2010 and he was made accused with others in MCOCA on 06.03.2003 and nowhere name of

the syndicates is ever established or mentioned.

26. Ld. Counsel has relied upon a case of **Ranjit Singh Sharma (2005) 5 SCC 204** wherein it is held as under:-

"Interpretation clauses contained in Sections 2(d), (e) and 2(f) are inter-related. An 'organized crime syndicate' refers to an 'organized 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 generic" / "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 Sections 146 and 153-A 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, 413 of the IPC relating to commission of offences or cheating or criminal breach of trust, the provision of the said Act. can be applied, which prima facie, does not appear to have been intended by the Parliament."

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 Act 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 indicted hereinabove, 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."

27. Ld. Counsel for the petitioner submits that no case under MCOCA Act is made out against the petitioner and has also relied upon another judgment of High Court of Bombay in **Sherbahadur Akram Khan & ors. Vs. State of Maharashtra 2007(1) Bom. C.R.(Cri.) 26**, wherein it is observed as under:

“7. While dealing with this case, we must bear in mind the purpose enacting the MCOC Act. This Act was enacted in 1999 since it was felt by the legislature that the existing legal frame was inadequate for coping with the menace of organised crime. The avowed object of the Act was to prevent and control criminal activity by organised crime syndicates or gangs and for matters connected therewith or incidental thereto. The statement of objects and reasons of this Act reads as under:

STATEMENT AND OBJECT

Organised crime has for quite some years now come up as a very serious threat to our society. It knows no national boundaries and is fueled by illegal wealth generated by contract killings, extortion, smuggling in contrabands, illegal trade in narcotics, kidnappings for ransom, collection of protection money and money laundering, etc. the illegal wealth and black money generated by the organised crime is very huge and has serious adverse effect on our economy. It is seen that the organised criminal syndicates make a common cause with terrorist gangs and foster narco terrorism which extend beyond the national boundaries. There is a reason to believe that organised criminal gangs are operating in the State and thus, there is immediate need to curb their activities.

It is also noticed that the organized criminals make extensive use of wire and oral communications in their criminal

activities. The interception of such communications to obtain evidence of the commission of crimes or to prevent their commission is an indispensable aid to law enforcement and the administration of justice.

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

3. As both Houses of the State Legislature are not in session and the Governor of Maharashtra is satisfied that circumstances exist which render it necessary for him to take immediate action to make a law for the purposes aforesaid, this Ordinance is promulgated.

8. Before we consider the merits of the present cases, it would be appropriate to set out certain provisions of the MCOC Act. Under Section 3(1), a person who commits an offence of organised crime, can be punished with death or imprisonment for life and would also be liable to pay a fine of a minimum of rupees one lac. In case the offence is punishable by imprisonment for a term which is not less than five years, and which may extend to life imprisonment, the accused may be subjected to payment of fine as well, of a minimum of rupees five lacs.

9. Section 2(d) defines the expression continuing unlawful activity thus:

Section 2(d). "Continuing unlawful activity" means 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 organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence.

The definition of organised crime is stipulated in Section 2(e) of the MCOC Act, thus:

Section 2(e). "Organised crime" means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting unsurgency.

Section 2(f) defines the term organised crime syndicate thus:

Section 2(f). "Organised crime syndicate" means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organised crime.

10. A perusal of the aforesaid definitions indicates that an organised crime syndicate is a gang which indulges in organised crime. This gang may consist of two or more persons, either acting singly or collectively. Such a gang should be found to indulge in continuing unlawful activity i.e. an activity which is prohibited by law and is a cognizable offence punishable with imprisonment for three years and more. An activity would be termed as a continuing unlawful activity if more than one charge-sheet has been filed

before the competent Court against the members of the gang either individually or jointly within the preceding ten years. However, it must be established that such an offence or unlawful activity is undertaken by a person with the objective of gaining pecuniary benefits or gaining undue economic or other advantage for himself or any other person or for promoting insurgency. Such unlawful activity could include the use of violence or threat of violence or intimidation or coercion.

12. Apart from this, as aforesaid, the unlawful activity is not relatable to any pecuniary advantage or economic gain for the accused. The words in Section 2(e) "with the objective of gaining pecuniary benefits or gaining undue economic or other advantage" will have to be given some effective meaning. Applying the principle of ejusdem generis the words "other advantage" would have to be interpreted in the same manner as the previous terms "pecuniary benefits" or "undue economic advantage". A quarrel at a water tap which resulted in violence cannot be an offence which falls within this definition. Assaults on some persons also cannot be considered as offences which have been undertaken for pecuniary gain or undue economic advantage. The sanction order which we have perused also does not disclose that there was any material before the Commissioner of Police to arrive at such a conclusion. According to the learned A.P.P., these assaults were carried out in order to gain supremacy in the local area where the accused resided and operated. However, a perusal of the sanction order does not reveal that this factor weighed with the Commissioner. In the present case, the order does not in any manner indicate that there was any material before the Commissioner or that he has considered the material showing that the accused had assaulted others for the purposes of economic gains.

13. We are fortified in the view that we have taken by the judgment of the Ranjeetsingh Brahmajeetsing Sharma v. State of

Maharashtra, reported in 2005 ALL MR (Cri) 1538 (S.C.). While interpreting Clauses (d), (e) and (f) of Section 2 of the MCOC Act, the Supreme Court has held thus

31. 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 Sections 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 'coersion' 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 or 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.

32. The Statement of Objects and Reasons clearly states 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 MCOC Act seeks to prevent or control. In other words, an offence falling within the definition of organised crime and committed by an organised 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.

28. On the other hand Mr. Navin Sharma, Id. APP for State submits that the petitioner was apprehended on 25.02.2010.

29. He further submits that petitioner has been indulging in continuing unlawful activities in an organized manner with the objective of gaining pecuniary benefits and other advantages for themselves and members of their crime syndicate by unlawful means.

30. He further submits that sanction has been obtained from the competent authority to prosecute both of them.

31. It is further submitted that petitioner with active association of co-accused Praveen Kumar had number of girls on his panel. Further submitted that aforesaid co-accused had come to Gurgaon in 2006 from his village Jhajjhar, Haryana and started working as a tempo driver. He then became a broker for the call girls and started living in Delhi at different places and started earning money. Thereafter, he came in contact with petitioner and started supplying the girls to the clients of the petitioner on commission basis i.e. used to pay the girls out of charges received from the clients and then share the balance with the petitioner.

32. Investigation also revealed that petitioner was using mobile phone numbers taken in different names and addresses for carrying on this illegal

trade. The mobile phone book contains thousands of phone numbers of different parts of the country including numbers of various hotels in Delhi. The mobile phone bills were itself running to the tune of Rs.5,21,744. There were numerous calls made from the phone of the petitioner to mobile phone no. of co-accused Praveen Kumar.

33. Investigation has revealed that both were in hand in glove and were acting in an organized manner after constituting a crime syndicate to carry out flesh trade for pecuniary gains.

34. Ld. APP further submits that petitioner had invested in various insurance policies, purchased property at Jawahar Park, Khanpur, Delhi in the year 2003 and had constructed a four and half storied house over there. The office in the house is well furnished with lavish lifestyle and valued to the tune of Rs.52,81,900/- . He had also constructed three storied temple in a 5,000 Sq. Ft. area in his native village which valued at Rs.50,80,000/-. Besides this, he had other residential property in village to the value of about Rs.15,00,000/-.

35. Further submitted that petitioner has been using different rented accommodation during all this time. The landlords of these premises have stated that petitioner took the premises representing himself to be a Swamy and then subsequently they realized that he was using it for a flesh trade and on this they asked him to vacate the same. Further submitted that one Honda City and one Honda Civic Care was recovered from the petitioner and his associates.

36. Ld.APP further submits that six bank accounts in the name of the petitioner shows huge cash deposits during this period. The total cash deposits in all the banks being about Rs.89 Lacs.

37. I have heard ld. Counsel for the parties.

38. Statement of Object of this Act is that illegal wealth generated by contract killings, extortion, smuggling in contrabands, illegal trade in narcotics, kidnappings for ransom, collection of protection money and money laundering, etc. the illegal wealth and black money generated by the organised crime is very huge and has serious adverse effect on our economy. It is seen that the organised criminal syndicates make a common cause with terrorist gangs and foster narco terrorism which extend beyond the national boundaries. Thus, the Statement of Objects and Reasons clearly states as to why the said Act had to be enacted.

39. 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 Act 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 statute providing for punishment of three years or more and in relation to such offences more than one charge-sheet may be filed. The same by itself, though, may not be sufficient to attract the provisions of MCOCA.

40. For the purpose of initiating proceedings under MCOCA Section 2(d)(e)(f) defines and indicates that the organized crime syndicate is a gang which indulges in organized crime. This gang may consist of two or more persons, either acting singly or collectively, such a gang should be found to indulge in continuing unlawful activities, i.e. activities which is prohibited by law and is a cognizable offence punishable with imprisonment for 3 years and more. The activity would be terms as a continuing unlawful activity if more than one charge-sheet has been filed before the competent court against the members of gang either individually or jointly within the preceding 10 years. However, it must be established that such an offence or unlawful activity is undertaken by a person with the objects of gaining pecuniary benefits or gaining undue economic or other advantages for himself or any other persons or for promoting insurgency. Such unlawful activity could include the use of violence or threat of violence or intimidation or coercion.

41. During the course of investigation, it is revealed that the petitioner was found involved in as many as 5 cases registered at different Police Stations under various offences as discussed above in Para 9 of the present judgement.

42. It is also revealed that the petitioner was using mobile phone numbers, bills thereof, running to the tune of Rs.5,21,744/-. That apart he has invested in various insurance policies, purchased property in various places including Delhi, constructed a four and half storied house, living with lavish lifestyle and have properties worth Crores of Rupees without any known source of income.

43. In my considered opinion, the case in hand qualifies as required under the aforesaid provisions, therefore, the charges framed by the Id. Trial Court against petitioner are proper.

44. I find no discrepancy in the order passed by Id. Trial Court. Therefore, I confirm the same.

45. Accordingly, Crl. M.C. 4341/2011 is dismissed.

46. Since the main petition is dismissed, Crl. M.A. 19899/2011 (Stay) does not require further adjudication and disposed of as such.

47. No order as to costs.

SURESH KAIT, J

MARCH 26, 2012

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