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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 659 OF 2014

State of Maharashtra
(At the instance of A.C.P.
Anti Terrorism Squad, Mumbai)

.. Appellant

Versus

Firoz @ Hamaja Abdul Hamid Sayyed
R/at 598, Shukrawar Peth, Pune.

.. Respondent
(Org.Accd. No. 3)

Mr. Sunil V. Manohar, Advocate General a/w Mr. Raja Bhaskar Thakare,
Special P.P. a/w Mr. Ashutosh Thipsay a/w Mr. H. J. Dedhia, APP, for
appellant-State.

Mr. Mehmood Pracha a/w Mr. T. W. Pathan a/w Mr. I.A. Khan i/by Legal
Axis for respondent.

CORAM: P. V. HARDAS &
DR. SHALINI PHANSALKAR-JOSHI, JJ.

RESERVED ON : JANUARY 29, 2015.

PRONOUNCED ON : APRIL 28, 2015.

JUDGMENT [Per P. V. Hardas, J.] :

1. This appeal filed under Section 12 of the Maharashtra Control of Organised Crime Act, 1999 (for short hereinafter referred to as M.C.O.C. Act), challenges the correctness of the decision of the Special Judge, M.C.O.C. Act, Pune in M.C.O.C. Special Case No. 7 of 2013, being an order below Exhibit 63, dated 2nd August, 2014. By virtue of the order

impugned in the present appeal, the Special Judge allowed the application at Exhibit 63 and thereby discharged the applicant therein/Original Accused No.3, along with the other accused, from the provisions of Section 3(1)(ii), 3(2), 3(4) of the M.C.O.C. Act and requested the Principal District Judge, Pune to assign the trial to a competent court.

2. The present impugned order is a sequel to an earlier order which was passed by the Special Judge, M.C.O.C. Act, dated 11/2/2014. The State Government had challenged the aforesaid order before the Division Bench of this court and during hearing, the learned counsel representing the respondent, urged that there were certain other aspects which had not been urged before the trial court. The Division Bench also upon perusal of the order impugned therein i.e. in Criminal Appeal No. 166 of 2014, noticed that certain factual aspects of the case had not been considered and no finding had been recorded with regard to those facts. The Division Bench, therefore, by its order dated 26/6/2014 allowed the appeal and quashed and set aside the impugned order and remitted the matter back to the Special Judge for a decision afresh in accordance with law. Pursuant thereto, the present impugned order has been passed, against which the present appeal has been filed.

3. It appears that the respondent herein had filed an application at Exhibit 63 in essence praying that he may be discharged from the provisions of the M.C.O.C. Act. The trial court accepted the submissions of the accused and accordingly discharged him. We may briefly advert to the findings which have been recorded by the trial court.

The learned trial Judge has held/observed that, “Causing of bomb explosions would not convert a terrorist act or an act of insurgency into “promoting insurgency”. The trial judge further recorded a finding that insurgency and promoting insurgency were two different aspects and the act alleged against the accused was an act of insurgency and, therefore, would not be an act promoting insurgency. The trial judge further recorded a finding that the act of terrorism or an act of terrorist as is defined under “The Unlawful Activities (Prevention) Act, 1967 (for short hereinafter referred to as “UAPA”) would not be an offence under the M.C.O.C. Act. The trial judge further recorded a finding that in cases of serial bomb blasts, it would not be a case of “organised crime” as it would not amount to committing any activity of promoting insurgency. The trial court came to the conclusion that once an act of insurgency had been committed, the said act cannot amount to promoting insurgency. The trial judge, therefore,

with the above and other findings allowed the application filed by the accused and discharged all the accused from the provisions of the M.C.O.C. Act.

4. Assailing the impugned order, Mr. Sunil Manohar, the learned Advocate General has urged before us that if two enactments have identical ingredients in respect of an offence, the accused could only be prosecuted under one enactment. However, if the ingredients of the offences under the two or more enactments are different, prosecution under both the Acts would be maintainable. The learned Advocate General further submitted before us that the ingredients of the offence under the UAPA and the M.C.O.C. Act are distinct and separate, though there may be slight overlapping and, therefore, the bar under Section 26 of the General Clauses Act would clearly not apply. The learned Advocate General amplified his submission by urging before us that the UAPA is directed against the terrorist act per se, while the M.C.O.C. Act is directed against the crime syndicate which has a driving force of promoting insurgency. It is also urged before us by the learned Advocate General that the observation of the trial judge that a terrorist organisation would only promote acts of terrorism out of principle and for no other consideration is a fallacious observation.

5. Countering the submissions of the learned Advocate General, Mr. Pracha, learned counsel for the respondent has urged before us that perusal of the provisions of the UAPA as well as the perusal of the provisions of the M.C.O.C. Act would indicate that the provisions of M.C.O.C. Act would not apply to cases of terrorism or terrorist activity. It is also urged before us that in case there is a conflict between the Central Act and the State Act, the Central Act will obviously prevail. It is also urged before us that the (two) charge-sheets against the accused had not been filed before a competent court and on that count alone the provisions of the M.C.O.C. Act would be inapplicable and the accused has been rightly discharged. Mr. Pracha, learned counsel for the respondent, has also urged before us that the Magistrate before whom the accused had been produced, had no jurisdiction to grant remand after the initial remand. The submission of Mr. Pracha, therefore, is that the provisions of the M.C.O.C. Act would not apply.

6. Section 2(k) of the UAPA defines what is a “terrorist act”. Section 2(k) reads thus :-

“2(k) “terrorist act” has the meaning assigned to it in section

15, and the expressions “terrorism” and “terrorist” shall be construed accordingly.”

Section 15 of the UAPA defines what is “Terrorist act” and Section 15 reads thus:

“15. Terrorist act. - Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country, -

- (a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) or a hazardous nature or by any other means of whatever nature to cause or likely to cause-
 - (i) death of, or injuries to, any person or persons; or
 - (ii) loss of, or damage to, or destruction of, property; or
 - (iii) disruption of any supplies or services

essential to the life of the community in India or in any foreign country; or

(iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or

(b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or

(c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or any other person to do or abstain from doing any act,

commits a terrorist act.

Explanation.- For the purposes of this section, public functionary means the constitutional authorities and any other functionary notified in the Official Gazette by the Central Government as a public functionary.”

7. Section 2(l) of the UAPA defines what is “terrorist gang” and

Section 2(m) defines what is “terrorist organisation”. Sections 2(l) and 2(m) read thus :-

“2(l) “terrorist gang” means any association, other than terrorist organisation, whether systematic or otherwise, which is concerned with, or involved in, terrorist act.

2(m) “terrorist organisation” means an organisation listed in the Schedule or an organisation operating under the same name as an organisation so listed.”

Section 2(p) of the UAPA defines what is an “unlawful association” and Section 2(p) reads thus:

“2(p) “unlawful association” means any association, -

- (i) which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity; or
- (ii) which has for its object any activity which is punishable under section 153A or section 153B of the Indian Penal Code (45 of 1860), or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity:

Provided that nothing contained in sub-clause (ii) shall apply to the State of Jammu and Kashmir;”

8. “Continue unlawful activity” is defined in Section 2(d) of the M.C.O.C. Act, which reads thus:

“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.”

“Organised crime syndicate” is defined in Section 2(f) of the M.C.O.C. Act, which reads thus :

“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.

As per the definition of “organised crime” in Section 2(e) of the M.C.O.C. Act, an organised crime would mean any continuing unlawful activity either by an individual, singly or jointly, 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. The aforesaid activity has to be with the objective of gaining pecuniary benefits or gaining undue economic or other advantage for himself or any other person or promoting insurgency.

The word “promoting insurgency” would be distinct from an insurgent act. Promoting insurgency would obviously mean all the steps which are taken for promotion of insurgency and it is immaterial whether an insurgent act has been committed pursuant to the promotion. Thus, the insurgent act may in a given case amount to culmination of the acts of promotion of insurgency. Thus, depending on the facts of the case an accused may be tried for promoting insurgency and insurgency itself. However, the acts leading to promotion of insurgency would be an independent and a distinct offence as against an act of insurgency which again is a separate and a distinct offence. Thus, any person, either singly or jointly, either as a member of an organised crime syndicate or on behalf of

such syndicate uses violence or threat of violence or intimidation or coercion or other unlawful means with the object of promoting insurgency, satisfying the other requirements of law, would be committing an offence under the M.C.O.C. Act. The provisions of Section 15 of the UAPA, which defines a terrorist act, deal with the terrorist act as such i.e. insurgency, but does not in any manner deal with any act promoting insurgency.

9. The learned Advocate General has referred to the judgment of the Supreme Court in State (NCT of Delhi) vs. Navjot Sandhu alias Afsan Guru [(2005) 11 SCC 600]. In the said judgment, Supreme Court has held as under:

“Where there are two distinct offences made up of different ingredients, embargo under Art.20(2) or S. 26, General Clauses Act, 1897 has no application, though the offences may have some overlapping features.”

10. The learned Advocate General has referred to the judgment of the Supreme Court in State of Bihar vs. Murad Ali Khan and ors. [(1988) 4 SCC 655]. The Supreme Court, at paragraph 31 has held thus :-

“31. The same set of facts, in conceivable cases, can constitute offences under two different laws. An act or an omission can amount to and constitute an offence under the

IPC and at the same time constitute an offence under any other law. The observations of this Court made in the context of Section 2(3) of Contempt of Courts Act might usefully be recalled. In *Bathina Ramakrishna Reddy V. State of Madras*, this Court examined the contention that the publication of an article attributing corruption to a judicial officer was not cognizable in contempt jurisdiction by virtue of Section 2(3) of the Contempts of Courts Act, 1953, which provided that:

No High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code.”

11. The learned Advocate General has further relied on the judgment of the Supreme Court in *Kishori Mohan Bera vs. The State of West Bengal [AIR 1972 SC 1749]*, particularly to the observations of the Supreme Court at paragraph 7, which we reproduce thus:

“7. In *Dr. Lohia v. State of Bihar* (1966) 1 SCR 709 = (AIR 1966 SC 740) this Court explained the difference between the three concepts of law and order, public order and the security of the State and fictionally drew three concentric circles, the largest representing law and order, the next representing public order and the smallest representing security of the State. Every infraction of law must necessarily affect order, but an act affecting law and order may not necessarily also

affect the public order. Likewise, an act may affect public order, but not necessarily the security of the State. These observations clearly bring out the distinction between each of the three concepts and the three imaginary concentric circles help to delineate the respective areas of the three concepts. A similar distinction between law and order and public order was also drawn in *Pushkar Mukherjee v. State of West Bengal*, (1969) 2 SCR 635 = (AIR 1970 SC 852) and a caution was there expressed that the expression 'public order' in S. 3 (1) of the Preventive Detention Act, 1950 did not take in every infraction of law and that every disturbance of law and order leading to disorder would not be sufficient to invoke the extraordinary power under such a detention law, unless the act in question was such as endangered or was likely to endanger public order. The true test is not the kind, but the potentiality of the act in question. One act may affect only individuals while the other, though of a similar kind, may have such an impact that it would disturb the even tempo of the life of the community. (See *Arun Ghosh v. State of West Bengal*, (1970) 3 SCR 288 = (AIR 1970 SC 1228) also *Nagendra Nath Mondal v. State of West Bengal*, (1972) 1 SCC 498 = (AIR 1972 SC 665). This does not mean that there can be no overlapping, in the sense that an act cannot fall under two concepts at the same time. An act, for instance, affecting public order may have an impact that it would affect both public order and the security of the State. In such a case the

power can be exercised on both the grounds, namely, disturbance of public order and danger to the security of the State.”

12. The learned Advocate General has also referred to the judgment of the Supreme Court in *Zameer Ahmed Latifur Rehman Sheikh vs. State of Maharashtra and ors.* [(2010) 5 SCC 246], relating to the challenge to the vires of the Maharashtra Control of Organised Crime Act, 1999. The Supreme Court at paragraphs 75, 76, 77, 78, 79 and 80 observes thus:

“76. Under MCOCA the emphasis is on crime and pecuniary benefits arising therefrom. In the wisdom of the legislature there are activities which are committed with the objective of gaining pecuniary benefits or economic advantages and which over a period of time have extended to promoting insurgency. The concept of the offence of “terrorist act” under Section 15 of UAPA essentially postulates a threat or likely threat to unity, integrity, security and sovereignty of India or striking terror amongst people in India or in foreign country or to compel the Government of India or the Government of a foreign country or any other person to do or abstain from doing any act.

77. The offence of terrorist act under Section 15 and the

offence of unlawful activity under Section 2(1)(o) of UAPA have some elements in commonality. The essential element in both is the challenge or threat or likely threat to the sovereignty, security, integrity and unity of India. While Section 15 requires some physical act like use of bombs and other weapons, etc., Section 2(1)(o) takes in its compass even written or spoken words or any other visible representation intended or which supports a challenge to the unity, sovereignty, integrity and security of India. The said offences are related to the defence of India and are covered by Entry 1 of the Union List.

78. Moreover, the meaning of the term “unlawful activity” in MCOCA is altogether different from the meaning of the term “unlawful activity” in UAPA. It is also pertinent to note that MCOCA does not deal with the terrorist organisations which indulge in terrorist activities and similarly, UAPA does not deal with organised gangs or crime syndicate of the kind specifically targeted by MCOCA. Thus, the offence of organised crime under MCOCA and the offence of terrorist act under UAPA operate in different fields and are of different kinds and their essential contents and ingredients are altogether different.

79. The concept of insurgency under Section 2(1)(e) of MCOCA, if seen and understood in the context of the Act, is a

grave disturbance of the public order within the State. The disturbance of the public order, in each and every case, cannot be said to be identical or similar to the concepts of terrorist activity as contemplated respectively under Section 2(1)(o) and Section 15 of UAPA. Moreover, what is punishable under MCOCA is promoting insurgency and not insurgency per se.

80. The aforesaid analysis relating to the essential elements of offence of “promoting insurgency” under Section 2(1)(e) of MCOCA and the offences of terrorist act and unlawful activity under Section 15 and Section 2(1)(o) of UAPA respectively, clearly establishes that UAPA occupies a field different than that occupied by MCOCA. There is no clear and direct inconsistency or conflict between the said provisions of the two Acts.”

12. The learned Advocate General has also referred to the judgment of the Full Bench of this court in State of Maharashtra vs. Jagan Gagansingh Nepali @ Jagya and anr. **[2011 (5) Mh.L.J. 386]**. The Full Bench, at paragraph 42 answered the question which was referred to it as under:-

“42. For the reasons aforesaid, we answer the issue that the term “other advantage” cannot be read as *ejusdem generis* with the words “pecuniary benefits” and “undue economic”.”

The learned Advocate General has also referred to paragraph 31 of the aforesaid judgment of the Full Bench of this court, which reads thus:-

“31. Applying these principles, it can be seen that the existing legal framework i.e. the penal and procedural laws and the adjudicatory system were found to be inadequate to curb or control the menace of organised crime. It was found that the organised crime had become a serious threat to the society beyond national boundaries and is fuelled by the illegal wealth achieved by contract, killing, extortion, smuggling in contrabands, illegal trade in narcotics, kidnapping for ransom, collector of protection money and money laundering etc. It was found that the illegal wealth and black money generated by the organised crime being very huge, it had serious adverse effect on the economy. It was further seen that the organised criminal syndicates made a common cause with terrorist gangs and foster narco terrorism which extend beyond the national boundaries. It was further found that the organised criminals have been making extensive use of wire and oral communications in their criminal activities. In this background, it was found necessary 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.

13. Mr. Pracha, learned counsel for the respondent, has referred to the various provisions of the UAPA, M.C.O.C. Act as well as National Investigation Agency Act, 2008. Mr. Pracha has also referred to the findings of the Supreme Court in Zameer Ahmed Latifur Rehman Sheikh (Supra) and has urged before us that in case of conflict between the Central Act and the State Act, the Central Act shall prevail. In the submission of Mr. Pracha, therefore, the provisions of the UAPA would prevail over the M.C.O.C. Act and in one prosecution the provisions of both the Acts cannot be applied. We may at this juncture briefly refer to the fact that the Supreme Court while dealing with the challenge to the validity of the M.C.O.C. Act has held that there was no clear and direct inconsistency or conflict between the provisions of the said two Acts. Since there is no conflict between the provisions of the two Acts i.e. UAPA and M.C.O.C. Act, the question as to whether Central Act would prevail over the State Act would not be a question which would fall for consideration of this court.

14. Mr. Pracha has further urged before us that the two charge-sheets presented against the accused had not been presented before the

competent court and, therefore, the provisions of the M.C.O.C. Act would not apply. Mr. Prach further urged before us that Section 2(d) of the M.C.O.C. Act, which defines “continuing unlawful activity”, contemplates more than one charge-sheets being filed before a competent court within the preceding period of ten years and that the court had taken cognizance of such offence. The trial judge, while dealing with the aforesaid submission of the respondent at paragraph 39 has held that the trial court was not a court of appeal and was, therefore, not competent to decide the legality of the order passed by the Magistrate. The trial judge came to the conclusion that since two charge-sheets have been filed i.e. Sessions Case No. 208 of 2008 and M.C.O.C. 11 of 2010 and the cognizance had been taken by the competent court, it was sufficient compliance of Section 2(1)(d) of the M.C.O.C. Act. In our opinion, two charge-sheets have been filed against the respondent. No plea has been raised in those cases regarding the competence of the court to take cognizance of the offence. It also does not appear that any finding had been recorded by the trial court regarding the competence of the trial court to take cognizance and proceed further with the trial. We have not been informed about any such challenge and in the absence of any challenge to the competence of the court to proceed further with the trial in those cases, it would not be open for us, at this

stage, to examine and record a finding regarding the competence of the trial courts to proceed with the trial in respect of the two previous charge-sheets. The aforesaid submission of the learned counsel for the respondent, therefore, in our opinion, does not in any manner support his contention regarding the inapplicability of the provisions of the M.C.O.C. Act.

15. Learned counsel for the respondent has placed reliance on the judgment of the Division Bench of the Delhi High Court in **Writ Petition (Civil) No. 7036 of 2013 – Sayed Mohd. Ahmad Kazmi vs. Union of India**, decided on 31/3/2014, particularly, paragraphs 11, 12 and 13, which read thus :

“11. As is apparent from the reading of the Section, it enables State Governments to constitute Special Courts for trial of offences under any or all of the enactments specified in the Schedule of the NIA Act. The said schedule refers to seven enactments and specific sections in Chapter VI of the Indian Penal Code i.e. Sections 121-130 both inclusive and Sections 489A to 489E both inclusive. Sub-section (1) to Section 22 of NIA Act refers to trial of offence(s) under any or all of the enactments specified in the schedule. Sub-section (2) makes the provisions of Chapter IV, i.e. Sections 11 to 22 of the NIA Act applicable to special courts constituted under

Sub-section (1), subject to the modifications stipulated in clauses (i) to (iii). The said clauses postulates that references to Central Government in Sections 11 and 15 shall mean references to State Government; reference to agency in Section 13(1) shall mean reference to the investigating agency of the State Government; and reference to Attorney General in Section 13(3) shall mean reference to Advocate General of the State. Sub-section (3) states that until special court is constituted by the State Government under sub-section (1), notwithstanding anything contained in the Code of Criminal Procedure 1973, the Court of Session of the Division in which such offence has been committed shall have all powers and will follow the procedure under Chapter IV of the NIA Act. Thus, where State Government has not constituted special courts under sub-section (1) to Section 22, the powers conferred under Chapter IV of the NIA Act shall be exercised by the Court of Session of the Division in which such offence is committed and the procedure in the said chapter of the NIA Act is to be followed. The provisions of Chapter IV on the power/authority of the court and procedure to be followed override the provisions contained in the Code of Criminal Procedure, 1973. The non-obstante stipulation in sub-section (3) is with reference to the power of the Court of Session and the procedure and even normal court of Session of the Division will have all powers in terms of sub-section (3) which are conferred on special courts under Chapter IV of the

NIA Act. The procedure under chapter IV is to be followed. Sub-section (3) does not carve out or confer territorial jurisdiction on the Court of Session of a Division. Court of Session of the Division has not been defined in the NIA Act but stands defined and explained in Sections 7, 9 and 10 of the Code of Criminal Procedure. The expression “in which offence has been committed” refers to Court of Session which under the provisions of Code would have jurisdiction to try the offence. The object and purpose of sub-section (3) is clear from the last part of the said sub-section, which stipulates that Court of Session shall have all powers and follow the procedure provided under Chapter IV of the NIA Act. This is the intended purpose and object behind sub-section (3) and the non-obstante expression used in the said sub-section is for the said purpose. Thus, where special courts have not been constituted by the State Government under Section 22(1), the Court of Session which normally has jurisdiction to try the offence under the Code of Criminal Procedure will be entitled to proceed and adjudicate whether or not offence has been committed and also have all powers conferred and follow the procedure stipulated under Chapter IV of the NIA Act. Sub-section (4) stipulates that on and from the date when the special courts are constituted by the State Government, the trial pending before the Court of Session of a Division, shall be transferred to the special court if the trial relates to any offence under the provisions of the NIA Act and has been

investigated by the State Government under the provisions of the NIA Act.

12. We fail to understand on what basis it is contended and submitted that the trial pending before Additional Session Judge 02, Patiala House Courts, New Delhi is vitiated under Section 22 of the NIA Act. As noticed above, the trial or proceedings pursuant to the charge-sheet have been transferred to the court of Additional Session Judge 02, Patiala House Courts, New Delhi pursuant to notification dated 3rd August, 2013 issued by the Delhi High Court in exercise of its administrative power. The said court would be the Court of Session of the Division for the purpose of Criminal Procedure Code in view of the dictum and as per the ratio of the decision dated 7th October, 2013 in WP © No. 5598/2013 titled Mohd. Shakeel vs. The High Court of Delhi. The same court i.e. Additional Session Judge 02, Patiala House Courts, New Delhi has been designated as a special court under Section 22(1) of the NIA Act. In terms of sub-sections (3) and (4) of Section 22, court of Additional Session Judge 02, Patiala House Courts, New Delhi, had all powers and had to follow the procedure under Chapter IV of NIA Act as a court of Session of the Division initially as a Special Court had not been constituted and as a Special Court after the constitution of the Special Court in terms of and under sub-section (4) read with sub-sections (1) and (2) of Section 22.

13. The entire National Capital Territory of Delhi prior to 1st March, 2013 was one division with a Session Judge. 11 Divisions were created vide notification dated 22nd February, 2013 w.e.f. 1st March, 2013. Police Station Special Cell, Lodhi Colony falls in New Delhi Division at Patiala House Courts. Additional Session Judge 02, Patiala House Courts, New Delhi Division is one of the Additional Session Judges falling within the said jurisdiction, whereas Additional Sessions Judge 03 (Central), Tis Hazari Courts is not one of the Additional Session Judge within the New Delhi Division. In the aforesaid factual background, challenge to the territorial jurisdiction of Additional Session Judge 02, Patiala House Courts, New Delhi Division, has to even otherwise fail. Thus, with effect from 12th September, 2013, Additional Session Judge 02, Patiala House Courts, New Delhi Division upon designation as a Special Court under Section 22 of the NIA Act, continued with proceedings as a Special Court and not as a Court of Session of the Division under sub-section (3). Earlier, Additional Session Judge 02, Patiala House Court, New Delhi Division was exercising powers under sub section 3 to Section 22 of the NIA Act. In actual effect, it made no difference because the Additional Session Judge 02, Patiala House Courts, New Delhi District was also Court of Session of Division exercising power and following the procedure of Chapter IV of the NIA Act and continued to exercise the same

power and follow the same procedure under Chapter IV, subsequently as a Special Court.”

The learned counsel for the respondent has also placed reliance on the judgment of the learned Single Judge of the Kerala High Court in **Bail Application No. 5134 of 2010 – Ashruff vs. State of Kerala, dated 26/10/2010**. The learned counsel for the respondent has also placed reliance on the judgment of the Division Bench of the Calcutta High Court in C.R.A. No. 411 of 2010, dated 4/5/2011 – Saraswati Rai vs. Union of India, which deals with the release of the accused on bail. Reliance is also placed on the judgment of the Supreme Court in **Sayed Mohd. Ahmed Kazmi vs. State, GNCTD and ors. [Criminal Appeal Nos.1695-1697 of 2012, dated 19/10/2012]**. The ratio of the said judgment is in respect of the competence of the court to grant further remand. The Supreme Court, at paragraph 27 directed the release of the accused therein on bail as the order of the Chief Metropolitan Magistrate extending the time of investigation and custody of the accused for 90 days with retrospective effect as well as the order of the High Court were quashed and set aside.

16. The ratio of the aforesaid judgments, in our opinion, would be inapplicable to the facts of the present case, as we are not examining the question of competence of the court either granting further remand of the accused nor are we entertaining a challenge in those cases regarding the competence of the court to proceed further with the trial. In the absence of such a challenge before us, the submission of the learned counsel for the respondent that the courts before whom the two charge-sheets had been filed were incompetent to either remand the accused or to proceed further with the trial, is a submission which cannot be entertained by us.

17. It would thus be apparent that the provisions of the M.C.O.C. Act and the UAPA are entirely different and both these Acts operate in spheres in respect of the offences specified therein. There may be some overlapping, but that by itself would be wholly insufficient to hold that prosecution under one Act would exclude the operation of the other Act. The M.C.O.C. Act deals with the organised crime syndicate committing several illegal activities with the objective of promoting insurgency and other objectives, while the UAPA deals with punishing the act of insurgency per se. Since these two enactments operate in respect of different and distinct offences and a prosecution in respect of offences

under both the enactments would certainly be maintainable. The finding of the trial court that the prosecution under the UAPA would exclude the operation of the provisions of the M.C.O.C. Act is completely unsustainable. As pointed out by us above, any individual acting jointly or singly as a member of the organised crime syndicate or on behalf of the crime syndicate commits any of the illegal activity specified in the Act with the objective of promoting insurgency or for any other purpose, would be liable for punishment under the provisions of the M.C.O.C. Act, regardless of the fact, whether the same accused is also being tried for the offence punishable under the provisions of the UAPA. It would be extremely hazardous to lay down a broad principle that the provisions UAPA exclude the provisions of the M.C.O.C. Act. The finding of the trial court in that regard, therefore, is wholly unsustainable in law and the order of the trial court, therefore, deserves to be quashed and set aside.

18. The appeal is thus allowed and the order impugned in the present appeal is hereby quashed and set aside.

(DR. SHALINI PHANSALKAR-JOSHI,J.)

(P. V. HARDAS,J.)