

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1104 OF 2012

Mr. Shoeb Munir Shaikh	)	
Aged 26 years, residing at 1050, New	)	
Nana Peth, Pune.` `	)	Appellant
vs.		(Orig.Accused No.4)
The State of Maharashtra	...	Respondent

ALONG WITH
CRIMINAL APPEAL NO. 105 OF 2013

1.	Shahabaz Feroz Khan	)	
	Age 22 years R/at Nawajes Park,	)	
	Lane No.10, Meetha Nagar,	)	
	Kondhwa, Pune.	)	
2.	Shadab Hussain Shaikh	)	
	Age 21 years, R/at 1050,	)	
	New Nana Peth, Pune	)	
		)	..Appellants
	vs.		(Orig. Accused Nos. 1 & 2)
	The State of Maharashtra	...	Respondent

ALONG WITH
CRIMINAL APPEAL NO. 1200 OF 2012

Mr. Taher @ Lala Sharif Shaikh	)	
Aged 22 years, 54, B.P.Lohiya Nagar	)	
Bhavani Peth, Pune	)	... Appellant
vs.		(Orig. accused No.3)
The State of Maharashtra	..	Respondent

ALONG WITH
CRIMINAL APPLICATION NO. 15 OF 2015

in
Criminal Appeal No. 105 of 2013
Shahabaz Feroz Khan .. Applicant
vs.
The State of Maharashtra .. Respondent

**ALONG WITH
CRIMINAL APPLICATION NO. 520 OF 2015**

in
Criminal Appeal No.1200 of 2012
Mr. Taher @ Lala Shariff Shaikh ... Applicant
vs.
The State of Maharashtra ... Respondent

Mr. Prakash Naik for appellant in Appeal No.1104/2012
Mr. P.G.Sarda for appellant in Appeal No.105 of 2013.
Ms. Mallika Ajay Ingale for appellant in Appeal No.1200 of 2012.
Ms. A.A.Mane, APP, for the State.

**CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 16th December, 2015.**

JUDGMENT :

The appellants herein are convicted for the offences punishable under Sections 392 read with Section 34 of Indian Penal Code and sentenced to suffer R.I. for five years and fine of Rs.1,000/- in default R.I. for two months, they are also convicted for the offence punishable under Section 3(1)(ii) of Maharashtra Control of Organized Crime Act, 1999 (hereinafter referred to as MCOCA) and sentenced to suffer R.I. for seven years and fine of Rs.5,00,000/- each in default further R.I. for two years by

the Special Judge under MCOCA, Pune in MCOCA Special Case No.2 of 2011 vide judgment and order dated 31.8.2012. Hence, this appeal. Since the accused are in jail, the matter was referred as a Jail Appeal.

2. Such of the facts necessary for the decision of this Appeal, are as follows :-

(a) That one Hansraj Singhal, who is resident of Kondhwa, Pune, owns a shop and godown under the name and style of “Vijay Steels”. Vikram Bansal happens to be his partner and the business is conducted by them jointly. One Sunil Bharadwaj is the Manager of Vijay Steels. The company has a stock of about 25 to 30 labours, besides 7 – 8 employees. Hansraj owns a Maruti Swift Car bearing registration No.MH-12/FY-4693, which was a self-driven car.

(b) On 7.8.2010, Hansraj Singhal approached Kondhwa Police Station and lodged a report alleging therein that on that day i.e. 7.8.2010, he had been to the godown as usual in the morning. His partner Vikram Bansal had also reached the godown. In the evening at about 8 p.m., Mr. Singhal left the godown. His Manager Sunil Bharadwaj had kept a bag in

the dicky of his car which contained cash amount of Rs.12 lakhs. When Hansraj was passing from the front of Clover Highland Society at Undri Road, two persons on a motorcycle came near the car and stopped in front of the car. The pillion rider approached the complainant who was still seated in the car. The said person tried to snatch the keys of the car, Mr. Hansraj pushed him. In the said scuffle, the unknown person had pulled Mr. Hansraj out of the car and snatched the keys. A third person came from behind the car and attempted to assault Mr. Hansraj. The person who snatched the keys took charge of the car, the pillion rider threatened the complainant to leave the place and they all robbed the cash amount of Rs.12 lakhs which was kept in the dickey of the car. They also took away two cellphones belonging to the complainant and escaped along with the car. Mr. Hansraj made frantic efforts to stop a passing vehicle, but to no avail. In the meanwhile, he saw his partner Vikram Bansal in his car. He stopped Mr. Bansal, narrated the incident to him. Thereafter, Mr. Bansal dialed 100 and informed the police about the incident. While they were approaching the police station, they met the police near Mohammadwadi Chowk. Mr. Hansraj narrated the incident to the police which was reduced into writing and on the basis of the said report, which was treated as a first information report, Crime No.147/2010 was registered against unknown accused

persons. Investigation was set in motion. The spot panchnama was recorded.

© On 8.8.2010, the car was found in an abandoned condition within the jurisdiction of Wanowrie Police Station. The supplementary statement of the complainant was recorded on 10.8.2010 and 13.8.2010.

(d) In the course of investigation, on 26.8.2010, all the accused were arrested. On the basis of the memorandum statement of accused No.1, - Shahabaz Khan, the police had been to Mitha Nagar, Kondhwa. That accused No.1 had produced cash of Rs.1,50,000/- which he had concealed in the cupboard of his house. The said cash was seized under a panchnama.

(e) On the same day, on the basis of the memorandum statement of accused Shoeb Shaikh, an amount of Rs.47,700/- was seized from the house of his father-in-law at Swargate, Pune.

(f) On 27.8.2010, on the basis of the memorandum statement of accused No.1 Shahabaz Khan, the motorcycle which was used in the commission of the said offence was seized from Navajis Park, Kondhwa.

(g) On 31.8.2010, on the basis of the memorandum statement of accused Taher, an amount of Rs.1,20,000/- was seized from the cupboard of his house situated at Ganj Peth, Pune.

(h) On the basis of the memorandum statement of accused No.1 – Shahabaz Khan, Cielo car was seized at Bhavani Peth, near Bharat Talkies. The accused had also produced one bag from the dickey of the car containing two sickles.

3. It is the case of the prosecution that Shahabaz Khan was a member of the crime syndicate and had criminal antecedents. It was also alleged that he was indulged in such crimes for pecuniary gain for himself and his gang. Hence, the investigating officer had communicated to the Additional Commissioner of Police to grant permission for applying the provisions of Section 3 of MCOCA. That the Addl. Commissioner of Police had granted permission to apply Section 3 of MCOCA and thereafter the investigation was transferred to the then ACP V.T.Pawar of Wanwori Police Station. Test identification parade was conducted by the Executive Magistrate in the premises of Yerwada Jail on 23.12.2010. The Addl.

Director General, upon perusal of the papers of investigation, had granted sanction for prosecution against the accused under MCOCA. On completion of investigation, charge-sheet was filed on 17.2.2011. The case was committed to the Special Court and registered as Special case No.2 of 2011. The prosecution examined as many as 15 witnesses to bring home the guilt of the accused.

4. PW-1 is the complainant – Mr. Hansraj Singhal deposed before the Court in consonance with the report lodged by him which is marked as Exhibit 46. PW-1 has deposed before the Court that on 7.8.2010, when he was proceeding to the godown, he had picked up his partner Vikram Bansal and they had proceeded to the godown in the same car. After closing the company, Vikram Bansal and PW-1 had left the premises in their respective cars at about 8 p.m. According to him, the Manager Sunil had kept a cash of Rs.12 lakhs in a green colour bag and had kept the bag in the dickey of his car. He has further deposed that he had given the description of the three miscreants who had looted him. According to him, they were in the age group of 25 – 30 years. At the test identification parade, which was conducted on 23.12.2010, he had identified three persons who had looted him. It is pertinent to note that in the test identification parade, he had

identified one person who was known to him prior to the incident as he used to visit his godown and that is accused No.4. PW-1 had learnt from the police authorities that A-4 was the person who was instrumental in giving tips to the other accused persons. He has not identified the cellphones which were shown to him and were marked as Articles .

In the cross-examination, PW-1 has stated before the Court that Vikram Bansal came in Chevorlette Optra car after the incident. According to him, the incident lasted for 3 – 4 minutes. Vikram Bansal had reached the spot within 5 – 10 minutes after the incident. He had not noticed registration number of the motorcycle, which was used in the commission of the offence. It is admitted by him that he had attended the police station for about 4 – 5 days after the incident. The police had not given him any information about the progress in the investigation. He has admitted before the Court that on 13.8.2010, he was informed by the police that his car was found in an abandoned condition. It is also admitted that at the time of registration of the FIR, the police had shown him some photographs of some persons who probably would be the accused. 15 days after 13.8.2010, police had arrested the accused. On 23.12.2010, when PW-1 had been for the test identification parade, there were 3 – 4 persons

besides him and the persons standing on the row were present in the hall of test identification parade. When he entered the hall, 12 persons were already standing in a row. He was not introduced to anybody else by the Tahsildar. He has admitted before the Court that on 27.8.2010, the police had informed him that they all arrested accused No.4 on the suspicion that he was instrumental in giving tips to the accused.

5. PW-2 Aslam Shaikh is a panch for the recovery of cash amount from the accused Shahabaz Khan. He has proved the memorandum of Shahabaz Khan which is at Exhibit 54. He has deposed before the Court that they had been to Mithanagar along with the accused. It was a 3-storeyed building. The accused had stopped at a house, the door was opened by his father. The vehicle was parked in the building which was shown by the accused. The seizure panchnama of the motorcycle is marked at Exhibit 55. It is pertinent to note that PW-2 could not identify the accused Shahabaz Khan in Court. He offered an explanation that due to passage of time, he could not identify Shahabaz Khan. He has admitted in the cross-examination that the time of conducting panchnama as mentioned in the panchnama is incorrect. He has also admitted that while proceeding to the spot where the motor cycle was seized, the accused was

handcuffed. The very fact that the accused who had given the memorandum statement was not identified by the witness in the Court would go to the root of the matter as it cannot be said that it was the same person whose memorandum was recorded and at whose behest the alleged motorcycle was seized.

6. PW-3 Sammer Ejaj Shaikh is the panch for recovery of cash at the instance of Munir Shaikh. According to him, accused Munir Shaikh has given a statement and therefore police went to the house of his father-in-law. The said memorandum is at Exhibit 57. The house to which they had been was in possession of Ameer Sayyed who claimed that accused Munir Shaikh is his son-in-law. He has also refused to identify the accused before the Court and the explanation offered is that due to passage of time, he is not able to identify the accused. He has admitted before the Court in the cross-examination that he was telephonically summoned by Kondhwa Police Station that there are crimes pending against him in Kondhwa Police Station. The very fact that he has failed to identify the accused before the Court would mean that the identity of the person who had given the memorandum has not been established. Moreover, it is pertinent to note that the police had called the witnesses telephonically although they were

fully aware that three offences were registered against him, that too at the same police station. Section 100 sub-clause (4) of the Code of Criminal Procedure contemplates as follows :-

*“Before making a search under this Chapter, the officer or other person about to make it **shall** call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do.”*

It goes without saying that it is mandatory upon the officer conducting the search to call upon two or more independent and **respectable inhabitants of the locality**

7. PW-3 is the resident of Sai Nagar, Kondhwa. The search was conducted near Laxminarayan Theatre, which is in the extreme opposite direction of Kondhwa. Moreover, the officer in charge of the police station was acquainted with PW-3 as an accused against whom offences were registered in the same police station. The panchnama bears no recital to

show that an attempt was made to procure respectable and independent persons from the locality where the search was to be conducted. It can therefore be said that the search and seizure was conducted in utter violation of Section 100 sub-clause (4) of Cr.P.C.

4. PW-4 Atmaram Sayaji Sonawane has also acted as a panch for the discovery of weapon at the instance of accused Shahabaz Khan. He has been declared hostile by the prosecution.

5. Similarly, PW-5 Ashok Lahane, who was called as a panch for recovery of cash of Rs.1,20,000/- from accused No.3 i.e. Taher @ Lala Rafiq Shaikh has been declared hostile by the prosecution.

6. PW-6 Mahadeo More has acted as panch for recovery of Cielo Car and two sickles from accused No.1. The memorandum and seizure panchnama are at Exhibits 69, 72 and 85 respectively. PW-6 Mahadeo More has admitted in the cross-examination that he works as a contractor. He resides behind Kondhwa Police Station. He had cordial relations with the police. He was called by the police from his house on 31.8.2010. That Bharat Talkies is at a distance of 3 kms. from Kondhwa

Police Station. It is also admitted that the area of Bharat Talkies is a thickly populated area. He has also admitted that he had put two signatures on the panchnama at Bharat Talkies and remaining signatures were made at the police station. He has not been able to identify accused No.1 before the Court. It would be therefore doubtful as to whether the memorandum was recorded of accused Shahabaz Khan as there is no substantive evidence to that effect.

7. PW-7 Sunil Khedekar was attached to Kondhwa Police Station as a Detection Officer. He has deposed before the Court that on 31.8.2010, PI Thosar had entrusted the investigation of Crime No.147 of 23010 to him. That he had recorded the memorandum statement of accused Taher @ Lala Shaikh. The memorandum is at Exhibit 74. he had summoned two panch witnesses. The accused Taher had led them to his house at Ganj Peth. He had stopped the vehicle in front of the Ganesh Bhuvan. The house was situated near Pir Darga. The mother of the accused was present in the house. The accused had opened the cupboard and removed a plastic bag containing 240 currency notes of Rs.500 denomination. The said car was seized. He has identified accused Taher before the Court.

In the cross-examination, he has admitted that he was transferred to Kondhwa Police Station from Wanowrie Police Station and, therefore, he is fully acquainted with the jurisdiction and area of the Kondhwa Police Station as well as Wanowrie Police Station. That the information of the alleged incident was given to all concerned police station as well as the Control Rooms. It is further admitted that on 8.8.2010, the Swift Car involved in Crime No.147 of 2010 was found in the jurisdiction of Wanowrie Police Station. The information was received by the police station. Needless to say that the very fact that location of the car was known to police on the very next day of the alleged incident i.e. on 8.8.2010. The seizure of the said car near Bharat Talkies on 31.8.2010 would lose its significance as the location of the car was already known to the police on 8.8.2010.

8. PW-8 Shahabaz Inamdar was summoned by the police to act as a panch for recovery of cash of Rs.2,30,000/- at the instance of accused Shahabaz Khan. The witness was declared hostile by the prosecution. He has admitted in the cross-examination that police had already prepared the panchnama and he had simply signed it in the police station.

9. Abdul Kadar Shaikh is the panch who was summoned by the police for the purpose of proving recovery of cash at the instance of accused Shahabaz. That PW-9 has pointed out accused Taher Shaikh as Shahabaz Feroz Khan. He was declared hostile by the prosecution. He has admitted before the Court that it is possible that he had signed a panchnama which was prepared by the police.

10. PW-10 Milind Thosar was attached to Kondhwa Police Station as a P.I. (Crime). On 8.8.2010, investigation of Crime No.147 of 2010 was entrusted with him. He had received the first information report and the scene of offence panchnama. On 26.8.2010, he had arrested four accused persons. Before the Court he had deposed in respect of the discovery of vehicles and cash at the instance of the accused persons. He had obtained registration documents of Cielo Car and had handed it over to PSO. He has deposed before the Court that he had written a letter to the Addl. Commissioner of Police for addition of Section 3 of MCOC Act. The said letter is marked at Exhibit 87. That on 18.10.2010, he had received an order from the Addl. Commissioner of Police granting him permission to add Section 3 of MCOC Act. The investigation was then handed over to V.T.Pawar, ACP, Wanowrie.

He has admitted in the cross-examination that he was well acquainted with the area of Kondhwa Police Station. That the incident had occurred on 7.8.2010 near NIBM premises which is a crowded locality. He has also admitted that Hadapsar Police Station and Wanowrie are adjacent to Kondhwa Police Station. He has also admitted that on 8.8.2010, Wanowrie Police Station had submitted the seizure panchnama of car to Kondhwa Police Station for further investigation. That no samples of finger prints were obtained from the car. He has also admitted that there is overwriting in the time of panchnama dated 26.8.2010. It is also admitted in the cross-examination that the motorcycle was recovered from an open public place. That Cielo Car was also seized from an open public place.

11. PW-10 has admitted in the cross-examination as follows :-

“It is true that, during course of investigation I made enquiry about pending crimes of accused. I had collected copies of previous charge-sheets, pending against the accused. It is true that, it revealed in my investigation, that accused Nos. 1 and 2 were facing 4 offences, prior to the present case. It is true that, accused Nos. 3 and 4 were not accused in previous four cases, which were filed against accused Nos. 1 and 2. It is true that accused Nos. 1 and 2 are released on bail, by the court in earlier 4 cases. With the discussion of senior police officers, I decided to apply provisions of MCOCA against the accused. Today I have not brought case diary. Case diary is in possession of ACP.

In the case diary I had mentioned that I had a discussion with senior police officers regarding application of MCOCA against accused. I had dispatched the copies of previous charge-sheets along with my report (Exh.87) to Addl. of Commissioner of Police. It is not mentioned in report (Exh.87) that I had enclosed certified copies of previous charge-sheet. I had sent my report (Exh.87) to Asstt. Commissioner of Police, Wanowrie.”

12. PW-10 has further admitted in the cross-examination that the accused were remanded to 11 days custody after their arrest and that the accused were brought before the Court without covering their faces. PW-10 has avoided to answer as to whether from the custody of accused, the complainant and his partner visited the police station for identification of accused.

13. PW-10 has further admitted that Exhibit 94 which is the arrest panchama of accused No.4 does not disclose the place from where the ws arrested. However, he had arrested all accused on 26.8.2010 at about 2 p.m. He had prepared the arrest panchnama at the spot. All the accused were produced before the Magistrate on 27.8.2010. He has admitted that he could not recollect as to whether he had called the complainant and his partner to the police station on 26.8.2010 to show accused No.4. It is also admitted that there was no material to show that accused No.4 had any

criminal antecedents. It is also admitted that Kondhwa Police Station had in fact maintained a list of organized criminals, but had no information about the alleged crime syndicate of accused No.1. That except accused Nos. 1 and 2, no other accused was shown as absconding. Accused Nos. 2 and 4 were living in the jurisdiction of Samarth Police Station and accused No.3 was residing in the jurisdiction of Khadki Police station. There was no material to show that accused No. 4 was a member of crime syndicate. PW-10 had no information from Samarth Police Station or Khadki Police Station about accused No.4 was a member of any crime syndicate. The communication from PW-10 to the Addl. Commissioner of Police, seeking permission to add Section 3 of MCOCA in Crime No.147 of 2010 is at Exhibit 87. The communication would show that there was suspicion that Shahabaz Feroz Khan resident of Mitha Nagar and Shoeb Hussain Shaikh resident of New Nani Peth were suspected to be involved in Crime No.147 of 2010. That there were crimes registered against them for the offence under Sections 392 and 394, whereas there were no criminal antecedents as against accused No.3 Taher and accused No.4 – Munir Shaikh. There was an ambiguous allegation against accused Nos. 1 and 2 that they are involved in theft of vehicles, abduction, kidnapping, dacoity, etc. Except two crimes, there were no other antecedents for the offence punishable for

abduction, kidnapping, etc. The order granting permission for adding Section 3 of MCOCA is at Exhibit 88. It is pertinent to note that it does not bear any endorsement to show that the charge-sheets in the earlier cases against accused Nos. 1 and 2 were annexed along with the letter of communication sent by PW-10.

14. PW-11 Rajaram Kshirsagar was attached to Kondhwa Police Station as a PSI. On 7.8.2010, he was on Station House duty. He had recorded the statement of PW-1 – Hansraj Singhal. He has deposed before the Court that FIR was recorded as per the say of PW-1 and that PW-1 had given description of the accused as well as of his Swift Car. PW-11 had immediately rushed to the scene of offence and prepared scene of panchnama. It is admitted that the memorandum panchnama at Exhibits 57 and 58 are in the handwriting of Police Constable Kadam. He has feigned ignorance as to whether panch witness Samir Izaz Shaikh is facing three crimes at Kondhwa Police Station. It is admitted that the distance between Kondhwa Police station and Laxminarayan Theater is about 7 km.

15. PW-12 Vikas Bhalerao was working as. Residential Nayab Tahsildar. He was requested to conduct the test identification parade on 22.12.2010. He had requested the panch witness to remain present at

Kondhwa Jail to act as panch for T.I. Parade. He had requested the jail authorities to arrange 24 persons as dummy accused persons for T.I. Parade and had requested that the chosen persons should resemble the accused persons. He has given a narration of the manner in which he conducted the test identification parade, the memorandum of which is at Exhibit 100.

In the cross-examination it is admitted that the panch witnesses were acquainted with him. He had not written down the separate description of each dummy accused. The panch witnesses were stopped. That there is no reference in the memorandum regarding Kala Mandir. He had not confirmed with the witnesses whether they had seen the accused prior to test identification parade nor enquired with them as to whether the photographs were shown to them prior to TIP. The role attributed to the accused was not stated by the witness when the accused were identified. It was not mentioned in the memorandum that the witnesses were made to sit in a separate room prior to T.I.parade while the admission of PW-12 that there was no verification of facts as to whether the witnesses had seen the accused prior to T.I.parade is sufficient to hold that the T.I. Parade was not conducted in accordance with law and that the possibility of the witnesses having seen the accused prior to T.I.Parade cannot be ruled out.

16. PW-13 Vithal Pawar was the then Commissioner of Wanowrie. He had received investigation in C.R. No.147/2010 on 19.10.2010. He has deposed before the Court that he had recorded supplementary statements of complainant and the witnesses. On 20.12.2010, he had requested the Tahsildar to arrange for conducting T.I. Parade. He had called for the call details of the accused from the Mobile Service Provider. He had filed the charge-sheet before the court. It is admitted in the cross-examination that he used to visit Kondhwa Police Station and Wanowrie Police Station at least once in a week. After registration of Crime No.147/2010, he had visited Kondhwa Police Station on many occasions. He had met the complainant before the investigation was entrusted with him. It is admitted that the scene of offence is situated within the jurisdiction of Wanowrie Police station. He has avoided to answer whether the Swift Car was found near Kamal Hotel. It is specifically admitted in the cross-examination that in Crime No.147 of 2010 photographs of each accused were affixed on their arrest panchnama and that the photographs of the accused along with main C.R.No.3 maintained in their record. The photographs of the accused were sent to the Modus Operandi branch. According to him, there is every possibility that

in the present case also the photographs of the accused were sent to Modus Operandi Branch.

17. It is pertinent to note that PW-12 has specifically admitted that during interrogation of the accused, nothing was recovered from them. When he had received investigation of seized articles were in a sealed condition and that he had not opened the sealed articles he had enquired with the complainant and the Investigating Officer about the pending cases against accused Nos. 1 and 2. He had received the proposal for adding Section 3 of MCOCA Act in an open envelope. It is also admitted that in fact the proposal is a confidential document. He has also admitted as follows :-

“It is true that, if document is sent along with other papers, then the document bears enclosure list. In proposal (Exh.87), there is no list of enclosure. Proposal was sent along with covering letter. The said covering letter is not enclosed in the case papers. There is no acknowledgement on proposal (Exh.87) of Addl. Commissioner of Police, North Region. The sanction was received by my office on 22/10/2010.”

“It is true that, seized SIM cards were not registered in the name of accused Nos. 2 to 4. I had made inquiry with the person in whose name the SIM cards were registered. It is true that I had found out the Tower location of seized SIM cards. I cannot say whether conversation took place on seized SIM cards, would be available during the investigation. I have not produced acknowledgment of Adl. D.G. and Police Commissioner, on my proposal. There is no reference on

proposal that all papers were sent to Addl. D.G. Seized Ciello car is not registered in the name of accused No.1.”

18. It is also admitted that the said seized Ceillo Car was purchased by brother of accused No.1 in the year 1996. Upon enquiry, he had learnt that the accused does not have any bank accounts. There was no immovable property registered in their name.

19. In fact, the prosecution is relying upon call details record to show the nexus between accused Nos. 1 to 3 and accused No.4. However, it is clear that none of the cellphones are registered in the name of accused persons. Hence, the prosecution has failed to establish the nexus between the accused Nos. 1 to 4. PW-12 has not stated before the Court that upon enquiry it was revealed that CDR details is an incriminating circumstance against the accused persons. Hence, no nexus is established between the accused Nos. 1 to 4 on 7.8.2010 or thereafter.

20. PW-14 Meera Borwankar was the Director General of Police as well as the Commissioner of Police when she had accorded sanction for prosecution of the accused under the provisions of MCOC Act. In the cross-examination, it is admitted that the list of documents were not sent along with the proposal. That she had not gone through each and every

statement of witnesses or of panchas. She could not recollect at the time of deposition as to whether the present grant was discussed in the monthly meeting of the officers. She has further admitted that the proposal for sanction was submitted to her by ACP. It is also admitted that it is not mentioned in the sanction order that the other charge-sheets were enclosed in the papers or were produced along with the draft sanction. According to her, huge amount of Rs.31 lacs and cars were seized from the possession of the accused persons. The sanction order is at Exhibit 127. The sanction order in no way indicates as to which was the syndicate formed by the accused No.1 or the syndicate to which he belonged or the identity of the members working in the said syndicate or that accused No.1 belonged to any other syndicate against which there were more than one charge sheet filed at the time of according sanction. Hence, the sanction order issued by PW-14 smacks of non-application of mind while according sanction.

21. PW-15 – Sanjay Latkar was working as Addl. Commissioner of Police, North Region, Pune. According to him, he had received all necessary investigation papers along with the said letter seeking approval to invoke the provisions under Section 3 of MCOCA. It is admitted in the cross-examination that there is no endorsement of his office on the proposal

at Exhibit 87. That the proposal at Exhibit 87 is a photocopy. According to him, in all probabilities, he had made entry in the diary. It is also admitted that movable or immovable property or Bank balance was not found in the name of accused No.4.

22. Section 411 of IPC reads as follows :-

“411. Dishonestly receiving stolen property -

“Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

23. On the basis of the evidence adduced by the prosecution:

(i) It would become amply clear that the prosecution has failed to establish that there was nexus between accused Nos. 1 to 4 or that they were in touch with each other prior to the commission of the offence, on the date of commission of the offence or thereafter since the prosecution has failed to establish that there was a record showing the call details between the accused inter-se.

(ii) The accused were exposed prior to the test identification parade. There is an admission that their photos were annexed on the arrest panchnama which was acceptable to the complainant. Secondly, the

accused have not been identified by the relevant witnesses in the Court. Hence, there is no independent , cogent and convincing evidence that the recovery/discovery was made at the instance of the accused persons. The possibility that the complainant and his partner had seen the accused prior to holding of T.I. Parade cannot be ruled out.

(iii) The prosecution has also failed to establish that the Ceillo Car was seized at the instance of the accused since it was found in an abandoned condition on 8.8.2010 within the jurisdiction of Wanowrie Police Station.

(iv) The officer who conducted the seizure had received information from Wanowri about the same on 8.8.2010 i.e. much prior to arrest of the accused persons. It cannot be believed that the police had left the car in the same condition just to make out a case of recovery at the instance of the accused Shahabaz. There is no link evidence to show that the car was abandoned by the accused.

(v) The witnesses were stock panch. They were summoned in utter violation of Section 100 sub-clause (4) of Cr.P.C.

(vi) It is pertinent to note that the prosecution has failed to record the statement of Bharadwaj who had actually kept the cash amount in the dickey of the car. This aspect would go to the root of the matter.

(vii) The possibility that the person who had kept the cash in the car was the only person besides the complainant to know that PW-1 was carrying such a huge cash on that day. The said person alone could have given tip to some miscreants and a plot had been laid.

(viii) It is not understandable as to how the complainant had met his partner soon after the incident on the same day although they had left the office premises at the same time. The prosecution has not examined Vikas Bansal who was the first person to inform the police station in respect of the alleged incident.

(ix) It is true that the police has seized the amount from all the accused persons however the panchnama to that effect is not proved by the prosecution.

(x) In the statement under Section 313 of Cr.P.C. accused have denied the charge and almost every question has been answered as not known.

(xi) The accused cannot claim benefit of the lapses in the investigation of each and every accused, especially in a case like the one at hand.

(xii) PW-14 and PW-15 have specifically stated that huge cash amount was recovered at the instance of accused Nos. 1, 3 and 4 and the cash amount was seized. In these circumstances, it can be believed that the respective amount was recovered at the instance of the accused persons. The prosecution has failed to prove that accused had stolen the cash amount from the car.

(xiii) Besides the bare statement of the complainant, there is no material on record to show that an amount of Rs.12 lakhs was kept in the dickey of the car. The amount that is recovered from all the three accused is approximately to the tune of Rs.3 lakhs and, therefore, it appears to this Court that the accused who have no sound financial capacity have failed to

explain the position of such a huge amount.

(xiv) They have no regular source of income. Hence, it appears that they must have received the stolen property.

(xv) The prosecution has miserably failed to establish the charge under Sections 3(1)(ii), 3(2) and Section 3(4) of MCOCA.

23. Hence, the accused deserve to be convicted for the offence punishable under Section 411 read with Section 34 of IPC. Hence, the following order :-

ORDER

(1) The conviction of the appellants for the offences punishable under Section 392 read with Section 34 of Indian Penal Code, Section 3(1)(ii) of Maharashtra Control of Organized Crime Act, 1999, Section 3(2) of Maharashtra Control of Organized Crime Act, 1999, and Section 3(4) of Maharashtra Control of Organized Crime Act, 1999 is quashed and set aside.

(2) The appellants herein are convicted for the offence punishable

under Section 411 read with Section 34 of Indian Penal Code and are sentenced to rigorous imprisonment for three years which is already undergone by the appellants and fine of Rs.1,000/- each, in default further R.I. for one month.

(3) The appellant – Shoeb Munir Shaikh – accused No.4 in Criminal Appeal No.1104 of 2012 is reported to have undergone substantive sentence of 3 years, 10 months and 8 days.

(4) The appellant Shadab Hussain Shaikh – accused No.2 in Criminal Appeal No.105 of 2013 is reported to have undergone substantive sentence of 5 years, 3 months and 7 days.

(5) The appellant Shahabaz Feroz Khan – accused No.1 in Criminal Appeal No.105 of 2013 has also undergone substantive sentence of 5 years, 3 months and 7 days.

(6) The appellant Taher @ Lala Sharif Shaikh – accused No.3 in Criminal Appeal No.1200 of 2012 has undergone substantive sentence of 3 years, 10 months and 8 days.

- (7) In view of this, the appellants be enlarged forthwith, if not required in any other offence.
- (8) Their bail bonds stand cancelled.
- (9) The amount of fine, if any, paid, be refunded to the appellants.

All the Appeals stand disposed of accordingly. In view of the disposal of the appeals, Criminal Application Nos. 15 of 2015 and 520 of 2015 stand disposed of accordingly.

(SMT.SADHANA S.JADHAV, J.)