

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

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Reserved on: 12th March, 2015
Date of Decision: 16th April, 2015

+ CRL. A. 358/2014

STATE

..... Appellant

Through: Mr. Siddharth Luthra, Sr. Advocate
with Mr. Varun Goswami, APP & Mr.
Anindya Malhotra, Advocate.

versus

BRIJESH SINGH @ ARUN KUMAR & ANR. Respondents

Through: Mr. Dayan Krishnan, Sr. Advocate
with Mr. Sudeep Passbola & Mr.
Akhand Pratap Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1. This is an appeal under Section 12 of The Maharashtra Control of Organised Crime Act, 1999 (hereinafter referred to as MCOCA) directed against the judgment and order dated 05.02.2014 passed by the Court of learned ASJ-01 (Special Judge MCOCA), New Delhi District, Patiala House Courts, New Delhi in SC No.139/13 pertaining to FIR No.10/13 under Sections 3 and 4 of MCOCA registered at P.S. Special Cell, New Delhi whereby the learned Special Judge discharged the respondents/accused persons from the said charges.

2. Succinctly stating the facts as emerged from the petition are that in the year 2007 FIR No.69/2007 was registered against respondent

No.1 and his associates at Police Station Special Cell, New Delhi under Sections 384/387/419/420/467/468/471/474/174A/506/120B/34 of the Indian Penal Code (hereinafter referred to as 'IPC'). In the said case, the activities of respondent No.1 and his associates were observed and analysed and it was revealed that the offences which were a subject matter of FIR No.69/2007 were the outcome of organized crime activities of respondent No.1 and his syndicates. It was further revealed that while committing these offences, violence and intimidation were extended in order to gain pecuniary benefits by the members of the organized syndicate. It was further established that illegal acts were done by the syndicate headed by respondent No.1 in pursuance of continuous unlawful activities of the syndicate.

3. Accordingly, a proposal was placed before the competent authority for obtaining approval under Section 23 (1) (a) of MCOCA for invoking the provisions of MCOCA against the activities of the syndicate. The approval was granted by the competent authority, i.e., Special C.P. of the Special Cell vide order No.260/P.Sec/Spl.CP/Spl.Cell on 22.02.2013. Upon such approval, FIR No. 10/13 was registered against the respondents on 05.03.2013 under Sections 3 and 4 of MCOCA at P.S. Special Cell, New Delhi.

4. During the ensuing investigation pertaining to FIR No.10/13 under Section 3 and 4 of MCOCA, it was revealed that the syndicate was involved in commission of large number of crimes and offences in an organized manner in large number of cases. These cases relate to offences which are cognizable in nature punishable with imprisonment of three years or more and the courts of competent jurisdiction have

taken the cognizance in these cases in more than one charge-sheet in the last preceding 10 years. The list of all such cases are as under: -

- (i) Crime No.98/91 FIR No.26/91 under Section 147/148/149/302/307 IPC PS Bhawarkaul, Ghazipur.
- (ii) Crime No.120/95 under Section 3 of UP Gangster Act, PS Chobeypur, Varanasi (UP).
- (iii) Crime No.251/01 FIR No.113/2001 under Section 147/148/149/307/302 IPC and 7 Criminal Law Act PS Mohammadabad, Distt. Gazipur (UP).
- (iv) Crime No.09/04 FIR No.08/04 under Section 147/148/149/427/307 IPC and 2/3 UP Gangster Act PS Cantt. Lucknow (UP).
- (v) Crime No.81/09 FIR No.62/2009 under Sections 147/148/149/307/120B IPC and 7 Criminal Law Act PS Lanka Sadar Varanasi (UP).
- (vi) Crime No.232/90 under Sections 147/148/149/427/379 IPC PS Saidpur Gazipur (UP).
- (vii) FIR No.69/07 under Sections 384/387/506/419/468/471/474/174A/34 IPC dated 08.10.2007 PS Spl. Cell, Delhi.
- (viii) FIR No.122/2010 dated 17.05.2010 under Sections 341/506/34 IPC PS. Subzi Mandi Delhi.

5. During investigation of FIR No.69/07 PS Special Cell, it was revealed that the respondent No.1 Brijesh Singh and his wife

Annapurna Singh had procured fake identities in the name of Arun Kumar Singh and Poonam Singh respectively and they along with the other members of the syndicate had accumulated huge moveable and immoveable properties, shareholdings/ ownership in several firms and companies besides having money by way of fixed deposit in various banks. The details of such properties are as under: -

(a) Bindhyachal Real Estate Developers Pvt. Ltd., N-6/435, IRC Village near Hotel Crown Bhubaneswar Orissa and Sanjana Viniyog Pvt. Ltd., 6C-14/2, Sidhartha Building Burdwan Road, Kolkata – 27 company and its sister companies wherein accused persons had substantial stakes in fake names.

(b) Sagar Udhyog Pvt. Ltd., Room No.211, 2nd Floor Marlin Chamber 18 British Indian Street Kolkata West Bengal in which Smt. Annapoorna Singh (W/o. respondent No.1) is alleged to have owned substantial shares and this company had purchased land measuring 9030 Sq. ft. at Moja Talapara in Municipal Corporation Ward No.10, Mother Terrasa Nagar Bilas Pur Chhattisgarh for Registry value of Rs.1,08,36,000/-.

(c) Vankateshwar Developers Pvt. Ltd., Room No.211, 2nd Floor Marlin Chamber 18, British Indian Street, Kolkata, West Bengal, in which Sujeet Kumar Singh (nephew of respondent No.1) and earlier Annapoorna Singh was one of the Directors of the company.

(d) M/s. Baba Kinna Ram International Pvt. Ltd., 109/1B, Grish Ghose Road, Belurmah Howrah, West Bengal.

6. It was also revealed during the said investigation that respondent No.1 and his wife Annapoorna Singh under fake name had two joint accounts in Standard Chartered Bank, Janpath, Bhubaneswar, another joint account and a locker in Oriental Bank of Commerce, J.N. Marg, BDA Complex Bhubaneswar with Locker; amount in Allahabad Bank Naipalli IRC village Bhubaneswar with Locker; account in United Bank of Commerce (UCO) Ashok Nagar Bhubaneswar; and account in the HDFC Bank, Salt Lake Branch, Kolkata. Therefore, it was observed that by indulging in such organized criminal activities, the members of syndicate had accumulated huge illegal wealth and despite being charged by courts of competent jurisdiction, after their release from jail either on serving sentence or on bail, the members of the syndicate continued committing crimes and offences.

7. During investigation it was also revealed that involvement of respondent No.1 was first reported in 1985 and till 2008, he was involved in 39 cases of different nature including murder, attempt to murder, waging war against State, extortion, rioting, etc.

8. Brijesh Singh @ Arun Kumar Singh, respondent No.1 was arrested on 23.01.2008 from Bhubaneswar in connection with FIR No.69/07 wherein it was revealed that all the activities were committed by him in a planned manner and after forming syndicate of his dedicated associates. Respondent No.1 and respondent No.2 were again arrested on 03.05.2013. It was revealed during investigation that respondent No.2 was also involved in as many as 27 cases of heinous nature before 2012. Further, it was revealed that respondent No.2 had

acquired fake identity and got driving license in the name of Pawan Kumar Singh with a false address. After assuming fake name, respondent No.2 opened various Bank accounts the details of which are as under: -

- (i) A/c No.08692011001101 in Oriental Bank of Commerce, Bhubaneswar, in the name of Pawan Kumar Singh, R/o. D2, Sai Towar, Nayapalli, Bhubaneswar, Orissa.
- (ii) A/c No.1221000080672, at HDFC Bank, Bhubaneswar, in name of Pawan Kumar Singh, R/o. D2, Sai Towar, Nayapalli, Bhubaneswar, Orissa.
- (iii) A/c No.357602010304420, at Union Bank of India, Saidpur-Branch, Gazipur in the name of Manwasi Singh and W/o. Tribhuvan Singh @ Pawan Kumar Singh.

9. The respondent No.2 also became Director of the following companies on the basis of his fake identity: -

- (i) Bindhyachal Real Estate Developers Pvt. Ltd. N-6/435 IRC Village near Hotel Crown Bhubneshwar Orissa.
- (ii) Sanjana Viniyog Private Ltd. 6C-14/2, Sidhartha Building, Burdwan Road, Kolkata-27.

10. Thereafter, on 26.09.2013 a detailed charge-sheet pertaining to the present case was filed by Sh. S.N. Srivastava, Special Commissioner (Spl. Cell). After hearing the parties on the point of charge, the learned Special Court vide its impugned order dated 05.02.2014 discharged the respondents from all the offences.

11. Learned senior counsel appearing on behalf of the State contended that the learned Special Court erred in introducing the restriction qua jurisdiction through a reading of Sections 5 and 6 of the MCOCA without appreciating the effect of Sections 7, 9 and 11 of the said Act. If the legislature wanted to create a restriction in the MCOCA, it would have done so on the point of jurisdiction of prior offence. In the present case, the criteria of continuing unlawful activity was fulfilled as the court of competent jurisdiction had already taken cognizance in more than one charge-sheet in last preceding 10 years in which the offences were cognizable in nature and punishable with imprisonment of more than 3 years. The ingredients of definition of organized crime, continuing unlawful activity and organized crime syndicate are fulfilled in the case before this Court, thus, the charges in the light of '**Sajjan Kumar vs. CBI**', (2010) 9 SCC 368 should have been framed against the respondents.

12. Mr. Luthra, learned senior counsel for petitioner further contended that the basic distinction between Section 3(5) and 4 of MCOCA is that for the applicability of Section 3(5) of MCOCA, the prosecution is required to establish that the property accumulated was either the proceed of organized crime or was derived from funds of organized crime syndicate whereas for Section 4 of MCOCA it is only required for the prosecution to prove that at any point of time, either before or at the time of offence, the person facing trial under the said Act was holding property for which he cannot satisfactorily account for. Section 4 MCOCA is clearly applicable to the facts of the present case.

13. It was lastly contended on behalf of the appellant that even in the case where the cognizance on FIR is taken outside Delhi, the courts in Delhi are not barred from invoking the provisions of MCOCA. He pointed out that in the present case, even before FIR No.69/07, there were more than one case in which cognizance had already been taken by the competent court and these cases were of the period from 2003 to 2007. In such a case, the learned Special Judge was not competent to discharge the respondent on the ground of jurisdiction alone. In support of his contention, reliance is placed on the judgment of this court in '**Shiv Murat Dwivedi @ Shiva vs. State**', 2012 CriLJ 4237.

14. According to Mr. Luthra, if the reasoning of the Special judge is accepted, it would be very simple for each syndicate either to commit the organized crime while sitting outside Delhi through their associates or take the shelter or generate the wealth outside Delhi after committing the offence within the limits of Delhi. The word, "organized crime" includes inter- state offences within its ambit. Otherwise also, courts in Delhi are not bound to take cognizance of the offence under MCOCA as per the provisions of Sections 177 and 178 Cr.P.C.

15. Learned senior counsel for the appellant has placed reliance on judgments in '**Govind Sakharam Ubhe vs. The State of Maharashtra**', *Crl.A. No. 18/2010 (BombayHC)*; '**Jai Singh Ashrafi Lal Yadav vs. State of Maharashtra**', 2003 BomCr (Crl.) 1606, '**State of Maharashtra vs. Shantilal Shah**', (2008) 13 SCC 5; '**Mahipal Singh and Ors. vs. CBI & Anr.**', 2012 LawSuit (Del.) 1261; '**State of Maharashtra vs. Jagan Gagansingh Nepali**', 2011 (5) MhLJ 386;

‘State vs. Satya Prakash’, *Crl. M.C.No. 2138/2010 decided on 03.11.2011(Delhi)*; **‘Sachin Bansilal Ghailal, Umesh Mohan Kirve vs. State of Maharashtra’**, *2014 Lawsuit (Bom.) 1163* and **‘Ajay Aggarwal vs. Union of India’**, *(1993) 3 SCC 609*.

16. *Per contra*, Mr. Dayan Krishnan, learned senior counsel for the respondents vehemently contended that except FIR No.69/07, no other offence has allegedly been committed by the respondents within the territorial limits of Delhi. The expression, “continuing unlawful activity” as defined under Section 2 (1) (d) of MCOCA is the basic ingredient of an offence under Section 3 thereof which is not fulfilled in the present case. Provisions of Sections 177 and 178 Cr.P.C. are not applicable to the facts of the present case. MCOCA is a special statute. The provisions of MCOCA have to be strictly applied and cannot be extended with regard to the offences that have been committed outside Delhi while considering Section 2 (1) (d) of MCOCA.

17. In support of his contention learned counsel for respondents have placed reliance on **‘Ranjit Singh Brahmajeet Singh vs. State of Maharashtra’**, *2005 (5) SCC 294*; **‘State of Maharashtra and Ors. vs. Lalit Somdatta Nagpal’**, *(2007) 4 SCC 171*; **‘Bharat Shantilal Shah vs. State of Maharashtra’**, *2003 AllMR (Crl.) 1061* and **‘State of Maharashtra vs. Bharat Shantilal Shah’**, *(2008) 13 SCC 5*.

18. I have heard learned senior counsel for the parties and have also perused the material on record.

19. The MCOCA was enacted to make special provisions for prevention and control and for coping with criminal activity by

organized crime syndicate or gang, and for matters connected therewith or incidental thereto. The objects and reasons of the Act insofar as the State of Maharashtra is concerned have discussed the fact that organized crime has come up as a serious threat to our society irrespective of national boundaries. Such activity is fueled by illegal wealth generation by contract killings, extortion, smuggling in contrabands, illegal trade in narcotics, kidnapping for ransom, collection of protection money and money laundering, etc. The organized crime syndicates make a common cause with terrorist gangs and foster narco terrorism which extends beyond the national boundaries. The State felt that it had also become necessary to have law for interception of wire and oral communications used in furtherance of these criminal activities so as to prevent their commission and the existing legal framework was found rather inadequate to curb or control organized crime. In order to fulfill all these objectives, the MCOCA was initially enacted for the State of Maharashtra and subsequently, the said Act was extended to the National Capital Territory of Delhi by GSR6(E) in exercise of powers conferred by Section 2 of the Union Territories (Laws) Act, 1950 by the Central Government with certain modifications.

20. Before advertng to the facts of the case, it would be pertinent to reproduce the relevant Sections of MCOCA which are germane to the controversy before this court. Section 3 of the MCOCA provides for the punishment of organized crime. Under the various sub-sections to Section 3 MCOCA, punishment is provided for committing an offence of organized crime, conspiring or abetting the commission of or

advocating, abetting or knowingly facilitating the commission of organized crime, harbouring or concealing or attempting to harbor or conceal any member of an organized crime syndicate, being a member of an organized crime syndicate and holding any property derived from or obtained from the commission of an organized crime or which has been acquired through the organized crime syndicate funds. Section 3 MCOCA reads as under:-

“3. Punishment for organised crime (1) Whoever commits an offence of organised crime shall,

(i) if such offence has resulted in the death of any person, be punishable with death or imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees one lac;

(ii) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.

(2) Whoever conspires or attempts to commit or advocates, abets or knowingly facilitates the commission of an organised crime or any act preparatory to organised crime, shall be punishable with imprisonment for a term which shall be not less than five years but which may extend to imprisonment for life, and shall also be liable to a fine, subject to a minimum of rupees five lacs.

(3) Whoever harbours or conceals or attempts to harbour or conceal, any member of an organised crime syndicate; shall be punishable, With imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to a, fine, subject to a minimum fine of rupees five lacs.

(4) Any person who is a member of an organised crime syndicate shall be punishable with imprisonment for a term which shall not be less, than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.

(5) Whoever holds any property derived of obtained from commission of an organised crime or which has been acquired through the organised crime syndicate funds shall be punishable with a term which, shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine, subject to a minimum fine of rupees two lacs.”

21. Under Section 4 of the MCOCA punishment for possession of unaccountable wealth on behalf of member of organized crime syndicate is provided. Under this section if any person on behalf of a member of an organized crime syndicate is or at any time have been in possession of movable or immovable property which he cannot satisfactorily account for is made liable for punishment for a term not less than three years but which may extend up to ten years along with fine. Section 4 thus, reads as:-

“4. Punishment for possessing unaccountable wealth on behalf of member of organised crime syndicate. - If any person on behalf of a member of an organised crime syndicate is, or, at any time bus been, in possession of movable or immovable property which he cannot satisfactorily account for, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to ten years and shall also be liable to fine, subject to a minimum fine of rupees one lac and such property shall also liable for attachment and forfeiture, as provided by section 20.”

22. The meaning of the expressions ‘continuing unlawful activity’, ‘organized crime’ and ‘organized crime syndicate’ used in the aforesaid two Sections is to be extracted from Sections 2 (1) (d), (e) and (f) respectively of MCOCA which read as under:-

“2. **Definitions-** (1) In this Act, unless the context otherwise requires,-

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(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;

(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 person or promoting insurgency;

(f) "organised crime syndicate" means a group of two or more persons who, acting either singly or collectively, as a syndicate of gang indulge in activities of organised crime; (g) "Special Court" means the Special Court constituted under section 5.”

23. From a joint reading of the provisions of Section 2 (1) (d) and (e) of the MCOCA, it can be seen that the following ingredients will be

necessary to make out the case of an organized crime; (i) that there has to be continuing unlawful activities; (ii) that such an activity (continuing unlawful activity) will have to be by an individual, singly or jointly; (iii) that such an activity is either by a member of an organized crime syndicate or on behalf of such syndicate; (iv) that there has to be use of violence or threat of violence or intimidation or coercion or other unlawful means; (v) that such an activity has to be with an objective of gaining pecuniary benefits or gaining undue economic or other advantage for the person who undertakes such an activity or any other person or promoting insurgency; (vi) that such an activity should be prohibited by law for the time being in force; (vii) that such an activity is cognizable offence punishable with imprisonment of three years or more (viii) that such an activity is undertaken either singly or jointly, as a member of an organized crime syndicate or on behalf of such syndicate; (ix) that in respect of such an activity more than one charge-sheet must have been filed before a competent court; (x) that the charge-sheet must have been filed within a preceding period of ten years; and (xi) that the courts have taken cognizance of such offences.

24. In **‘Jaisingh Asharfilal Yadav & Ors. vs. State of Maharashtra & Anr.’**, 2003 All MR (Crl.) 1506 the scope of Section 2(1) (d) and Section 2(1) (e) of MCOCA was discussed by the Hon’ble High Court of Bombay and it was observed as under:-

“8. The above definitions reveal that in order to accuse a person or the persons to have committed an offence of organized crime, he or they must be shown to have been involved firstly in any continuing unlawful activity;

secondly, being a member of or acting on behalf of organized crime syndicate; thirdly, by way of unlawful means, including use of violence or threat of violence or intimidation or coercion and, fourthly, with the object of gaining benefit either pecuniary or undue economic or other advantage for himself or other person, and fifthly, promoting insurgency. As far as “continuing unlawful activity” is concerned, it has to be an activity prohibited and punishable by law in force with imprisonment of three years or more and of cognizable nature as well as it should be as a member of or on behalf of the organized crime syndicate and further that at least two charge-sheets must have been filed in respect of such offences within the period of preceding ten years and the Court should have taken cognizance of such offences. A group of two or more persons indulging in the activities of organized crime either singly or collectively is called as an organized crime syndicate in terms of Section 2(f) as seen above.

9. The analysis of the definition of the organized crime, therefore, would reveal that continuing unlawful activity is one of its ingredients whereas in order to make an activity to be continuing unlawful one, it should disclose filing of minimum two charge-sheets in relation to the activity prohibited by law in force and of the nature specified in Section 2(d) during the period of preceding ten years. In other words, lodging of two charge-sheets in relation to the acts which are already declared under the law then in force as offences of the nature specified under Section 2(d) during the preceding period of ten years is one of the requisites for the offence of organized crime under the said Act.”

25. There is a distinction between the expressions, continuing unlawful activity used under Section 2 (1) (d) and organised crime used under Section 2(1) (e) of the MCOCA. While in the former, the use of force or violence to gain pecuniary benefit for oneself is not a

necessary ingredient, in the latter, the same is a necessary ingredient. Further, what is made punishable under Section 3 of the MCOCA is the offence of organized crime and not continuing unlawful activity. This distinction was discussed by the High Court of Bombay in '**Madan s/o. Ramkisan Gangwani vs. State of Maharashtra**', 2009 All MR (Crl.) 1447 and it was observed as under:-

"115. If the provisions of the Act are read in entirety, in the light of foregoing discussion, they will show that offence of "organised crime" is constituted by atleast one instance of continuation, apart from continuing unlawful activity evidenced by more than one charge sheets in preceding ten years : This is so because :

(a) If "organised crime" was synonymous with "continuing unlawful activity", two separate definitions were not necessary.

(b) The definitions themselves show that ingredients of use of violence in such activity with the objective of gaining pecuniary benefit are not included in definition of "continuing unlawful activity", but find place only in definition of "organised crime".

(c) What is made punishable under Section 3 is "organised crime" and not "continuing unlawful activity".

(d) If "organised crime" were to refer to only more than one charge sheet filed, the classification of crime in Section 3(1)(i) and 3(1)(ii) on the basis of consequence of resulting in death or otherwise would have been phrased differently, namely, by providing that "if any one of such offence has resulted in the death", since continuing unlawful activity requires more than one offence. Reference to "such offence" in Section 3(1) implies a specific act or omission.

(e) If the offence of organised crime itself is comprised of previous offences in respect of which charge sheets

have been filed, or in other words such charge sheets are a component of the offence of organised crime, all such offences referred to in such charge sheets could be tried at one trial, and the rider in Section 7 about triability of the accused under the Code at the same trial would be redundant.

(f) Entire Section 18 of the Act would become redundant if "continuing unlawful activity" evidenced by proof of filing of two charge sheets is equal to organised crime, since question of recording confessions would not arise. Certified copies of charge sheets, with certified copy of order thereon by the Court taking cognizance, would be admissible without formal proof and if this itself was enough to constitute offence, no other evidence would be required to be tendered.

(g) For the same reason, there may be no need to examine any witnesses and consequently Section 19 would be redundant.

(h) If proof of filing two charge sheets is enough to establish offence of organised crime, there may be no occasion to carry out any investigation, other than collecting copies of charge sheets. Consequently, it would be unnecessary for high ranking police officers to wield the power to allow recording information or to sanction prosecution after such charge sheets are collected.”

26. It is observed from above that in order to make an individual liable for punishment for organized crime and for possessing of unaccounted wealth on behalf of a member of organized crime syndicate under Sections 3 and 4 of MCOCA respectively, it is at first instance, necessary to establish an organized crime, which, in turn, is established on a proof that an individual has either singly or jointly, either as a member of an organized 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 undue economic or other advantages for himself or any other person or promoting insurgency has been involved in any continuing unlawful activity. Further, continued unlawful activity means an activity prohibited by law which is a cognizable offence punishable with three years or more, committed singly or jointly or as a member of an organized crime syndicate or on or behalf of it in respect of which more than one charge sheet is filed and competent court has taken cognizance of such offence.

27. The moot question in all these cases is also the point of consideration before this court i.e. whether the charge-sheets under Section 2(1) (d) of the MCOCA have to be filed and cognizance taken thereon in the State to which the said Act applies or whether the competent Court as provided under Section 2 (1) (d) of the MCOCA can be any Court even outside the jurisdiction to which the said Act applies. It is vehemently argued by the learned senior counsel for the State that in the light of the object of MCOCA no restriction can be read in the definition of continuing unlawful activity under the said Section and that the Court is competent to invoke the provisions of MCOCA even on the charge-sheets filed and cognizance taken thereupon in the Court which may fall outside such States also. This contention does not find favour with this Court.

28. Undoubtedly, MCOCA was enacted to curb the menace of organized crime with the realization that the menace resulting in such criminal activity knows no boundaries. In the statement and objects of

“5. Special Courts-(1) The State Government may, by notification in the Delhi Gazette, constitute one or more Special Courts for such area or areas, or for such case or class or group of cases, as may be specified in the notification.

(2) Where any question arises as to the jurisdiction of any Special Court, it shall be referred to the State Government whose decision shall be final.

(3) A Special Court shall be presided over by a judge to be appointed by the State Government, with the concurrence of the Chief Justice of the Delhi High Court. The State Government may also appoint, with the concurrence of the Chief Justice of the Delhi High Court, additional judges to exercise jurisdiction in a Special Court.

(4) A person shall not be qualified for appointment as a judge or an additional judge of a Special Court, unless he immediately before such a appointment, is a sessions judge or an additional sessions judge.

(5) Where any additional judge is or additional judges are appointed in a Special Court, the judge of the Special Court may, from time to time, by general or special order in writing, provide for the distribution of the business of the Special Court among himself and the additional judge or additional judges and also for the disposal of urgent business in the event of his absence or the absence of any additional judges.

6. Jurisdiction of Special Court- Notwithstanding anything contained in the Code, every offence punishable under this Act shall, be triable only by the Special Court within whose local jurisdiction it was committed or at the case may be, by the Special Court constituted for trying such offence under subsection (1) of section 5.”

30. If the contention of the learned Senior counsel for the State is accepted, it would not be unusual to see cases in which there is not even a single charge-sheet on which the cognizance is taken by a competent Court in Delhi, however, there exist charge-sheets outside Delhi on which cognizance is taken by the competent Court, would be brought before the Special Courts in Delhi to invoke the provisions of MCOCA in Delhi. However, if this would have been the intention of the legislature, they would not have confined the provisions of the said Act to Delhi or Bombay alone rather MCOCA would have been enacted as a Central law. This would also have an effect of making the provisions of Section 1(2), 5 and 6 of the MCOCA otiose because in all such cases, the court would still be competent to bring the matters under the ambit of MCOCA for the cases registered and charge-sheet filed thereupon in the states to which MCOCA does not apply.

31. At this juncture it would be relevant to consider the judgment of this court in '**State vs. Satya Prakash**', (supra). In the said case the order of grant of regular bail to the respondent was challenged. Out of the six FIRs and the charge-sheets brought on record in the instant case, three were filed in Delhi while the rest were filed at the police station Sahibabad, District Ghaziabad, UP. This court, on consideration of the FIRs filed in Delhi had reached to a conclusion that the same did not involve any pecuniary gains so as to invoke the provisions of MCOCA and that the FIRs filed at UP were not found sufficient on which sanction under Section 23 of the said Act could have been granted by the competent authority. In the light of above reasoning this court observed that in the absence of a valid sanction, the

designated court had no jurisdiction to try the case against the accused. The line of reasoning in this case clearly goes in consonance with what I have observed above.

32. Learned counsel for the State has relied on the judgment of this court in '**Shiv Murti Dwevide**', (supra). In the said judgment the objections as to the jurisdiction were not considered by this court and hence the said judgment is not applicable to the facts of the present case.

33. It was also contended by learned counsel for the State that the provisions of MCOCA can be invoked with the aid of Sections 177 and 178 Cr.P.C. This contention too must fail. Chapter XIII of Cr.P.C. provides for the jurisdiction of the Criminal Courts in inquiries and trials under Sections 177 to 189. Although, by such provisions, the power of a criminal court is extended to try a case which may have occurred outside its own jurisdiction in case of uncertainty or in cases of the consequences, effect or act in relation to the main offence, etc. occurring in the jurisdiction of such a court. However, in my opinion, this would not be sufficient enough to override the requirement of filing of two or more charge-sheets and cognizance taken thereon in courts in Delhi to invoke the provisions of MCOCA in Delhi. If pursuance to the said provisions of Cr.P.C., if a charge-sheet is filed or cognizance is taken in two or more cases in competent courts in Delhi, there would be no difficulty in invoking the provisions of MCOCA. However, by the mere usage of these Sections, provisions of MCOCA are not attracted for the cases which may be continuing outside the jurisdiction of Delhi Courts.

34. It is well settled law that the provisions of MCOCA are quite stringent and strict compliance to them is mandatory. The Hon'ble Supreme Court in '**State of Maharashtra and Ors. vs. Lalit Somdatta Nagpal and Anr.**', (*supra*) held:-

“However, we are in agreement with the submission that having regard to the stringent provisions of MCOCA, its provisions will have to be very strictly interpreted and the concerned authorities would have to be bound down to the strict observance of the said provisions. There can be no doubt that the provisions of the MCOCA have been enacted to deal with organized criminal activity in relation to offences which are likely to create terror and to endanger and unsettle the economy of the country for which stringent measures have been adopted. The provisions of the MCOCA seek to deprive a citizen of his right to freedom at the very initial stage of the investigation, making it extremely difficult for him to obtain bail. Other provisions relating to the admission of evidence relating to the electronic media have also been provided for. In such a situation it is to be seen whether the investigation from its very inception has been conducted strictly in accordance with the provisions of the Act.”

35. The provisions of MCOCA are meant to eradicate the evil of organized crime however considering the rigours which it entails and the stringent provision thereof this court is bound to confine its applicability only to the jurisdiction which the legislature intended it to be. Though, the arguments of the State in invoking the provisions of MCOCA in the instant case are appreciable, yet, this court is bound by the limits of jurisdictional confines to which the legislatures have bound the applicability of this Act.

36. In the present case, FIR No. 69/2007 was lodged on 08.10.2007 at PS Special Cell, Delhi under Sections 384/387/419/420/467/468/471/474/174A/506/120B/34 IPC pursuant to which respondent No. 1 was arrested on 23.01.2008 and the charge-sheet was filed against him on 23.03.2008 and respondent No.2 was arrested on 05.06.2013 and the charge-sheet against him was registered on 29.09.2013. Thereafter, the FIR No. 10/13 under Sections 3 and 4 of the MCOCA was registered on 05.03.2013 in which both the accused were formally arrested on 03.05.2013 and the sanction under Section 23(1) of MCOCA was granted on 10.01.2013. To invoke the provisions of MCOCA, a total of eight FIRs aforementioned were brought on record. However a perusal of the FIRs show that in six cases the alleged offences were committed outside Delhi and the cognizance in respect of the offence committed therein have also been taken in the competent courts outside Delhi. In the seventh FIR, i.e., FIR No.69/2007 allegations are directed against respondent Nos. 1 and 2 who have allegedly committed an act of extortion upon the complainant Sudhir Singh. The last FIR in the series, FIR No.122/10 under Sections 341/506/34 IPC registered at PS Subzi Mandi does not mention the involvement of the said respondents and the trial court has reached at a finding that there is nothing in the said FIR to state that the said case was in pursuance of the activities of the organized crime syndicate.

37. It is worth mentioning here, even at the cost of repetition that the offences under Section 3 and 4 of the MCOCA are related to orgained crime or harbouring wealth on behalf of orgained crime syndicate. The definition of orgained crime and organized crimes syndicate

under Sections 2(1) (e) and (f) of the MCOCA have a relation to the expression continuing unlawful activity under Section 2 (1) (d) thereof. As already observed, the requirement of two or more charge-sheet and cognizance of offences in such cases is not fulfilled merely by bringing on record the details of cases filed anywhere, rather, the said charge-sheet must relate to the jurisdiction of competent Court in Delhi. Since in the present case only one FIR fulfils these requirements, provisions of MCOCA cannot be said to have been rightly invoked against the respondents.

38. For the reasons recorded above, the appeal is without any merit, the same deserves to be dismissed and the same is hereby dismissed.

Crl. M.A. Nos.4632/2014 & 4633/2014

The applications are dismissed as infructuous.

**(VED PRAKASH VAISH)
JUDGE**

APRIL 16th, 2015
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