pdp

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 333 OF 2016

The State of Maharashtra
(At the instance of Antop Hill
Police Station in C.R. No. 66 of 2014) .. Appellant
(Org. Complainant)

Versus

1. Mohd. Yunus @ Tamatar Mohd. Ali Shaikh
Age 28 years, Occ. Hawker,
R/o Garib Nawaz Nagar,
Lane No.3, Kokri Agar,
Antop Hill, Mumbai – 400 037.

2. Kasim @ Chuha Salimuddin Shaikh
Age 23 years, Occ. Service,
Garib Nawaz Nagar, Behind Antop Hill,
Mumbai – 37.

3. Niyazuddin @ Bablu Abid Shaikh
Age 28 years, Occ: Service,
Lane No.2, Room No. 51, Near
Asra Asra Medical Store,
Kokri Agar, Antop Hill, Mumbai – 37.

4. Imtiyaz @ Petla Mehbool Kharadi
Age 25 years, Occ: Service,
R/o Garib Nawaz Agar,
Kokri Agar, Antop Hill, Mumbai – 37.

5. Suresh @ Abbu Kannan Devandra
Age 24 years, Occ: Service,'
R/o Garib Nawaz Nagar, Lane No.2,

Room No. 26, S.M. Road, Kokri Agar,
Antop Hill, Mumbai – 37.

6. Abubakar Shabbir Shaikh @ Siddiqui
Age 20 years, Occ. Service,
Garib Nawaz Nagar,
Lane No.7, Near Main Drainage,
S.M. Road, Kokri Agar, Antop Hill,
Mumbai – 37. .. Respondents
(Org. Accd. Nos.1 to 6)

Mrs. S. V. Sonawane, APP for Appellant – State.
Ms. Naima Shaikh i/by Abdul Wahab Khan for respondent nos.1, 2, 5 and 6.
Mr. Nitin Sejpal for respondent no.3.

CORAM: NARESH H. PATIL &
PRAKASH D. NAIK, JJ.

RESERVED ON : AUGUST 04, 2016.

PRONOUNCED ON : SEPTEMBER 06, 2016

ORDER [Per Naresh H. Patil, J.] :

1. This appeal, filed by the State of Maharashtra, is directed against the order dated 17/6/2015 passed below Exhibit -5 (As M.A.) in M.C.O.C. Special Case No. 14 of 2014 by the Special Judge under MCOC Act, Greater Mumbai.

2. The original accused nos.1 to 6 in Crime No. 66 of 2014

registered with Antop Hill Police Station for offences punishable under Sections 307, 143, 144, 147, 148, 149 of the Indian Penal Code filed application under Section 11 of the Maharashtra Control of Organised Crime Act, 1999 (for short “MCOC Act”). The applicants-accused prayed for setting aside order granting sanction by the Competent Authority on 6/9/2014 and to transfer the case to court of competent jurisdiction.

3. The learned Special Judge under MCOC Act, Greater Mumbai, partly allowed Exhibit -5 (Misc. Application) and discharged the accused from the provisions of Section 3(1)(ii), 3(2) and 3(4) of MCOC Act. The matter was to be placed before the Principal Judge, City Civil & Sessions Court, Mumbai to be assigned to the competent court.

4. On investigation of complaints, two charge-sheets came to be filed. They are cross cases, which arise from C.R. No.65 of 2014 and C.R. No. 66 of 2014 (MCOC Special Case Nos.13 of 2014 and 14 of 2014. The present case, in which the accused filed application, relates to C.R. No. 66 of 2014 (MCOC Special Case No. 14 of 2014). Both the FIRs were registered with Antop Hill Police Station. The informant in the first case i.e. C. R. No. 65 of 2014 is accused no.4 in the present case.

5. The prosecution case is that the accused no.1 in both the cases is heading respective organised crime syndicate. On 13/3/2014, the informant in the first case came to Antop Hill area in search of work. At about 7.45 p.m., when he was near “Shiva Ka Durga”, a motorcycle dashed him. The informant questioned the rider of the bike on his rashness. The rider i.e. accused no.1 thereafter slapped the informant. According to the complainant, the activities of the accused no.1 created terror in the minds of the people. He is extortionist. He had extorted Rs. 500/- twice from him. It was alleged that the accused extorts money from small businessmen.

6. On 13/3/2014, at about 10.30 p.m., when the informant was going towards bathroom, accused no.1 and his 5-6 associates saw him. Accused No.1 asked his associates to catch the informant and kill him. Accused No.1 and his associates followed the informant with sharp edged weapons. The informant asked for help from the people in lane, but due to fear and terror of accused no.1 and his associates, nobody interfered. The informant ran in the directions he could and hid himself in the bushes near one gutter. Accused No.1 and his associates traced out the informant,

assaulted with sharp edged weapons. They attempted to kill the informant.

7. It is stated that due to the first incident, narrated above, the second case of counter attack took place. Informant in the present case received injuries. The FIR in the present case reads that on 13/3/2014, there was “Bhandara” at Saibaba Temple and the informant and his friends had gathered. The informant was coming back at about 9.30 p.m. He kept “Bhandara” at home and came out of his house. He was chit-chatting with his friends. Thereafter, he came near double storied bathroom for answering natures call at about 10.30 p.m. He saw Vijay (accused No.1 in first case). Then he followed them to find out as to where they were going. He saw Vijay and associates beating one person. He saw some persons coming from other side by holding swords in their hands. They were shouting. Upon such shouting, Vijay and associates started running here and there. One of the persons coming from other side inflicted injuries on the head of Vijay with a weapon. The other person hit him on his leg. Siddiqui (accused no.6) assaulted informant with a weapon. The informant received injury on his head. The informant tried to run away. The informant was taken to Sion Hospital. Thereafter, he lodged a complaint.

8. The learned APP appearing for the appellant – State submitted that the trial court committed error in allowing the application of the accused persons. The previous more than one case, where charge-sheets were filed and cognizance was taken, was placed on record. The allegations made in these cases attract provisions of Section 2(1)(d) and 2(1)(e) of the MCOC Act. Learned APP further submitted that the approval and the sanction order was passed in accordance with law and even if the court found some error or deficiencies in the said order, the same could be tested during evidence in the trial. There is no need to allow the application on account of alleged defects pointed out by the accused in the approval or sanction order. Two charge-sheets were filed and cognizance was taken and, therefore, in the facts, there was sufficient compliance of the provisions of MCOC Act. Learned APP submitted that it was wrong on the part of the trial court to observe that no record was placed, showing order of taking cognizance by the competent court. Oral inquiry with Investigating Officer, ACP Bagwe in this regard was uncalled for. Learned APP submitted that proper opportunity was not given to the prosecution to place on record the evidence relating to cognizance and the other charge-sheets. Learned APP placed reliance on the judgment of

Division Bench of this court in the case of Anil Sadashiv Nanduskar vs. State of Maharashtra **[2008 (3) Mah.L.J. (Cri) 650]**.

9. Ms. Naima Shaikh, learned counsel appearing for respondent nos.1,2,5 and 6 submitted that the State failed to make out a case that the accused were involved in a crime syndicate. Reference was made to provisions of Section 2(1)(d) and 2(1)(e) of the MCOC Act. Learned counsel submitted that ingredients of Section 2(1)(d) and 2(1)(e) are not satisfied. Therefore, the trial court rightly allowed the application. Mere fight between two groups cannot attract the provisions of the MCOC Act. There are cross cases based on an incident. The prosecution failed to make out any case of gaining pecuniary benefits or other advantage by the accused. Learned counsel submitted that the sanctioning authority, without application of mind, gave sanction. It is defective in nature. No record was placed before the sanctioning authority. In both the cases, sanction was given in mechanical manner. Learned counsel relied upon the following judgments :-

(a) The State of Maharashtra vs. 1. Pravin @ Pappu Dayanand Shetty and ors. **[Criminal Appeal No. 667 of**

2009, decided on 8/1/2010].

(b) Sherbahadur Akram Khan and ors. vs. State of Maharashtra **[2007 (1) Bom. C.R. (Cri) 26]**.

10. Mr. Sejpal, learned counsel appearing for respondent no.3 referred to the following judgments :

(a) Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra **[2005 SCC (Cri) 1057]**.

(b) State of Maharashtra vs. Lalit Somdatta Nagpal **[(2007) 2 SCC (Cri) 241]**.

(c) The State of Maharashtra vs. Jagan Gagansingh Nepali @ Jagya & anr. **[2011 ALL MR (Cri) 2961]**.

Learned counsel submitted that considering the stringent provisions of MCOC Act, the responsibility on the prosecution is heavy to satisfy that the case is made out by prosecution to registered offences under MCOC Act. The prosecution has failed to satisfy these conditions.

11. We have perused the record placed before us, impugned order, considered the submissions advanced before us. We have also perused the judgments cited (Supra).

12. Section 2(1)(d) and 2(1)(e) of the MCOC Act reads as under:-

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

(a)

(b)

(c)

(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 other person or promoting insurgency;"

It is obligatory on the part of the prosecution to establish that the accused persons in the present case were involved in more than one charge-sheet and their activities would attract the provisions of Section 2(1)(d) and 2(1)(e) of MCOC Act. They must be part of an organised crime syndicate and involved in continuous activities either for gaining pecuniary benefits or other advantage. In the judgments cited above, the object behind the provisions of Section 2(1)(d) and 2(1)(e) has been well defined and narrated. The prosecution is bound to establish that the case calls for application of stringent provisions of MCOC Act.

13. From the perusal of the charge-sheet in the FIR No. 66 of 2014, we find that provisions of MCOC cannot be attracted. It is a case of assault by two groups against each other. In the supplementary statement of Sushant Yashwant Kap recorded on 16/3/2014, a reference is made in respect of sale of hut for Rs. 1,60,000/-. We do not find that the incident referred therein took place with an object of gaining pecuniary benefits or gaining undue economic or other advantage by the accused or any other person.

14. We have also noticed from the record that the criminal cases were registered as C.R. Nos.206/11, 71/06, 313/09 and 3/10, but the prosecution placed reliance on the cases which were referred before the trial court. The trial court observed that no order was placed on record in respect of taking cognizance by competent court in previous charge-sheet bearing Case No. 519 of 2009. On oral inquiry from Investigating Officer, ACP Bagwe, the trial court observed that order of taking cognizance by competent court of the offence mentioned in the previous charge-sheet was not sent to authority granting approval. In the facts, we find that these cases were pending for years together before the courts and, therefore, trial court ought to have been cautious and slow in making observations in this regard. Such observations could have been made by calling for the concerned record by the court and after looking into the same.

15. On the question of sanction, we find that it is settled position that the sanction order could be tested by leading evidence in a case. Therefore, on that count, the order can not be faulted. Taking into consideration the object behind the MCOC Act, the facts of the case and the charge-sheets relied upon by the prosecution, we do not find that

application of MCOC Act was warranted. We do not notice any error for causing interference in the impugned order.

16. There is no merit in the appeal. Appeal is dismissed.

(PRAKASH D. NAIK, J.) (NARESH H. PATIL,J.)