

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.553 OF 2015

Amir Moudin Khan,
R/o.242, MHADA Colony, Near Sagar Hotel,
Shilphata, Khopoli, Dist.Raigad Appellant

versus

The State of Maharashtra Respondent

Mr.Manoj Mohite i/by Mr.Vinayak R. Patil for Appellant.
Mrs.M.M.Deshmukh, APP, for State.

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

DATE : 25th August 2016

PC :

1. This appeal is preferred against an order dated 12 November 2014 below Exhibit-37 in Special (MCOC) Case No.1 of 2013 by Special Additional Sessions Judge, Raigad-Alibag, constituted under the provisions of Maharashtra Control of Organised Crime Act, 1999 ('MCOC'). The Appellant's application (Exhibit-37) under Section 11 of MCOC Act for transferring case no.1 of 2013 to the regular Sessions Court, came to be rejected by the impugned order.

2. Learned counsel appearing for the Appellant submitted that the Trial Court ought to have referred to two previous charge sheets in detail for ascertaining application of provisions of Sections 2(d) and 2(e) of MCOC Act. It was submitted that a general reference was made to some previous cases filed against the Appellant and in

one or two cases where order of acquittal was recorded in favour of the Appellant. Learned counsel submitted that from the affidavit-in-reply filed by the Respondent-State, for the first time, the Appellant came to know that the State places reliance on two charge sheets viz. (i) charge sheet no.12 of 2008 filed in Regular Case No.29 of 2008 for offences under Sections 407, 411 and 34 of Indian Penal Code (Khalapur Police Station); and (ii) Charge Sheet No.129 of 2010 filed in Regular Case No.154 of 2010 for offences under Sections 420 and 34 of Indian Penal Code (Khalapur Police Station). Learned counsel placed on record two charge sheets concerning above two crimes. Based on the aforesaid two charge sheets, learned counsel for Appellant submitted that a perusal of two charge sheets would indicate that the ingredients of Sections 2(d) and 2(e) of MCOC Act for taking into consideration two previous charge sheets for application of MCOC Act against Appellant are absent.

3. Learned APP submitted that though in the impugned order passed by the Trial Court, necessary details in respect of subject matter of previous two charge sheets are not discussed, but same are brought on record by State by filing an affidavit. Learned APP submitted that mandatory procedure in getting approval and sanction was adhered to and followed by the State machinery.

4. We have perused the impugned order, record placed before us and affidavit-in-reply filed by the State. We have noticed certain infirmities in the impugned order. The order does not discuss to a reasonable extent about previous two charge sheets filed against the Appellant, based on which MCOC Act was applied against Appellant.

Application of Sections 2(d) and 2(e) of MCOC Act along with other relevant provisions, though in brief, was also not referred to and discussed by the Trial Court. We have noticed that the Trial Court has referred to some of the reported and unreported judgments in a cursory manner. It is difficult to understand as to in which context the judgments were cited and how they weighed with the Trial Court. At one place the Trial Court refers to the observations made by High Court in Application No.1047 of 2013 of the Appellant. Without prejudice to the rights of the contesting parties, we observe that the Trial Court would deal with the matter uninfluenced by the observations made by this Court while considering the material on record, the provisions of law and the plea raised by the Appellant in the subject application.

5. In the affidavit-in-reply, the State has categorically contended in paragraphs 4 and 5 as under :

"4. I say that applicant accused came to be arrested on 24.12.2011. During the course of investigation it is revealed that the arrested accused, applicant and other wanted accused are involved in number of CRs. Therefore, a proposal was submitted by Senior Police Inspector, Unit-1, Crime Branch, Navi Mumbai to the Additional Commissioner of Police, Navi Mumbai vide its letter O.W. No.187/2012 dated 6.3.2012.

5. I say that the applicant is involved in a number of criminal cases of serious nature, cognizance of which has been taken by competent court. More than one charge sheet has been filed against the applicant within last 10 years for offences which are punishable with imprisonment for term of more than three years. The

two CRs within ten years in which the charge sheet were filed and cognizance is taken by the competent court were taken into consideration for invoking MCOC against the applicant/accused and the members of the gang which are as under :

<i>Sr No.</i>	<i>Police Station</i>	<i>C.R. No</i>	<i>Sections</i>
<i>1</i>	<i>Khalapur</i>	<i>200/2007</i>	<i>407, 411, 34 of IPC</i>
<i>2</i>	<i>Khalapur</i>	<i>17/2010</i>	<i>420, 34 of IPC "</i>

6. It is, therefore, appropriate that the Trial Court is provided with an opportunity to go with these two charge sheets on which reliance is placed by the prosecution so as to appreciate the plea raised by the contesting parties. In these circumstances, we are of the view that the issue relating to two earlier charge sheets, which arise for consideration in the appeal for the first time, should be considered and appreciated first by the first court namely the Trial Court in its proper perspective. Both learned counsel for the Appellant and the Respondent fairly submitted that the issue could be re-looked which is raised before this court, afresh so that just and proper conclusions could be arrived at based on the necessary material which would be placed before the Trial Court.

7. In the facts, we are of the view that the case is required to be remanded back to the Trial Court for a fresh consideration of the issues which could be raised by the contesting parties before the Trial Court in respect of the prayers made in the application filed under Section 11 of MCOC Act, 1999.

ORDER

- (a) The appeal is partly allowed;
- (b) Impugned order below Exhibit-37 in Special (MCOC) Case No.1 of 2013, dated 12 November 2014, passed by Special Additional Sessions Judge, Raigad-Alibag, stands quashed and set aside;
- (c) Application Exhibit-37 stands restored to the file of Special (MCOC) Case No.1 of 2013;
- (d) The Special Court under MCOC Act is directed to dispose of the application Exhibit-37 on its own merits after hearing the parties and taking into consideration the observations made by this Court as above, within three months from the date of receipt of a copy of this order;
- (e) It is clarified that we have not expressed any opinion on the merits of the case. All issues on merits are kept open.

(PRAKASH D. NAIK, J.)

(NARESH H. PATIL, J.)

MST