

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 85 OF 2017

Gajanan s/o Damodhar Mhatre **..... APPELLANT/
[ORI. ACCUSED NO. 1]**

V E R S U S

The State of Maharashtra **..... RESPONDENT**

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Mr. M.V.Ghatge, Advocate for Appellant.

Mr. G.O.Wattamwar, A.P.P. for Resp. - State.

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CORAM : V.L.ACHLIYA, J.

DATE : 9th JUNE, 2017

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ORDER :

1. The instant Appeal is filed by the appellant/original accused No. 1 u/s 12 of the Maharashtra Control of Organized Crimes Act, 1999 [for short, 'MCOC Act'] against the order dated 24/06/2016 passed by learned Special Judge [MCOC Court], Aurangabad in

Special Case No. 21/2012. By the impugned order, learned Special Judge rejected the application [Exh. 54] filed by the appellant/original accused No. 1 u/s 227 of the Code of Criminal Procedure seeking discharge.

2. Before adverting to the submissions advanced, it is necessary to consider the brief facts for filing of Appeal.

Appellant/accused No. 1 along with co-accused were charge sheeted for committing offences u/ss 302,201,120-B,114,109,328 read with section 34 of the Indian Penal Code and u/s 135 of the Bombay Police Act registered vide Crime No. 81/2012 on 20/03/2012 with police station Kranti Chowk, Aurangabad. The accused were charged with an allegation that by entering into criminal conspiracy, they kidnapped the son of the appellant/accused No. 1 and caused his murder, as per the contract of killing given by appellant/accused No. 1 to accused No. 5, the contract killer. After filing of the charge sheet, the case was registered as Sessions Case No. 285/2012 on the file of the Sessions Judge, Aurangabad. On 16/03/2012, as another offence was registered vide Crime No. 21/2012 with police station Begumpura, Aurangabad against the appellant/accused

No. 1 and other accused persons with allegation that by entering into criminal conspiracy, they have caused the murder of Sindhubai Mhatre i.e. wife of appellant/accused No. 1. In the investigation conducted by the Crime branch, it was revealed that initially the appellant/accused No. 1 had approached to Imran @ Mehendi, the gangster, who was running the organized crime syndicate to cause murder of his son Nilesh. By accepting the consideration, accused No. 5 Imran @ Mehendi, with the help of members of his syndicate, abducted Nilesh, caused his murder and disposed of his body. Later-on, the appellant/accused No. 1 again approached accused No. 5 Imran @ Mehendi to cause murder of his wife Sindhubai, as she was insisting to know about the whereabouts of her son Nilesh. Accused No. 5 Imran @ Mehendi accepted the contract of killing and caused the murder of Sindhubai with the help of members of his gang and disposed of her body. Later-on, on the complaint forwarded by the Special Court to the Commissioner of Police to apply the provisions of the MCOC Act, further investigation was conducted and with the approval of appropriate authority, supplementary charge sheet was filed and the accused were also charge sheeted committing the offence under the provisions of the MCOC Act. The appellant/accused

No. 1 and accused No. 5 Imran @ Mehendi moved an application vide Exh. 54 u/s 227 of the Code of Criminal Procedure for discharge. Learned Special Judge [MCOC Court], Aurangabad decided the application vide order dated 24/06/2016 and rejected the application. Being aggrieved, the appellant/accused No. 1 has preferred this Appeal.

3. I have heard the learned counsel for the appellant/accused No. 1 and A.P.P. for the respondent – State and further perused the original record and proceedings of the case called for the purpose of deciding the Appeal.

4. In nut-shell, it is the contention of the learned counsel for the appellant/accused No. 1 that the impugned order is perverse, not sustainable in law and same has been passed without application of mind. He submits that the appellant/accused No. 1 has moved an application seeking discharge on limited ground that the offence under the provisions of the MCOC Act are not attracted against the appellant/accused No. 1 as on the date of filing of charge sheet in Special Case No. 21/2012 and applying the provisions of the MCOC Act, more than one

charge sheets were not filed before the competent Court. He submits that the application was filed by placing reliance on the decision of the Apex Court in the case of **Prasad Shrikant Purohit V/s State of Maharashtra and another reported in [2015] 7 Supreme Court Cases – 440.** By referring the impugned order, learned counsel submits that the order has been passed without application of mind. The ground on which the appellant/accused No. 1 has sought discharge, was at all not taken into consideration and decided by the learned Special Judge. He, therefore, submits that the impugned order is not sustainable to the extent of appellant/accused No. 1 and liable to be set aside.

5. On the other hand, respondent – State has opposed the application and supported the order passed by the trial Court. Learned A.P.P. has submitted that the order passed by the trial Court calls for no interference. He submits that the evidence gathered by the prosecution is sufficient to *prima facie* attract the offence of MCOC Act against the appellant/accused No. 1 and there is sufficient evidence to show that the appellant/accused No. 1 had entered into criminal conspiracy with accused No. 5 Imran, the professional contract killer and gangster, who run

organized crime syndicate to kill his wife and son. He submits that in order to attract the offence under the provisions of the MCOC Act, particularly u/s 3 [1] [ii] and 3 [2] of the MCOC Act, it is not necessary that more than one charge sheets should have been filed against such individual before applying the provisions of MCOC Act. He submits that a person who enters into criminal conspiracy or attempts to commit or abets or knowingly facilitates the commission of an organized crime which includes any act preparatory to organized crime, are also liable for prosecution under the provisions of the MCOC Act.

6. In order to appreciate the submissions advanced, I have perused the record and proceedings. Perusal of the application [Exh. 54] reveals that the appellant/accused No. 1 has not claimed discharge from entire case. The discharge was sought for prosecution under the provisions of the MCOC Act. The ground raised in the application to seek discharge confines to non filing of more than one charge sheets before the competent Court on the date of prosecuting the appellant/accused No. 1 for the offence punishable u/s 3 of the MCOC Act.

7. Perusal of the application [Exh.54] reveals that

application was filed in a most casual manner. There is no specific reference made in the application that the application is made for the appellant/accused No. 1 as well as accused No. 5. If we look to the prayer clauses, then it reflects that the application was filed only for accused No. 5 Imran @ Mehendi. However, if we look to the contents of the application, it reflects that the application was filed for the appellant/accused No. 1 as well as accused No. 5 Imran @ Mehendi, who is described as applicant No. 2. Learned counsel for the appellant has fairly conceded that the application was not properly drafted. However, he submits that the contents of the application clearly reflects that the application was filed for the appellant/accused No. 1 as well as accused No. 5. He further submits that the application was filed seeking discharge under the provisions of the MCOC Act and no discharge was claimed for the offences under the provisions of the Indian Penal Code.

8. If we read the contents of the application [Exh. 54], it reveals that the applicant has claimed discharge on limited ground that at the time of filing charge sheet in Special Case No. 21/2012, there were more than one charge sheets, relating to the offences as referred in

section 2 [d] of the MCOC Act, were not filed before the competent Court and cognizance of such offence has been taken by such Court against the applicant. In support of the contention, the appellant/accused No. 1 has relied on decision of the Apex Court in the case of Prasad Shrikant Purohit [supra].

9. Since the discharge was claimed on a limited ground, it is useful to reproduce the pleadings made in the application [Exh.54] seeking discharge by the appellant/accused No. 1, which reads as under :

" It is most respectfully submitted that, the applicant No. 1 is alleged to have committed only two offences i.e. he have given contract to kill his son, therefore, he is charge-sheeted to Sessions Case No. 285/2012 and second alleged offence is involved in this case i.e. MCOCA Case No. 21/2012. Therefore, it is contained by the Investigating Officer and Public Prosecutor that, he is involved in two cases in support of this appellant, he is relied on the Judgment of Prasad Prohit V/s State of Maharashtra wherein Hon'ble Apex Court has laid

down the principal in Head Note "B", says that, there should be two charge sheets and thereafter third crime should be relevant to say that, accused is in continuation to commit crime under the provisions of MCOCA Act ".

10. Thus, if we consider the application [Exh.54] filed by the appellant/accused No. 1 seeking discharge, then the discharge claimed by the appellant/accused No. 1 was not claimed as discharge from the entire case, but it was confined to the discharge from the offences under the provisions of the MCOC Act. On perusal of the impugned order dated 24/06/2016, it reflects that the learned Special Judge has decided the application as if the application is filed by the appellant seeking discharge from the entire case. It reflects that the pleadings of the appellant/accused No. 1, then discharge was sought only from the offences under the provisions of the MCOC Act, on the ground that more than one charge sheets were not filed against him relating to the offences of nature as referred in section 2 [d] of the MCOC Act prior to applying the provisions of the MCOC Act against him. The ground on which the appellant/accused No. 1 has sought

discharge was at all not taken into consideration and decided by the learned Special Judge. Neither the contention of the appellant/accused No. 1 was taken into consideration nor discussed in the order passed. It reflects that the application has been decided without application of mind.

11. Learned counsel has further pointed out that in the order, in paragraph No. 6, it is observed that the present appellant/accused No. 1 along with accused No. 5 Imran @ Mehendi had filed application [Exh.10] for discharge and same was rejected on 04/04/2014 after considering the entire facts of the case and said order has not been challenged in Appeal. It is further observed that as earlier application was rejected and the order was not challenged, the subsequent application filed is not maintainable in law. By referring the record and proceedings, it is pointed out that the observations made to the extent of the appellant/accused No. 1 are *per-se* incorrect and reflects the non application of mind on the part of the learned Special Judge as no such application vide Exh. 10 filed by the appellant/accused No. 1.

12. In order to appreciate the submissions, I have

perused the record and proceedings. On perusal of the application [Exh.10], it reveals that the application was moved seeking bail and not for discharge u/s 227 of the Code of Criminal Procedure, which itself demonstrate the casual approach and non application of mind on the part of the learned Special Judge in deciding the application. For this reason alone, the impugned order is liable to be set aside and the matter needs to be referred back for deciding the application afresh.

13. On perusal of the impugned order passed by the learned Special Judge, it reveals that the contention raised by the appellant/accused No. 1 in his application [Exh.54] seeking discharge was at all not taken into consideration and discussed in the order. In absence of any reasons and findings by the trial Court, it is not desirable for this Court to examine the merits of the submissions advanced by the learned counsel for the appellant/accused No. 1 and A.P.P. as regards the applicability of the provisions of the MCOC Act as against the appellant/accused No. 1.

14. In view of above, the impugned order is liable to be set aside to the extent of the appellant/accused No.

1 and matter needs to be remanded for deciding the application afresh. Since it is found that the application [Exh.54] filed on behalf of the appellant/accused No. 1 is drafted in a very casual manner and there is no specific prayer seeking discharge of the appellant/accused No. 1, it is desirable that in stead of prosecuting the application [Exh.54], the appellant/accused No. 1 be permitted to present fresh application seeking discharge restricted to the ground raised in the application [Exh.54]. I am, therefore, inclined to pass the following order.

ORDER

[i] Criminal Appeal is partly allowed. The impugned order dated 24/06/2016 passed below Exh. 54 in Special Case [MCOCA] No. 21/2012 is set aside to the limited extent of the appellant/accused No. 1 Gajanan s/o Damodhar Mhatre.

[ii] The appellant/accused No. 1 is permitted to submit fresh application seeking discharge restricted to the grounds raised in the application [Exh. 54] by submitting such application on the next date of hearing.

[iii] In case the appellant/accused No. 1 makes fresh application on the next date of hearing seeking discharge on limited grounds as raised in previous application, then the trial Court is directed to decide the same as expeditiously as possible and preferably within the period of two weeks from the date of filing such application. In case, the appellant/accused No. 1 fails to file application as permitted before the next date of hearing fixed in the matter, the trial Court will be at liberty to proceed with the matter.

[iv] Criminal Appeal stands disposed of in above terms.

[V.L.ACHLIYA, J.]