

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.2922 OF 2017

Manish Perakash Arora : Petitioner.
Versus
The State of Maharashtra and ors. : Respondents.

Mr. Harshad Nimbalkar a/w Satyam H Nimbalkar for the Petitioner.
Mrs. A S Pai, Addl. PP for the Respondent/State.

**CORAM : R. M. SAVANT &
SANDEEP K. SHINDE, JJ.**
DATE : 07th September 2017

P.C.

1 The order dated 02/06/2017 passed by the Approving Authority i.e. the Special Inspector General of Police, Kolhapur Range, Kolhapur under Section 23(1)(a) of the MCOC Act 1999 is taken exception to by way of the above Writ Petition.

2 The said order approving the application of the provisions of the MCOC Act, as the reading of it discloses, has taken into consideration the offences registered against the members of organized crime syndicate indulging into continuing unlawful activity. It discloses one Kapildev Chandravali Dubey was a gang leader against whom there are as many as six offences registered, punishable with imprisonment of more than 3 years. It further discloses that those six offences were committed by the said Kapildev Dubey either singly or jointly as a member of organized crime syndicate and on

behalf of such crime syndicate. The Crime No.25/2017 registered with Rajgad Police Station under Sections 395, 397, 342, 201 read with 34 of the Indian Penal Code is one of such offences in respect of which approval has been granted under Section 23(1) of the MCOC Act. The Petitioner herein is Accused No.12 in the said Crime No.25/2017.

3 The said order has been prefaced by the fact that the gang leader and his accomplices for their own financial and other illegal gains as also to show an upper hand of the said syndicate has indulged into the offences which are very serious in nature. The said order discloses that a proposal was received from the Superintendent of Police, Pune Rural seeking approval to apply the provisions of MCOC Act in relation to C R being No.25/2017. The said order discloses that the Approving Authority i.e. the Special Inspector General of Police, Kolhapur Range, Kolhapur has minutely perused the proposal as also the documents sent therewith. The material sent with the proposal has thereafter been referred to in the said order dated 02/06/2017. The said order concludes that the Fir being No.25/2017 registered with the Rajgad Police Station for the offences punishable under Sections 395, 397, 342, 412, 201 of the Indian Penal Code have been committed by the said gang as being the members of an organized crime syndicate and the offence is an organized crime committed by the said syndicate.

4 The said order is sought to be challenged on behalf of the Petitioner inter alia on the ground that there is non-application of mind on the part of the Approving Authority in so far as the Petitioner is concerned having regard to the facts of the case. The said order is also challenged on the ground that the said order does not contain the reasons as to why the provisions of the MCOC Act have been applied to the Petitioner herein who is arraigned as the Accused No.12 in the said C.R. No.25 of 2017 registered with Rajgadh Police Station.

5 The learned counsel appearing on behalf of the Petitioner Shri Nimbalkar to buttress the said contention drew our attention to the said order dated 02/-6/2017 and the factum of the FIR being registered under the provisions of the Indian Penal Code.

6 On behalf of the State, the learned Additional Public Prosecutor Mrs. Pai to controvert the contentions urged on behalf of the Petitioner, sought to place reliance on the judgment of a Division Bench of this Court in the matter of Anil Sadashiv Nanduskar v/s. State of Maharashtra, reported in 2008 (3) Mah.LJ (Cri) 650. Placing reliance on the said judgment, the learned Additional Public Prosecutor would contend that it is not necessary that the reasons why the MCOC Act is required to be applied in respect of a particular accused have to be mentioned. The learned Additional Public

Prosecutor relying upon the said judgment would submit that ultimately it is for the prosecution to prove that the approval granted is in terms of the provisions of the MCOC Act at the trial by leading evidence.

7 Having heard the learned counsel for the parties, we have considered the rival contentions. In so far as the contention urged by the learned counsel appearing on behalf of the Petitioner is concerned, the same can be said to have been covered by the judgment of the Division Bench of this Court in Anil Sadashiv Nanduskar's case (*supra*). An identical contention was raised before the Division Bench in the said case. The Division Bench has formulated the said questions in paragraph No.6 of the said judgment. The Division Bench has poised the question as to whether the approval granted in the said case in terms of Section 23(2) of the MCOC Act is valid and lawful. The Division Bench then proceeded to answer the said questions and in the context of the present challenge paragraphs 13, and 24 of the said Report are material and are reproduced herein under :-

"13 The settled law by a catena of decisions of the Apex Court is to the effect that it is desirable that every order whether the approval or sanction it should speak for itself, i.e. *ex-facie* it should disclose consideration of the materials placed before it and application of mind thereto. However, failure to reproduce or refer those recitals in the resolution or order itself would not render the order of approval or sanction to be invalid unless the prosecution fails to establish by leading evidence that all the materials necessary for the grant of approval or sanction were placed before the concerned authority for due

application of mind by such authority before the grant of approval and or sanction. It apparently discloses that question of validity of approval or sanction cannot be decided unless the prosecution is afforded opportunity to lead evidence in that regard. Undoubtedly, an accused desiring to raise objection regarding the defects in such approval or sanction, or grant, he can raise such objection; however, for conclusive decision on the said point the accused has to wait till the trial is complete and on that ground he cannot insist for discharge unless the objection relates to inherent lack of jurisdiction to the concerned authority to grant sanction or approval and such issue can be decided on undisputed facts. The law being well settled to the effect that the prosecution in a case where sanction or the approval order does not ex-facie show consideration of all the materials and/or application of mind, is entitled to establish the same by leading necessary evidence regarding production of materials before the concerned authority, the question of discharge of accused merely on the basis of such objection being raised cannot arise. The decision on the point of defect, if any, in the order of approval or sanction will have to be at the conclusion of the trial.

24 The contention that the order of approval or order of sanction should disclose consideration of material qua each of the accused sought to be prosecuted is devoid of substance. That is not the import of section 23 of MCOC Act. Section 23(1)(a) as well as section 23(2) with reference to approval and sanction speaks of commission of offence and cognizance of the offence. In fact the law on this aspect is also well settled and reiterated by the Apex Court in Dilawar Singh's case (*supra*) itself. It was held therein that, court takes cognizance of offence and not of an offender when a Magistrate takes cognizance of an offence, under Section 190 Cr.P.C. Undoubtedly, it was also held that it was necessary for the Sanctioning Authority to take note of the persons against whom the sanction is sought to be granted. However, those were the requirement under Section 19 of the Prevention of Corruption Act. The said section specifically requires sanction with reference to a particular person. That is

not the case under section 23 either in relation to the approval or in relation to the sanction. As already seen above section 23(1)(a) of MCOC Act speaks of approval for recording of information about commission of offence of organized crime under MCOC Act, whereas sanction is for initiating proceeding for the offence under MCOC Act. The sanction order or the approval order on the face of it need not speak of the individual role of each of the accused. Being so, contention that the order of approval or sanction should reveal consideration of the overt acts or otherwise of each of the accused while granting approval or sanction is totally devoid of substance. Of course, the involvement in organized crime of each of the persons sought to be prosecuted should necessarily be considered by the concerned authority before the grant of approval or sanction, but need not be specifically stated in the order and the consideration thereof can be established in the course of trial.

A reading of the aforesaid paragraphs therefore discloses that failure to reproduce or refer the recitals in the resolution or order itself would not render the order of approval or sanction to be invalid unless the prosecution fails to establish by leading evidence that all the material necessary for the grant of approval or sanction were placed before the concerned authority for due application of mind by such authority before the grant of approval and or sanction. It is further held by the Division Bench that the contention that the order of approval or order of sanction should disclose consideration of material qua each of the accused sought to be prosecuted is devoid of substance. The Division Bench referred to the judgment of the Apex Court in Dilawar Singh's case and observed that the court takes cognizance of the offence and not the offender. The Division Bench further observed that the involvement in

organized crime of each of the persons sought to be prosecuted should necessarily be considered by the concerned authority before the grant of approval or sanction, but need not be specifically stated in the order and the consideration thereof can be established in the course of trial.

8 It is on the touchstone of the judgment of the Division Bench in *Anil Sadashiv Nanduskar's* case (supra) that we are unable to persuade ourselves to accept the contentions urged on behalf of the learned counsel for the Petitioner Shri Nimbalkar as regards the approval order suffering from infirmity on the grounds urged by him.

9 The learned Additional Public Prosecutor Mrs. Pai has produced for our perusal the file containing the proposal and other papers. We have with the assistance of the learned Additional Public Prosecutor perused the relevant material. On such perusal we are prima facie satisfied that the tests laid down by the Division Bench as regards the involvement of the Petitioner is satisfied in the present case. We do not deem it appropriate to delve further, and refer to the material lest it affects the Petitioner at the trial. As indicated above the Approving Authority has in the order dated 02/06/2017 has in terms observed that he has minutely considered the proposal as well as the material which was annexed thereto. The said material is obviously the material which has been collected during the course of investigation. In our view, therefore, the

impugned order does not suffer from any illegality or infirmity for this Court to exercise its writ jurisdiction. The above Writ Petition is accordingly dismissed.

[SANDEEP K. SHINDE, J]

[R.M.SAVANT, J]