

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

CRIMINAL APPEAL No.743 OF 2018

Shailendra @ Sheru Mangilal Lodha ... Applicant

Vs.

The State of Maharashtra & anr. ... Respondents

Mr.E.B. Dixit with P.R. Yadav and Ms.Sarita Vishwakarma i/b
Ms.Priyanka Dubey for the Appellant

Ms.S.V. Sonawane, APP, for the Respondent/State

**CORAM: Mr.S.S. SHINDE &
Mrs.MRIDULA BHATKAR, JJ..
DATED: SEPTEMBER 7, 2018**

P.C. :

1. This appeal is directed against the order dated 9.3.2018 passed by the learned Special Judge, (MCOC), Thane, in Case No.1 of 2016 below exhibits 8, 18, 29 and 36, thereby rejecting the applications. The applications were made by the appellant/accused and the other co-accused, who are not party to this appeal praying that the accused persons are to be discharged u/s 11 of the Maharashtra Control of Organised Crime Act. It is made clear by the learned Counsel for the appellant that the present appellant had earlier filed a Criminal Writ Petition No.469 of 2016

challenging the sanction granted by the police under The Maharashtra Control of Organised Crime Act. However, the Division Bench of this Court by order dated 7.9.2016 had passed the following order:

“2. In this view of the matter, we are of the view that the Petitioner has efficacious and alternate remedy available under Section 11 of the Act. The Petitioner may resort to alternate and efficacious remedy. Keeping all issues open, we dispose of the petition.”

2. The learned Counsel thus, made it clear that the appellant and the other co-accused have moved the application before the trial Judge pursuant to the order u/s 11 of the Maharashtra Control of Organised Crime. Section 11 states that if at all the Special Judge of the Maharashtra Control of Organised Crime Court finds that the evidence under the Maharashtra Control of Organised Crime Act is not made out and, therefore, that case cannot be tried by him, he has power to transfer the case to the regular Sessions Court. Considering the prayers mentioned in the application, the learned Counsel has explained that by giving challenge to the sanction granted by the police authority under the Maharashtra Control of Organised Crime Act, the appellant in fact wants that all charges under the MCOC Act are to be dropped. Thus, this appeal

is, in fact, filed by the appellant for discharge from the charges under The Maharashtra Control of Organised Crime Act.

3. The appellant / accused is prosecuted for the offences punishable in relation to C.R. No.380 of 2015 registered with the Tulinj Police Station, District Palghar for the offences punishable under sections 307, 324, 120B r/w 34 of the Indian Penal Code and sections 3(25), 3(27) of the Arms Act and under sections 3(1)(ii), 3(2), 3(3) of The Maharashtra Control of Organised Crime Act. On 12.8.2015, one Faizan Subhan Ansari gave information to the police that on 11.8.2015, in the late night, when he alongwith his friend Javed Ansari was chitchatting and taking drinks near one graveyard of village Aachola, Tulinj, the co-accused Imran Khan, Vikas @ Chindhi Shamsunder Choube arrived there and Imran fired at Javed. The complainant Faizan and his friend Manish started running. At that time, Vikas hit bottle on his head and they went on firign towards Javed. Javed got injured and he was taken to hospital. Initially, Faizan gave the name of the appellant / accused that he was driving the vehicle. However, his supplementary statement was recorded on 25.12.2015 wherein he has stated that the accused was not driving. Imran, the injured,

did not take the name of the appellant and as his presence was doubtful, the Sessions Court granted him bail on 31.8.2015. At that time, the Maharashtra Control of Organised Crime Act was not invoked in the said case. However, subsequently during the course of investigation, the police found that the offence was monitored and committed by the henchmen Mahindra Singh and his associates and the appellant was a party to the conspiracy. So, after obtaining the two chargesheets within the preceding 10 years against Mahindra Singh and his associates, prior approval was granted on 19.10.2015 under section 23(1A) of the Maharashtra Control of Organised Crime Act by the Inspector General (Prisons). Thereafter, on 29.1.2016, sanction to prosecute the appellant/accused and the other accused under section 3 of the Maharashtra Control of Organised Crime Act was granted by the Additional Director General of Police. Thereafter, the accused were tried under the Maharashtra Control of Organised Crime Act and the police filed chargesheet in C.R. No.380 of 2015 against the present appellant / accused and his bail application was cancelled by the order dated 1.1.2016.

4. The learned Counsel for the appellant/accused has submitted that Mahindra Singh was arrested on 22.10.2015 and the co-accused Imran was arrested on 29.2.2016. The police authority granted sanction on 19.10.2015, i.e., prior to the arrest of Mahindra Singh. There is no evidence of conspiracy before the authority, who granted sanction as Mahindra's confession was recorded on 4.11.2015 and Imran gave the alleged confessional statement on 5.3.2016. The learned Counsel has submitted that except these confession statements, there is no evidence against the present appellant/accused showing any nexus with the so called syndicate of Mahindra Singh. The learned Counsel argued that no syndicate of Mahindra Singh is in existence and the appellant/accused is not at all connected in any manner with this alleged syndicate. The learned Counsel submitted that the prosecution tried to establish the nexus of the appellant/accused on the basis of the only confessional statements of the co-accused Mahindra Singh and Imran Khan. However, the said material of the confession statement of Mahindra Singh which was recorded on 4.11.2015 and of Imran Khan recorded on 5.3.2016 were not before the approving authority on 9.10.2015. Therefore, the entire exercise carried out by the prosecution under section 23 of the

Maharashtra Control of Organised Crime is futile and invalid. He further argued that the injured, Javed himself has not taken the name of the appellant/accused that he arrived on the spot alongwith Imran on the motor cycle and the complainant Faizan in his supplementary statement which was recorded on 25.12.2015, has clarified that he by mistake has stated that the appellant/accused was riding the motor cycle on which the co-accused Imran Khan and Vikas Choube, were on the pillion seat. The learned Counsel has submitted that under such circumstances, as the appellant has not played any role in the substantive offence and when there was no material before the sanctioning authority to show the association of the appellant with the co-accused muchless with the syndicate of Mahindra Singh, the sanctions granted are illegal and hence, the prosecution under the MCOC Act also should be dropped.

5. Learned Prosecutor, on the point of substantive offence, relied on the statements of the injured Javed, eye witness Faizan and submitted that there is evidence of the eye witnesses that the co-accused arrived on the spot and fired at Javed. She has further produced a table of chargesheets filed against either the co-

accused Mahindra Singh or Imran Khan or against Vikas Choube @ Chindi. On the point of nexus of the appellant/accused with Mahindra Singh, she relied on the transcripts of the intercepted calls wherein there was a specific mention that the appellant/accused has direct nexus in planning the murder of Javed and the appellant was ready to finance the killers. She submitted that the appellant had full knowledge of this conspiracy and has participated actively. She relied on the confession statements of Imran Khan and also of Mahindra Singh. She pointed out that the appellant has paid Rs.1 lakh to Imran Khan and Vikas Choube when they went to purchase the weapon. Similarly, he also paid them money for expenditure and helped them to run away. She submitted that, therefore, this application is to be rejected.

6. We have considered the submissions of the learned Counsel for the appellant and also the learned Prosecutor. The chart submitted by the learned Prosecutor discloses that there are in all 11 cases registered at Nallasopara, Tulinj, Manikpur police stations and Vanawadi police station against either Mahindra Singh or Vikas Choube or Imran Khan. All the offences are mainly against

human body. Some are of the nature of extortion and unlawful assembly. Though it is true that no chargesheet is filed against the appellant earlier from the confession statements of Imran Khan and Mahindra singh, his role is very specifically mentioned. From this confession statements, his active participation under the conspiracy of eliminating Javed, prima facie, can be inferred. The appellant/accused is facing charges under section 3(1)(ii), 3(2), 3(3) of The Maharashtra Control of Organised Crime Act. A person who participates in the commission of the substantive offence alongwith members of the organised crime, first time, whether he also can be said to be a member of the organised crime under section 3(4) of the Maharashtra Control of Organised Crime Act, is the question of law which can be determined at the time of trial after giving proper opportunity to the prosecution to adduce evidence. The nature and degree of participation is a decisive factor in such charges under Maharashtra Control of Organised Crime Act. Considering the transcripts of the CDR and the other evidence collected by the prosecuting agency, at this stage, it cannot be said that the prior approval granted and the sanction given under section 23(1) of the Maharashtra Control of Organised Crime Act is illegal. Under such circumstances, we are

of the view that the Maharashtra Control of Organised Crime Act charges cannot be dropped at this stage and hence, the appeal fails.

7. Appeal is accordingly dismissed.

(MRIDULA BHATKAR, J.)

(S.S. SHINDE, J.)