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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELATE JURISDICTION

CRIMINAL APPEAL NO. 1084 OF 2018

Praful Maganlal Kapadia .....Appellant

V/s.

The State of Maharashtra .....Respondent

Mr. Kuldeep S. Patil advocate for the appellant
Mr. J. P . Yagnik APP for the State

CORAM : S. S. SHINDE AND MRS. MRIDULA BHATKAR, JJ.

DATE : SEPTEMBER 4, 2018.

P.C. (PER: MRS. MRIDULA BHATKAR, J.)

This criminal appeal is directed against the order dated 19/07/2018 passed below application Exhibit 113 in Special Case no. 2 of 2018 passed by the learned Special Judge, Mumbai. Appellant-accused has moved an application for discharge from the prosecution under the Maharashtra Control of Organized Crime (hereinafter referred as 'MOCOC Act') charges in the said case.

2 The complainant lodged the F.I.R. on 18/08/2013 with Vikhroli

Police Station, Mumbai that he was threatened and demanded money telephonically on 11/07/2013 by one Kumar Pillai who is the head of the organized crime syndicate. On 18/07/2013, one of the accused went to the house of the complainant and demanded amount of Rs. 75 Lakhs by threatening him of life. At the instance of the complainant, crime no. 227 of 2013 was registered for offence punishable under sections 451, 385, 387 r/w 34, 120-B & 201 of the Indian Penal Code and pursuant to this, co-accused were arrested for the said offencce of extortion and conspiracy. The police found that the offence is committed by organized crime syndicate headed by Kumar Pillai. Thereafter, police came across two charge-sheets filed against members of the syndicate and therefore, after obtaining approval of the authority, invoked the provisions of MCOC Act and registered offences under sections 3 (1) (ii) 3 (2) 3 (4) of the MCOC Act. During the course of investigation, police came across the participation of the present appellant-accused. Hence, he was arrested on 19/10/2017 in C.R. no. 82 of 2018 registered with DCB CID Unit VII. He moved an application before the Sessions Court praying that the provisions of MCOC Acct are to be dropped from the case of 2 of 2018 arising out of

Crime no. 82 of 2013 registered with DCB-CID Unit – VII.

3 The learned counsel for the appellant-accused has submitted that the appellant-accused has not committed any substantive offence of extortion for which the offence was registered on 18/07/2013 against main accused and other co-accused namely Kiran Dhanavade and others. He has submitted that there is no connection between him and Kumar Pillai in respect of the commission of any offence. There is no evidence to show that appellant-accused had knowledge that principal accused was having some syndicate and involved in crime. The learned counsel has submitted that the son of the appellant-accused is suffering from cancer and for that Ms. Kamala Pillai mother of the principal accused was funding for the treatment and so he agreed to do certain work of transfer of money for Kamala Pillai. He further submitted that mere association is not sufficient to prosecute under MCOC Act but the actual knowledge to the appellant-accused is required. There is no direct nexus with the offence committed by organized crime of Pillai and appellant-accused. He further submitted that whatever role attributed to him will not fall

within the scope of sections for which he is charged. He has further submitted that he was never a member of this syndicate. He did not pass or publish any information and assisted the organized crime syndicate in any manner. He further submitted that police have not obtained sanction to prosecute appellant-accused under MCOC Act and therefore, charges under MCOC are to be dropped and he is to be discharged.

4 The learned prosecutor while opposing this application has submitted that the prosecution has collected sufficient evidence against the appellant-accused. Appellant-accused had actively participated in the commission of the organized crime committed by the syndicate headed by accused no. 1 Kumar Pillai. The learned prosecutor has submitted that accused deposited different amounts on number of occasions in the accounts of accused no. 1 and so also of the co-accused. He pointed out that the incident of demand of Rs. 75 Lakhs took place on 18/07/2013 and thereafter appellant-accused deposited money in the account of wife of accused no. 1 Kiran Dhanavade and thereafter on various dates i.e. on 22/08/2013 he

deposited approximately Rs. 45,000-47,000/-, then he deposited Rs. 10,000/- in the accounts of co-accused on 26/08/2013 and on 13/08/2013 he deposited Rs. 45,000/-. He also pointed out that the police have obtained opinion of hand writing expert in respect of the hand writing on the bank slips of the appellant-accused. He has submitted that police have recorded confession of the appellant-accused and pursuant to which the police have traced incriminating circumstances. The first sanction obtained on 06/12/2013 and the second sanction was obtained on 20/01/2016. In support of his submissions, on the point of validity of sanction under MCOC Act, he relied on the Division Bench Judgment of this Court in the case of **Sachin Bansilal Ghaiwal v. State of Maharashtra [2014 Cri. L. J. 4217].** He also relied on the ration laid down in the Judgment of the Division Bench in the case of **Anil Sadashiv Nanduskar Vs. State of Maharashtra [2008 (3) Mah.L.J. (Cri.) 650].**

5 Under the MCOC Act, the sanction of the Police Commissioner is mandatory under section 23 (2) of the MCOC Act to prosecute any person. If two charge-sheets are filed against the syndicate i.e.

members of the syndicate then those charge-sheets can be taken into account by the sanctioning authority while according sanction to invoke MCOC Act. The order of approval was granted on 20/09/2013 based on two charge-sheets which were filed against headman Kumar Pillai in the preceding 10 years. The charge-sheet was filed in MCOC Case no. 17 of 2013. In earlier charge-sheet the appellant-accused was shown absconding. Under the law, the cognizance is taken of the offence and not of the accused. Appellant-accused was arrested on 19/10/2017. Thereafter, the Commissioner of Police accorded sanction to prosecute the present appellant-accused by order dated 10/01/2018 and thereafter, appellant-accused is prosecuted under MCOC Case no. 2 of 2018 which is clubbed along with MCOC Special Case No. 17 of 2013 & 19 of 2016. In case of **Anil Sadashiv Nanduskar** [*cited supra*] the Division Bench of this Court while dealing with section 23 (2) of the MCOC Act has observed as under:

> *"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."

6 The Division Bench of this Court in the case of **Sachin Bansilal Ghaiwal** [*cited supra*] has referred the case of **Anil Sadashiv Nanduskar** [*cited supra*] and has held as follows:

> *"The prosecution has to be afforded an opportunity to lead evidence with regard the subjective satisfaction recorded by the competent authority by leading evidence at the time of trial. Undoubtedly, an accused desiring to raise objection regarding the defects in such grant of approval or sanction, the accused 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 an inherent lack of jurisdiction of the concerned authority to grant approval or sanction and such an issue can be decided only on the undisputed facts on record."*

7 The details in respect of transaction of depositing money in the accounts of the mother of Kumar Pillai and his accounts are collected by the police. At this stage, the defence put up by the appellant-accused that he was only working under the mother of Kumar Pillai because she was helping him financially for the treatment of his son cannot be appreciated in view of the material placed before us by the prosecution showing *prima facie* association of the appellant-accused in the activities of the syndicate. Thus we are of the view that the charges of MCOC Act, at this stage, cannot be dropped.

8 Appeal stands dismissed.

[MRS. MRIDULA BHATKAR, J.] **[S. S. SHINDE, J.]**