

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4350 OF 2013

Niyamatullah Mohammed Shirgaonkar.] ... Petitioner

Versus

The State of Maharashtra & Ors.] ... Respondents

Mr. M. A. Solkar for Petitioner.
Mrs. S. V. Sonawane, APP for State.

CORAM :- R. M. SAVANT &
SARANG V. KOTWAL, JJ.
DATE :- 22 MARCH, 2018

P. C. :-

1. The present Petition is filed by the Petitioner for quashing of the charge-sheet *qua* the Petitioner filed in MCOC Case No.13 of 2013 pending on the file of the Special MCOC Court for Greater Bombay.

2. We have heard Mr. Amin Solkar, learned Counsel for the Petitioner and Mrs. S. V. Sonawane, learned APP for State.

3. Before proceeding with the further discussion, it is necessary to note that the present Petitioner has not surrendered before the police and therefore, was not available for investigation and is absconding. The charge-sheet against the other accused was filed under Sections 307, 506(II), 387 and 120B read with Section 34 of the IPC and under Sections 3(1)(ii), 3(2) and 3(4) of The Maharashtra Control of Organised Crime Act, 1999 (for short, 'MCOC Act'). The charge-sheet was the result of the investigation into the offence registered at Antop Hill Police Station vide C.R.No.229 of 2012. The trial against the other accused has proceeded and we are informed that about 20 witnesses are examined. The present Petitioner has neither surrendered nor has faced the trial.

4. The investigation was launched into the C.R.No.229 of 2012 registered at Antop Hill Police Station. The FIR was lodged by one Rajesh Vichare. The incident had taken place on 04/10/2012 at about 5.15 p.m. at Sainath Rahiwasi Sangh, Antop Hill, Mumbai - 400037. The first informant Rajesh's brother Mangesh Vichare was assaulted by the accused Rohit @ Pappi Mulchand Chavan, Prakash @ Vicky Krishna Bhatkal and Anil Shankar More.

5. According to the prosecution case, the incident had occurred at the instance of one Vijay Kedare who wanted to have control of development project of a slum in the area. Mangesh, Rajesh and their brother Yogesh were part of one group of the slum dwellers who had entrusted the development of the slum to one Dosti Realtors whereas Vijay Kedare wanted to have control and was favouring Omkar Builders. Yogesh was the Chief Promoter of Sainath CHS and was taking active interest in the redevelopment of the slum area. Yogesh and Mangesh were not paying any heed to Vijay Kedare and his associates. They refused to succumb to their illegal demands and therefore Vijay Kedare wanted to establish his supremacy in the area and wanted to have control over the redevelopment thereby securing pecuniary gains for himself and his associates. The prosecution story and allegations are mentioned in the charge-sheet filed in the case.

6. Insofar as the present Petitioner is concerned, the allegations against him are that he was one of the associates of Vijay Kedare and was in constant touch with him. At the behest of Vijay Kedare, he was instrumental in giving threats and had facilitated the commission of the offence. After registration of the FIR on

04/10/2012; vide the order dated 13/11/2012, the Additional Commissioner of Police, Central Region, Mumbai, gave approval under Section 23(1)(a) to apply the provisions of Sections (3)(1)(ii), 3(2) and 3(4) of the MCOC Act to C.R.No.229 of 2012. Mr. R. N. Rupawate, A. C. P., Sion Division, was directed to investigate the said case.

7. The first charge-sheet was filed on 24/03/2013 against the 3 assailants Rohit, Prakash and Anil. At that time, Anil More was still absconding. This charge-sheet was filed after obtaining sanction under Section 23(2) of the MCOC Act granted by the Commissioner of Police, Brihanmumbai on 22/03/2013.

8. On 24/09/2013, the Commissioner of Police, Brihanmumbai, granted another sanction under Section 23(2) of the MCOC Act against Chandrakant Dattaram Dhage and Arogya L. Swami Pol who were by then arrested and against one Krishna @ Kari Shitkhandor and the present Petitioner who were shown as wanted accused. After this sanction, further charge-sheet was filed.

9. Mr. Amin Solkar, learned Counsel for the Petitioner, submitted that the Petitioner was working as a fitter, he was a social worker and had formed a society named 'Samanta CHS' and had submitted his consent form to Omkar Realty Builders for redevelopment under the SRA scheme. According to him, Yogesh Vichare had many criminal cases pending against him and the Petitioner's group did not want to allow Yogesh to develop the slum area through Dosti Realtors in the background of Yogesh's criminal activities. Mr. Solkar submitted that the present Petitioner was implicated falsely because of this background and as Yogesh wanted to take advantage of the situation to have complete control over the redevelopment scheme. According to Mr. Solkar, in the entire charge-sheet filed against the accused, there was no material whatsoever to show complicity of the present Petitioner and therefore it was necessary that the proceedings against him should be quashed.

10. *Per contra*, Mrs. S. V. Sonawane, learned APP for State, submitted that there was enough material against the Petitioner. She submitted that the Petitioner has not surrendered before the police and has not cooperated with the investigation. She further submitted

that the Petitioner has shown utter disregard to the rule of law and procedure and therefore, he does not deserve any relief. Mrs.Sonawane, in support of her contentions on merits, has culled out a few statements from the charge-sheet to show the role played by the present Petitioner in the offence. Since this is a serious offence under the MCOC Act and since the witnesses also need protection, we refrain from naming the witnesses vis-a-vis their statements. Instead, we are referring to page numbers of the compilation provided by Mrs.Sonawane.

11. Page 1 of the compilation shows that a statement of the witness mentioned therein was recorded under Section 164 of the Cr.P.C. before the learned Metropolitan Magistrate, 51st Court, Kurla, Mumbai. As per the statement, it is mentioned that on 23/09/2012, the main accused Vijay Kedare had called this witness and had told him to inform his associates including the present Petitioner and the actual assailants that Vijay was admitted to Nashik Civil Hospital and they should contact him. On four occasions thereafter between 23/09/2012 to 29/09/2012, he again called him and told him to instruct accused Anil More to extort Rs.5 Lakhs from Yogesh Vichare.

Accordingly when Anil More tried to extort money from Yogesh Vichare, there was a quarrel and Anil More was taken in custody. This witness had removed Mangesh to hospital after Mangesh was assaulted on 04/10/2012 by the assailants. During investigation also, this witness's statement was recorded on a few occasions. In this connection, his supplementary statement dated 21/10/2013 which is at page 17 of the compilation is important. His statement mentions that he used to pass messages from Vijay Kedare to his associates including the present Petitioner. He has specifically mentioned that on 30/09/2012 at about 7.00 p.m., the present Petitioner and others met Mangesh Vichare and told him to pay Rs.5 Lakhs and to meet Vijay Kedare and if he did not do so, he would have to face dire consequences. After this incident dated 30/09/2012, on 04/10/2012 i.e. on the day of the incident, all the accused including the Petitioner were sitting in the office of Omkar Builders and planning and plotting the assault on Mangesh and this witness himself was present to observe this. On the said day at about 5.15 p.m. Mangesh was assaulted. Thus, there was direct connection of the Petitioner with the assault at the behest of Vijay Kedare.

12. The compilation submitted by Mrs. Sonawane includes the statement on page 23 where the witness giving his statement has mentioned that on 07/10/2012, the Petitioner and one Swami Pol had threatened this witness by saying that he would meet the same fate as that of Mangesh and the Petitioner and Pol demanded money from him.

13. The statement of the witness on page 6 also shows that the Petitioner was in constant touch with the actual assailants and held discussions about Yogesh and Mangesh Vichare.

14. The statement of another witness which is at page 26 also shows that on 30/09/2012, the present Petitioner and others had approached Mangesh and all of them had threatened and abused Mangesh in the presence of this witness.

15. Thus, taking into account all these statements which are forming part of the charge-sheet, we are of the opinion that it cannot be said that there is no material at all to proceed against the present Petitioner. In fact, this material shows that the prosecution is rightly

launched not only under the Sections of the IPC but even the provisions of the MCOC Act are properly invoked. The entire material shows that the crime syndicate in question was led by Vijay Kedare and the other accused including the present Petitioner were his associates and members of the crime syndicate. Mr.Solkar emphatically submitted that there was no material against the present Petitioner. As discussed above, we are not able to agree with the contentions of Mr.Solkar.

16. As we are informed the trial against the other accused has already proceeded and 20 witnesses are also examined. It is rather disturbing that the Petitioner has not cooperated with the investigation, has not surrendered before the police and has, instead, approached this Court by way of the present Petition. For more than four years, the Petitioner is absconding. The record shows that the Petitioner was present before this Court on 18/03/2014 and was granted protection till the next date i.e. 19/03/2014, then it was extended till 21//03/2014. The record does not further show that such protection was extended thereafter. Thus, after March 2014 also, more than four years have passed. The investigating agency was

deprived of further investigation as the Petitioner was not available for investigation. Therefore, we are in agreement with the submission of Mrs. Sonawane that the Petitioner does not deserve any relief from this Court. We, therefore, decline to exercise our writ jurisdiction. The Writ Petition is accordingly dismissed.

(SARANG V. KOTWAL, J.)

(R. M. SAVANT, J.)