

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

CRIMINAL WRIT PETITION NO.5264 OF 2017

Anil Mahaling Kasture : Petitioner.
Versus
Vishwas Nagare Patil and ors. : Respondents.

Mr. Samir A Vaidya for the Petitioner.
Mrs. A S Pai, Addl. PP for the Respondent/State.

**CORAM : R. M. SAVANT &
SANDEEP K SHINDE, JJ.**
DATE : 24th JANUARY 2018

P.C.

1 The prior approval granted vide order dated 29/11/2017 passed by the Approving Authority i.e. the Special Inspector General of Police, Kolhapur Range, Kolhapur under Section 23(1)(A) of the Maharashtra Control of Organised Crime Act, 1999 (for short MCOCA) is under challenge by way of the above Writ Petition.

2 The impugned order dated 29/11/2017 discloses that the Approving Authority has taken into consideration the offences registered against the Petitioner and his accomplices who are alleged to be the members of an organized crime syndicate who are indulging into continuing unlawful activity. The Petitioner is alleged to be the gang leader against whom there are as many as 12 FIRs registered in which there are eight offences which are punishable with imprisonment of more than 3 years. The impugned order

further discloses that the said organized crime syndicate has again on 10/06/2017 indulged into offences punishable under Section 392, 323, 504, 504, 34 of the Indian Penal Code in respect of which FIR No.117 of 2017 has been registered. The said offences are also punishable with imprisonment of more than 3 years. The impugned order further cites that the gang leader i.e. the Petitioner herein Anil Mahaling Kasture and his accomplices as the members of an organized crime syndicate engaged themselves into continuing unlawful activity. They have indulged in violence as also they have given threats of violence as also by using force have by illegal means sought to make illegal gains for themselves or the gang as can be seen from the offences alleged against them. The said order further discloses that a proposal was received from the Superintendent of Police, Satara seeking approval to the application of the provisions of MCOCA in relation to C.R. Being No.117 of 2017 registered with Shahupuri Police Station for the offence punishable under Section 392, 323, 504, 506, 34 of the Indian Penal Code by the said gang as being members of an organized crime syndicate and the offence being the organized crime committed by the said syndicate.

3 As indicated above, the said order dated 29/11/2017 is under challenge in the above Writ Petition. The learned counsel for the Petitioner Mr. Samir Vaidya would contend that merely because FIRs have been registered against the Petitioner and the cases are pending, the provisions of the MCOCA

would not become applicable.

4 The next contention urged on behalf of the Petitioner by the learned counsel is that the impugned order passed by the Approving Authority suffers from non-application of mind in as much as the Approving Authority has not taken into consideration the fact that the Petitioner has been acquitted in the cases. The learned counsel for the Petitioner sought to place reliance on the judgment of the Apex Court reported in (2005) 5 SCC 294 in the matter of Ranjitsing Brahmajeetsing Sharma v/s. State of Maharashtra and another to draw this Court's attention to the objects of the MCOCA.

5 Per contra, the learned Additional Public Prosecutor would rely upon the judgment of a Division Bench of this Court reported in 2008(3) MhLJ (Cri) 650 in the matter of Anil Sadashiv Nanduskar v/s. State of Maharashtra. The learned Additional Public Prosecutor by placing reliance on the said judgment would contend that it is not necessary that the reasons why MCOCA is required to be applied in respect of a particular case have to be mentioned. The learned Additional Public Prosecutor would submit that ultimately it is for the prosecution to prove that the approval granted is in terms of the provisions of the MCOCA, at the trial by leading evidence.

6 We have heard the learned counsel for the Petitioner and the

learned Additional Public Prosecutor for the State. In our view, the contentions urged by the learned counsel for the Petitioner can be said to be squarely covered by the judgment of a Division Bench in Anil Sadashiv Nanduskar's case (supra). In so far as the contention urged by the learned counsel for the Petitioner is concerned, an identical contention was also raised in Anil Sadashiv Nanduskar's case (supra). The Division Bench having regard to the said contention posed a question as to whether the approval granted in the said case in terms of Section 23(2) of the MCOCA is valid and lawful. The Division Bench then proceeded to answer the said question. Paragraphs 13 and 24 of the said judgment in Anil Sadashiv Nanduskar's case (supra) 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.

Hence what flows from the judgment of the Division Bench in Anil Sadashiv Nanduskar's case (supra) is 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 observed by the Division Bench that the contention that the order of approval or order of sanction under the MCOCA should disclose consideration of material qua each of the applicants 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 under the MCOCA 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.

7 It is on the touchstone of the judgment of the Division Bench in Anil Sadashiv Nanduskar's case (supra) that we do not countenance the submissions urged on behalf of the Petitioner as regards the impugned order granting approval suffering from infirmity on the grounds as urged by the learned counsel for the Petitioner. The factum of the Petitioner being acquitted in some of the cases in our view has no relevance having regard to the provisions of Section 2(d) of the MCOCA. The judgment in the case of Ranjitsingh Sharma's case (supra) has also no relevance as in the said case the issue before the Apex Court was whether Ranjitsing Sharma was an “abettor”.

8 We are also informed by the learned Additional Public Prosecutor in fact the learned Additional Public Prosecutor questioned the maintainability of the above Writ Petition on the ground that the Petitioner has absconded himself and is therefore not entitled to invoke the writ jurisdiction of this Court. The said preliminary objection was sought to be countered by the learned counsel for the Petitioner that if there is a breach of the fundamental right of a person then he is entitled to approach this Court. The proposition as propounded by the learned counsel for the Petitioner cannot be disputed. However, since we are exercising the writ jurisdiction under Article 226 of the Constitution of India, the conduct of a party also assumes importance. Apart from the fact that the Petitioner prima facie appears to be a person indulging in

continuous unlawful activity, the factum of he being not available to the law enforcement agency for investigation is also a factor to be taken into consideration. In our view, therefore for the afore-stated reasons we do not deem it appropriate to exercise our writ jurisdiction. The above Writ Petition is accordingly dismissed.

[SANDEEP K SHINDE, J]

[R.M.SAVANT, J]