

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CRIMINAL APPLICATION (BA) NO.514 OF 2018

(Rakesh s/o Sharadchandra Ninave ..vs.. State of Maharashtra, through PSO, PS Sitabuldi, Nagpur)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri R.K. Tiwari, Counsel for the applicant,
Shri S.S. Doifode, Addl.P.P. for the non-applicant/State.

CORAM : ROHIT B. DEO, J.

DATE OF RESERVING THE ORDER : 02-07-2018

DATE OF PRONOUNCING THE ORDER : 13-07-2018

The applicant came to be arrested by the Sitabuldi Police, Nagpur on 06-2-2016 in connection with Crime 51/2016, registered on the basis of complaint of one Shubhangi Dantulwar, for offences punishable under Sections 392 and 411 read with Section 34 of the Indian Penal Code.

2. The accusation against the applicant is that he dishonestly received stolen property, knowing or having reason to believe the same to be stolen property.

3. The applicant was released on bail by the Judicial Magistrate First Class, Nagpur on 10-3-2016.

4. During the course of the investigation, the investigating agency invoked the provisions of the Maharashtra Control of Organised Crime Act (MCOC

Act). The Special Court cancelled the bail granted to the applicant by order dated 03-11-2017 since the provisions of the MCOC Act were invoked. The applicant moved the Special Court for grant of bail, which application was rejected by the Special Court on 02-5-2018.

5. The learned Counsel Shri R.K. Tiwari would submit that *prima facie* the provisions of the MCOC Act are not attracted. He would invite the attention of this Court to paragraph 8 of the affidavit-in-reply to demonstrate that each of the eleven charge-sheets is submitted after the date of the registration of crime 51/2016. Shri R.K. Tiwari would rely on the decision of the Hon'ble Apex Court in ***Mahipal Singh vs. C.B.I. and another*** reported in ***AIR 2014 SC 2660*** and in particular to the observations in paragraphs 10 and 11 which read thus :

“10. We have given our most anxious consideration to the rival submissions and in the light of what we have observed above, the submissions advanced by Mr. Subramaniam commend us. It is trite that to bring an accused within the mischief of the penal provision, ingredients of the offence have to be satisfied on the date the offence was committed. Article 20(1) of the Constitution of India permits conviction of a person for an offence for violation of law in force at the time of commission of the act charged as an offence. In the case in hand, examinations alleged to have been rigged had taken place in January, 2010, June, 2010, November, 2010 and January, 2011 and the date on which the first information reports were registered, more than one charge-sheets were not filed against the accused for

the offence of specified nature within the preceding period of ten years and further, the court had not taken cognizance in such number of cases. As observed earlier, for punishment for offence of organised crime under Section 3 of the MCOCA, the accused is required to be involved in continuing unlawful activity which inter alia provides that more than one charge-sheets have been filed before a competent court within the preceding period of ten years and the court had taken cognizance of such offence. Therefore, in the case in hand, on the date of commission of the offence, all the ingredients to bring the act within Section 3 of the MCOCA have not been satisfied. We are conscious of the fact that there may be a case in which on the date of registration of the case, one may not be aware of the fact of charge-sheet and cognizance being taken in more than one case in respect of the offence of specified nature within the preceding period of ten years, but during the course of investigation, if it transpires that such charge-sheets and cognizance have been taken, Section 3 of the MCOCA can be invoked. There may be a case in which the investigating agency does not know exactly the date on which the crime was committed; in our opinion, in such a case the date on which the offence comes to the notice of the investigating agency, the ingredients constituting the offence have to be satisfied. In our opinion, an act which is not an offence on the date of its commission or the date on which it came to be known, cannot be treated as an offence because of certain events taking place later on. We may hasten to add here that there may not be any impediment in complying with the procedural requirement later on in case the ingredients of the offence are satisfied, but satisfying requirement later on to bring the act within the mischief of penal provision is not permissible. In other words, procedural requirement for prosecution of a person for an offence can later on be satisfied but ingredients constituting the offence must exist on the date the crime is committed or detected. Submission of charge-sheets in more than one case and taking

cognizance in such number of cases are ingredients of the offence and have to be satisfied on the date the crime was committed or came to be known.

11. Now we proceed to apply the principle aforesaid to the fact of the present case. We find that on the date the offence was committed or came to be known, one of the ingredients of the offence, i.e. submission of charge-sheet and cognizance of offence of specified nature in more than one case within the preceding period of ten years, has not been satisfied. Therefore, we have no other option than to hold that the accused cannot be prosecuted for the offence under Section 3 of MCOCA.

6. The learned Additional Public Prosecutor Shri S.S. Doifode was not in a position to controvert the submission of Shri R.K. Tiwari that *prima facie* the provisions of the MCOC Act are not attracted.

7. In view of the enunciation of law by the Hon'ble Apex Court in *Mahipal Singh vs. C.B.I and another*, this Court is of the opinion, that *prima facie* the provisions of the MCOC Act are not attracted in so far the present applicant is concerned. These *prima facie* observations are restricted to the case of the applicant.

8. The maximum punishment for offence punishable under Section 411 of the Indian Penal Code is three years. The applicant has already suffered incarceration of more than nine months. The continued incarceration shall be nothing short of a pretrial punishment. In this

view of the matter, this Court is inclined to allow the application.

9. The application is allowed.

10. The applicant shall be released on bail on executing personal bond of Rs.15,000/- with one solvent surety of the like amount.

11. The applicant shall not tamper with the prosecution evidence nor shall attempt to influence the witnesses in any manner.

JUDGE

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