**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**BENCH AT AURANGABAD**

**CRIMINAL APPEAL NO.42 OF 2019**
**WITH**
**CRIMINAL APPLICATION NO.3864 OF 2018**

Avan S/o. Haiwan Kale, **...APPELLANT**
Age-28 years, Occu-Driver, [Orig.Accused No.3]
R/o. Chikli, Tq. Ashti,
Dist. Beed

**VERSUS**

The State of Maharashtra **...RESPONDENT**
Through the Sub-Divisional Police
Officer, Sub-Division Beed,
Dist. Beed

Mr.N.L.Jadhav, Advocate for the appellant
Mr.K.N.Lokhande, APP for the respondents/State

**CORAM : PRASANNA B. VARALE &**
**S.M.GAVHANE,JJ.**
**DATED : 21.01.2019**

**J D U G M E N T [PER: S.M. GAVHANE, J.]**

. The appellant/accused No.3 against whom and five others Special Case No.5/2017 is pending in the Court of Special Judge, Aurangabad and whose application (Exh.19) to discharge him is rejected on 11.09.2018 by the Special Judge, Aurangabad has taken an exception to the said order by this appeal.

2. Facts in brief are that, crime No.151/2017 has been registered with Ambhora Police Station, Ashti, Dist. Beed for an offences under Section 395 of the Indian Penal Code (for short the 'IPC') alongiwth Sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (for short the 'MCOC Act') against the appellant and others on the complaint lodged by one Ramnath Sukhdeo Bankar on 29.05.2017. Initially said crime was registered against six unknown persons for offence punishable under Section 395 of the IPC. One Dilip @ Dilkya Kale and Nehriya @ Pandit Kale were arrested by the police on suspicion in connection with the said crime on 30.05.2017 and disclosure statements of the said accused that Scorpio Jeep of the appellant was used in the said crime were recorded. It was alleged that there was involvement of the appellant. He was arrested on 12.10.2017. His statement was recorded under Section 27 of the Evidence Act and at his instance his Scorpio Jeep was seized. After completion of the aforesaid crime, charge-sheet was submitted in the Court of Special Judge (MCOCA), Aurangabad and the Special Case No.5/2017 came to be registered against the appellant and others.

3. It is in the aforesaid case the appellant filed an application (Exh.19) to discharge him from the said case on the grounds that without any sufficient and justifiable ground and without following mandatory provisions and Rules of the MCOC Act the investigating agency applied Section 3 of the MCOC Act even ignoring the basic ingredients of Section 2(f) of MCOC Act. The authorities did not apply their mind to apply Section 3 of the MCOC Act. When there is no single offence registered against the appellant and as his antecedent is spot-less, there was no reason to register crime against the appellant for the offence under Section 3 of the MCOC Act. There is no material to frame charge against the appellant for the offences alleged against him. The confessional statement of co-accused was recorded without following the provision under Section 18 of the MCOC Act and the said statement of co-accused has no evidencary value. The said statement of co-accused is very weak piece of evidence. There should be at lest two cases, wherein, charge-sheet is filed within 10 years to attract the provisions of MCOC Act as held by the Hon'ble Supreme Court in the case *State of NCT of*

*Delhi Vs Brijesh Singh @ Arun Kumar and Another reported in 2017(DGLS)(SC) Page 1064*.

4. The prosecution opposed the application (Exh.19) of the appellant vide say (Exh.27) on the grounds that the appellant is not innocent. He has committed an offence and there is sufficient evidence against him. The application is misconceived and is not tenable. During investigation it was revealed that the appellant has committed the organized crime with object of gaining pecuniary benefits for promoting insurgencies in society. The appellant has committed the crimes under different police stations. He is involved in more than two crimes during preceding period of 10 years. There is no ground to discharge him and ultimately the prosecution had prayed to reject the application.

5. The learned Special Judge considering the application and say filed by the prosecution as well as on considering the arguments advanced on behalf of the appellant, and the prosecution dismissed the application (Exh.19) on 11.09.2018 and said order is impugned in the present appeal on as many as

fourteen grounds and mainly on the grounds that the statement of co-accused on the basis of which involvement of the appellant is alleged by the prosecution is weak evidence and there are no two cases registered against the accused in the preceding 10 years so as to attract the provisions of MCOC Act.

6. Mr.N.L.Jadhav, learned counsel for the appellant has made submission in the light of above referred grounds and prayed to set aside the impugned order and to allow the appellant's application (Exh.19) to discharge him from the case. The learned counsel for the appellant has relied upon the following decisions:

(a) In the case *of Majhar Nashir Shaikh and others Vs State of Maharashtra 2016 DGLS (Bom.) 129* in paragraph Nos. 39 and 40 it was observed as under:

> "39. A plain reading of section 2(e) would indicate that to prove the offence of organised crime, among other requirements, the prosecution is required to establish that the accused had indulged in continuing unlawful activity,

which as defined under Section 2(d) of the MCOC Act reads as under:

> 2(d) “Continuing unlawful activity” means an activity prohibited by law for time being in force, which is cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a Competent Court within the preceding period of ten years and that Court has taken cognizance of such offence.

40. A conjoint reading of these definitions clearly indicates that in order to prove an offence of 'organised crime' or of being member of 'organised crime syndicate', amongst other requirements, the prosecution is required to prove that more than one charge-sheets have been filed in Competent Court within the preceding period of ten years in respect of such offences, and that the Court has taken cognizance of such offence.”

(b) In the case *of Mohamad Iqbal Farooq Sheikh and anr Vs State of Maharashtra 2007 (Supp) Bom.C.R.415* in paragraph Nos. 9,13 and 14, it was

observed as under:

> “9. In the present case, admittedly there is no certificate and memorandum prepared or noted at the end of the confession by the Competent Authority P.W.16, which is one of the mandatory requirement of Section 18 of MCOC Act. Neither the prosecution has relied on any contemporaneous record to substantiate that substantial compliance was done by P.W.16 of the mandatory requirements after recording of confession was completed. Applying the principle expounded by the Apex Court in the above said decisions, I have no hesitation in accepting the argument of the appellants that confession statements as recorded by P.W.16 will be of no avail. The same will have to be discarded. Once the confessional statements are discarded, the only other evidence that remains against the accused No.2 is discovery of motor cycle which was allegedly used in the commission of the alleged crime. That evidence alone cannot be the basis to proceed against the accused No.2. That is not a substantive piece of evidence to indicate the complicity of the accused No.2 in the commission of the crime. For, it is only discovery of vehicle allegedly used in the commission of crime in terms of Section 27 of the Evidence Act. No other fact can be inferred to proceed against the accused No.2.

13. In so far as second aspect with regard to the efficacy of the test identification parade that the Special Executive Officer (P.W.13) did not question the witness who participated in the parade as to whether they had opportunity to see accused or their photographs before hand. The procedure for holding identification parade is provided for in the criminal manual. Rule 16(2) (g)reads thus:

> 16(2)(g) The witnesses should be prevented from seeing the suspect before he is paraded with other person, and witnesses who have previously seen a photograph or description of the suspect should not be led in identifying the suspect by reason of their recollection of the photograph or description, as for instance by being shown the photograph or description, before the parade.

14. To consider this aspect, we will have to turn to evidence of Special Executive Officer (P.W.13) In the cross-examination in paragraph 20, this witness states that he has read the booklet issued by the Government of Maharashtra to Special Executive Officer for guidance to hold test identification parade. He however, admits that he does not

know about the High Court Criminal Manual. Relying on this admission it was argued that this witness was not even familiar with the requirements stated in the High Court Criminal Manual. This argument however, overlooks that the booklet issued by the Government of Maharashtra is a comprehensive document providing sufficient guidance to the Special Executive Officer to hold test identification parade. I am not dwelling upon other matters which were argued with reference to the version given by the P.W.13. What is relevant for our purpose is the statement made by the P.W.13 in the cross-examination in paragraph 21. He has stated thus:

> According to me the fact that I had asked witness as to whether police had shown suspect to witness or whether police had shown photograph of the suspects to the witness has remained to be mentioned in T.I. Parade memorandum.

In other words, this witness has admitted that the essential enquiry to ensure that the test identification parade was free and fair in all respect was not adhered to in the present case. If it is so, such test identification parade will be of no avail and the accused though identified in such parade will have to be given benefit of doubt. On this

finding, the appellants would succeed on the argument that the test identification parade as conducted in the present case will have to be discarded. If so, the version given by P.W.7 will be of no consequence as the complicity of the appellants/accused Nos.2 and 3 in the commission of the offence has not been established by the prosecution beyond reasonable doubt."

(c) In the case *of State of NCT of Delhi Vs Brijesh Singh @ Arun Kumar and another 2017 DGLS (SC) 1064* in paragraph Nos. 25 and 26 it was observed as under:

"25. Organised crime which is an offence punishable under Section 3 of MCOCA means a continuing unlawful activity committed by the use of force or violence for economic gain. One relevant pre-condition which has to be satisfied before any activity can be considered as a continuing unlawful activity is that there should be at least two charge sheets filed against the members of an organised crime syndicate within the previous 10 years and a competent Court has taken cognizance of such charge sheets. In the instant case, there are eight charge sheets filed against the respondents, six out of which are in the State of Uttar Pradesh. The submission of the Respondents,

which was accepted by the Courts below, is that such charge sheets which are filed in the State of Uttar Pradesh are not relevant for the purpose of determining whether the Respondents have indulged in a continuing unlawful activity. The Courts below held that only charge sheets filed in competent courts within Delhi have to be taken into account. We are not in agreement with the Courts below.

26. Organised crime is not an activity restricted to a particular State which is apparent from a perusal of the statement of Objects and reasons. A restrictive reading of the words competent Court appearing in Section 2(1)(d) of MCOCA will stultify the object of the Act. We disagree with the learned senior counsel for the Respondents that it is impermissible for the Special Courts to take into account charge sheets filed outside the National Capital territory of Delhi as that would result in giving extra territorial operation to MCOCA. A perusal of the charge sheets filed against the Respondents in the State of Uttar Pradesh which are relied upon by the prosecution to prove that organised crime was being committed by them shows clear nexus between those charge sheets and the National Capital Territory of Delhi where prosecution was launched under MCOCA. The twin conditions to establish territorial nexus in RMD Chambargaugwealas case (supra) are fulfilled. If

members of an organised crime syndicate indulge in continuing unlawful activity across the country, it cannot by any stretch of imagination said, that there is no nexus between the charge sheets filed in Courts in States other than Delhi and the offence under MCOCA registered in Delhi. In such view, we are unable to accept the submission of the Respondents that charge-sheets filed in competent Courts in the State of Uttar Pradesh should be excluded from consideration. We hold that competent Courts in the definition of continuing unlawful activity is not restricted to Courts in Delhi alone."

7. Mr.K.N.Lokhande, learned APP for the respondent/State on the other hand submitted that there is sufficient material to frame charge against the appellant for the offences alleged against him and therefore, on proper appreciation of the material on record the Special Judge has rightly rejected the discharge application (Exh.19) by the impugned order. It is submitted that there is no reason to interfere with the said order and thus, learned APP has claimed to dismiss the appeal. To support his submissions he has relied upon the following decisions :

(a) In the case of *Govind Sakharam Ubhe Vs State of Maharashtra 2009 ALL MR (Cri)1903* in which in paragraph Nos. 43 and 44 the division bench of this Court has observed as under:-

> "43. In this connection, we must refer to the judgment of the Division Bench of this Court (R.M.S.Khandeparkar & V.K.Tahilramani, JJ) in Asif Khan Bashir Khan Vs. The State of Maharashtra, in Criminal Appeal No.749 of 2007 Date of Decision : 16/10/2007. In that case, it was contended that the sanction to prosecute the accused under the MCOC Act was granted on the assumption that two charge-sheets are filed against them during the preceding period of ten years, when in fact, it was not so. This Court after focusing its attention on the definition of the term continuing unlawful activity observed as under:
>
> However, the charge-sheet is essentially in relation to the offence committed in a matter. Merely because it relates to a particular person, once it is disclosed that such person is a member of the organised crime or organised crime syndicate and the offence is part of the continuing unlawful activity by either the organised crime or organised crime syndicate, it obviously would mean that the charge-sheet

refers to, as defined in Section 2(d), the offence committed as part of a continuing unlawful activity by organised crime or organised crime syndicate and the person being a member of such organised crime or organised crime syndicate, such charge-sheet can definitely be taken into consideration for the purpose of application of MCOC Act against any such person.

44. Since in Asifkhan, the point which we are considering was squarely raised and answered, its ratio is attracted to the present case. In (Deepak Bajaj Vs State of Maharashtra and anr.)17, 2009(1) Bom.C.R.(Cri.)62(S.C.): 2008 DGLS (soft)1290: AIR 2008 S.C.W. 7788, while considering the presidential value of a judgment, the Supreme Court took a resume of several decisions endered by it. The Supreme Court referred to its judgment in (Ambika Quarry Works Vs State of Gujrat and ors)18, 1986 DGLS (soft) 535: 1987 (1) S.C.C. 213, where it has observed that the ratio of any decision must be understood in the background of the facts of that case and a case is only an authority for what it actually decides and not what logically follows from it. In the light of this, we are of the opinion that the words more than one charge-sheet contained in Section 2(1)(d) refer to unlawful activities of the organized crime syndicate. Requirement of more than

one charge-sheet is qua the unlawful activities of the organized crime syndicate and not qua individual member thereof." (emphasis supplied)

(b) In the case of *Sachin Bansilal Ghaiwal Vs State of Maharashtra Criminal Appeal No.25 of 2014 with Criminal Appeal No.1115 of 2013 decided on 16.07.2014* the division Bench of this Court in paragraph Nos. 33,34,36 to 39 observed as under:-

33. The fourth contention raised in paragraph 4 above by the Appellant is that, mere submitting antecedents by the police of the person is not sufficient to invoke the provisions of the MCOC Act and there must be a common thread amongst all the persons to say that crime must have been committed on behalf of the crime syndicate. The said submission has only to be recorded, to be rejected, at its threshold. The reason being twofold. Firstly, the said submission is made without taking into consideration the ratio laid down by the Division Bench of this Court in the case of **Govind Sakharam Ubhe** (supra) which clearly clarifies and settles the position of law as to the filing of the charge-sheets. The Division Bench has in unequivocal terms laid down the ratio that the requirement of more than one charge-sheet is qua the unlawful activities of the organised

crime synidicate and not qua the individual member thereof. The second reason is that, construing the said Section 2(1)(d) of the MCOC Act in the manner as submitted by Mr.S.V.Kotwal, learned counsel for the Appellant in Criminal Appeal 25 of 2014, would indubitably not only frustrate but would also further lead to give nugatory effect to the intention of the legislature in enacting the said provision. We therefore refrain ourselves from accepting such a narrow and constricted interpretation of the said provision viz. Section 2(1)(d) of the MCOC Act.

34. The fifth contention raised in paragraph 4 above by Shri. J. Shekhar, the learned counsel for the Appellant in Criminal Appeal 1115 of 2013 is that, the term 'Member' as mentioned in Section 2(d) has not been defined anywhere in the MCOC Act, so also the term 'Gang' referred to in Section 55 of the Bombay Police Act 1951 and therefore the Appellants are otherwise also not qualified to be held as 'member' of the 'gang' of the organized crime syndicate for want of any role in the alleged crime. It is true that the term 'member' has not been defined in the MCOC Act. However, a safe reliance can be placed on the Bolack's Law Dictionary wherein the term “member' has been defined as under:

> "member-1. Parliamentary Law. One of the individuals of whom an organizatnion or a deliberative assembly consists, and who enjoys the full rights of participating in the organization- including the rights of making, debating, and voting on motions- except to the extent that the organization reserves those rights to certain classes of membership"

36. Again a safe reliance can be placed on the term "gang" as has been defined in the Black's Law Dictionary as under:

> "gang- A group of person who go about together or act in concert, esp. for antisocial or criminal purposes. Many gangs (esp. those made up of adolescents) have common identifying signs and symbols, such as hand signals and distinctive colors. Also termed street gang."

37. We are conscious about the trite legal position that the Courts cannot legislate a statute or equally cannot legislate a provision into a statute. But the Courts can certainly interpret it with reference to and by taking into consideration the object of enacting particular provision or

a statute as stated herein above in paragraph Nos. 20 to 22 of the present judgment.

38. Thus, according to us and in our humble opinion and after giving our earnest consideration, the expression 'member' as has been termed in Section 2(1)(d) of the MCOC Act can be interpreted and defined as, a person who participates in the crime either actively or passively or a person who facilitates the commission of the crime committed by the organized crime syndicate or on behalf of the organized crime syndicate, automatically becomes the member of the said crime syndicate which commits the offence or on whose behalf the offence in question is committed, as contemplated under Sec. 2(1)(d), 2(1)(e), Section 3 and other provisions of the MCOC Act.

39. The said intention of the legislature can further be gathered from the expression which is used in sub section (2) of Section 3 of the MCOC Act i.e. “any act preparatory to organised crime” has direct bearing with the expression 'member' which appears in Section 2(1)(d) of the MCOC Act and therefore taking into consideration the intention of the legislature, widest possible meaning has to be given to the expression 'member' as is appearing in Sections 2(1)(d), 2(1)(e), Section 3 and other provisions of

the MCOC Act.

(c) In the case of State of *Maharashtra Vs Jagan Gagansingh Nepali @ Jagya and another 2011(5) Mh.L.J.386* the Division Bench of this Court observed in paragraph Nos. 11,34,35,38 and 39 as under:-

> "11. From the perusal of Section 2(1)(e), it can be seen that the following ingredients will be necessary to make out the case of an organised crime: (i) that there has to be a continuing umnlawful activities (ii) that such an activity will have to be by an individual, singly or jointly; (iii) that such an activity is either by a member of an organised crime syndicate or on behalf of such syndicate; (iv) that there has to be use of violence or threat of violence or intimidation or coercion or other unlawful means; (v) that such an activity has to be with an objective of gaining pecuniary benefits or gaining undue economic or other advantage for the person who undertakes such an activity or any other person or promoting insurgency. The ingredients of continuing unlawful activities would be : (i) that such an activity should be prohibited by law for the time being in force; (ii) that such an activity is a cognizable offence punishable with imprisonment of three years or more (iii) that such an activity is undertaken either singly

or jointly, as a member of an organised crime syndicate or on behalf of such syndicate; (iv) that in respect of such an activity more than one charge-sheet must have been filed before a competent Court and (v) that the charge-sheets must have been filed within a preceding period of ten years and (vi) that the Courts have taken cognizance of such offences.

34. it can, thus, clearly be seen that the purpose behind enacting the MCOCA was to curb the activities of the organised crime syndicates or gangs. The perusal of the Preamble and the Statement of Objects and Reasons and Preface, in our considered view, does not lead to any narrower meaning that MCOCA has been enacted only for the purpose of curbing activities which involve pecuniary gains or undue economic advantages. The mischief which is sought to be cured by enactment of MCOCA is to curb and control menace of organised crime. The law has been enacted with the hope that the elements spread by the organised crime in the Society can be controlled to a great extent and for minimizing the fear spread in the society. If a narrower meaning as sought to be placed is accepted, it will frustrate the object rather than curing the mischief for which the Act has been enacted.

35. For appreciating this issue, it would also be relevant to refer to sub-section (4) of Section 3 of MCOCA. It can be seen that the said provision also provides for punishment only by virtue of a person being a member of the organised crime syndicate. If the contention advanced by the respondents is to be accepted, sub-section (4) of Section 3 will be rendered redundant. We are also of the considered view that there could be various "unlawful continuing activities" by a member of "organised crime syndicate" or by any person on behalf of such a syndicate which can be for the advantages other than economic or pecuniary. We will consider some illustrations.

(i) A politician is murdered by a member of organised crime syndicate or gang on its behalf at the behest of rival political leader. In the facts of a given case, this was without any pecuniary or economic consideration, it was to gain an advantage in the nature of political patronage to the said organised crime syndicate by the political leader at whose behest the murder has taken place.

(ii) If a member of an organized crime syndicate or any person on its behalf murders or kills the leader of another syndicate or rival gang in order to get supremacy in the area, there may be no direct economic or pecuniary advantage by that particular

unlawful activity. However, in the long term by the very fact of having supremacy in the area, the organised crime syndicate would be in a position to get economic or pecuniary advantage.

(iii) A witness in the trial against the member of an organised crime syndicate may be killed. There may not be any pecuniary advantage in such an activity, however, advantage of assuring acquittal of member of the syndicate could be there.

(iv) A member of an organised crime syndicate murders another member of such syndicate. There may be no pecuniary or economic benefits by such an activity, however, there may be advantage to a person committing murder of getting a stronghold or supremacy in the 'organised crime syndicate' of which he is a member.

These could be some of few illustrations which may come in the term “other advantage”. There can be many more.

38. It is difficult to accept the contention that if the wider meaning is given to the provision of Section 2(1)(e),

provisions of MCOCA would be invoked even for petty offences. In case of Sherbahadur Akram Khan Vs State of Maharashtra (cited supra), some of the offences resulted from the quarrel at public water tap. In the said matter, as in many of the cases, the accused had assaulted the injured with a fist blow. By no stretch of imagination, such an activity could be construed to be the one for which MCOCA could be invoked. If there are some altercations between two businessmen within four corners of shop and, as a result of which one of them slaps the other, by no stretch of imagination it can be said to be an offence for which MCOCA is to be invoked. Similarly, a dispute between two brothers on some property issue and even assault and that too by a deadly weapon would not come in the ambit of MCOCA. The legislative intent is clear, that MCOCA is for curbing the organised crime. Unless there is prima facie material, firstly, to establish that there is an organised crime syndicate and, secondly, that organised crime has been committed by any member of the organised crime syndicate or any person on behalf of such syndicate, the provisions of MCOCA cannot be invoked. In the earlier paragraph we have discussed in detail as to what are the ingredients so as to constitute an offence of “organised crime”. The prosecution will, therefore, have to firstly establish that there is an organised crime syndicate. It will have to satisfy

that there exist the ingredients of "continuing unlawful activity". It will thereafter have to satisfy that the ingredients of the "organised crime" as spelt out by us hereinbefore exist, prior to invoking the provisions of MCOCA. We are, therefore, unable to accept the contention that if the wider meaning is given, the MCOCA can be invoked even for sundry offences. As held by the Apex Court in the case of *Ranjitsing Brahmajeetsing Sharma (supra)* merely because the person who cheats or commits a criminal breach of trust more than once, the same by itself may not be sufficient to attract the provisions of MCOCA. By the same analogy, if a person commits murder more than once, would not by itself be sufficient to attract the provisions of MCOCA. At the cost of repetition, we make it clear that unless all the ingredients to constitute the offence punishable under MCOCA are available, it will not be permissible to invoke the provisions of MCOCA.

39. Apart from that it can be seen that there is inbuilt safeguard in section 23 of the said Act, inasmuch as no information of the commission of the offence of the organised crime shall be recorded by the police officer without prior permission of the police officer not below the rank of Deputy Inspector General of Police. A further safeguard is provided by sub-section (2) of Section 23 to the

effect that no Special Court shall take cognizance of the offence under this Act without previous sanction of the police officer not below the rank of Additional Director General of Police. It is implicit that while granting permission under sub-section (1) and granting sanction under sub-section (2) of section 23 of MCOCA, the police officers, who are undisputedly high ranking, will be required to apply their mind to the facts of the case and come to a prima facie satisfaction as to whether the ingredients to constitute the offence punishable under MCOCA are made out or not. Equally, the Special Courts, which are manned with senior judicial officials of the rank of Sessions Judge, while taking cognizance would be required to come to a prima facie satisfaction that the ingredients to constitute an offence punishable under MCOCA are made out. The Special Judge, if upon material placed by the police is satisfied that the ingredients to constitute offence punishable under MCOCA are not made out, would be required to transmit the case for trial of such offence to any Court having jurisdiction under the code, in view of the provisions of section 11 of MCOCA.

8. We have carefully considered the submissions made by the learned counsel appearing for the appellant and learned APP. Also we have

perused the compilation submitted by the learned APP and the copies of the documents placed on record by learned counsel for the appellant and we have gone through the impugned order.

9. There is no dispute that crime No.151/2017 was registered under Section 395 of the IPC against six unknown persons on the complaint of Ramnath Sukhdeo Bankar dated 29.05.2017 and subsequently on suspicion accused Dilip @ Dilkya Kale and Nehriya @ Pandit Kale were arrested by the police. There is also no dispute that after recording the confessional statement of accused Dilip @ Dilkya Kale, the appellant/accused No.3 was arrested and after completion of the investigation and after adding offence under MCOC Act, charge-sheet came to be filed against all the six accused including the appellant/accused No.3

10. As regards the first ground of objection argued by the learned counsel for the appellant is that confessional statement of co-accused Dilip @ Dilkya Kale on the basis of which the appellant is involved in the present crime has no evidencary value since it was not recorded following provision

under Section 18 of the MCOC Act is concerned, copy of confessional statement of co-accused Dilip @ Dilkya Kale produced with the compilation submitted by the learned APP shows involvement of all six accused in committing the offences, the presence of appellant at the spot of incident as well as use of Scorpio vehicle of the appellant in the commission of offence. Said statement bears thumb impression of accused Dilip @ Dilkya Kale, signatures of both Panchas and the Investigating Officer. The aspect of admissibility or otherwise of this confessional statement of co-accused Dilip @ Dilkya Kale against the appellant/accused No.3 would be considered while deciding the case and at least at this stage it is clear from the confessional statement of co-accused that the vehicle of the appellant was used in the commission of offence. Similarly, there is a statement of another co-accused Krushna Vilas @ Ramdas Bhosle recorded under Section 27 of the Evidence Act which shows that vehicle of the appellant was used in the commission of offence and the appellant was told about using of his vehicle and that he consented for the same.

11. Copy of statement of appellant under

Section 27 of the Evidence Act produced with the compilation by the learned APP shows that the appellant made statement leading to discovery of his vehicle Scorpio bearing No.MH-17-AJ-3595 used in the commission of offence and at his instance said vehicle was seized, which statement bears his signature as well as thumb impression, signatures of both Panchas and the Investigating Officer. Thus, there is *prima facie* material to show involvement of the appellant in the crime. It is argued on behalf of the appellant that confessional statement is weak piece of evidence. Said aspect cannot be considered at the stage of framing of charge. Therefore, argument advanced by the learned counsel for the appellant that confessional statement of co-accused and disclosure statement of appellant cannot be considered at the stage of framing charge against the accused is not acceptable.

12. As regards the second submission of the learned counsel for the appellant that offences under Sections 3(1)(ii), 3(2), 3(4) of MCOC Act are not attracted against the appellant since this is the only crime registered against the appellant and there is no material to show that in preceding ten

years the appellant was involved in two crimes is concerned, alongwith the compilation learned APP has produced information of the crimes registered against the appellant and other accused. Said information (at Page 11 and 12 of the compilation) shows that in all four crimes have been registered in different Police Stations against accused Krushna Vilas @ Ramdas Bhosle, in all six crimes have been registered against Ajay Vilas Bhosle, in all three crimes have been registered against accused Atlya Eshwar Bhosle, one crime is registered against accused Sandeepya Eshwar Bhosle, one crime is registered against the accused Dilip @ Dilkya Nehrya @ Pandit Kale and one crime is registered against the accused Awan Haiwan Kale/appellant. Thus, it appears that only one crime is registered against accused Sandeepya Eshwar Bhosle, Dilip @ Dilkya Nehrya @ Pandit Kale and appellant/accused i.e. present crime No.151/2017 and against rest of the three accused more than three crimes have been registered against them. Considering the facts that out of six accused in the present crime three accused are involved in more than one crime and charge-sheets are pending against them, *prima facie* it can be said that the appellant is a member of

organised crime syndicate as defined under Section 2(i)(f) and naturally therefore, *prima facie* the offences punishable under Sections 3(1)(ii), 3(2), 3(4) of MCOC Act are attracted. Therefore argument advanced by the learned counsel for the appellant that there is no material to proceed against the appellant for the aforesaid offences under the MCOC Act is not acceptable.

13. Perusal of the impugned order shows that in paragraph Nos.15 and 16 of the said order the learned Special Judge considered the material against the appellant and observed that the members of the syndicate other than the applicant/appellant are involved in more than one crime and charge-sheets are pending against them and record shows about presence of the appellant at the time of incident in question and use of his vehicle in commission of offence and therefore, no case is made out by the appellant for discharge.

14. For the reasons discussed above and applying the decisions in the cases of *Sachin Bansilal Ghaiwal (Supra), Govind Sakharam Ubhe (supra) and Maharashtra Vs Jagan Gagansingh Nepali @*

*Jagya and another (supra)* we find that there is sufficient material against the appellant/accused No.3 for proceeding and hence he cannot be discharged from the case.

15. There is no dispute about the principles laid down in the decisions in the case of *Mohamad Iqbal Farooq Sheikh and anr Vs State of Maharashtra (supra), Majhar Nashir Shaikh and others Vs State of Maharashtra (supra) and State of NCT of Delhi Vs Brijesh Singh @ Arun Kumar and another (supra)* relied upon by the learned counsel for the appellant/accused. But, considering the facts and circumstances present in the instant case decisions in the cases of *Majhar Nashir Shaikh* (supra)and *Mohamad Iqbal Faooq Sheikh and anr* (supra) cannot be suitably made applicable to the present case at the stage of considering the discharge application and as regards the decision in the case of *State of NCT Delhi* (supra) said decision cannot be made applicable to the present case which is on the point of “Competent Court” to try the offence.

16. We, therefore, hold that the learned Single Judge has rightly rejected the appellant's

application to discharge him from the case by passing the impugned order. Therefore, there is no ground to interfere with the said order. Thus, the appeal being devoid of merits, the same is liable to be dismissed. Accordingly the appeal stands dismissed.

17. In view of dismissal of the appeal, the criminal application No.3864 of 2018 to stay the special case pending against the applicant/appellant is disposed of.

**[S.M.GAVHANE,J.]** **[PRASANNA B. VARALE, J.]**

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