IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.986/2016

1] Sow.Rani Prabhakar Nair,
age 60 yrs., occu.Retired,
r/at B/13/35, Upper Indira Nagar,
Bebiwewadi, Pune – 411037.

2] Sau.Jyoti Bapu Nair,
age 30 yrs., occu.housewife,
R/at B/13/35, Upper Indira Nagar,
Bebiwewadi, Pune – 411037.

..APPLICANTS..

VERSUS

State of Maharashtra,
Through the I.O., DCP Zone II,
Pune.

..RESPONDENT..

…..

Mr.A.H. Ponda i/by Priyal Gopaldas Sarda, Advocate for applicants.
Smt.S.V. Sonawane, APP for respondent – State.

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CORAM: R.M. BORDE &
V.L. ACHLIYA, JJ.

DATE: 25.01.2019

ORDER (Per V.L. Achliya J.):

1] The applicants, the absconding accused, have filed this application u/s 482 of the Code of Criminal Procedure, 1973, seeking following reliefs:-

> "[a] That this Hon'ble Court may be pleased to quash and set aside the prosecution / proceedings carried out in Crime registered vide FIR No.477/2015 at Kondhwa Police Station, Pune and in Special MCOCA Case No.21/2016 pending at the files of Ld.Special Judge, Pune, for the commission of offences u/s 307, 387, 447, 504, 506(2) r/w 34 of IPC, Section 3(1)(ii), 3(2), 3(4), 3(5), 4 of the Maharashtra Control of Organized Crime Act, 1999, Section 4(25) of Arms Act and section 37(1) r/w 135 of Bombay Police Act.
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> [b] That this Hon'ble Court be please to quash and set aside the order dated 06/08/2016 allowing the issuance of Proclamation against the present Applicants in Special MCOCA case No.21/2016 arising out of CR No.477/2015 registered at Kondhwa Police Station, Pune."

2] Heard learned counsel for the applicants and learned APP representing the respondent. Perused the record and proceedings.

3] In brief, it is the contention of learned counsel for the applicants that the applicant no.1 is the mother and applicant no.2 is the legally wedded wife of accused Bapu Prabhakar Nair i.e. the accused no.3. The said accused Bapu has been already arrested and charge-sheeted for commission of offences u/s 307, 387, 447, 504, 506(2) r/w 34 of the Indian Penal Code and offence under Section 3(1)(ii), 3(2), 3(4), 3(5), 4 of the Maharashtra Control of Organized Crime Act, 1999 (in short, the MCOCA), Section 4(25) of the Arms Act and section 37(1) r/w 135 of the Bombay Police Act registered vide C.R.No.477/2015 with Kondhwa Police Station, Pune. The applicants are subsequently made as accused in said Crime No.477/2015 with allegations that they hold the property which has been acquired through the proceeds of crime committed by the accused no.3, who indulges in commission of organized crime. So also they are found in possession of unaccountable wealth on behalf of members of organized crimes and head of the syndicate of such organized crimes.

4] It is submitted that the allegations as attributed to the applicants are not sufficient to implicate and make them as accused in commission of offence u/s 3(5) and 4 of the MCOCA, 1999. In short, it is the contention of learned counsel for the applicants that there is no evidence to show that the applicants hold any property derived or obtained from commission of an organized crime or which has been acquired through organized crime syndicate fund. It is further contention of learned counsel for the applicants that the property possessed by the applicants is not an unaccountable wealth on behalf of member of organized crime syndicate.

5] It is submitted that accusations made against the applicants that accused Bapu Prabhakar Nair – the son of applicant no.1 and husband of applicant no.2, has deposited the proceeds of crime in their bank accounts and purchased various immovable properties in their names out of proceeds of crime, are not sufficient to book them u/s 3(5) and 4 of the MCOCA, 1999.

6] The applicants have further challenged the order dated 6.8.2016 to issue proclamation to declare them as absconding accused on their failure to appear before the investigating officer on 28.8.2016 with contention that the order is bad in law as mandatory period of 30 days has not been provided while passing the impugned order.

7] On the other hand, the learned APP opposed the application with contention that there is sufficient evidence to make the applicants as accused in Crime NO.477/2015. By referring the overall facts of the case leading to registration of offence and investigation of the crime, the learned APP submits that during the investigation of Crime No.477/2015 registered u/s 307, 387, 447, 504, 506(2), 212, 468, 471 r/w 34 of the Indian Penal Code, it was revealed that there was organized crime syndicate operating to grab the immovable properties of the people by making forceful entry and illegally taking possession of such property and then to raise the disputes and force such person to submit to their demands to settle the dispute. The accused made entry in the land admeasuring 14 Gunthas belonging to the complainant and members of his family and erected compound. On 12.12.2015, when the complainant and persons accompanying him visited the site, the accused abused, assaulted and attempted to kill the complainant. They threatened them to kill. On the basis of the complaint lodged by the complainant, the above mentioned offences came to be registered against the accused as named in the complaint including the accused Bapu @ Kumar Prabhakar Nair – the son of applicant no.1 and husband of applicant no.2. During the course of investigation and interrogation of accused no.3, it is found that he is running the crime syndicate and acquired huge movable and immovable properties out of proceeds of crime. During the course of investigation, the offence under the provisions of the MCOCA came to be registered against them. During the investigation, it was revealed that the said accused Bapu @ Kumar Prabhakar Nair is having number of bank accounts opened in his own name as well as in the names of applicant nos.1 and 2. He has deposited huge amounts in these accounts (as per the details provided in the report of Investigating Officer made available by the learned APP for the perusal of the Court). The report produced reveals that seven accounts are found to have been opened with various banks in the names of applicants and huge amounts deposited in those accounts. The applicants have no independent source of income to receive such huge amounts found credited in their accounts. The report of Investigating Officer provides the details of number of immovable properties purchased in the names of present applicants. The report provides the details of five immovable properties and one vehicle purchased in the names of the applicants. In respect of one of such land purchased, the offence u/s 467, 468, 471, 473, 420 r/w 34 of the Indian Penal Code found to be registered with Bibwewadi Police Station, Pune, *vide* Crime No.6/2016. Similarly, on scrutiny of the bank transactions of the applicants, the accused no.3 and witnesses, it is found that huge amounts have been deposited in the accounts of the applicants as well as accused Bapu Prabhakar Nair by these persons. Thus, in brief, it is the case of prosecution that the accused no.3 – the son of applicant no.1 and husband of applicant no.2 found to be running a crime syndicate and committing various offences. Out of proceeds of the crime, the accused no.3 has deposited huge amounts in the accounts of the applicants as well as purchased various properties in their names. On the basis of evidence gathered during the course of investigation, the applicants are subsequently added as accused in the case by registering an offence u/s 3(5) and 4 of the MCOCA, 1999.

8] We have carefully considered the submissions advanced in the light of record and proceedings as well as the report of Investigating Officer produced for perusal of the Court.

9] We refrain ourselves from discussing the evidence gathered by the investigating agency as well as disclosure of names of witnesses as referred in the report of the Investigating Officer as the accused are charged under the provisions of the MCOCA, 1999 and the applicants are the absconding accused against whom further investigation needs to be conducted.

10] At the outset, we are not inclined to entertain the application for the reason that the applicants are the absconding accused. Instead of submitting to the process of law and to appear before the Investigating Officer pursuant to the order dated 6.8.2016 passed by the learned Judge, the applicants have filed this application. The order to issue proclamation came to be passed on 6.8.2016 by the learned Judge on due consideration of report submitted by the Investigating Officer to satisfy the Court to issue proclamation against the applicants, who were found to be absconding. Immediately thereafter, present application has been filed and the lower Court was misguided by informing the Court that this Court has stayed the proceedings. The affidavit to that effect was filed before the lower Court by Advocate Versha Shankar Phadkay, the lawyer representing the applicants. In fact, *vide* order dated 29.8.2016, this Court has only stayed the order dated 6.8.2016 passed in respect of issuance of proclamation. No order to stay the proceedings was passed by the Court. It is pertinent to note that the said lawyer representing the applicants was subsequently made as an accused in same crime. Thus, considering the overall facts of the case and the applicants being the absconding accused involved in commission of serious offence, we are not inclined to entertain the application u/s 482 of the Cr.P.C.

11] Apart from the fact that the applicants are the absconding accused, on due consideration of the material gathered by prosecution, there is *prima facie* case to connect the applicants with the offences registered against them. The applicants appear to have no independent source of income to possess huge amounts in their bank accounts. So also they have no independent source of income to acquire immovable properties in their names as detected during the course of investigation. The report filed by the Investigating Officer reveals that huge amounts have been transferred in the accounts of present applicants and prime accused Bapu Prabhakar Nair, from these accounts. During the investigation, it is found that accused Bapu Prabhakar Nair is running an organized crime syndicate and indulging into acts of taking forcible possession of prime properties and then extract money from these persons. In the light of evidence gathered against the applicants, the contention of learned counsel for the applicants that the accusations against the applicants attract no offence, cannot be accepted.

12] It is quite settled position in law that the powers u/s 482 of the Cr.P.C. are to be exercised sparingly. The powers u/s 482 of the Cr.P.C. are expected to be invoked when the Court is satisfied that it is a case of gross abuse of process of law or in order to secure the ends of justice, it is expedient to exercise inherent jurisdiction vested with the Court. Neither the case of abuse of process of law nor to secure the ends of justice has been made out by the applicants to invoke powers u/s 482 of the Cr.P.C..

13] While exercising powers u/s 482 of the Cr.P.C., the Court is expected to take care that the invocation of such powers is not allowed to be mis-used by an unscrupulous element. The Court has to ensure that an unprincipled and unethical litigant does not misuse invocation of inherent powers vested in the Court. In the present case, the applicants are declared as absconding accused. They avoided to submit to the process of law. The investigation is required to be conducted after securing presence of the applicants for investigation. In that view, the stage has not reached to invoke the powers u/s 482 of the Cr.P.C. So also the evidence relied upon by the prosecution is *prima facie* sufficient to register crime and investigate the case against them.

14] Thus, on due consideration of overall allegations attributed to the applicants in commission of offence and material referred and relied against them in support of the allegations to constitute the offence u/s 3(4) and 4 of the MCOCA, 1999, we are of the view that the evidence relied upon by the prosecution *prima facie* make out to investigate the case against the accused for the offences registered against them. We are, therefore, not inclined to entertain the application. Accordingly, the application is rejected.

(V.L. ACHLIYA, J.) **(R.M. BORDE, J.)**