

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.538 OF 2016

THE STATE OF MAHARASHTRA)
THROUGH ATS, POLICE STATION,)
MUMBAI))...APPLICANT

V/s.

MUSTAFA MEHMOOD SAYYED @ MUNNA)
MUSTAFA @ SAYYED BADEMIYA)
MEHMOODMIYA)...RESPONDENT

Mrs.M.M.Deshmukh, APP for the Appellant – State.

Mr.Siddiqui M.Arif, Advocate for the Respondent.

**CORAM : INDRAJIT MAHANTY &
A. M. BADAR, JJ.**

DATE: 10th JUNE 2019

P.C. :

1 This is an application under Section 308 of the Code of Criminal Procedure filed by the State seeking sanction to prosecute the respondent/accused for the offence of giving false evidence.

2 Facts, in brief, leading to filing of the instant application are thus :

- (a) The Anti-Terrorist Squad of Maharashtra Police got information about transportation of arms and ammunitions in large quantity and on 9th May 2006, a four wheeler vehicle came to be intercepted and upon checking the same, 10 AK-47 rifles, 40 magazines, 2000 live cartridges, explosives weighing 30 kilograms and other material came to be recovered from it. Accused Amir Shakil Ahmed came to be arrested. Accordingly, LAC NO.3 of 2006 for offences punishable under various sections of the Indian Penal Code, Explosive Substance Act, Indian Explosive Act, Arms Act as well as Unlawful Activities (Prevention) Act came to be registered. During investigation of that offences, 16 AK-47 rifles, 62 magazines, 3200 live cartridges, 43 kilograms RDX and 50 live hand grenades apart from vehicles came to be seized. After prior approval, provisions of the Maharashtra Control of Organized Crimes Act, 1999 (hereinafter referred to as MCOC Act for the sake of brevity)

were also added to the case diary of the said crime. During course of investigation, respondent/accused no.20 Sayyed Mustafa Mehmood came to be arrested on 9th October 2007.

- (b) After following due procedure prescribed under the MCOC Act, confessional statement of respondent/accused no.20 Sayyed Mustafa came to be recorded by the Deputy Commissioner of Police, Mumbai, on 3rd November 2007 and 5th November 2007.
- (c) After filing of the charge-sheet, MCOC Act Special Case No.16 of 2006 @ 18 of 2006 @ 20 of 2007 @ 8 of 2009 @ 20 of 2012 came to be registered against accused persons.
- (d) It is seen from the record that on 7th November 2007, respondent/accused no.20 Sayyed Mustafa Mehmood preferred an application and prayed for tendering pardon under Section 9(3) of the MCOC Act read with 307 of the Cr.PC. After calling say of the prosecution on the said

application, on 15th November 2007, the learned Special Judge explained the contents of his application to respondent/accused no.20 Sayyed Mustafa Mehmood and after hearing the parties, passed an order below Exhibit 37 by allowing the application for grant of pardon moved by respondent/accused no.20 Sayyed Mustafa Mehmood.

- (e) During the course of trial, respondent/accused no.20 Sayyed Mustafa Mehmood moved an application at Exhibit 1218 for framing Charge against him and for hearing the case against him along with other accused. However, as pardon was tendered to respondent/accused no.20 Sayyed Mustafa Mehmood, the learned Special Judge was pleased to reject his application for examining him as a witness. Accordingly, on 2nd March 2015, respondent/accused no.20 Sayyed Mustafa Mehmood entered in the witness box as Prosecution Witness No.88 and resiled his former statement. He was cross-examined by the learned Special Public Prosecutor. On the very same day, the learned Special Public Prosecutor

gave a certificate as envisaged by Section 308 of the Cr.P.C. and certified that respondent/accused no.20 Sayyed Mustafa Mehmood committed breach of condition of pardon tendered to him and had willfully concealed the facts in connection with the crime apart from giving false evidence.

- (f) On conclusion of trial of the subject offences, the learned trial court disposed off the MCOC Act Special Case by convicting twelve accused persons.
- (g) On the basis of certificate issued by the Special Public Prosecutor, as respondent/accused no.20 Sayyed Mustafa Mehmood had not complied with the condition on which the pardon was tendered to him, he was made an accused for trying him for the subject offence by registering MCOC Special Case No.5 of 2016. As the Special Public Prosecutor while issuing the certificate, as required by Section 308 of the Cr.P.C., had certified that respondent/accused no.20 Sayyed Mustafa Mehmood has given false evidence, the

State has moved this application for sanction to prosecute respondent/accused no.20 for the offence of giving false evidence.

3 We have heard the learned APP appearing for the State at sufficient length of time. She argued that considering the fact that apart from commission of breach of condition on which pardon was tendered to respondent/accused no.20 Sayyed Mustafa Mehmood, he has also adduced false evidence before the learned trial court, and therefore, he needs to be prosecuted for the said offence. The learned counsel appearing for respondent/accused no.20 Sayyed Mustafa Mehmood opposed the application by contending that during the course of trial, respondent/accused no.20 Sayyed Mustafa Mehmood had applied for framing Charge against him and for conducting the trial even against him, and therefore, the instant application deserves to be rejected.

4 We have carefully considered the submissions so advanced and also perused the record made available. It is seen from the record that respondent/accused no.20 Sayyed Mustafa Mehmood had moved an application at Exhibit 37 under his own signature on 7th November 2007. The said application seeking tender of pardon was also signed by the learned advocate for respondent/accused no.20 Sayyed Mustafa Mehmood. The learned advocate for respondent/accused no.20 Sayyed Mustafa Mehmood was absent on that day and therefore, the case was adjourned to 15th November 2007. On that day, the learned advocate for respondent/accused no.20 Sayyed Mustafa Mehmood was present before the learned Special Judge. As seen from the roznama of the case, the learned Special Judge had explained the contents of his application Exhibit 37 to respondent/accused no.20 Sayyed Mustafa Mehmood in Hindi. Respondent/accused no.20 Sayyed Mustafa Mehmood confirmed the contents of the said application and stated that he wants to give evidence before the court on pardon being tendered. All these happened in presence of the learned advocate for respondent/accused no.20

Sayyed Mustafa Mehmood, as seen from roznama of 15th November 2007. Ultimately, on 15th November 2007 itself, the application at Exhibit 37 was allowed by the learned Special Judge on the condition that respondent/accused no.20 Sayyed Mustafa Mehmood will make full and true disclosure of all facts and circumstances within his knowledge, relating to the conspiracy and seizure of arms and ammunitions on the road in Taluka Khultabad, District Aurangabad. The learned Special Judge noted that respondent/accused no.20 Sayyed Mustafa Mehmood had accepted the pardon so tendered to him on explaining to him the contents of the order passed below Exhibit 37. That is how, respondent/accused no.20 Sayyed Mustafa Mehmood became approver on tendering of pardon to him. However, when respondent/accused no.20 Sayyed Mustafa Mehmood entered in the witness box as Prosecution Witness No.88, he went on deposing that he does not know contents of the application Exhibit 37 moved by him for seeking pardon and for becoming approver. He denied to have given any such application before the learned Special Judge. Respondent/accused no.20

Sayyed Mustafa Mehmood further denied that the court read over the contents of that application and explained the contents of that application to him. He denied the fact that he had accepted the pardon for becoming approver. Respondent/accused no.20 Sayyed Mustafa Mehmood, though admitted the fact that his confession, recorded as per provisions of Section 18 of the MCOC Act, bears his signature on each page thereof, he ventured to depose that he does not know contents of his confession.

5 It is trite that record of the court is sacrosanct. The application at Exhibit 37 for seeking pardon moved by respondent/accused no.20 Sayyed Mustafa Mehmood, not only bears his signature but signature of his learned advocate also. Record of the court in the form of order sheet shows that the learned Special Judge explained the contents of his application Exhibit 37 to respondent/accused no.20 Sayyed Mustafa Mehmood in presence of his learned advocate and has further noted that respondent/accused no.20 Sayyed Mustafa Mehmood still wants to give his statement before the court on pardon being

tendered. The order below Exhibit 37 tendering pardon to respondent/accused no.20 Sayyed Mustafa Mehmood categorically shows that the said order was explained to respondent/accused no.20 Sayyed Mustafa Mehmood in Hindi and he then accepted the pardon.

6 In the light of this factual position emerging on record, we are of the considered opinion that this is a fit case for granting sanction to prosecute respondent/accused no.20 Sayyed Mustafa Mehmood for the offence of giving false evidence, and therefore, the order :

ORDER

- i) The application is allowed in terms of Prayer Clause (a) and the same is accordingly disposed off.

(A. M. BADAR, J.)

(INDRAJIT MAHANTY, J.)