

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.5265 OF 2019

RADHESHYAM LAXMANRAO MOPALWAR)...PETITIONER

V/s.

THE STATE OF MAHARASHTRA AND ORS.)...RESPONDENTS

Mr.Subhash Jha a/w. Ms.Nilofer Sayed a/w. Mr.Harekrishna Mishra a/w. Ms.Sanjana Pardeshi i/b. Ms.Shweta Rathod and Mr.Prashant Mairale, Advocate for the Petitioner.

Mr.A.R.Kapadnis, APP for the Respondent – State.

Mr.M.B.Shirsat and Dr.Waghmare with Mr.Jagdale a/w. Mr.Rohan Bhosale, Advocate for Respondent Nos.2 to 4.

Mr.R.M.Kadam, Police Sub-Inspector, AEC, Crime Branch, Thane, present in court.

CORAM : A. M. BADAR, J.

DATE : 16th DECEMBER 2019

ORAL JUDGMENT :

1 Heard. Rule. Heard finally by consent of parties.

2 This is a petition by the First Informant/alleged victim of the crime in question. By filing this petition, the petitioner is

praying for directing the learned Special court to dispose off the Special Case No.18 of 2018 on the file of the learned Special Judge, Maharashtra Control of Organized Crimes Act (hereinafter referred to as MCOC Act for the sake of brevity), Greater Bombay, Mumbai, most expeditiously and with some measurable time limit.

3 At the outset it needs to be mentioned that speedy trial is a fundamental right implicit in Article 21 of the Constitution of India. It is an obligation of the State and in the case in hand, speedy trial of offences allegedly committed against him by accused persons is sought by the alleged victim of the crime in question.

4 The learned counsel for the petitioner drew my attention to the judgment of the Hon'ble Apex Court in the matter of Hussain and Another vs. Union of India¹ and more particularly paragraph 29.1.2. thereof which reads thus :

“29.1.2. Magisterial trials, where accused are in custody, be normally concluded within six months

1 2017 (5) SCC 702

and sessions trials where accused are in custody be normally concluded within two years.”

With this, the learned counsel for the petitioner submitted that the judgment in the matter off **Hussain and Another (supra)** passed by the Hon'ble Supreme Court operated as a writ to all courts and as per mandate of the Supreme court, sessions trial where the accused are in custody are required to be concluded within a period of two years. It is contended by the learned counsel for the petitioner that in the case in hand, the trial is not being disposed off expeditiously, despite its transfer on the file of Shri. V.S.Padalkar, Special Judge under the MCOC Act at Mumbai, as per directions of the Hon'ble Apex Court. My attention is drawn by the learned counsel for the petitioner to the order dated 20th July 2019 passed by the learned Special Judge, Sessions Court, Greater Bombay, Mumbai, to demonstrate that only two cases are pending on the file of the said court. By relying on observations of the learned Special Judge made in the order dated 20th July 2019 (Record page 275), it is argued that the trial is being protracted by the accused persons. Reliance is placed on paragraphs 6, 8, 12, 13

and 14 of the said order which read thus :

“6 Accused Nos.2 and 3 have now engaged another Ld. Counsel. The submission of accused Nos.1 to 3 is that they did not receive the chargesheet as it were handed over to then Learned Advocate. In fact, the entire charge-sheet papers were handed over to each of the accused and therefore, their contention is nothing but to prolong the matter for framing of charge.”

“8 At this juncture, one another application (Exh.91) is filed by accused no.2 by stating that she be allowed to engage her friend Shri Pratik Shivpuje for conducting her case. She again has made a bold allegation in the said application that she does not believe on her private Advocate or Government Advocate appointed through another source i.e. Legal Aid Committee. This prayer cannot be allowed. It is not disclosed whether he is an Advocate or not. After being asked to accused Nos.1 to 3 again, they have stated that they required some time. In my opinion, they wanted to prolong the matter by putting some or another grounds.”

“12 At this juncture, an application (Exh.93) is filed by accused No.1 with a prayer that he intends to conduct the trial by himself and not to frame charge. The said prayer of ‘not to frame charge’ cannot be granted for the reasons that criminal jurisprudence said that criminal trial should be decided as early as possible.”

“13 One more reason is that the case is now transferred by an order of the Hon’ble Supreme Court and only two cases are pending in this Court, one is Malegaon Bomb Blast, 2008 and second one is present case. Third case is under investigation i.e. Bomb blast occurred on 01/05/2019 at Gadchiroli.”

“14 The Special Court is constituted for the purpose of trial of these cases only. Hence, I am of the clear opinion that there should not be delay in conducting the trial.”

5 To buttress his contention regarding prejudice caused to the petitioner, the learned counsel for the petitioner relied on judgment of the Hon'ble Apex Court in the matter of **Krishnan and**

Another vs. Krishnaveni and Another². Reliance is placed on paragraph 10 of the said judgment, the relevant portion of which reads thus :

“10The object of criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out. The recent trend is to delay the trial and threaten the witness or to win over the witness by promise or inducement. These malpractices need to be curbed and public justices can be ensured only when trial is conducted expeditiously.”

With the aid of these observations of the Hon'ble Apex Court, it is argued that any further delay in trial may result in causing prejudice to the petitioner, who is the First Informant.

6 As against this, the learned APP submitted that the Charge is already framed and the case is fixed for recording evidence on 17th December 2019. The learned APP submitted that the prosecution is interested in getting the expeditious disposal of the trial.

2 (1997) 4 Supreme Court Cases 241

7 I have also heard Mr.M.B.Shirsat, learned counsel appearing for respondent nos. 2 to 4 who made a statement that he has instructions to appear on their behalf. Infact, the learned counsel has not disputed the fact that the trial needs to be decided expeditiously. However, he submitted that the petitioner/ First Informant is an influential person who may cause injustice to the accused persons, some of whom are in jail. They may not be able to instruct their advocates appearing before the learned trial court appropriately, and therefore, due care may be taken so that fair opportunity for raising their defence should be made available to respondent nos.2 to 4/accused persons.

8 I have considered the submissions so advanced and also perused the material placed on record.

9 Brief facts, leading to the prosecution of accused/ respondent nos.2 to 4 can be culled out from the record as under :

- (a) Petitioner Radheshyam Mopalwar is the First Informant at whose instance Crime No.I-380 of 2017 for offences punishable under Sections 384, 386, 387 read with 34 of the Indian Penal Code came to be registered against respondent nos.2 to 4 at Police Station Kalwa, District Thane. Subsequently, with the approval of the Assistant Commissioner of Police, provisions of Sections 3(1(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crimes Act, 1999 (hereinafter referred to as MCOC Act for the sake of brevity) came to be added to the case diary of the crime in question. The charge-sheet filed on completion of investigation in pursuant to the said First Information Report (FIR) resulted in registration of the subject special case under MCOC Act.
- (b) According to the prosecution case, Petitioner/First Informant Radheshyam Mopalwar is a senior Indian Administrative Service (I.A.S.) Officer working as the Vice President and Managing Director of the Maharashtra State Road

Development Corporation Limited. In the year 2013, while in the process of getting divorce from his wife Manisha Deshmukh, through intervention of Deputy Superintendent of Police Pravin Patil, he came in contact with respondent no.2/accused no.1 Satish Mangle and his friend Mayuresh Raut. They acted as intervenor in the matter of divorce. Respondent No.2/Accused no.1 Satish Mangle runs a licensed Detective Agency under the name and style "Shirley Detective Agency".

- (c) In August 2016, some professional dispute between Respondent No.2/Accused no.1 Satish Mangle and his friend Mayuresh Raut, ultimately, resulted in lodging FIR by Respondent No.2/Accused no.1 Satish Mangle with Satara City Police Station for offences punishable under various Sections of the Indian Penal Code. Mayuresh Raut, Manisha Deshmukh and others were arraigned as accused in that crime. Subsequently, at the instance of family members of Respondent No.2/Accused no.1 Satish Mangle, some

association working in the field of Anti Corruption Movement took out a procession on Mantralaya under leadership of one Prashant Bhise. That procession was also directed against Petitioner/First Informant Radheshyam Mopalwar. Alleging that they were required to incur expenses for taking out procession on Mantralaya, Respondent No.2/Accused no.1 Satish Mangle, his wife Respondent No.3/Accused no.2 Shraddha Mangle and others started extending demand of Rs.50 to 60 lakh from the Petitioner/First Informant Radheshyam Mopalwar with a threat to his life. Petitioner/First Informant Radheshyam Mopalwar was, therefore, constrained to lodge the report of this incident, which has resulted in registration of Crime No.588 of 2016 with Police Station Bandra against the accused persons.

- (d) According to the prosecution case, on 1st August 2017, Respondent No.2/Accused no.1 Satish Mangle caused broadcasting of an audio clip in the programme on TV

Channel ABP Majha reflecting corruption by Petitioner/First Informant Radheshyam Mopalwar. This resulted in conducting enquiry by the authorities of the State. As per version of the prosecution, then Respondent No.2/Accused no.1 Satish Mangle started meeting political heavyweights. He started leveling defamatory accusations against Petitioner/First Informant Radheshyam Mopalwar. He made several complaints against Petitioner/First Informant Radheshyam Mopalwar to various agencies such as Central Bureau of Investigation, Enforcement Directorate, Income Tax Authorities, Anti Corruption Bureau and State Government etc. This, according to the prosecution, was in order to extort hefty amount of money from Petitioner/First Informant Radheshyam Mopalwar.

- (e) As alleged by the prosecution, on 23rd October 2017, through one of the acquaintance named Mishra, there was meeting between Petitioner/First Informant Radheshyam Mopalwar with respondent no.2 Satish Mangle and

respondent no.3 Shraddha Mangle and others, whereat, a demand of Rs.10 crore was made to the Petitioner/First Informant Radheshyam Mopalwar by threatening that Respondent No.2/Accused no.1 Satish Mangle is having several audio clips which are containing material that would defame Petitioner/First Informant Radheshyam Mopalwar as well as his political bosses. On the very same day, at about 12 noon, again there was meeting at Shangrila Resort where the demand for Rs.10 crore was reiterated by the accused persons with a threat to publish the audio clips containing incriminating material against the Petitioner/First Informant Radheshyam Mopalwar. Then on 31st October 2017 again there was a meeting at J.W.Marriott Hotel between Petitioner/First Informant Radheshyam Mopalwar and Respondent No.2/Accused no.1 Satish Mangle, Respondent No.3/Accused no.2 Shraddha Mangle and others. Demand of Rs.10 crore was again made by them from Petitioner/First Informant Radheshyam Mopalwar and the Petitioner/First Informant Radheshyam Mopalwar got the conversation

recorded. Accused persons then decided to accept the amount of Rs.1 crore from Petitioner/First Informant Radheshyam Mopalwar on 2nd November 2017.

- (f) Petitioner/First Informant Radheshyam Mopalwar then reported the matter to the Anti Extortion Cell of Thane. Necessary action for laying trap was taken by summoning panch witnesses. The trap came to be laid and Respondent No.2/Accused no.1 Satish Mangle came to be apprehended red handed while accepting the amount of extortion at his own house. This is how the crime in question came to be registered, investigated and made subject matter of the trial before the learned Special Judge at Thane.

10 During the course of arguments, the learned counsel for respondent nos.2 to 4 has tendered copy of order dated 6th September 2018 passed by the Hon'ble Supreme Court in Criminal Appeal No.1130 of 2018 (petition for Special Leave to appeal (Crl.) No.6104 of 2018) arising out of judgment and order dated

29th June 2018 passed in Writ Petition No.2721 of 2018. The learned counsel for respondent nos.2 to 4 has fairly stated that they have no objection for conducting the trial of the special Case by Special Judge Shri. V.S.Padalkar, under the MCOC Act at Mumbai. I have perused the said order. The Hon'ble Apex Court was pleased to give following directions in Criminal Appeal No.1130 of 2018 (petition for Special Leave to appeal (Crl.) No.6104 of 2018) :

“7 This appeal is accordingly allowed with the following directions:

(i) Special Case bearing No.1 of 2018 pending before the Special Court under the MCOC Act at Thane (presided over by the Special Judge, S.B. Bahalkar, District Judge-4 and Additional Sessions Judge, Thane) is transferred to the senior most Judge, Mr. V.S. Padalkar, under the MCOCA at Mumbai.;

(ii) The State of Maharashtra shall ensure issuance of notification within a period of one week from today in this regard, vesting the power upon the

senior most Judge under the MCOCA at Mumbai to try Special Case bearing No.1 of 2018.;

(iii) The senior most Judge under the MCOCA, Mumbai, shall hear the bail application in Special Case bearing No.1 of 2018 expeditiously in accordance with law preferably within one week after the issuance of the notification and dispose of the same within a period of four weeks thereafter.”

11 It is, thus, clear that trial of Special Case bearing no.1 of 2018 pending before the Special court under the MCOC Act at Thane (now renumbered as MCOC Special Case No.18 of 2018) came to be transferred to Shri. V.S.Padalkar, Special Judge under the MCOC Act, Mumbai, by the Hon'ble Apex Court. In the said case, as submitted by the parties, Charge has already been framed and the case is fixed for recording of evidence. On this backdrop, it is seen from the order dated 20th July 2019 passed by the learned Special Judge under the MCOC Act, which is at page 275 of the paper book, that trial of only two cases is pending before the said Special court presided over by Shri. V.S.Padalkar,

Additional Sessions Judge. One of those two cases is the MCOC Special Case No.18 of 2018 which is the subject matter of the present petition. The another case is Malegaon Bomb Blast case 2008. Thus, the Special court at Mumbai is having only two trials on its file, one of which is the case involved in the present petition i.e. MCOC Special Case No.18 of 2018 (old no.1 of 2018). No doubt, the learned Special Judge in the order dated 20th July 2019 has recorded dissatisfaction over the manner in which the trial is being proceeded because of acts such as appointing of new advocates by the parties but no overbearing importance can be given to this aspect. The learned trial court has also opined that the accused persons are prolonging the matter on one or the other pretext by seeking adjournment. These observations seem to be due to the fact that the learned Special Judge is not having enough judicial work to keep him occupied. In this fact situation, trial of the case in hand needs to be expedited keeping in mind the fact that accused persons and particularly accused nos.1 and 2 are undertrial prisoners since 2017.

12 Be that as it may, the Charge in the MCOC Special Case No.18 of 2018 (old no.1 of 2018) is already framed and as the trial is ripe for hearing, it needs to be decided expeditiously, considering the fact that only two cases are on the file of the learned Special court. It is apposite to note that as reported accused nos.1 and 2 are behind bars from November 2017, it will be in the interest of these accused to expedite the trial. Interest of the petitioner/ First Informant is also protected if the trial is expedited and the order dated 20th July 2019 passed by the learned Special Court makes it clear that the learned trial court is also making efforts in this direction. Moreover, the Hon'ble Apex Court has observed in the matter of Krishnan and Another (supra) that undue prolonging of the trial results in witness being threatened or won over by promise or inducement. This contingency can also be eliminated by directing time bound disposal of the trial.

13 It needs to be noted that it is expected of the learned

trial court to grant fair opportunity to the accused persons to defend themselves as per provisions of relevant law. However, the parties shall not take unnecessary adjournments in the trial and the learned trial court should take care to supervise proceeding of the trial in order to conduct the trial on day to day basis as per mandate of Section 309 of the Cr.P.C.

14 Thus, in the interest of all parties and particularly keeping in mind the fact that only two cases are pending on the file of the learned Special Judge, the trial needs to be expedited. Considering the nature of offence and quantum of evidence which is required to be adduced in the matter, trial can be finished well within six weeks time, and particularly so, because of pendency of only two matters before the learned trial court. The learned trial court is expected to adhere to the relevant provisions of the Cr.P.C. including that of Section 309 of the Cr.P.C. for speedy disposal of the trial. As such, the following order :

ORDER

- (i) The petition is allowed with a direction to the learned Special Judge, Court Room No.26, City Civil and Sessions Court, Greater Bombay, Mumbai, to dispose off the trial of MCOC Special Case No.18 of 2018 (old no.1 of 2018) expeditiously, by conducting it on day to day basis, and in any case, on or before 15th February 2020.
- (ii) All parties are directed to co-operate the learned trial court in expeditious disposal of the trial in the given time frame.
- (iii) Rule is made absolute in above terms.
- (iv) Parties to act on authenticated copy of this order.

(A. M. BADAR, J.)