

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

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.1421 OF 2018**

**SHRINIWAS @ SHINU GANESH CHINAYYA )  
@ PILLAY )...APPELLANT**

**V/s.**

**THE STATE OF MAHARASHTRA )...RESPONDENT**

Mr.Abhishek Yende, Advocate for the Appellant.

Mr.V.B.KondeDeshmukh, APP for the Respondent - State.

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

**DATE: RESERVED ON 15<sup>th</sup> JULY 2019  
PRONOUNCED ON 25<sup>th</sup> JULY 2019**

**JUDGMENT : (PER : A.M.BADAR, J.)**

1           By this appeal under Section 12 of the Maharashtra Control of Organized Crimes Act, 1999 (hereinafter referred to as the MCOC Act for the sake of brevity) the appellant/accused no.5 is challenging the order dated 19<sup>th</sup> July 2018 passed below Exhibit 14 in MCOC Special Case No.1 of 2017 by the learned Special

Judge under the MCOC Act, Pune, thereby rejecting his claim for discharge from offences punishable under Sections 364, 395, 397, 427, 506 of the Indian Penal Code as well as under Section 4(25) of the Indian Arms Act, under Sections 37(1) and 135 of the Maharashtra Police Act so also under Sections 3(1)(ii), 3(2) and 3(4) of the MCOC Act.

2           Heard the learned counsel appearing for the appellant/accused no.5. He argued that the appellant/accused no.5 is a young person of 19 years of age and by drawing our attention to the chart filed along with the charge-sheet by the prosecuting agency, it is argued that not a single offence was registered against the appellant/accused no.5 prior to registration of the crime in question. It is argued that the appellant/accused no.5 has no criminal antecedents and the crime in question is the only crime registered against him. With this, the learned counsel argued that the appellant/accused no.5 cannot be prosecuted for the offence punishable under Section 3 of the MCOC Act as there is no evidence to show his involvement in continuing unlawful

activities and filing of more than one charge-sheet against him. The learned counsel for the appellant/accused no.5 placed reliance on judgment of the Honourable Apex Court in the matter of Mahipal Singh vs. Central Bureau of Investigation and Another<sup>1</sup>.

3           The learned APP opposed the appeal and supported the impugned order rejecting application for discharge moved by the appellant/accused no.5.

4           We have carefully considered the submissions so advanced and also perused the record made available.

5           The crime in question came to be registered on the basis of the First Information Report (FIR) lodged by Nitesh @ Tinku Vinod Das, who happens to be the victim of the crime in question. According to the prosecution case, as reflected from the charge-sheet, the First Informant is owner of a garage named as “Das Garage” which is at the ground floor of the building where

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1   (2014) 11 Supreme Court Cases 282

he used to reside. The First Informant has categorically reported to the police that at about 10.30 p.m. of 21<sup>st</sup> July 2016, he along with his brother Pritesh @ Prabhu were standing in front of their garage. At that time, accused persons including appellant/accused no.5 Shriniwas @ Shinu Pillay came there. They abducted Pritesh @ Prabhu and while leaving that place, they threatened and warned First Informant Nitesh @ Tinku Das that if he wanted his brother unharmed, he should bring money, or else, he should forget his brother. With these utterances, the gang of accused persons took Pritesh @ Prabhu with them inside the locality. First Informant Nitesh @ Tinku Das followed them. Near the board of Ganesh Mitra Mandal, accused persons including the appellant/accused no.5 took out *koytas* and asked the First Informant to pay ransom. When First Informant Nitesh @ Tinku Das informed them that he had not brought money, accused persons including appellant/accused no.5 Shriniwas @ Shinu Pillay, assaulted First Informant Nitesh @ Tinku Das as well as his brother Pritesh @ Prabhu by *koytas* – a sharp edged weapon. They were also assaulted by means of kicks and fist blows. Co-

accused Babu Pillay snatched the gold chain from neck of First Informant Nitesh @ Tinku Das. The gang of accused persons, apart from assaulting the First Informant and his brother, had also assaulted two women who were witnessing the incident. They ransacked the vehicles in the locality. First Informant Nitesh @ Tinku Das further disclosed to the police that appellant/accused no.5 Shriniwas @ Shinu Pillay along with co-accused used to regularly collect money from the residents as well as the shopkeepers by wielding weapons and threatening them. He categorically stated that by threatening the First Informant, the appellant/accused no.5 had taken amount of Rs.500/- to Rs.1,000/- on a number of occasions from his garage.

6 Papers of investigation revealed that First Informant Nitesh @ Tinku Das and his brother Pritesh @ Prabhu had sustained bleeding injuries because of assault on them by means of *koytas* by accused persons including the appellant/accused no.5. Similarly, Geeta Jadiya @ Sonar and her daughter Deepika Jadiya @ Sonar were also injured in the incident. Property of the

residents such as two wheelers and rickshaws were damaged when the accused persons were wielding reign of terror in the locality. Gold chain of the First Informant was also robbed in the incident by the accused persons.

7           During the course of investigation, the Investigator has collected Injury Certificates reflecting severe injuries sustained by the First Informant Nitesh @ Tinku Das, his brother Pritesh @ Prabhu and witnesses Geeta Jadiya @ Sonar and Deepika Jadiya @ Sonar.

8           Statement of injured witnesses came to be recorded by the prosecution during the course of investigation. Similarly, statement of of eye witnesses are also recorded. Those are showing complicity of the appellant/accused no.5 in the crime in question.

9           So far as the offence under the MCOC Act is concerned, requirement of filing of more than one charge-sheet is

qua the unlawful activities of the organized crime syndicate and not against the individual member thereof. What is contemplated under Section 2(1)(d) of the MCOC Act is that activities prohibited by law, for the time being in force, have been undertaken either singly or jointly, as a member of the organized crime syndicate and in respect of which more than one charge-sheets have been filed. Stress is on the unlawful activities committed by the organised crime syndicate. In the case in hand, statement of the First Informant itself goes to show that the appellant/accused no.5 was regularly terrorising the shopkeepers and other residents in the locality on the point of sharp edged weapons and used to collect *hafta* of Rs.500/- to Rs.1,000/- from them continuously. In this view of the matter, judgment in the matter of **Mahipal Singh (supra)** is of no assistance to the appellant/accused no.5.

10           Considering the material collected by the prosecuting agency and keeping in mind the fact that provisions of the MCOC Act were invoked after seeking due approval from the competent

officer and the charge-sheet was filed after obtaining due sanction, it cannot be said that there is no sufficient ground for proceeding against the appellant/accused no.5. No infirmity, as such, can be found in the impugned order rejecting the application for discharge moved by the appellant/accused no.5. The appeal is devoid of merits, and therefore, the order :

**ORDER**

The appeal is dismissed.

(A. M. BADAR, J.)

(INDRAJIT MAHANTY, J.)