IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 184 OF 2015

1. Pundlik s/o Ukla Pawar
   Age: 27 years, Occu.: Labour,
   R/o Chikala, Tq. Mudkhed,
   Dist. Nanded
   At present Bamni Tanda,
   Mandal Kudla, Dist. Adilabad

2. Dashrath s/o Ukla Pawar
   Age: 25 years, Occu.: Labour
   R/o Chikala, Tq. Mudkhed,
   Dist. Nanded
   At present Bamni Tanda,
   Mandal Kudla, Dist. Adilabad

3. Ukla s/o Fakira Pawar
   Age: 55 years, Occu.: Labour,
   R/o Chikala, Tq. Mudkhed,
   Dist. Nanded
   At present Bamni Tanda,
   Mandal Kudla, Dist. Adilabad ...APPELLANTS

VERSUS

State of Maharashtra ...RESPONDENT

WITH
CRIMINAL APPEAL NO. 186 OF 2015

1. Teja s/o Pandu Rathod
   Age: 45 years, Occu.: Labour,
   R/o Nanded Road, Tamsa,
   Tq. Hadgaon, Dist. Nanded

2. Shankar s/o Pandurang Rathod
   Age: 25 years, Occu.: Labour,

R/o Nanded Road, Tamsa,
Tq. Hadgaon, Dist. Nanded ...APPELLANTS

VERSUS

State of Maharashtra ...RESPONDENT

WITH
CRIMINAL APPEAL NO. 187 OF 2015

1. Putkulya s/o Rajeshri Chavan
   Age: 45 years, Occu.: Labour,
   R/o Sonari, Tq. Himayat Nagar,
   Dist. Nanded

2. Shivaji s/o Rajashri Chavan
   Age: 40 years, Occu.: Agri.,
   R/o Sonari, Tq. Himayat Nagar,
   Dist. Nanded

3. Gabbarsing @ Gabrya @ Nilesh
   s/o Sitaram Rathod
   Age: 40 years, Occu.: Labour,
   R/o Pardi, Tq. Himayat Nagar,
   Dist. Nanded ...APPELLANTS

VERSUS

State of Maharashtra ...RESPONDENT

WITH
CRIMINAL APPEAL NO. 188 OF 2015

1. Ramrao s/o Topa Pawar
   Age: 45 years, Occu.: Labour,
   R/o Chikala, Tq. Mukhed,
   Dist. Nanded

2. Raju s/o Mariba Gaikwad @
   Vishwanath Rama Vinkare
   Age: 40 years, Occu.: Labour,

R/o Chalgani, Tq. Umerkhed,
Dist. Yevatmal,
at present r/o Mukhed, Dist. Nanded ...APPELLANTS

VERSUS

State of Maharashtra ...RESPONDENT

Mr. Nilesh S. Ghanekar, Advocate for appellants
Mr. M.N. Nerlikar, A.P.P. for respondent - State

CORAM : R.G. AVACHAT, J.
DATE : 14th JULY, 2020

ORAL JUDGMENT :-

These appeals are directed against the judgment and order dated 21st January, 2015 passed by the learned Special Judge of a Court constituted under the Maharashtra Control of Organised Crime Act, 1999 ('M.C.O.C. Act') in Special Case No. 1 of 2010. By the impugned judgment and order, the appellants in all these appeals were convicted for the offences punishable under Sections 3(1)(ii) and 3(4) of the M.C.O.C. Act and sentenced to suffer Rigorous Imprisonment ('R.I.') for a period of five years and fine of Rs.5 lakh each on each count. In default of payment of fine, the appellants have been directed to undergo R.I. for three years.

2. Heard learned Counsel for the appellants and learned A.P.P. for State. Mr. Ghanekar, learned Counsel for the appellants would submit that the

appellants have not been tried for the offence of organised crime and being members of organised crime syndicate. Evidence has been led in respect of their past criminal antecedents, as such the impugned judgment is unsustainable in law. Learned A.P.P. would, on the other hand, support the impugned judgment and order.

3. The facts giving rise to the present appeals are briefly stated as under :-

P.W.1 – Kashinath was a Police Inspector, Hadgaon Police Station, Dist. Nanded. A crime vide C.R. No. 62 of 2009 for the offences punishable under Sections 395 and 397 of the Indian Penal Code ('I.P.C.') was registered with Hadgaon Police Station. One Jijabai Kale was the first informant. Another crime vide C.R. No. 66 of 2009 came to be registered for the offences punishable under Sections 396 and 397 of the I.P.C. with the very police station on the report lodged by one Madhav Kadam. P.W. 1 – Kashinath investigated both the crimes. On completion of investigation, he filed charge-sheets against the accused Putkulya Chavan, Appellant No.1 in Criminal Appeal No. 187 of 2015 and his ten associates (appellants herein). During investigation of both the crimes, it was found that the appellants herein were members of an organised crime syndicate headed by Putkulya Chavan. Both the crimes were committed by them as members of the organised crime syndicate. A necessary proposal for invoking the provisions of M.C.O.C. Act had been placed before the Special Inspector General of Police, Nanded Region. The proposal came to be approved. Crime for the offences punishable under Sections 3(1)(ii), 3(2) and 3(4) of the M.C.O.C. Act, therefore came to be registered against the appellants. Charge-sheets, police papers pertaining to their criminal activities committed during the period of ten years before registration of C.R. Nos. 62 and 66 of 2009 were obtained. On completion of investigation, all the police papers were placed before the Additional Deputy Inspector General of Police for obtaining sanction for prosecution of the appellants for the offences punishable under M.C.O.C. Act. Additional Director General of Police (L and O) Maharashtra State, Mumbai granted sanction for the prosecution of the appellants. Charge-sheet thereafter came to be filed in the Court constituted for trial of the offences under M.C.O.C. Act. Learned Special Judge framed charge. The appellants pleaded not guilty. The prosecution examined ten witnesses, all police officials.

4. The Statement of Objects and Reasons for which M.C.O.C. Act is enacted reads as under :-

> "Organised crime has for quite some years now come up as a very serious threat to our society. It knows no national boundaries and is fueled by illegal wealth generated by contract killings, extortion, smuggling in contrabands, illegal trade in narcotics, kidnappings for

ransom, collection of protection money and money laundering, etc. the illegal wealth and black money generated by the organised crime is very huge and has serious adverse effect on our economy. It is seen that the organised criminal syndicates make a common cause with terrorist gangs and foster narco terrorism which extend beyond the national boundaries. There is a reason to believe that organised criminal gangs are operating in the State and thus, there is immediate need to curb their activities.

It is also noticed that the organized criminals make extensive use of wire and oral communications in their criminal activities. The interception of such communications to obtain evidence of the commission of crimes or to prevent their commission is an indispensable aid to law enforcement and the administration of justice.

2. The existing legal frame i.e. the penal and procedural laws and the adjudicatory system are found to be rather inadequate to curb or control the menace of organised crime. Government has, therefore, decided to enact a special law with stringent and deterrent provisions including in certain circumstances power to intercept wire, electronic or oral communication to control the menace of the organised crime."

5. Section 2 of M.C.O.C. Act defines various terms such as 'continuing unlawful activity', 'organised crime' and 'organised crime syndicate'. The terms defined under Section 2 of the M.C.O.C. Act and relevant for deciding these appeals are reproduced below :-

2(d) "continuing unlawful activity" means an activity prohibited by law for the time being in force, which is a 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 synidcate 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;

2(e) "organised crime" means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting unsurgency;

2(f) "organised crime syndicate" means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organised crime;

6. Section 3 of M.C.O.C. Act provides for punishment for organised crime. Section 3 reads thus :-

3.(1) Whoever commits an offence of organised crime shall, -
(i) if such offence has resulted in the death of any person, be punishable with death or imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees one lac;

(ii) if any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.

(2) ………

(3) ……….

(4) Any person who is a member of an organised crime syndicate shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.

(5) ……….

7. For charging a person of organised crime or being a member of organised crime syndicate, it would be necessary to prove that the persons concerned have indulged in :

(i) an activity,

(ii) which is prohibited by law,

(iii) which is a cognizable offence punishable with imprisonment for three years or more,

(iv) undertaken either singly or jointly,

(v) as a member of organised crime syndicate i.e. acting as a syndicate or a gang, or on behalf of such syndicate,

(vi) (a) in respect of similar activities (in the past) more than one charge-sheets have been filed in competent court within the preceding period of ten years,

(b) and the court has taken cognizance of such offence.

(vii) the activity is undertaken by :

(a) violence, or

(b) threat of violence, or intimidation or

(c) coercion or

(d) other unlawful means

(viii)(a) with the object of gaining pecuniary benefits or gaining undue or other advantage or himself or any other person, or

(b) with the object of promoting insurgency.

8. Close analysis of the term, "organised crime" would indicate that there has to be an activity prohibited by law for the time being in force which is a cognizable offence punishable with imprisonment of three years or more, undertaken as singly or jointly as a member of organised crime syndicate or on behalf of such syndicate, in respect of which activity more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and the Court has taken cognizance of such offence. In the present case, the witnesses have been examined only in proof of previous criminal activities. Although it appears that provisions of M.C.O.C. Act have been invoked on registration of C.R. Nos. 62 and 66 of 2009, admittedly, the charge-sheet in respect of both those crimes were filed without applying the provisions of M.C.O.C. Act. It is reported that Court of Additional Sessions Judge has tried the appellants for those crimes and the appellants have been acquitted thereof. Before the Special Court herein, no criminal activity of the appellants as is

defined as continuing unlawful activity was ever a subject of trial by the Special Court. As such, it has to be observed that the appellants have not been tried for committing an organised crime. It appears that a clear illegality has been committed in prosecuting the appellants only on the basis of their involvement in previous crimes. Since the appellants have not been tried for any continuing unlawful activity which could have been an organised crime punishable under Section 3(1)(ii) of the M.C.O.C. Act and having been committed as members of organised crime syndicate, and therefore, being liable for punishment as members of organised crime syndicate, interference with the impugned judgment and order is called for. The appeals are therefore required to be allowed setting aside the impugned judgment and order. In the result the appeals succeed. Hence, the following order :

ORDER

(I) Criminal Appeal Nos. 184, 186, 187 and 188 of 2015 are allowed.

(II) The judgment of conviction and order of sentence dated 21.01.2015 passed by learned Special Judge, M.C.O.C. Act, Aurangabad in Special Case No.1 of 2010, for the offences punishable under Sections 3(1)(ii) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999, is hereby set aside.

(III) The appellants are acquitted of the offences punishable under Sections 3(1)(ii) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999.

(IV) Appellant no.3 namely, Ukla s/o. Fakira Pawar in Criminal Appeal No.184 of 2015, who is in jail, be set at liberty forthwith, if not required in any other offence.

(V) Fine amount, if has already been paid by the appellants, be refunded to them.

(VI) Office to communicate this order to the jail authorities immediately.

(R.G. AVACHAT, J.)

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