

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2461 OF 2017

**KUMAR KRISHNA PILLAI @ KRISHNAN
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PILLAI @ KUMAR ANNA @ K.P. ... PETITIONER.**

VERSUS

THE STATE OF MAHARASHTRA ... RESPONDENTS.

Mr.Pankaj D. Kavale, Advocate for the Petitioner.

Mr.S.V.Gavand, Additional Public Prosecutor for the State.

CORAM : A. M. BADAR, J.

DATE : 21ST FEBRUARY 2020.

P.C.:

1. By this petition, the petitioner is praying for quashing and setting aside order below Exhibit 2 in Sessions Case No.739 of 2016, passed by the learned Additional Sessions Judge, Greater Mumbai. By this order dated 23.3.2017, application-Exhibit 2 preferred by the prosecution

under Section 10 of the Maharashtra Control of Organised Crime Act, 1999 (to be referred to as the 'M.C.O.C.Act' for the sake of brevity) came to be allowed and hearing of Sessions Case No.739 of 2016 came to be kept in abeyance till final disposal of Special Case Nos.18 of 2016 and 19 of 2016.

2. Heard learned counsel for the petitioner. He submits that another case was not sought to be stayed by the prosecution. In the Sessions Case, supplementary Charge-sheet was filed by the prosecution. It is further argued that because of keeping the trial in abeyance, no application for discharge or bail could be moved before the learned trial court. Therefore, the impugned order needs to be set aside.

3. Learned Additional Public Prosecutor appears for the State.

4. Section 10 of the MCOC Act reads thus;

10. Trial by Special Courts to have precedence -

The trial or any offence under this Act by a Special Court shall have precedence over the trial of any other case against the accused in any other court (not being a Special Court) and shall be concluded in preference of the trial of such other case and accordingly, the trial of such other cases shall remain in abeyance.

5. Because of pendency of trials of offences under the MCOC Act, the learned Additional Sessions Judge, has stayed the trial of Sessions Case No.739 of 2016. The Division Bench of this Court while dealing with similar challenge in **Criminal Writ Petition No.408/2009 and 409/2009, in the matter of Dashrath Bapu Shinde Versus The State of Maharashtra,** has held in paragraph 16 of the Judgment dated 28th April 2009 as under;

16. We have no hesitation in rejecting Mr.Chitnis's argument that an application

under Section 10 of the MCOCA has to be made in the Special Court. If we accept Mr.Chitnis's argument, it will lead to an absurd result of one coordinate court staying a case pending in another court. Surely the legislature never intended such a situation to occur. Apart from the principle based on judicial propriety that one coordinate court can not stay case pending in another coordinate court, Sections 6 and 7 of the MCOCA make this position very clear. Section 6 states that notwithstanding anything contained in the Code, every offence punishable under MCOCA shall be triable only by the Special Court within whose local jurisdiction it was committed or as the case may be, by the Special Court constituted for trying such offence under sub-section (1) of Section 5, Section 7 talks about power of Special Courts with respect to other offences. It states that when trying any offence punishable under the MCOCA, the Special Court may also try any other offence with which the accused may, under the Code, be charged at the same trial,

if the offence, is connected with such other offence. Since this enabling provision is not invoked in this case, the cases pending before the Sessions Court will have to be kept in abeyance in view of Section 10 of the MCOCA and as such the application under Section 10 of the MCOCA could not have been made in the Special Court.

6. In this view of the matter, the petition is devoid of merits and therefore, is rejected.

(A. M. BADAR, J.)