IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 600 OF 2021

Mr. Raymond Antwi,
Aged : 23, Occ. Student,
Resident of Ghana, Africa,
(Currently lodged at Arthur
Road Prison)

…. **APPELLANT**
(Ori. Accused No.3)

// VERSUS //

State of Maharashtra,
through A.C.P. Dongri,
Division, Mumbai.

…. **RESPONDENTS**

Shri Ajay Bhise a/w Shri Mahesh Mule, Advocate for Appellant.
Mrs. Aruna S. Pai, Chief P.P. for Respondent/State.

CORAM : PRASANNA B. VARALE AND ANIL S. KILOR, JJ.

DATED : JANUARY 06, 2022

P.C.

1. By way of present appeal under Section 12 of the Maharashtra Control of Organised Crime Act, 1999 (for short 'MCOCA'), the appellant has raised a challenge to the order dated 15th February, 2021 passed below Exhibit No.26 in MCOCA Special Case No.12 of 2019 by the learned Special Judge MCOCA, Mumbai by which the learned Special Judge was pleased to reject the application filed by the appellant under Section 11 of the MCOCA seeking discharge from the offences punishable under the provisions of MCOCA.

2. It is the case of the prosecution that on 23rd February, 2019 at 4.30 am the team of police officer attached to Dongri Police Station who was patrolling below Sandhurst Road Railway Station, near Wadi Bander noticed three persons of the age group of 22 to 30 years loitering there suspiciously. The team of officers observed their activities. They appeared to be foreign Nationalists. Those three suspicious people, having felt the police presence ran toward the railway tracks. The police officer chased and apprehended them at some distance. These persons tried to retaliate but were overcome by the police officer by using appropriate force.

3. After the preliminary inquiry, it was revealed that the apprehended persons were selling drugs, hence all the necessary help was sought, two panch witnesses were called and search and seizure from the accused was conducted. The search was conducted of all the three apprehended persons, the first person who introduced himself was Okpala Chigbo Benedict resident of Nigeria was found in possession of 55 grams of Mephedrone (M.D.). The second person who introduced himself was Ture Musa resident of Ivory Coast was found in the possession of 61 grams of Mephedrone (M.D). The third person who introduced himself was Raymond Antwi (the appellant) resident of Ghana, who was found in possession of 57 grams of Mephedron (M.D). The material was sealed and seized and the all three person were taken into custody.

4. Since these accused were found in the possession of Mephedrone (M.D) which is a banned drug under the provisions of Narcotic Drugs Psychotropic Substance Act, 1985 (for short NDPS Act) F.I.R. came to be registered at the instance of P.S.I. Prakash Sitaram Dinkar vide Special L.A.C. No. 25/2019 at Dongri Police Station, Mumbai for the offences punishable under Section 8(c), 22(c), 29 of the

Narcotic Drugs Psychotropic Substance Act, 1985, Section 3(2)A and 14 of Foreigners Act, against all three persons and subsequently shown to be arrested.

5. It is alleged that during the further investigation, it was revealed that the arrested accused were working for habitual drug peddler Ique Chickweni Emanual (Original Accused No.4) and he is the head of the syndicate and also providing them Drugs for sale. It was also revealed that original accused no.4 was also providing the logistic support to them. The Original Accused No.4 was apprehended on 27th February, 2019 below Wadi Bandar bridge Near Sulabh Souchalaya, Dongri. In his personal search, he was found in possession of transparent plastic bag containing 58 grams of Mephedrone (M.D). After due verification, original Accused No.4 was shown arrested in Special L.A.C. No. 25.2019 registered with Dongri Police Station, Mumbai.

6. During the investigation it was revealed that the arrested original Accused No.4 has previously arrested and charge sheeted in two cases under NDPS Act and other acts. It was also revealed during the investigation that he has formed his gang to carry out illegal drug

peddling activities for pecuniary gains, hence a proposal was send for prior approval under Section 23(1)(a) of MCOCA. Accordingly, Section 3(1)(ii), 3(2), 3(4) of the MCOCA were applied on 10/04/2019. As per the provision of section 23(2) of the MCOCA the prosecution has obtained sanction on 19th June, 2019.

7. The arrested accused were produced before the Special MCOCA Court, Mumbai from time to time and after sufficient police custody, they were remanded to judicial custody. According to the prosecution, the arrested accused are members of the Organized Crime Syndicate and committed organized crime.

8. It is alleged that the said organized crime syndicate is headed by original accused no.4 i.e. Ique Chickweni Emanual @ Stanley @ Ekwe Chukwuenyne Emmanuel. On the strength of the above complaint investigation was carried out by the investigating agency and chargesheet came to be filed before the learned Special MCOCA Court, Mumbai.

9. Thereupon, the appellant filed an application Exh.26 for discharge which came to be rejected vide impugned order dated 15/02/2021, which is the subject matter of this appeal.

10. We have heard the learned counsel for the respective parties.

11. The learned counsel for the appellant submits that the learned Special Judge has committed error in dismissing the application Exh.26 seeking to transfer the case to regular court under Section 11 of the MCOC Act read with Section 227 of Code of Criminal Procedure (hereinafter referred to as "Cr.P.C.")

12. It is submitted that the appellant is not concerned with any unlawful activities nor in any manner associated with any of the persons connected with unlawful activities. It is submitted that he is not a member of any gang or organization or crime syndicate, therefore, there is no question of he being a member of any organized crime syndicate.

13. The learned counsel for the appellant submits that there is no material available with the prosecution to show that the appellant is member of any organized crime syndicate, more particularly, as alleged as a member of organized crime syndicate operated by the accused No.4. It is submitted that unless the prosecution discharges its initial burden to show that the accused No.4 is operating any organized crime syndicate

and the appellant is a member of such syndicate, the provisions of MCOCA cannot be invoked. For this purpose he has drawn attention of this Court to the definition of “Organized Crime Syndicate” and “Continuing Unlawful Activity”. The learned counsel for the appellant in support of this contention, has relied upon the judgment of the Hon’ble Supreme Court in the case of *Prasad Shrikant Purohit vs. State of Maharashtra*, reported in **(2015) 7 SCC 440** and the judgments of Coordinate Bench of this Court in the case of *Govind Sakharam Ubhe vs. State of Maharashtra*, reported in **2009 SCC Online Bom. 770** and in the case of Sachin Bansilal Ghaiwal vs. State of Maharashtra, reported in **2014 SCC Online Bom. 725**.

14. It is further submitted that from the material placed on record by the prosecution it can be seen that in the previous two charge-sheets which are relied by the prosecution, the said charge-sheets are not of any Organized Crime Syndicate but are committed in the independent capacity. He, therefore, submits that invocation of provisions of the MCOCA in this case against the appellant is illegal and not sustainable in the eyes of law.

15. It is submitted that in order to make an activity to be continuing unlawful one, it must disclose filing of minimum two charge-sheets and Court has taken cognizance of such offence in relation to the activity prohibited by law in force and of the nature specified in Section 2(d) during the period of preceding 10 years. He, therefore, submits that lodging of two charge-sheets in relation to the acts which are already declared under the law then in force as offences of the nature specified under Section 2(d) of the Act during the preceding period of 10 years is one of the requisites for the offence of Organized Crime under the Act.

16. The learned counsel for the appellant submits that as no case is made out against the appellant he deserves to be discharged. It is submitted that the learned Special Judge, MCOCA has committed error in rejecting the application preferred by the appellant for discharge.

17. On the other hand, Mrs. Aruna Pai, Chief Public Prosecutor for the respondent/State strenuously opposed the application and submits that during the investigation it was revealed that the co-accused Ique Chickweni Emanual @ Stanley is a habitual drug peddler and was operating a syndicate and providing the accused persons MD Drugs for selling it to drug addicts and also providing them other logistic support.

18. It is further submitted that during the course of investigation statements of various witnesses were recorded by the Investigating Officer. The witnesses have supported the case of the prosecution and disclosed the involvement of the appellant and other accused persons. It is submitted that the witnesses have stated that they used to purchase Cocaine / MD from the accused persons including the present appellant,

19. The learned Chief P.P. submits that during the investigation it was revealed that Ique Chickwani Emariual is a gang leader and has formed his gang to carryout illegal drug peddling activities for pecuniary gain and he is continuously indulging in unlawful activities individually and organized crime syndicate headed by him. It is submitted that more than one charge sheet are filed against the aforesaid gang leader during the preceding period of 10 years for offences punishable with imprisonment for more than 3 years and competent Courts have taken cognizance of the same.

20. The learned Chief P.P. further submits that the competent authority after perusal of the proposal and papers thereof had considered

that the provisions of Section 3(1)(ii), 3(2) and 3(4) of the MCOCA is applicable to accused persons, including the appellant, therefore, accorded necessary approval under Section 23(1)(a) of the MCOCA, 1998 on 9th April 2019 directing thereby to the Assistant Commissioner of Police Dongri Division, Mumbai investigating the said offence and after completion of the investigation the Commissioner of Police, Mumbai had given requisite sanction under Section 26(2) of the MOCOA vide order dated 19/06/2019 for filing charge sheet against Okpala Chgbo Benedict @ Benedith, Turre Musa, Raymond Antwi (i.e. the present Appellant/ accused) and Ique Chickweni Emanual @ Stanley @ Ekwe Chukwunenyne Emmanuel.

21. It is submitted that accordingly the chargesheet was filed on 21/06/2019 against Okpala Dhgbo Benedict @ Benedith, Turre Musa, Raymond Antwi (present appellant) and Ique Chikweni Emanual @ Stanley @ Ekwe Chukwunenyne Emmanuel.

22. The learned Chief P.P. further states that the definition of "organized crime syndicate" given in Section 2(f) of the Act shows that it is not necessary that all the members of the crime syndicate need to get

involved in all the crimes which is the activity of syndicate. In support of this contention she has placed reliance on the case of *Govind Sakharam Ubhe Vs. State of Maharashtra* reported in **2009 All MR Criminal 1903**. It is submitted that the members of the crime syndicate may act singly or collectively in different offences and what is required to be considered is whether there was organized crime syndicate and the person who is before the court had acted as either singly or collectively as a member of that syndicate.

23. The learned Chief P.P. further submits that the requirement of more than one chargesheet is qua the unlawful activities of the organized crime syndicate and not qua the individual member thereof.

24. It is submitted that C.D.R. extracted from the mobile phone of the present appellant accused shows that he was in company with co-accused Turree Musa. Turee Mussa's photo, Indian visa, passport etc are found in the mobile phone. Accordingly, panchanama was prepared and statement of panch witnesses also recorded. C.D.R. of the mobile of the present appellant/accused was also obtained.

25. It is submitted that appellant/accused was in contact with the organized crime syndicate leader viz accused Ique Emanuel @ Stanley through co-accused and staying together with other co-accused. The witnesses have stated that the present appellant was seen in the company of co-accused at Nalasopara.

26. It is submitted that during course of investigation, it was revealed that the present appellant visited India on medical visa for a period of 3 months from 2nd January, 2019 to 31st March, 2019. The appellant was committed this offence on 23rd February, 2019.

27. It is submitted that the appellant has not taken any medical treatment for which he obtained visa to India. Therefore, offence under Foreigners Act is committed.

28. To consider the rival contentions of the parties, we have carefully perused the record with the help of learned counsel for the respective parties.

29. The Hon'ble Supreme Court of in the case of *Prasad Shrikant Purohit v. State of Maharashtra*, reported in **2015(7) SCC 440** has

considered the definition of “Continuing Unlawful Activity”, “Organized Crime Syndicate” and “Organized Crime” and observed thus:

> “*42. The definition of '”continuing unlawful activity” under Section 2(1)(d) mainly refers to an activity prohibited by law. The said activity should be a cognizable offence, punishable with imprisonment of three years or more. The commission of such offence should have been undertaken either by an individual singly or by joining with others either as a member of an “organized crime syndicate” or even if as an individual or by joining hands with others even if not as a member of a “organized crime syndicate” such commission of an offence should have been on behalf of such syndicate. It further states that in order to come within the definition of “continuing unlawful activity” there should have been more than one charge-sheet filed before a competent Court within the preceding period of 10 years and that the said Court should have taken cognizance of such offence.*
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> *43. Before getting into the nuances of the said definition of “continuing unlawful activity”, it will be worthwhile to get a broad idea of the definition of “organized crime” under Section 2(1)(e) and “organized crime syndicate” under Section 2(1)(f). An “organized crime” should be any “continuing unlawful activity” either by an individual singly or jointly, either as a member of an “organized crime syndicate” or on behalf of such syndicate. The main ingredient of the said definition is that such “continuing unlawful activity” should have been indulged in by use of violence or threat of violence or intimidation or coercion or other unlawful means. Further such violence and other activity should have been indulged in with an objective of gaining pecuniary benefits or gaining undue economic or other advantage for himself or for any other person or for promoting insurgency. Therefore, an “organized crime” by nature of violent action indulged in by an individual singly or jointly either as a member of an “organized crime syndicate” or on behalf of such syndicate should have been*

either with an object for making pecuniary gains or undue economic or other advantage or for promoting insurgency. If the object was for making pecuniary gains it can be either for himself or for any other person. But we notice for promoting insurgency, there is no such requirement of any personal interest or the interest of any other person or body. The mere indulgence in a violent activity etc. either for pecuniary gain or other advantage or for promoting insurgency as an individual, either singly or jointly as a member of "organized crime syndicate" or on behalf of a such syndicate would be sufficient for bringing the said activity within the four corners of the definition of "organized crime".

44. An "organized crime syndicate" is a group of two or more persons who by acting singly or collectively as a syndicate or gang indulge in activities of "organized crime".

45. By conspectus reading of the above three definitions, if in the preceding 10 years from the date of third continuing unlawful activity if more than one charge-sheet has been filed before a competent Court which had taken cognizance of such offence which would result in imposition of a punishment of three years or more, undertaken by a person individually or jointly either as a member of an "organized crime syndicate" or on its behalf, such crime if falls within the definition of "organized crime", the invocation of MCOCA would be the resultant position.

....

60. One of the contentions raised and which was countered by the respondents was that such two earlier offences should also satisfy the other requirements stipulated under MCOCA, namely, as a member of an organized crime syndicate or on behalf of an organized crime syndicate either singly or jointly. A strict interpretation of Section 2(1)(d) would definitely mean the fulfillment of such requirement since the definition specifically reads to the effect 'undertaken either singly or jointly as a member of an organized crime syndicate or on behalf of such syndicate'. Therefore, even if the earlier offences were not initiated under the provisions of

MCOCA such initiations should have been capable of being brought within the provisions of MCOCA, namely, as part of an activity of an organized crime syndicate either by its own members either singly or jointly or though not as a member but such participation should have been on behalf of an "organized crime syndicate". As far as filing of the charge-sheet is concerned what all it refers to is such filing before a Competent Court and that Court should have taken cognizance of such offence.

61. A minute reference to the said Section 2(1)(d), therefore, shows that in the event of the fulfillment of the rest of the requirements, namely, the nature of offence providing for punishment of three years and more, the involvement of the offender as required under the said definition, when it comes to the question of filing of the charge-sheet, the requirement of such filing should be before a competent court within a period preceding 10 years and that such court has taken cognizance of such offence. Significantly, when it comes to the question of fulfillment of the requirement of cognizance what is prescribed is the cognizance of such offence and not the offender. As far as the court is concerned, here again the specific reference used is "competent court" and not "Sessions Court". Therefore, keeping aside the rest of the requirements to be fulfilled under Section 2(1)(d) for the present, when we consider the requirement of filing of the charge-sheet before the Competent Court and such Court taking cognizance of such offence, it can be stated without any scope of controversy that two earlier cases which would attract a punishment of more than three years and prohibited by law, undertaken singly or jointly as a member of an organized crime syndicate or on its behalf, if more than one charge-sheet is filed in respect of such offence before the Competent Court and the said Court had taken cognizance of such offence, the definition of "continuing unlawful activity" would be satisfied."

30. In the case at hand, on considering the rival contentions it can be seen that the whole controversy revolves around the issue whether the words "more than one charge-sheet" referred to the unlawful activities of an organized crime syndicate or to the individual member?

31. The said issue is no more res-integra. The Division Bench of this Court in a case of *Govindrao Sakharam Ubhe ..vs.. State of Maharashtra*, reported in **2009 SCC Online Bom. 770**, this Court has held thus :

> "*35. It is now necessary to go to the definition of `continuing unlawful activity'. Section 2(1)(d) defines `continuing unlawful activity' to mean 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 organized crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheet have been filed before a competent court within the preceding ten years and that court have taken cognizance of such offence. Thus, for an activity to be a `continuing unlawful activity' -*
> *a) the activity must be prohibited by law;*
> *b) it must be a cognizable offence punishable with imprisonment of three years or more;*
> *c) it must be undertaken singly or jointly;*
> *d) it must be undertaken as a member of an organized crime syndicate or on behalf of such syndicate*
> *e) in respect of which more than one charge-sheet have been filed before a competent court.*

36. The words `in respect of which more than one charge-sheet have been filed' cannot go with the words `a member of a crime syndicate' because in that case, these words would have read as `in respect of whom more than one charge-sheet have been filed'.

37. But even otherwise, if all provisions are read together we reach the same conclusion. Section 2(1)(d) which defines `continuing unlawful activity' sets down a period of 10 years within which more than one charge-sheet have to be filed. The members of the crime syndicate operate either singly or jointly in commission of organized crime. They operate in different modules. A person may be a part of the module which jointly undertakes an organized crime or he may singly as a member of the organized crime syndicate or on behalf of such syndicate undertake an organized crime. In both the situations, the MCOCA can be applied. It is the membership of organized crime syndicate which makes a person liable under the MCOCA. This is evident from section 3(4) of the MCOCA which states that any person who is a member of an organized crime syndicate shall be punished 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 fine, subject to a minimum of fine of Rs.5 lakhs. The charge under the MCOCA ropes in a person who as a member of the organized crime syndicate commits organized crime i.e. acts of extortion by giving threats, etc. to gain economic advantage or supremacy, as a member of the crime syndicate singly or jointly. Charge is in respect of unlawful activities of the organized crime syndicate. Therefore, if within a period of preceding ten years, one charge-sheet has been filed in respect of organized crime committed by the members of a particular crime syndicate, the said charge-sheet can be taken against a member of the said crime syndicate for the purpose of application of the MCOCA against him even if he is involved in one case. The organized crime committed by him will be a part of the continuing unlawful activity of *the organized crime syndicate. What is important is the nexus or the link of the person with organized crime syndicate. The link with the `organized crime syndicate' is the crux of the term `continuing unlawful activity'. If this link is not established, that person cannot be roped in.*

38. In order to substantiate our construction of Section 2(1)(d) of the MCOCA, we will take hypothetical example of accused 1(A), accused 2(B), accused 3(C) and accused 4(D), who are members of the organized crime syndicate and who have committed crimes within preceding ten years. Insofar as accused A is concerned, it is alleged that he has committed an offence resulting in the death of any person which is punishable with death or imprisonment for life as described in Section 3(1) of the MCOCA. Accordingly, one charge-sheet is filed against him. Insofar as accused B is concerned, it is alleged that he has committed an offence resulting in the death of any person which is punishable with death or imprisonment for life as described in Section 3(2) of the MCOCA. Accordingly, one charge-sheet is filed against him. Likewise, insofar as accused C is concerned, it is alleged that he has committed an offence resulting in the death of any person which is punishable with death or imprisonment for life as described in Section 3(3) of the MCOCA. Accordingly, one charge-sheet is filed against him. Finally, it is alleged that accused D is a member of organized crime syndicate as described in Section 3(4) of the MCOCA and as such has indulged in organized crime and against whom also one charge-sheet is filed.

39. The submission on behalf of the appellant is that even though all the four accused namely, A, B, C and D may be members of the organized crime syndicate since against each of the accused not more than one charge-sheet is filed, it cannot be held that they are engaged in continuing unlawful activity as contemplated under Section 2(1)(d) of the MCOCA. Apart from the reasons which we have given hereinabove as to why such a construction is not possible, having regard to the object with which the MCOCA was enacted, namely to make *special provisions for prevention and control of organized crime syndicate and for coping with criminal activity by organized crime syndicate, in our opinion, Section 2(1)(d) cannot be so construed. Such a construction will defeat the object of the MCOCA. What is contemplated under Section 2(1)(d) of the MCOCA is that activities prohibited by law for the time being in force which are punishable as described therein have been undertaken either singly or jointly as a member of 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 organized crime syndicate. Requirement of one or more charge-sheet is qua the unlawful activities of the organized crime syndicate.*"

32. In the teeth of above referred well settled principles of law and as held by the Division Bench of this Court that requirement is of more than one charge-sheet qua the unlawful activities of the organized crime syndicate and not qua individual member, we revert to the facts of the present case.

33. In this case, on 23.02.2019, at 4.30 a.m. the team of the Police Personnel of Dongri Police Station, who was patrolling below the Sandhurst Railway Station, Railway tracks at Wadi Bandar noticed that three persons are suspiciously loitering there. The police apprehended them and upon inquiry it was revealed that they were drug peddlers. They introduced themselves as Okpala Chigho Benediet and Ture Musa, and Raymond Antwi (present Appellant).

34. It is submitted that during further investigation of the said LAC case, it was disclosed that, habitual drug peddler Ique Chickweni Emanual (accused No.4) was operating this syndicate and providing them MD drug for selling it to drug addicts and he was also providing them other logistics support.

35. It is submitted that during investigation it was revealed that the arrested accused Ique Chickweni Emanual is habitual drug peddler and previously arrested and charge-sheeted in two cases under NDPS and other Acts. The details of the same are as under :

Sr. No.	C.R. No.	Police Station	Names of Act	Present status
1.	Anti Narcotic Cell Special LAC No.171 of 2015	Anti Narcotic Cell	Under Sections 8 (c) r/w section 22 of NDPS Act,1985	NDPS Special Case No.60 of 2015 before the Learned Special Court, (NDPS), Mumbai
2.	C.R. No.79 of 2016	Dongri Police Station	Under sections 307, 353, 332, 337, 143, 147, 148, 149 of IPC r/w section 135 of Maharashtra Police At, r/w Sections 8(c), 21, 29 of NDPS Act, 1985, r/w Sections 3 and 14 of the Foreginers Act, 1946.	Special Sessions Case No.120 of 2016 before the Learned Special Sessions Court, Mumbai.

36. It was revealed that the said Gang leader – Ique Chickweni Emanual has formed his gang to carry out illegal drug peddling activities for pecuniary gain. The accused No.4 is continuously indulging in unlawful activities individually and Organized crime syndicate headed by him. More than one charge sheets have been filed against the Gang leader –accused Ique Chickweni Emanual during the preceding period of 10 years for offences punishable with imprisonment for more than three years and the Competent Courts have taken cognizance of the same.

37. From the above referred facts, it is clear that there are more than one chargesheet qua the organised crime syndicate, though it is not qua the appellant. From the CDR and the statements of witnesses *prima-facie*, it can be seen that the appellant is the member of 'organized crime syndicate'. Hence, we do not find any error committed by State in applying the provisions of the MCOCA to the appellant, in this case.

38. In the case of *Govindrao Sakharam Ubhe* (supra) while considering the principles laid down by the Supreme Court as regards the power under Section 227 of the Cr.P.C., this Court has held thus :

"25. The principles laid down by the Supreme Court in the above cases need to be summarized. It is settled law that at the stage of Section 227 of the Code, the court has power to sift the materials collected by the prosecution to find out whether there is prima facie case against the accused or not. The court has to be satisfied that there is ground for presuming that the accused has committed the offence or that there is no sufficient ground for proceeding against him. The Court's enquiry must not be directed to find out whether the case will end in conviction. However, though roving enquiry is not permissible, the court can consider whether the material collected by the prosecution if accepted as it is without being subjected to cross-examination gives rise to strong and grave suspicion for presuming that the accused has committed the offence and that unrebutted material will lead to a conviction. If at the stage of Section 227 or Section 228, the scales as to the guilt or innocence of the accused are even then the court must proceed to frame a charge. There is no question of giving benefit of doubt to the accused and discharge the accused at that stage because the scales are even. That can be done only at the conclusion of trial. If there is a strong suspicion which leads the court to think that there is a ground for presuming that the accused has committed an offence, then the court will proceed to frame the charge. But if two views are possible and the court is satisfied that the evidence gives rise to some suspicion but not grave suspicion against the accused, the court will be within its right to discharge the accused. Suspicion has to be strong and grave suspicion leading the court to presume that the accused has committed an offence. While basic infirmities and broad probabilities can be considered, the court cannot make a roving enquiry into the pros and cons of the matter and weigh the evidence as if it is conducting a trial. Probative value of the material cannot be gone into at that stage."

39. As observed herein above, there is *prima-facie* material available which, if accepted, as it is without being subjected to cross-examination, would give rise to strong and grave suspicion for presuming that the appellant has committed the offence and it will lead to a conviction. In the circumstances, the prayer of the appellant for discharge under Section 227 of the Code cannot be accepted.

40. Moreover, as there is no perversity committed by the learned Special Judge, MCOCA in rejecting the application Exh.26 vide order dated 15/02/2021, we are of the opinion that the present appeal needs to be dismissed. Accordingly, we pass the following order:

The appeal is **dismissed.**

(ANIL S. KILOR, J) (PRASANNA B. VARALE, J)

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