

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.599 OF 2022

Mr. Ramesh Jivatram Israni @ Dilip

Age : 71 years, Occ : Angadia,

Residing at : Room No.88,

Sindhu Wadi, 1st Floor, M.G. Road,

Ghatkopar, Mumbai-400 077.

.....Appellant

(Orig. accused. No.5)

Vs.

The State Of Maharashtra,

[through D.C.B. C.I.D., Anti-Extortion Cell)

....Respondent

Mr. Ashwin Thool i/by Sushant Mahadik for the Appellant.

Mr. H.J. Dedhia APP, for the Respondent-State.

**CORAM : A. S. GADKARI AND
MILIND N. JADHAV, JJ.**

DATE : 6th OCTOBER, 2022.

JUDGMENT (PER- A.S. GADKARI, J.):

1) Present Appeal under Section 12 of the Maharashtra Control of Organized Crime Act, 1999 (for short, “*the MCOC Act*”) is preferred by the Appellant (Original Accused No.5) impugning the Order dated 23rd August, 2018, below Exh-11 in MCOCA Case No.3 of 2018, rejecting his Application for discharge under Section 227 of the Code of Criminal Procedure (for short, “*Cr.P.C.*”) from the said case.

The said MCOCA Case No.3 of 2018 is culmination of investigation of DCB, CID, CR No.47 of 2017 (Original CR No.468 of 2017 registered with Kandivali Police Station) for the offences punishable under Sections 387, 120-B of the Indian Penal Code and 3 (1)(ii), 3(2), 3(4) of MCOC Act.

2) It is the prosecution case that, the Appellant (Accused No.5) aided and abetted the Organized Crime Syndicate headed by Mr. Ravi Pujari by receiving and transferring money on behalf of the said syndicate to the absconding accused Bhagwan Shobhrajmal Krushnani @ Ajay Dixit. That, the Appellant therefore is a member of said Organized Crime Syndicate.

3) Mr. Thool, learned Advocate appearing for the Appellant submitted that, the Appellant is running a business of 'Hawala' i.e. transfer of amount from one place to another place. That, it is at the request of Kamalsingh Vijaysingh Rajput @ Kamaluddin Mohammad Patel @ Raju (Accused No.4), the Appellant transferred certain amounts to Dubai which were received by the absconding accused and the Appellant has also received certain amounts from Dubai for and on behalf of Accused No.4.

That, the Appellant had no knowledge, that by transfer of the said money, Appellant was aiding or assisting the Organized Crime Syndicate of Mr. Ravi Pujari. He submitted that, the Appellant had not

abetted the said crime and therefore the definition of Section 2 (1) (a) will not attract in the present case as far as the Appellant is concerned. He vehemently submitted that, the Appellant's defence of '*knowledge*' be tested herein, in this Appeal against rejection of his Application under Section 227 of Cr.P.C. and the Appellant be given benefit of the same by discharging him from the said case. He submitted that, the Appellant is merely a "*Hawala Agent*" and nothing beyond it. He relied on a decision of the Hon'ble Supreme Court in the case of Ibrahim Musa Chauhan @ Baba Chauhan Vs. State of Maharashtra reported in MANU/SC/0266/2013 : JT2013(5)SC68 and in particular paragraph Nos.198 to 202 thereof. He therefore prayed that, the impugned Order may be set aside by allowing the present Appeal.

4) On the contrary, Mr. Dedhia, learned APP supported the impugned Order. Learned APP pointed out the relevant material against the Appellant on record. Learned APP submitted that, there is no infirmity or error in the impugned Order and therefore the same may be sustained by dismissing the present Appeal.

5) A useful reference at this stage can be made to the decision of the Hon'ble Supreme Court in the case of *Union of India Vs. Prafulla Kumar Samal*, reported in AIR 1979 SC 366. It is necessary and useful to refer to paragraph 10 of the said judgment which reads as under:-

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out:

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roaming enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial”.

The Supreme Court in the case of *R.S. Nayak vs. A.R. Antulay and Anr. Reported in AIR 1986 SC 2045*, while analysing provisions of Sections 227, 239 and 245 of Cr.P.C., in unequivocal terms in para No.44 has held as under:-

“The Code contemplates discharge of the accused by the Court of Sessions under Section 227 in a case triable by it; cases

instituted upon a police report are covered by Section 239 and cases instituted otherwise than on police report are dealt with in Section 245. The three sections contain some what different provisions in regard to discharge of the accused. Under Section 227, the trial Judge is required to discharge the accused if he 'considers that there is not sufficient ground for proceeding against the accused.' Obligation to discharge the accused under Section 239 arises when "the Magistrate considers the charge against the accused to be groundless." The power to discharge is exercisable under Section 245(1) when "the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction...." It is a fact that Sections 227 and 239 provide for discharge being ordered before the recording of evidence and the consideration as to whether charge has to be framed or not is required to be made on the basis of the record of the case, including documents and oral hearing of the accused and the prosecution or the police report, the documents sent along with it and examination of the accused and after affording an opportunity to the two parties to be heard. The stage for discharge under Section 245, on the other hand, is reached only after the evidence referred to in Section 244 has been taken. Notwithstanding this difference in the position there is no scope for doubt that the stage at which the Magistrate is required to consider the question of framing of charge under Section 245(1) is a preliminary one and the test of "prima facie" case has to be applied. In spite of the difference in the language of the three sections, the legal position is that if the trial Court is satisfied that a prima facie case is made out, charge has to be framed."

A further reliance can also usefully be placed on the decision of the Supreme Court in the case of *State of Maharashtra Vs. Soma Nath Thapa* reported in (1996) 4 SCC 659 wherein, the Supreme Court has held that, if there is ground for presuming that the accused has committed the offence, it can be said that, a prima facie case has been made out against the accused. It has been further held that, even if the Court finds that the

accused might have committed an offence, it can frame charge. The Supreme Court has further clarified in the said case that, at the stage of framing of charge probative value of the statements/material on record cannot be gone into.

The Supreme Court in the case of *Palvinder Singh Vs. Balwinder Singh and others reported in (2008) 14 SCC 504* while dealing with the provisions of Section 227 of Cr.P.C., in para 13 has held that, the charges can also be framed on the basis of strong suspicion. That marshaling and appreciation of evidence is not in the domain of the Court at that point of time.

Thus, it is clear that the Supreme Court in its various decisions has held that while considering the application for discharge the Court has to take into consideration the *prima facie* case as made out by the Complainant/prosecution.

6) By applying the aforestated principles enunciated by the Hon'ble Supreme Court, we have scrutinized the evidence which is in the form of statements of witnesses.

As per the chargesheet, it is the Appellant who at the instance of Kamalsingh Vijaysingh Rajput @ Raju (Accused-4) received money from absconding accused Bhagwan Krushnani @ Ajay Dixit. That the head of Organized Syndicate i.e. Mr.Ravi Pujari through the said Hawala Operator i.e. Bhagwan Krushnani @ Ajay Dixit sent money to Appellant. That the

Appellant thereafter *inter-alia* handed over the said amount to accused No.4.

7) One witness has stated that, at the request of accused No.4 he introduced his acquaintance i.e. the Appellant with him, as accused No.4 was to receive money from Dubai. That after receipt of money from absconding accused Bhagwan Krushnani @ Ajay Dixit, Appellant handed over Rs.1,00,000/- to the said witness and he in turn handed it over to accused No.4 at Bhayandar. That the Appellant also transferred Rs.9,00,000/- at the instance of accused No.4 to Dubai. This witness has stated that, the Appellant is in the business of 'Hawala' and used to transfer and receive amount from his counter part i.e. absconding accused Bhagwan Krushnani @ Ajay Dixit from Dubai. Statement of this witness under Section 164 of Cr.P.C. has also been recorded before the Metropolitan Magistrate, Mumbai, wherein this witness has reiterated the said facts. There are three other witnesses, who were employees of Appellant, who in unequivocal terms have stated that, the Appellant used to send and receive money from absconding accused Bhagwan Krushnani @ Ajay Dixit stationed at Dubai.

8) Learned Advocate for Appellant has also admitted in his arguments that, the Appellant is 'Hawala Agent' and nothing beyond it. Being a Hawala Agent and in the said business according to us, itself is an illegal act and cannot be glorified.

9) Section 2(1)(a) of the MCOC Act defines the term '*abet*'. It states, '*abet*' with its grammatical variations and cognate expressions, includes, the rendering of any assistance, whether financial or otherwise, to the organized crime syndicate.

In the present case, it is the allegation against the Appellant that, he being an illegal Hawala Operator, aided and abetted the organized crime syndicate headed by Mr. Ravi Pujari by sending and receiving money through the absconding accused. From the bare perusal of statement of witnesses, it *prima-facie* clearly appears that, the Appellant in fact aided and abetted the Organized Crime Syndicate headed by Mr. Ravi Pujari.

10) Record further indicates that, the statement of accused No.4 Kamalsingh Vijaysingh Rajput @ Raju has been recorded under Section 18 of MCOC Act by the Competent Authority. In his statement, accused No.4 has admitted that, he used to send money through Appellant to Dubai under the instructions of Ravi Pujari. He has stated that, on at-least three occasions under the instructions of Ravi Pujari, he contacted Appellant and sent the said amount to Dubai to the absconding accused.

11) Section 18 of MCOC Act prescribes for recording of confessional statement of an accused. The said statement is departure to common law and is a substantive piece of evidence. Section 15 of TADA Act is *pari-materia* with Section 18 of the MCOC Act.

12) The Hon'ble Supreme Court in the case of *State of Maharashtra Vs. Bharat C. Raghani and Ors.*, reported in 2001 ALL MR (Cri) 1903 : 2001(9) SCC 1: AIR 2002 SC 409 has held that, "*Confessional statement under Section 15 of the TADA Act is a departure to the common law. It is a substantive piece of evidence. Confessional statement of accused recorded by police officer is a substantive evidence and even if it is subsequently retracted, it can be made the basis of conviction, if it is generally corroborated. That, corroboration of the confessional statement is not a rule of law but a rule of prudence. In order to sustain a conviction on the basis of a confessional statement, it is sufficient that there is its general corroboration.*"

13) From the pleadings and arguments advanced by the Advocate for the Appellant, it clearly appears to us that, the Appellant wants this Court to accept his defence of 'no knowledge' at this stage itself in an Application under Section 227 of Cr.P.C. for discharge. As the same is contrary to the settled position of law, the plea cannot be accepted and stands rejected.

14) After perusing the material placed before us, we are of the opinion that there is more than sufficient material available on record to proceed with the Appellant as contemplated under Section 228 of Cr.P.C..

After perusing the record and impugned Order, we are of the considered view that, the Trial Court has not committed any error either in

law or on facts while passing it.

15) There are no merits in the Appeal.

Appeal is accordingly dismissed.

(MILIND N. JADHAV, J.)

(A.S. GADKARI, J.)

SANJIV
SHARNAPPA
MASHALKAR

Digitally signed
by SANJIV
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MASHALKAR
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