IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 616 OF 2024

The State of Maharashtra
(Through Asst. Commissioner of Police,
Division – 2, Nashik City) .. Appellant

Versus

Manish Vikram Dulgaj,
Age : 23 Years,
R/at : Room No. 3718, Mahalaxmi Chawl,
New Walmik Temple, Bhadrakali, Nashik. .. Respondent

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Mr. S. V. Gavand, A.P.P. for the Appellant/State.

None for the Respondent.

...

CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 28th NOVEMBER, 2024.

JUDGMENT (PER MANJUSHA DESHPANDE, J.) :-

1. The State of Maharashtra has filed the present Appeal invoking the powers of this Court under Section 12 of the Maharashtra Control of Organised Crime Act, 1999 ("the MCOC Act"), challenging the order dated 08.09.2022 passed by the District Judge-2 and Special Judge (MCOCA), Nashik, in Special (MCOCA) Case No. 233 of 2021, wherein the

Application filed by the accused No.4 i.e. the Respondent herein, has been allowed and he has been discharged for the offence punishable under Section 3(1)(i)(ii), 3(2) and 3(4) of the MCOC Act. It is against the order of discharge, the present Appeal has been filed by the State of Maharashtra.

2. The brief facts of the prosecution can be summed up as follows :

(i) The informant lodged the First Information Report ("FIR") against the accused alleging that accused No.7 Vishal Sunil Bhainwal has formed a gang with other co-accused including the accused No.4 i.e. the Respondent in the present Appeal, and they have committed unlawful activities in Bhadrakali, Wadala Naka area of Nashik. They have threatened the people residing in the area, assaulted them, looted them and also alleged to have indulged in extortion. It is alleged that the accused persons are always armed with knife, chopper etc. They have created reign of terror in the area and people do not dare to lodge complaint against the accused persons because of the fear created in their mind.

(ii) According to the informant, accused No.7 who is the leader of the gang bears grudge against him, since he was of the view that the informant used to give tip to the police, whenever accused No.7 visited in the said area.

(iii) On 08.02.2021 at about 9.30 p.m., while the informant and his mother were taking a stroll, the accused No.7, alongwith other members of his gang came near them and abused him and his mother, on the ground of failure to pay his 'hafta', and also for giving tip to the police. He and his mother were assaulted with kicks and blows by the accused and thereafter they have left. Therefore, he lodged NC against the accused at Bhadrakali Police Station. The informant after taking treatment at Civil Hospital, Nashik alongwith his mother, brother Arjun and friend Akash proceeded to their house in a Rickshaw.

(iv) When they reached their house and alighted from the Rickshaw at about 11 p.m., accused No.7 Vishal Bhainwal alongwith his gang members Pavan Tak, Satish Tak, Akash Tak, Nikhil Tak, Abhay Bhainwal, Harish Pawar, present Respondent Manish Duglaj and Shivam Pawar, were standing there. Upon noticing the informant, accused rushed towards them and started assaulting. Accused Vishal Bhainwal, Pavan Tak, Nikhil Tak, Shivam Pawar and Akash Tak were possessing sharp edged weapons like choppers and knives. Since the accused started assaulting the informant and others, who accompanied him therefore they started running for shelter.

(v) Mother of the informant went towards the chawl while Arjun, the brother of the informant went towards Dwarka, and the informant alongwith his friend Aakash ran towards Dwarka Police Station. They were chased by the accused, one of the accused Satish Tak shouted that they should be killed, otherwise they will create problem. The accused stopped the informant and his friend Akash, near Sulabh Shauchalaya and assaulted Akash with a knife and chopper. Upon sustaining injuries, Akash fell to the ground. Accused Vishal and other accused assaulted the informant on his back with knife and chopper, but the informant managed to run towards the police station. When the police arrived at the spot, the accused fled from there. Akash was taken to the hospital in a Rickshaw by Arjun, but he was declared 'brought dead' by the Doctor.

(vi) After recording the statement of the informant, offence was registered against the accused at Bhadrakali Police Station, being C.R. No. 47 of 2021. The accused were arrested pursuant to the registration of FIR. Total nine accused participated in the commission of the said crime, during the investigation, it transpired that the accused No.7 is the gang leader and has committed various offences alongwith members of his gang. Apart from the nine accused involved in the case, involvement of 12 more accused was revealed during the investigation as member of the gang of accused No.7.

(vii) The investigation revealed, that the accused No.7 formed an 'Organized Crime Syndicate', with other co-accused and has committed various offences, like robbery by using criminal force, singly and/or jointly, for and on behalf of the organized crime syndicate, for which the offences have been registered at Bhadrakali Police Station in Nashik District. It revealed that more than two charge-sheets of cognizable cases having punishment of more than three years were filed against the gang leader in the preceding ten years which are pending before the Competent Courts and cognizance of the said charge-sheets was taken therefore provisions of the MCOCA were invoked.

(viii) The proposal was submitted for seeking prior approval under Section 23(1)(a) of the MCOC Act, on receiving the approval on 21.04.2021, to invoke provisions of Section

3(1)(i)(ii), 3(2) and 3(4) of the MCOC Act. On receiving approval for invoking provisions of MCOC Act, offence was investigated by the Assistant Commissioner of Police, Nashik City.

(ix) On completion of the investigation and by obtaining sanction under Section 23(2) of the MCOC Act, the charge-sheet was filed before the Special MCOCA Court, Nashik, in Special MCOCA Case No. 233 of 2021, against the accused including the present Respondent.

(x) The accused No.4 i.e. the present Respondent filed Application under Section 227 of the Code of Criminal Procedure ("Cr.P.C.") seeking discharge from the provisions of MCOC Act, before the learned Special MCOC Court, Nashik. The prosecution has filed its reply opposing the Application. After taking into consideration the contents of the Application as well as the reply filed by the prosecution, the Special Judge, MCOCA Court allowed the Application for discharge and directed to discharge the Applicant from the charges levelled against him under Section 3(1)(i)(ii), 3(2) and 3(4) of the MCOC Act. Being aggrieved and dissatisfied with the order dated 08.09.2022 the State of Maharashtra has filed the present Appeal.

3. The Special Judge, while allowing the discharge Application, has gone through the three charge-sheets which were filed against other co-accused.

Charge-sheet in C.R. No. 57 of 2016 of Bhadrakali Police Station, for the offence punishable under Sections 323, 324 and 504 read with Section 34 of the IPC and Section 135 of the Mumbai Police Act, has been filed against the accused Sumit Ashok Lot, Tipu Randhir Pawar and Vishal Sunil Bhainwal @ Loncha.

The second charge-sheet in C.R. No. 627 of 2019, for the offence punishable under Sections 394, 341 read with Section 34 of the IPC, has been filed for assault by fist and blows against accused Vishal Bhainwal, Aatish Sharma Chavan, Ritik Sharanpal Chavan and Rudra @ Sanjeet Sheldon.

The third charge-sheet in C.R. No. 531 of 2018, lodged for the offence punishable under Sections 324, 323, 504, 506 read with Section 34 of the IPC, against accused Pawan Tak, Vishal Bhainwal, Nikhil Tak and Vijay Bhainwal.

All the three charge-sheets do not disclose that the unlawful activities were committed by or on behalf of the syndicate either singly or jointly. The Special Judge has recorded that upon going through the entire FIR, charge-sheet and material placed on record, there was nothing to indicate that the Applicant i.e. the Respondent herein has committed any offence punishable under the provisions of the MCOC Act.

In order to attract the provisions of MCOC Act, the mandatory requirement is of ‘continuing unlawful activity’ undertaken either singly or jointly by the accused. The Special Judge has observed that the charge-sheet do not disclose that the offences were committed on behalf of the crime syndicate for coercion or promoting insurgency or for any pecuniary gains.

Since the charge-sheet do not fulfill the requirement for attracting definition of “organized crime”, the Special Judge has given a finding that, the offence as defined under the MCOC Act are not made out, since the necessary conditions for attracting provisions of the act are not fulfilled. It is also observed, that the other co-accused were already discharged from all the charges under the MCOC Act, therefore the Special Judge MCOCA has allowed the application of the Applicant/ Accused No.4.

4. The learned A.P.P. Mr. Gavand on behalf of the Appellant-State contended that accused No.4 i.e. the present

Respondent and other accused have committed serious offence under Section 302 of the IPC and also under the provisions of MCOC Act. The accused No.7, who is the gang leader, alongwith the present Respondent has indulged in unlawful activities in Wadala Naka and Bhadrakali area by threatening, assaulting and looting the people, as well as collecting hafta from them and thereby terrorizing the residents of the locality. According to the learned A.P.P., the Judge of the trial Court has erred in holding that there is nothing on record to indicate that, the accused have committed organised crime as defined under Section 2(e) of the MCOC Act. In fact the material in the charge-sheet itself is sufficient to show the nexus of the present Respondent who was present on the scene of the offence, to establish that he was part of the syndicate.

5. The learned A.P.P. further submits that the Special Judge has confused himself regarding the applicability of Sections 3(1)(i)(ii), 3(2) and 3(4) of the MCOC Act. According to him, the learned Judge has misinterpreted the applicability of the two provisions, thereby getting misdirected. It is further urged that the perusal of FIR itself shows that the accused No.7 was the gang leader and other accused including present

Respondent, were present during the commission of offence, which was committed for creating terror in the said locality, on the ground that the non-abidance to pay hafta to the accused, therefore it is explicit that they were working as organised crime syndicate, continuing their criminal activities for gaining pecuniary advantage.

The competent authority after perusing the entire record has accorded permission to invoke provisions of MCOC Act and sanction under Section 23(2) of the MCOC Act, for filing the charge-sheet against the accused including the present Respondent. The Special Judge has failed to consider the relevant material which was available on record, which has occasioned in miscarriage of justice.

The learned A.P.P. has finally prayed that the order dated 08.09.2022 passed by the Special Judge (MCOCA), Nashik, below Exh-44, being erroneous and bad-in-law, needs to be quashed and set aside by allowing the present Appeal.

6. We have heard the learned A.P.P., appearing for the Respondent and also we have gone through the memo of the Appeal alongwith the documents placed on record.

7. In the discharge application filed by the Respondent herein, it is his specific contention that, the charge-sheets which have been relied upon by the Competent Authority while granting approval were filed within the period of 10 years, prior to commission of the alleged offence, wherein the punishment is prescribed upto three years. According to the averments made in the Application, unless the charge-sheet which is relied upon for invoking the provisions of the MCOC Act, mentions that the said offences have been committed by the organised crimes syndicate, it cannot be used against the accused persons for invoking the provisions under the MCOC Act.

8. The other ground which has been pressed into service by the Applicant was that, the three charge-sheets which have been relied upon by the Competent Authority for granting sanction are personal in nature to the accused as well as the informant. All the three offences have occurred in a spur of a moment. Upon perusal of the three charge-sheets, it does not disclose that the said offences have been committed by the accused as a member of organised crime syndicate. Therefore, the provisions of the MCOC Act cannot be invoked.

9. The Special Judge after taking into consideration the three charge-sheets which were produced on record has observed that, there is no whisper in the charge-sheet that these offences have been committed on behalf of the syndicate either singly or jointly. It does not involve any demand of extortion or pecuniary benefit. It is observed that none of the charge-sheet consist averments alleging unlawful activity undertaken either singly or jointly by the accused. Therefore, the alleged act will not fall within the ambit of the expression "continuing unlawful activity".

10. Charges have been framed against the Respondent for the offence punishable under Section 3(1)(i)(ii), 3(2), 3(4) of the MCOC Act. Section 3 of the MCOC Act reads thus :

> ***3. Punishment for organised crime***
> *(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) in 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) Whoever conspires or attempts to commit or advocates, abets or knowingly facilitates the commission of an organised crime or any act preparatory to organised crime, shall be punishable with imprisonment for a term which shall be not 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.

(3) Whoever harbours or conceals or attempts to harbour or conceal, any 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 extent to imprisonment for life, and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.

(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) Whoever holds any property derived or obtained from commission of an organised crime or which has been acquired through the organised crime syndicate funds shall be punishable with a term which shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine, subject to a minimum fine of rupees two lacs.

11. Upon going through Section 3 of the MCOC Act, the necessary conditions under Section 2(d) and 2(e) of the Act are required to be fulfilled. The two necessary conditions which are required to be fulfilled in order to attract Section 3 are that, it should be an offence of 'organised crime' and upon going through the definition of organised crime, it requires that there should be a 'continuous unlawful activity' either by individually, singly or jointly, as a member of organised crime syndicate. The 'continuing unlawful activity' has been defined under Section 2(d) of the Act, which reads thus :

> *" 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 syndicate 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 ;"*

Whereas 'Organised Crimes' has been defined under Section 2(e) of the Act, which is reproduced as under :

> "*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 insurgency;"*

The "organised crime syndicate" defined under Section 2(f) of the Act reads thus :

> *"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 ;*

Hence, in order to attract the Section 3 of the MCOC Act, the necessary conditions are (i) It has to be continuing unlawful activity (ii) by "organised crime syndicate".

12. In the present case while granting sanction under Section 23(1), the three charge-sheet which have been relied upon by the Competent Authority do not in any manner disclose that they have been committed by the 'organised crime syndicate'.

The gist of the incident resulting in filing of FIR and resultantly three charge-sheets filed against other co-accused can be summarized as under :

In C.R. No. 57 of 2016, registered C.R. No. 323, 324, 504 read with Section 34 of the IPC, the allegation was that the complainant was walking on the road, at that time one of the co-accused dashed him with his motorcycle which led to physical as well as verbal abuses and assault by fists and blows.

The second C.R. i.e. C.R. No. 627 of 2019, for the offence punishable under Section 394, 341 read with Section 34 of the IPC, the allegations are that while the complainant, his brother-in-law and his friend Prafulla Kambale were going on their bike, the accused stopped them and assaulted them by fist and blows on their face, eyes and nose and also abused them verbally.

The third charge-sheet taken into consideration was in FIR No. 531 of 2018, for the offence punishable under Sections 324, 323, 504, 506 read with Section 34 of the IPC, wherein the dispute broke out between the complainant and accused on account of the playing drums in the Ganpati festival.

Therefore, considering all the incidents leading registration of offence, it cannot be held that the offence has been committed by the organised crime syndicate with the object of gaining pecuniary benefits, or gaining undue economic or other advantage, for himself or any other person or promoting insurgencies.

The Special Judge has rightly observed that, the "continuing unlawful activity" is necessary ingredients to constitute an "organised crime" unless and until the necessary conditions for attracting "continuing unlawful activity" are fulfilled, it would not amount to organised crime.

13. This Court had an occasion to deal with the challenge to the order granting discharge to an accused on similar ground. While deciding the issue this Court has taken a view that, unless the mandatory requirement contemplated by the expression "continuing unlawful activity" occurring in MCOC Act is fulfilled, it would not attract the Section 3 of the MCOC Act.

In the case of ***State of Maharashtra V/s. Rahul Ramchandra Taru, reported in 2011 SCC OnLine Bom 605***, this Court have been pleased to rely on the observations made in the Judgment of ***Prafulla s/o. Uddhav Shende V/s. State of Maharashtra, (2009 AlL MR (Cri.) 870).*** The observations made in the Judgment of ***Rahul Ramchandra Taru*** in para

No.11 are reproduced which read thus :

> *"11. In Prafulla s/o. Uddhav Shende v. State of Maharashtra, (2009 AIL MR (Cri.) 870), the learned single Judge of this court while dealing with the bunch of appeals arising out of judgments passed by the Special Court at Nagpur, placed reliance on the various decisions, mainly, the decision in Ranjeetsingh Brahmajeetsing Sharma's case (supra), also made a reference to the case of Sherbahadur Akram Khan (Supra) and observed in paragraphs 29, 43 and 44 that:*
>
>> *"29. Since the definitions, though intertwined in a cyclic order, are clear and unambiguous, it would follow that each ingredient in the definitions, or the alternative thereof provided by the definitions themselves, would have to be proved. Viewed thus, 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*
>>
>> *(i) which is prohibited by law*
>>
>> *(iii) which is a congnizable offence punishable with imprisonment for three years or more*
>>
>> *(iv) undertaken either singly or jointly*
>>
>> *(v) as 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 chargesheets 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

"43. This fortifies the conclusion that mere _proof of filing chargesheets in the past is not enough. It is only one of the requisites for constituting offence of organised crime. If only the past charge-sheets were to be enough to constitute offence of organised crime, it could have offended the requirement of Article 20(1) of the Constitution and possibly Article 20(2) as well, (and in any case Section 300, Cr.P.C.). Had these judgments of the Supreme Court and Division Benches of this Court been cited before the learned single Judge deciding Amarsingh v. State (2006 ALL MR (Cri.) 407) the learned Single Judge, without doubt would not have held that the matter was simply one of an arithmetical equation. The said judgment cannot be reconciled with the judgments of division benches in Jaising v. State (2003 ALL MR (Cri) 1506 and Bharat Shah State 2003 ALL MR (Cri) 1061 which I am bound to follow

44. Therefore, since the previous criminal history of the applicants denotes that they had been or are being separately charged/tried for those offence before competent courts, there is, no question of such offences constituting offence of organised crime".

This Court has gone a step further and observed in para No.15 of the Judgment of ***State of Maharashtra V/s. Rahul Ramchandra Taru,*** *(supra)* that, prosecution is required to prove that, in the preceding 10 years more than one charge-sheet, alleging commission of cognizable offence punishable with imprisonment of three years or more have been filed and further to prove such that in charge-sheets it has been alleged that the accused either singly or jointly and as a member of organised crime syndicate or on behalf of such syndicate committed such unlawful activity. Para No.15 of the said Judgment is as under :

> *" **15**. We propose to clarify that to address the question which is posed in this appeal, interpretation of expressions "or other advantage" and "or other unlawful means", occurring under section 2(1)(e) of MCOCA, is not strictly necessary. Even if, both the terms are given wider meaning, the prosecution is not absolved of its duty to prove that within the preceding period of 10 years more than one chargesheets, alleging commission of cognizable offence punishable with imprisonment of three years or more, have been filed and further to prove that in such chargesheets, it has been alleged that the accused either singly or jointly and as a member of organized crime syndicate or on behalf of such syndicate committed the unlawful activity. This follows that merely alleging that more than one chargesheets in respect of cognizable offence punishable with imprisonment of three years or more have been filed, is not sufficient. This does not satisfy requirements of law. This is what precisely held by the Supreme Court in the case of*

> *Ranjeetsingh Brahmajeetsing Sharma (supra). The unlawful activity alleged in the previous chargesheets should have nexus with the commission of the crime which MCOCA seeks to prevent or control. An offence falling within the definition of organized crime and committed by organized crime syndicate is the offence contemplated by the Statement of Objects and Reasons under the MCOCA."*

14. The Special Judge has undertaken an exercise to go through the three charge-sheets relied upon by the Sanctioning Authority, and has observed that, all the three charge-sheets sans allegation that alleged act is undertaken either singly or jointly by accused as a member of 'organised crime syndicate', or on their behalf.

On examination of the three charge-sheets, we do not find any reference about the crime having committed by organised crime syndicate. Therefore, the observations made in the Judgment of ***State of Maharashtra V/s. Rahul Ramchandra Taru,*** *(supra)* would squarely apply to the present case.

Thus, the unlawful activity alleged in the previous charge-sheets should have nexus with the commission of crime which the MCOC Act seeks to prevent or control. The offence should fall within the definition of 'organised crime'.

Therefore, considering the provisions of the MCOC Act and the interpretation of "continuing unlawful activity", according to us, the Special Judge has not committed any error in passing order of discharge in favour of the Applicant.

In the wake of the foregoing discussion here-in-above, no case for interference in the order dated 08.09.2022 passed by the District Judge-2 and Special Judge (MCOCA), Nashik, in Special (MCOCA) Case No. 233 of 2021, has been made out by the Appellant.

Hence, the Appeal stands dismissed.

(MANJUSHA DESHPANDE, J.) **(BHARATI DANGRE, J.)**