IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.909 OF 2024

Amjad Ramjan Pathan ....Appellant
Versus
The State of Maharashtra ....Respondent

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WITH
INTERIM APPLICATION NO.2679 OF 2024
IN
CRIMINAL APPEAL NO.909 OF 2024

Mr. Sujit Motiram Satam, Advocate (appointed) for the Appellant.
Mr. Vinit A. Kulkarni, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 24th SEPTEMBER, 2024

ORAL JUDGMENT :

1. The Appellant was the original accused No.2 in MCOCA Special Case No.11/2018 before the Special Judge under the Maharashtra Control of Organized Crimes Act, 1999 (for short, 'MCOC Act'), Pune. There were two accused in the trial. The learned trial Judge, vide his judgment and order dated 27.4.2022, convicted both of them as follows :

[i] They were convicted for the offence punishable under Section 392 of IPC and they were sentenced to suffer RI for six years and to pay a fine of Rs.25,000/- and in default of payment of fine to suffer SI for six months;

[ii] They were convicted for the offence punishable under Section 3(1)(ii) of the MCOC Act and they were sentenced to suffer RI for five years and to pay a fine of Rs.5,00,000/- and in default of payment of fine, to suffer SI for one year.

[iii] They were convicted for the offence punishable under Section 3(2) of the MCOC Act and they were sentenced to suffer RI for five years and to pay a fine of Rs.5,00,000/- and in default of payment of fine, to suffer SI for one year.

[iv] They were convicted for the offence punishable under Section 3(4) of the MCOC Act and they were sentenced to suffer RI for five years and to pay a fine of Rs.5,00,000/- and in default of payment of fine, to suffer SI for one year.

The substantive sentences were directed to run concurrently. The Appellant was acquitted from the charge of offence punishable under Section 3(5) of the MCOC Act. The Appellant was given set off under Section 428 of Cr.P.C. for the period undergone in jail.

2. Heard Mr. Sujit Satam, learned appointed counsel for the Appellant and Mr. Vinit Kulkarni, learned APP for the Respondent-State.

3. The prosecution case is that on 28.5.2017, the first informant Sujata Jagtap was returning from a function with her husband on a two-wheeler. Two unknown persons came on another two-wheeler. They snatched her gold ornaments and gold chain. She lodged the FIR at Wakad Police Station vide C.R. No.322/2017 under Section 392 read with 34 of IPC. The investigation was conducted. The Applicant and the co-accused were arrested. During investigation it was noticed that both the accused had other antecedents in which the charge-sheets were filed and cognizance was taken by the competent Courts. There were more than one charge-sheets and more than one such orders taking cognizance by the competent Court. Therefore, the provisions of the MCOC Act were applied. Approval for the investigation under Section 23(1) of the MCOC Act was granted. The investigation was carried out by the authority under the MCOC Act and the charge-sheet was filed. The sanction was

granted under Section 23(2) of the MCOC Act. The trial was conducted before the Special Judge, MCOC Court at Pune. During the trial, the prosecution examined six witnesses including the first informant, the panchas, the valuer and the investigating officers. At the conclusion of the trial, both the accused, including the Appellant, were convicted and sentenced as mentioned earlier.

4. Learned counsel for the Appellant submitted that as far as the Appellant is concerned, there is absolutely no evidence against him. The informant has not identified him in the test identification parade. She has not identified him before the Court. There is no recovery at his instance and, therefore, the conviction is unsustainable. He submitted that since the offence under the IPC is not proved, there cannot be continuous unlawful activity of which the Appellant was said to be a perpetrator belonging to an organized crime syndicate and, therefore, even the conviction under the provisions of the MCOC Act is not sustainable.

5. Learned APP could not counter these submissions. He

only relied on the evidence of the informant and the police officers.

6. Before discussing the evidence, I must observe that the learned counsel for the Appellant's submissions are absolutely correct. There is absolutely no evidence against the present Appellant in this case.

7. PW-1 was the informant Sujata Jagtap. She has stated that on 28.5.2017, she along with her husband had gone to attend a wedding at Ravet. They were returning at around 5.00 p.m.. They had reached Tathawade Chowk. There was a speed breaker and, therefore, her husband slowed down his two-wheeler. At that time two persons came on one motorcycle. The pillion rider snatched the gold chain and other ornaments from her neck. They went away. She stated that she could identify the person who had snatched the ornaments. She identified the accused No.1 Jafar as the person who had snatched those ornaments. After the incident she went to Wakad police station and lodged the FIR. The FIR is produced at Exhibit-25. She showed the spot of incident to the police. During investigation,

the police recovered the gold-ornaments which were given to her after recovery and after melting those recovered ornaments. She further deposed that after the incident about 6-7 months subsequently she was called to Yerwada jail and she had identified the accused No.1. In the cross-examination, she was asked about the location. There was traffic at the spot and it was surrounded by buildings and residential houses. After the incident, her husband had raised shouts, because of which some people had gathered there. They tried to search for the accused but they were not found. They reached the police station at about 10.00 p.m.. On 24.11.2017, she was called to Wakad police station. She further deposed that when the accused were arrested, the police showed both the accused to her. She further corrected herself and added that they had shown only the accused No.1. She further submitted that at the time of the test identification parade, both the accused were made to stand in the parade. The memorandam of test identification parade is produced on record at Exhibit-26. It is mentioned in that memorandum that the informant had not identified the Appellant though he was made to stand in the parade. Her FIR is produced on record at Exhibit-25, which describes the incident and also describes the ornaments which were snatched. Her entire evidence does not show any evidence of incriminating nature against the present Appellant. It only describes the incident and the allegations; and the evidence is only against the accused No.1. At the highest it can be said that the accused No.1 was accompanied by one more person but the prosecution has not proved that the other person was none other than the present Appellant.

8. PW-2 Amit Kamble was a pancha in whose presence the accused No.1 Jafar had given a memorandum statement and at his instance recovery was made on 4.6.2017. The recovery was effected from the accused No.1's house. There were more than 100 ornaments and there was cash amount of Rs.62 Lakhs. But again there is absolutely no connection of the Appellant with that recovery. Though there is mention of the Appellant's name in the memorandum statement given by the accused No.1, that portion of the memorandum statement recorded under Section

27 of the Evidence Act is inadmissible.

9. PW-3 Amol Veer was another pancha. He was pancha for a panchnama mentioning that the accused No.1 Jafar had shown the spot of incident. PW-3 was present when the accused No.1 had shown the spot. It can be noted that the spot was already known to the police and again this evidence does not concern the present Appellant.

10. PW-4 Ghanashyam Zanvar was the Valuer who had given the estimated value of the ornaments recovered at the instance of the accused No.1. Again this witness is not concerning the Appellant.

11. PW-5 PI Waghmode had effected the arrest of the accused No.1. He had also effected recovery at the instance of the accused No.1 Jafar. This was in respect of the ornaments and cash amount mentioned earlier. This witness also did not say anything against the Appellant.

12. PW-6 Assistant Commissioner of Police Vikram Patil was the designated officer who was authorized to investigate the

offence under the provisions of the MCOC Act. He admitted that during investigation, the bank account of the Appellant was found but there was hardly any amount in that bank account. According to him, the result of the investigation was that the accused No.1 Jafar as head of the organized crime syndicate had committed many offences along with the present Appellant who was a member of his crime syndicate. He had produced the approval order under Section 23(1) of the MCOC Act dated 6.10.2017 at Exhibit-53. The antecedents and listing of offences against both the accused was produced at Exhibit-71. There are many offences involving both the accused No.1 and the present Appellant. The sanction under Section 23(2) was produced at Exhibit-72.

. This is the evidence led by the prosecution.

13. Thus, from the above evidence it is more than clear that there is absolutely no evidence against the present Appellant as far as the incident dated 28.5.2017 is concerned. There is neither identification in the test identification parade nor the identification in the Court against the present Appellant. There is

no recovery at his instance concerning the incident dated 28.5.2017. In fact the evidence does not show that there was other recovery attributable to him at all. Thus, the prosecution has miserably failed to prove the Appellant's connection with the incident dated 28.5.2017.

14. It was necessary for the prosecution to have proved that particular incident against the Appellant then only it could have been termed as a continuous unlawful activity having a link with the earlier offences. Since the prosecution could not prove the Appellant's involvement in the incident dated 28.5.2017 it will have to be held that the prosecution has not proved that the Appellant has taken part in that particular activity. Hence there was no continuing unlawful activity attributable to the present Appellant and, therefore, it cannot be said that the Appellant was a member of the organized crime syndicate and as a member of the organized crime syndicate he has committed offence on 28.5.2017.

15. Therefore, though there were other antecedents and charge-sheets were filed against the Appellant and other accused

and of which cognizance was taken by the Court; that by itself is not sufficient to convict the Appellant under the MCOC Act because the main allegations in respect of the incident dated 28.5.2017 are not proved against him. In short, there is no continuing unlawful activity.

16. The relevant definitions provided in the MCOC Act i.e under Sections 2(d), (e) & (f) read thus :

> "2. (1) In this Act, unless the context otherwise requires,—
>
> xxxx
> xxxx
> xxxx
>
> (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;

(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;

(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;"

. The definition of 'organized crime' is mentioned under Section 2(e) of the MCOC Act. Since the main ingredient is about the continuation of unlawful activities; which is not proved by the prosecution, the offence under the MCOC Act is also not proved against the Appellant. In the result, the Appeal succeeds and the Appellant is acquitted.

17. Hence, the following order :

:: O R D E R ::

i. The Appeal is allowed.

ii. The judgment and order dated 27.4.2022 passed by the the Special Judge under the MCOC Act, Pune. convicting and sentencing the Appellant in MCOCA Special Case No.11/2018, is set aside.

iii. The Appellant is acquitted from all the charges.

iv. The Appellant is in custody. He shall be released forthwith if not required in any other case. Before his actual release, the Appellant shall execute a PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) ensuring his availability in case Appeal against acquittal is preferred.

v. The Appeal is disposed of accordingly. In view of disposal of main Appeal, Interim Application is also disposed of.

(SARANG V. KOTWAL, J.)

PRADIPKUMAR PRAKASHRAO DESHMANE

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