2024:BHC-NAG:3224

IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APPP) NO.1678/2023
IN
CRIMINAL APPLICATION (BA) NO.381/2023

Amjad Khan s/o Aziz Khan
..vs..
State of Mah., thr.Sakkardara Police Station, District Nagpur

....

Office Notes, Office Memoranda of Coram, appearances, Court orders or directions and Registrar's orders	Court's or Judge's Order

....

Shri D.N.Mehta, Counsel for the Applicant.
Shri M.J.Khan, Additional Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 07/03/2024
PRONOUNCED ON : 15/03/2024

1. Heard learned counsel Shri D.N.Mehta for the applicant and learned Additional Public Prosecutor Shri M.J.Khan for the State.

2. By this application, the applicant is seeking recall of order dated 15.9.2023 by which the application of the applicant for grant of regular bail was rejected.

3. The applicant had filed an application under Section 439 of the Code of Criminal Procedure read with Section 21(4) of The Maharashtra Control of Organised Crime Act, 1999 (the MCOC Act) for

grant of regular bail in connection with Crime No.327/2022 registered with the non-applicant/police station for offences punishable under Sections 120-B, 384, 386, 420, 447, 467, 468, 471, 504, and 506 of the Indian Penal Code and under Sections 3(1)(ii), 3(2), 3(4), and 4 of the said Act. After considering submissions canvassed by both sides and perusing investigation papers, the application for grant of bail was rejected by order dated 15.9.2023.

4. Learned counsel for the applicant submitted that the present application is filed for recalling of the order rejecting the bail on ground that though he placed reliance on the decision of the Honourable Apex Court in the case of **Mahipal Singh vs. Central Bureau of Investigating and anr, reported in (2014)11 SCC 282** which was followed by the Division Bench of this court in Criminal Appeal No.297/2017 (**Madhukar s/o Babu Shinde vs. State of Maharashtra and ors**), the same is not distinguished by this court and this court considered two chargesheets out of three chargesheets in the order. It is further held that two chargesheets were filed in Crime No.428/2021 on 30.8.2021 and in Crime No.430/2021 on 27.10.2021. In fact, chargesheet in

Crime No.428/2021 was filed on 30.10.2021. Thus, two chargesheets were not there on the date of lodging of the First Information Report against the applicant. This factual error has seriously prejudiced the applicant.

5. Another ground raised by learned counsel for the applicant is that this court observed in paragraph No.24 of the order rejecting the bail application that the applicant and the other co-accused were continuously involved in various illegal activities since the year 1995 till 2021 and referred statement of Nurjah Begam wd/o German Khan. In fact, the applicant was not accused in Crime No.337/1995 (Sessions Case No.450/1995). Thus, on the date of the alleged crime, the applicant was minor. It is contention of learned counsel for the applicant that there is an error apparent on the face of record and, therefore, the order rejecting the bail application by this court may be recalled and the matter be kept for fresh hearing.

6. Learned counsel for the applicant vehemently submitted that observation of this court, regarding two chargesheets against the applicant, is

erroneous. He by pointing out Section 362 of the Code of Criminal Procedure (the Code) submitted that there is a saving clause in the said Section which reads as "Save as otherwise provided by this Code or by any other law for the time being in force, ………”. The said clause does not take away power of this court while considering any applications filed before it. Provisions of Section 482 of the Code are saved by saving clause. Plenary powers of this court under the Constitution of India cannot be made subservient to provisions of Section 362 of the Code. He further submitted that this court in paragraph No.20 of the order rejecting the bail application observed that two chargesheets were filed against the applicant, one in Crime No.428/2021 on 30.8.2021 and another in Crime No.430/2021 on 27.10.2021. In fact, in Crime No.428/2021 was filed on 30.10.2021. Thus, the observation of this court is error apparent which needs to be corrected. He further submitted that the decision of the Honourable Apex Court in the case of **Mahipal Singh vs. Central Bureau of Investigation and anr** *supra* is not distinguished by this court while passing the order and the observation, that involvement of the applicant in continuous illegal activities on the basis of statement of Nurjah Begam wd/o German Khan, is also erroneous.

7. In support of his contentions, learned counsel for the applicant placed reliance on following decisions:

> **New India Assurance Company Limited vs. Krishna Kumar Pandey, reported in (2021)14 SCC 683;**
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> **Ramadhar Sahu vs. The State of Madhya Pradesh, reported in 2023 LiveLaw SC 945;**
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> **Grindlays Bank Limited vs. Central Government Industrial Tribunal and ors, reported in 1980 (Supp) SCC 420;**
>
> **Ganesh Patel vs. Umakant Rajoria, reported in 2022 SCC OnLine SC 2050, and**
>
> **Budha Swain and ors vs. Gopinath Deb and ors, reported in (1999)4 SCC 396.**

8. At the last, learned counsel for the applicant prays that the application be allowed.

9. *Per contra*, learned Additional Public Prosecutor for the State strongly opposed the application on ground that the application is filed on a flimsy ground. Actually, chargesheets are filed in Crime No.428/2021 on 30.10.2021 and Crime No.430/2021 on 27.10.2021. Thus, prior to invocation

of provisions of the MCOC Act in Crime No.437/2021, three crimes were already registered and chargesheets were filed against organized crime syndicate in connection with Crime Nos.62/2012; 428/2021, and 430/2021. The provisions of the MCOC Act came to be invoked after obtaining approval from competent court as contempBitstream Charterlated under relevant provision of Section 23(1) of the MCOC Act on 24.1.2022 in connection with Crime No.437/2021 wherein the applicant is one of accused along with gang leader Firoz Khan. It is further submitted that the applicant cannot take disadvantage of typographical mistake.

10. Learned Additional Public Prosecutor for the State further submitted that in terms of provisions of Section 362 of the Code, review of an order and a judgment by courts is not permissible in view of said provisions of the said Section, except for the purpose of correction or clerical or arithmetical mistakes. Such orders/judgments cannot be reviewed in view of specific embargo imposed in view of provisions of the said Section. The applicant is seeking review to the order rejecting the regular bail. He further submitted that there

is no procedural lapse in the order which could justify seeking recalling fresh hearing of the application. After hearing learned counsel for the applicant on merits at length, this court rejected the bail application by passing a reasoned order. In most of judgments on which the applicant relied upon, the Honourable Apex Court has considered civil litigation between parties with regard to passing of *ex parte* award. He submitted that in view of Section 362 of the Code, no court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error. He submitted that the said Section is based on an acknowledged principle of law that once a matter is disposed of finally by a court, the said court in absence of specific statutory provisions becomes f*unctus officio* and disentitles to entertain a fresh prayer for the same relief. As such, the application deserves to be rejected.

11. In support of his contentions, learned Additional Public Prosecutor for the State placed reliance on the decision in the case of **Hari Singh Mann vs. Harbhajan Singh Bajwa and ors, reported in**

AIR 2001 SC 43.

12. The applicant was arraigned as accused in connection with Crime No.437/2021 registered with Sakkardara Police Station, Nagpur for offences punishable under Sections 384, 386, 447, 504, 506, 120B, 212, and 216 of the Indian Penal Code and 3(1)(ii), 3(2), 3(4), 4, and 3(3) of the MCOC Act. One Amjad Gulam Hussain lodged report on 30.8.2021 against the applicant and other co-accused on an allegation that the applicant and other co-accused are involved in illegal activities and several offences are registered against them and requested for taking action. The sum and substance of allegation was that the applicant and his brothers were involved in illegal possession of property of "Baba Tajuddin Dargah" and collecting money from shop owners of areas by creating terror in locality. The complainant was also pressurized to sell his house and six shops were forcibly taken into possession by the applicant. On the basis of the said report, initially, the crime was registered under provisions of the Indian Penal Code.

13. During course of investigation, it revealed

to investigating officer that the applicant and other co-accused are members of organized crime syndicate and gang leader is Firoz Khan who is resident of Sakkardara, Tajbagh, Nagpur. He created terror in minds of local residents by using weapons and various offences under provisions of the NDPS Act and smuggling were registered against them. Against the gang leader, in all 39 offences are registered and the applicant is involved in all eight offences. Considering activities in which the applicant is involved, the investigating officer took a decision to add provisions of the MCOC Act and a proposal was sent by the Assistant Commissioner of Police, Ajni through the Additional Director General of Police and the Commissioner of Police vide No.1701/2022 dated 22.6.2022 for seeking sanction to prosecute Firoz Khan and others under provisions of Section 23(2) of the MCOC Act. Prior to that, an approval invoking provisions under the MCOC Act was granted on 24.1.2022 under Section 23(1) of the MCOC Act. Thus, the sanction was granted on 6.7.2022 under Section 23(2) of the MCOC Act and prior to that approval was granted on 24.1.2022 under Section 23(1) of the MCOC Act.

14. By considering provisions of the MCOC Act and the settled law, in the light of the judgment of the Honourable Apex Court and this court, it is held that involvement of the applicant is revealed in continuous unlawful activities and the application of the applicant for grant of bail is rejected. Being aggrieved with the same, the present application is filed by the applicant for recalling of the order rejecting the bail mainly on ground that while rejecting the application, the court has observed that there were three offences registered against the applicant wherein chargesheet was filed and cognizance was taken. Thus, ingredients to fulfill requirement of definition of "continuing unlawful activity" are satisfied. The ground is raised that while observing the same, this court has taken into consideration that in Crime No.61/2012 registered under Sections 323, 385, 294, 506 read with Section 34 of the Indian Penal Code wherein chargesheet was filed on 16.10.2012; Crime No.428/2021 registered under Sections 386, 294, and 506(2) read with 34 of the Indian Penal Code and under Sections 4 and 25 of the Arms Act wherein chargesheet was filed on 30.8.2021, and in Crime No.430/2021 registered under Sections 386, 294, 506-

B, and 109 read with 34 of the Indian Penal Code and under Sections 4 and 25 of the Arms Act wherein also chargesheet was filed on 27.10.2021. In fact, in Crime No.428/2021 chargesheet was filed on 30.10.2021. Thus, observation of this court apparently erroneous and, therefore, an opportunity is to be granted to the applicant for fresh hearing by recalling the earlier order.

15. Insofar as the above contentions are concerned, though date of filing of chargesheet in Crime No.428/2021 is wrongly mentioned, while passing the order, in paragraph No.30 of the order, it is clarified that when provisions of the special act are invoked, there were more than two chargesheets against the accused. For the purpose of reference, the said paragraph is reproduced, as under:

> *"By considering the observations of the Honourable Apex Court, there were two chargesheets against the applicant when the First Information Report in the Crime No.437/2021 was registered. It is pertinent to note that initially the crime was registered under the provisions of the Indian Penal Code. During the investigation, it revealed*

to the Investigating Officer that the applicant along with the other co-accused is involved in various unlawful activities which are continuous in nature and, thereafter, proposal was sent to apply the provisions of the MCOC Act. Accordingly, the sanction was granted on 24.1.2022. Thus, when the sanction was granted, there was more than one chargesheet against the applicant of which cognizance was taken by the competent court.”

16. Thus, in paragraph No.30 of the order rejecting the bail application, it is specifically observed that when the sanction was granted, there were more than one chargesheets against the applicant wherein cognizance was taken. Admittedly, the First Information Report in respect of Crime No.437/2021 was registered on 31.8.2021 wherein provisions of the Indian Penal Code were invoked and the crime was registered under said provisions. During investigation, it revealed to the investigating agency that the applicant is involved in continuous illegal activities and, therefore, proposal was sent for invoking provisions of the MCOC Act and approval was granted on 24.1.2022 under

Section 23(1) of the MCOC Act. While granting approval, the sanctioning authority has considered various crimes registered against the applicant and taken into consideration three offences viz. Crime No.61/2012 wherein chargesheet was filed on 16.10.2012; Crime No.428/2021 wherein chargesheet was filed on 30.10.2021, and Crime No.430/2021 wherein chargesheet was filed on 27.10.2021. Subsequently, proposal was sent on 22.6.2022 seeking sanction to prosecute the accused and the sanction was granted on 6.7.2022 under Section 23(2) of the MCOC Act. Thus, on the date of invoking provisions, three offences are considered wherein the applicant was involved and chargesheets were filed and the competent court has taken cognizance.

17. Section 2(1)(f) of the MCOC Act defines "organized crime syndicate' means a group of two or more persons who, acting singly or collectively, as a syndicate or gang indulged in activities of organized crime.

18. Section 2(1)(e) of the MCOC Act defines "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.

19. Definition of “continuing unlawful activity” within meaning of Section 2(1)(d) states an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three or more, undertaken either singly or jointly, as a member of organized crime syndicate or on behalf of such syndicate in respect of which more than one chargesheets have been filed before a competent court within the preceding the period of ten years and that court has taken cognizance of such offence.

20. 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, and e) in respect of which more than one charge- sheet have been filed before a competent court. Therefore, the MCOC Act contemplates a situation where a group of persons as members of organized crime syndicate indulge in organized crime. That is, they indulge in use of violence, threats of violence, intimidation, etc. to gain pecuniary benefit or undue economic or other advantage for themselves or any other person. These activities as per the definition of organized crime are continuing unlawful activity prohibited by law.

21. Considering the entire material on record, it was observed that a *prima facie* case is made out against the applicant which shows involvement of the applicant in organized crime syndicate and in view of rigor under Section 21(4), the application of the applicant was rejected.

22. Another limb of submission was that this court has not distinguished the judgment in the case of **Mahipal Singh vs. Central Bureau of Investigating and anr** *supra*. In fact, while passing the order,

reference of the judgment was taken in paragraph No.27 of the order and observations of the Honourable Apex Court was also considered and reproduced. In the said judgment, it is held that in order to constitute an offence or organized crime, it has to be established that accused is involved in ‘continuing unlawful activity’ defined in Section 2(1)(d) of the MCOC Act that is more than one chargesheets in respect of offence of nature specified in Section 2(1)(d) have been filed against him before competent court within preceding period of ten years and the court has taken cognizance of such cases - for invocation for offence of organised crime ingredients constituting that offence must exist on the date the crime is committed or detected. Satisfying the requirements of offence later on to bring the act within mischief of penal provision is not permissible. In order to constitute an offence or organized crime, it has to be established that accused is involved in ‘continuing unlawful activity’ defined in Section 2(1)(d) of the MCOC Act that is more than one chargesheets in respect of offence of nature specified in Section 2(1)(d) have been filed against him before competent court within preceding period of ten years and the court has taken cognizance of such cases - for invocation for offence of organised crime ingredients constituting that offence must exist on the date the crime is committed or detected. Satisfying the requirements of offence later on to bring the act within mischief of penal provision is not permissible. These observations are dealt by the court by observing that in paragraph No.30 that by considering observations of the Honourable Apex Court, there were two chargesheets against the applicant when sanction was granted on 24.1.2022. In last lines, it is specifically held that when the sanction was granted, there were more than one chargesheets against the applicant of which cognizance was taken by the competent court.

23. Thus, in view of observations of the Honourable Apex Court, this court observed that initially, the offence was registered under provisions of the Indian Penal Code and during investigation, involvement of the applicant was revealed in a “continuous illegal activity”. Moreover, the application is rejected in view of rigor under Section 21(4) of the MCOC Act.

Paragraph No.53 of the order clarifies, what is considered while considering the bail application. It is specifically observed that that considering the entire material on record, a *prima facie* case is made out against the applicant which shows that he was connected with the organised crime syndicate. While considering bail applications, where the provisions of the MCOC Act are applied, the court has to come to conclusion that accused is not guilty of offence on the basis of reasonable grounds. The expression ‘reasonable ground’ has not been defined in the MCOC Act. However, it connotes substantial probable causes for believing that the accused is not guilty of offence he is charged with. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. Thus, recording of satisfaction on these aspects is *sine qua non* for grant of bail. It is further observed that in the light of the above well settled legal position, at this stage, there is sufficient material on record to consider that the applicant is guilty of the offences and the application was rejected.

24. Third contention raised by the applicant is that he was not accused in 337/1995 and observation of this court is error apparent. The observation is on the basis of statement of one Nurjah Begam wd/o German Khan recorded on 22.6.2022 wherein she stated name of the applicant. Admittedly, judgment passed in Crime No.337/1995 or First Information Report in the said crime was not before the court. Thus, on the basis of the statement, the said observation was made.

25. Now, coming to aspect of recalling of the order rejecting the regular bail application, it is submitted that the observation is error apparent. Admittedly, power of review cannot be exercised in criminal proceeding. In view of the power under Section 362 of the Code, only clerical or arithmetical mistakes can be corrected. Term "mistake or error apparent" by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be

treated as an error apparent.

26. Now, reverting back to the scope of Section 362 of the Code which expressly provides that, “save as otherwise provided by this Code or by any other law for the time being in force, no court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error”. Thus, the said Section prohibits reopening of a final order except in the cases of clerical or arithmetical error. Such being the position, and in view of the expressed prohibition in the Code itself in the form of Section 362 of the Code, powers to recall are prohibited and the order cannot be recalled which is passed on merits.

27. Learned counsel for the applicant submitted that he is aware that there cannot be review of an order under Section 362 of the Code, but there is a saving clause in Section 362 of the Code which reads as “save as otherwise provided by this Code or by any other law for the time being in force,………”. This clause does not take away powers of Courts while considering applications.

28. There are no provisions in the code authorizing this Court to review judgment passed either in exercise of its appellate or revisional or original criminal jurisdiction. Such powers cannot be exercised with the aid or under provisions of Section 482 of the Code. Section 362 of the Code prohibits the review not of judgments but also final orders other than the judgment.

29. As regards the contention of learned counsel for the applicant as to the saving clause, the same has been dealt with by the Honourable Apex Court in the case of **Sankatha Singh vs. State of U.P., reported in (1962) Suppl.(2) SCR 817**, in which it was held as under:

> “It is true that the prohibition in Section 362 of the Code against the Court altering or reviewing its judgment, is subject to what is "otherwise provided by this Code or by any other law for the time being in force". Those words, however, refer to those provisions only where the Court has been expressly authorized by the Code or other law to alter or review its judgment. The inherent power of the Court is not contemplated by the saving provision contained in Section 362 of the Code and,

therefore, the attempt to invoke that power can be of no avail”.

30. The Honourable Apex Court in the case of **Smt.Sooraj Devi vs. Pyare Lal and anr, reported in 1981 AIR 736** has held that “the inherent power of the Court cannot be exercised for doing that which is specifically prohibited by the Code”.

31. In the case of **New India Assurance Company Limited vs. Krishna Kumar Pandey** *supra,* as placed by learned counsel for the applicant, issue raised was whether in a revision under Section 397 of the Code, arising out of conviction, the High Court would have, even while affirming the conviction, taken away the right of the employer to exercise disciplinary control over an employee, on the basis of the conviction by the criminal court. In paragraph No.11 of the judgment, the Honourable Apex Court dealt with the fact that the respondent secured an order from the High Court, behind the back of his employer that his conviction will not have an impact upon the service career of the respondent and held that the High Court did not have power to pass such an order and, therefore, held that if at all, the High Court could have invoked,

after convicting the respondent, the provisions of the Probation of Offenders Act, 1958, so that the respondent could take shelter, if eligible, under Section 12 of the said Act. In this case, the High Court ventured to do something which it was not empowered to do. On this background, it is held that the respondent cannot take umbrage under Section 362 of the Code and, therefore the appeal was allowed.

32. Here in the present case, the order impugned was passed after hearing both sides after granting sufficient opportunity.

33. Learned counsel for the applicant further placed on the decision in the case of **Ramadhar Sahu vs. The State of Madhya Pradesh** *supra* wherein the Honourable Apex Court held that the opinion of the High Court, in the impugned order, is that in the event the High Court granted bail to the appellant without compliance of the conditions specified in the earlier order of a Coordinate Bench, that would constitute modification of the order and Section 362 of the Code prohibits such modification of a judgment or final order. It is held that an order

for refusal of bail however, inherently carries certain characteristics of an interlocutory order in that certain variation or alteration in the context in which a bail plea is dismissed confers on the detained accused right to file a fresh application for bail on certain changed circumstances. Thus, an order rejecting prayer for bail does not disempower the Court from considering such plea afresh if there is any alteration of the circumstances. Conditions of bail could also be varied if a case is made out for such variation based on that factor. Prohibition contemplated in Section 362 of the Code would not apply in such cases. Thus, the observation of the Honourable Apex Court, in the light of the fact that there is no prohibition to file fresh bail application after rejection of earlier application in the changed circumstances and Section 362 of the Code would not prohibit the same.

34. The another decision in the case of **Grindlays Bank Limited vs. Central Government Industrial Tribunal and** ors *supra* is in the light of legal provision under Order 47 and Section 114 of the Civil Procedure Code. So, it would not helpful to the applicant.

35. In the case of **Ganesh Patel vs. Umakant Rajoria** *supra,* the Honorable Apex Court held that application for recall of the order was maintainable as it was an application seeking a procedural review, and not a substantive review to which Section 362 of the Code would be attracted. Thus, the Honourable Apex Court held that the application for recall is maintainable in case of procedural review.

36. Here in the present case, there is no procedural review prayed by the applicant.

37. In the case of **Budha Swain and ors vs. Gopinath Deb and ors** *supra,* inherent powers of the court to recall are discussed which are under Section 151 of the Civil Procedure Code. The Honourable Apex Court held that tribunal or a court may recall an order earlier made by it if (i) the proceedings culminating into an order suffer from the inherent lack of jurisdiction and such lack of jurisdiction is patent, (ii) there exists fraud or collusion in obtaining the judgment, (iii) there has been a mistake of the court prejudicing a party or (iv) a judgment was rendered in ignorance of the

fact that a necessary party had not been served at all or had died and the estate was not represented. The power to recall a judgment will not be exercised when the ground for re-opening the proceedings or vacating the judgment was available to be pleaded in the original action but was not done or where a proper remedy in some other proceeding such as by way of appeal or revision was available but was not availed.

38. In the present case, there is no ground of inherent lack of jurisdiction or a ground of fraud or collusion. As far as the ground of mistake is concerned, as already held, it is not an error apparent prejudicing the applicant and, therefore, the contention of learned counsel for the applicant is not sustainable.

39. Learned Additional Pubic Prosecutor for the State vehemently submitted that in view of provisions contemplated under Section 362 of the Code, only clerical and arithmetical mistakes can be corrected and in support of his contentions, he placed reliance on the decision in the case of **Hari Singh Mann vs. Harbhajan Singh Bajwa and ors** *supra*

wherein it is held there is no provision in the Code authorizing the High Court to review its judgment passed either in exercise of its appellate or revisional or original criminal jurisdiction. Such a power cannot be exercised with the aid or under the cloak of Section 482 of the Code. Section 362 of the Code no Court, when it has signed its judgment or final order disposing of a case shall alter or review the same except to correct a clerical or arithmetical error. The Section is based on an acknowledged principle of law that once a matter is finally disposed of by a Court, the said Court in the absence of a specific statutory provision becomes *functus officio* and disentitled to entertain a fresh prayer for the same relief unless the former order of final disposal is set aside by a court of competent jurisdiction in a manner prescribed by law.

40. As observed earlier, the applicant has raised various grounds for recall of the order. While passing the order, though date of filing of the chargesheet in respect of Crime No.428/2021 is wrongly mentioned, paragraph No.30 specifies that when sanction was granted, there were more than one

chargesheets against the applicant wherein cognizance was taken. The said observation was made considering the definition of “continuing unlawful activity”. Admittedly, involvement of the applicant is revealed during the investigation and, therefore, the investigation officer sent a proposal for approval to apply provisions of the MCOC Act vide letter number 2014/2021 dated 11.12.2021 and after considering the material, approval under Section 23(1) was granted on 24.1.2022. On the date of granting the approval and on the date of evoking provisions of the Special Act, there were two chargesheets against the applicant wherein cognizance was taken. Thus, it was considered that for charging a person under provisions of the MCOC Act for organized crime or being a member of the organized crime syndicate, essential ingredients are, 1. an activity; 2. which is prohibited by law; 3. which is a cognizable offence punishable with imprisonment for three years or more; 4. undertaken either singly or jointly; 5. as a member of organized crime syndicate i.e. acting as a syndicate or a gang or on behalf of such syndicate; 6(a). in respect of similar activities (in the past) more than one chargesheets have been filed in competent court within preceding period of 10 years; 6(b). and the court has taken cognizance of such offence; 7. the activity is undertaken by (a) violence or (b) threat of violence, or intimidation or (c) coercion or (d) other unlawful means; 8(a). with the object of gaining pecuniary benefits and gaining undue or other advantage by himself or any other person or (b). with the object of promoting insurgency.

41. In the light of above ingredients, admittedly, the First Information Report was not lodged by alleging the criminal activities as a member of organized crime syndicate. During the investigation, it revealed that the applicant is involved in a “continuous unlawful activity” as a member of organized crime syndicate and in pursuance of the common object of such syndicate either singly or jointly committed an offence and, therefore, provisions of the MCOC Act are evoked. Subsequently, on the date of approval, two chargesheets were fled against the applicant wherein punishment of three years or more is provided and cognizance was taken by the competent court and, therefore, the contention of learned counsel for the applicant that there is an error apparent is not

sustainable.

42. As already observed, in view of the scope of Section 362 of the Code, an order can be recalled only on the ground of arithmetical or clerical error.

43. The Honourable Apex Court in the case of **Mohammed Zakir vs. Shabana and ors**, **reported in (2018)15 SCC 316** held that the High Court should not have exercised the power under Section 362 of the Code for a correction on merits. However, patently erroneous the earlier order be, it can only be corrected in the process known to law and not under Section 362 of the Code. The whole purpose of Section 362 of the Code is only to correct a clerical or arithmetical error. What the High Court sought to do in the impugned order is not to correct a clerical or arithmetical error; it sought to rehear the matter on merits, since, according to the learned Judge, the earlier order was patently erroneous i.e. impermissible under the law.

44. In the case of **Simrikhia vs. Dolley Mukherjee and Chhabi Mukherjee and anr, reported in (1990)2 SCC 437** also the Honourable Apex Court held

that inherent power of the High Court under Section 482 does not extend to what is expressly barred under the Code and, therefore, the same cannot be exercised by the court to review its own earlier decision in view of Section 362 of the Code.

45. Thus, in view of the well settled legal principles, if the court is satisfied the order to be reviewed suffers from manifest error which is required to be unearthed by an elaborate process of reasoning and such an order leads to an injustice, the High Court would be justified in exercising powers to recall or review the order to pass such order as may be found expedient in facts of the case. The inherent jurisdiction of the High Court cannot be evoked to override bar or review under Section 362 of the Code. The law is, therefore, clear that the inherent power cannot be exercised for doing that which cannot be done on account of the bar under the other provisions of the Code. The court is not empowered to recall its own decision under purported exercise of inherent powers.

46. Thus, in my view, no case for exercising of

review/recall jurisdiction is made out. Hence, the application deserves to be rejected and it is **rejected.**

47. In view of disposal of the application, criminal application(s), if any, also stand(s) disposed of.

(**URMILA JOSHI-PHALKE, J.**)

!! BrWankhede !!