2025:BHC-AUG:13289-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.862 OF 2024

Ajitsingh s/o. Raghuvirsingh Gaherwar,
Age : 51 years,
Occ. Service (under suspension),
r/o. Aurad Shahajani,
Tq.Nilanga, Dist. Latur. ..Appellant

Vs.

The State of Maharashtra,
Through Sub Divisional Police Officer,
Investigating Officer (Asst. S.P.) of
CR. No.97/2022,
Chakur Police Station, Chakur,
Tq. Chakur, Dist. Latur ..Respondent

Mr.V.D.Godbharle, Advocate for appellant
Mr.S.J.Salgare, APP for respondent

CORAM	**:**	**R.G.AVACHAT AND NEERAJ P. DHOTE, JJ.**
RESERVED ON	**:**	**FEBRUARY 20, 2025**
PRONOUNCED ON	**:**	**MAY 06, 2025**

ORDER ***(Per R.G.Avachat, J.)*** **:-**

This is an appeal under Section 12 of the Maharashtra Control of Organised Crime Act, 1999 (“MCOC Act”, for short). The challenge herein is to the order dated 12.08.2024, passed by learned Addl. Sessions Judge and Special Court, Latur, rejecting the application (Exh.83) for discharge from the offences punishable under the MCOC Act.

2. The case of prosecution, in short, is as under:-

There is an organised crime syndicate headed by accused no.1 – Narayan Tukaram Irbatanwad. The rest of the accused persons, eleven in number (including juvenile in conflict with law), are alleged to be the members of the organised crime syndicate. The crime in question was, initially, registered as C.R. No.0097 of 2022 with Chakur Police Station, Dist.Latur, for the offences punishable under Sections 302, 120-B, 201, 212, 216 read with Section 34 of Indian Penal Code . The FIR was lodged by a police officer. The gist of the FIR was that a dead boy in mutilated condition was found in *Khadani* (a place wherefrom *Murum* was excavated), on Ajansonda Road, within the limits of village Chapoli, Tq. Chakur, Dist. Latur. During the investigation, it was revealed that there was monetary transaction between the deceased – Sachin @ Lalu Shivsamb Davangave and accused no.1. Accused no.1 gave contract to kill the deceased. Accused nos.2, 3 and a juvenile in conflict with law committed murder of said Sachin @ Lalu, pursuant to the said contract.

3. In this appeal, we are concerned with the role of the appellant only. The prosecution proposes to rely on the statement

dated 25.08.2022 of one Venkat Shankarrao Shivane, Peon, serving with Mst.Dinanath Mangeshkar High School. His statement disclosed that on 18.05.2022, accused no.1 had come to the college to meet the appellant. Accused no.1 stayed in the college for two days. That time, the appellant had informed him (witness) that an offence of murder was registered with Police Station, Chakur. Accused no.1 was arrested in the said crime. He jumped the jail. He (witness) was further informed that the police were on lookout of accused no.1. The witness further informed that accused no.1 had come to the college to hide himself. The appellant instructed the witness not to disclose anything, if anybody made inquiry about him (accused no.1). The witness was further asked by the appellant to make provision of residence and meals for accused no.1. He was further informed that accused no.1 was a dangerous person and if anyone learns about his presence there, he (accused no.1) even would not spare them. The appellant even paid Rs.500/- to the witness. He then made arrangement for stay of accused no.1 in the college for two days. On the third day, the witness gave accused no.1 a key of the appellant’s four-wheeler. Thus, in short, the case of the prosecution is that the appellant harboured accused no.1 (leader of the organised crime syndicate).

4. The trial court observed that the material produced on record creates a grave suspicion, leading to presume the appellant to have harboured and concealed the main accused involved in continuing unlawful activity. The appellant’s application was, therefore, turned down.

5. Learned counsel for the appellant would submit that the provisions of the MCOC Act have been wrongly invoked. He took us through the relevant definitions contained in Section 2 of the MCOC Act, to submit that the main offence in question was not continuing unlawful activity. He would further submit that there were no two charge-sheets filed against accused no.1 and at least, one more person for the requisite offences. A cognizance thereof was not taken. He took us through the chart of the offences registered against original accused no.1 and others. We do not detain ourselves to the submissions advanced by learned counsel.

6. Learned APP would, on the other hand, submit that two charge-sheets in connection with the requisite offences were required to be filed against an organised crime syndicate and not an individual. He relied on the judgment of this Court in the case of

Govind Sakharam Ubhe Vs. State of Maharashtra, AIR Online 2009 Bom 2 and the Apex Court judgment in the case of ***Zakir Abdul Mirajkar Vs. State of Maharashtra and ors., AIR Online 2022 SC 1325***. According to him, the sole witness's statement, *prima facie*, makes out involvement of the appellant in the offence of harbouring of accused no.1 - leader of the organised crime syndicate. He would further submit that the condition of filing two charge-sheets is not necessary as against a member of the organised crime syndicate or the person who harbours such member. According to learned APP, the trial court has rightly turned down the discharge application filed by the appellant. He, therefore, urged for dismissal of the appeal.

7. We have considered the submissions advanced. Perused the police papers.

8. Before adverting to the factual matrix, a reference to the relevant definitions contained in Section 2 of the MCOC Act is must.

Section 2(1) of the MCOC Act defines "abet", as under:-

> a) "abet", with its grammatical variations and cognate expression, includes,—
>
> (i) the communication or association with any person with the actual knowledge or having reason to

believe that such person is engaged in assisting in any manner, an organised crime syndicate;

(ii) the passing on or publication of, without any lawful authority, any information likely to assist the organised crime syndicate and the passing on or publication of or distribution of any document or matter obtained from the organised crime syndicate; and

(iii) the rendering of any assistance, whether financial or otherwise, to the organised crime syndicate;

(b) ....

(c) ....

(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;

Section 3 of the 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) ………..

9. There can be no two views over the legal proposition that filing of two previous charge-sheets for a particular kind of offence, so as to constitute the third offence to be the organised crime, has to be against the organised crime syndicate and not an individual, who either abets an organised crime or is a member of organised crime syndicate. A useful reference in this regard could be made to the judgments of the Apex Court in the cases of (i) **Prasad Shrikant Purohit Vs. State of Maharashtra and anr., [2015]9 S.C.R. 575** and (ii) **Zakir Abdul Mirajkar** (Supra).

10. Learned APP admits the appellant to have not played any role preparatory or in committing the offence, which is alleged to be an organised crime. The appellant is sought to be prosecuted for the offence punishable under Section 3(3) of the MCOC Act.

11. Before invoking the provisions of the MCOC Act, Sections 212 and 216 of the Indian Penal Code were invoked against the appellant. After invocation of the MCOC Act, there appears to have been no further investigation to *prima facie* indicate the appellant to have been involved in the offence punishable under Section 3(3) of the MCOC Act. For better appreciation, both the offences namely, one under the Indian Penal Code and under MCOC Act need to be compared with each other.

Sections of I.P.C.		Section M.C.OC. Act
212. Harbouring offender.— Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment; **if a capital offence**. — shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; **if punishable with imprisonment for life, or with imprisonment**.— and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence is punishable with imprisonment which may extend to one year, and not to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.		**3. Punishment for organised crime.-** (1) ….. (2) ….. (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) ….. (5) …..

216. Harbouring offender who has escaped from custody or whose apprehension has been ordered.— Whenever any person convicted of or charged with an offence, being in lawful custody for that offence, escapes from such custody, or whenever a public servant, in the exercise of the lawful powers of such public servant, orders a certain person to be apprehended for an offence, whoever, knowing of such escape or order for apprehension, harbours or conceals that person with the intention of preventing him from being apprehended, shall be punished in the manner following, that is to say, - **if a capital offence**.—if the offence for which the person was in custody or is ordered to be apprehended is punishable with death, he shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; i**f punishable with imprisonment for life, or with imprisonment**.— if the offence is punishable with imprisonment for life or imprisonment for ten years, he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine; and if the offence is punishable with imprisonment which may extend to one year and not to ten years, he shall be		

punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence, or with fine, or with both.		

A comparison of the punishments provided to both the offences, would indicate that the offence under the MCOC Act is serious and in aggravated form. The punishment provided therefor is of not less than five years and fine of not less than Rs.Five Lakhs. It needs no mention that *mens rea* is an essential ingredient of the offence/s both under the Indian Penal Code and the MCOC Act. Reading of Section 212 of I.P.C. would indicate that the accused of the said offence must either know or has reason to believe the person harboured or concealed, to be the offender. Such act must be with the intention of screening him from legal punishment.

12. At the cost of repetition, it is observed that the statement of the sole witness does not lead us to *prima facie* infer that the appellant was in the know or had reason to believe the original accused no.1 to have been a leader of the organised crime syndicate or while he was even harboured or he was an accused of committing organised crime syndicate.

13. In our view, therefore, the trial court ought to have discharged the appellant of the offence punishable under Section 3(3) of MCOC Act. Needless to mention, the offences punishable under Sections 212 and 216 of Indian Penal Code are *prima facie* made out against the appellant; and the trial Court (Special Court) need to frame charge against the appellant for committing those offences. Needless to mention, the appellant shall be tried along with rest of the accused by the Special Court itself.

14. We refrain ourselves from making observation, as to whether the main offence of murder was an organised crime, within the meaning of Section 2(d) of MCOC Act, since the actual perpetrators thereof, and at whose behest such crime was committed, are not before us in this appeal.

15. In the result, the appeal succeeds in terms of the following order:-

(i) The appeal is allowed

(ii) The appellant is discharged from the offence punishable under Section 3(3) of the MCOC Act.

(iii) The appellant be charged for the offences punishable under Sections 212 and 216 of Indian Penal Code and allied offences, if any, in the very case, i.e. special case.

(iv) Needless to mention, the trial court has jurisdiction to exercise the powers under Section 216 of the Code of Criminal Procedure, if the evidence in the case so demand.

[NEERAJ P. DHOTE, J.] **[R.G. AVACHAT, J.]**

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