



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Pronounced on: 2nd April, 2025**
 + **CRL.REV. P. 484/2012**

STATE

Through

it's Secretary, Govt. of NCT of Delhi

.....Petitioner

Through: Mr. Utkarsh, Ld. APP for the State
 with Insp. Adesh Kumar and SI
 Abhishek Guleria P.S. Anand
 Parbat.

Versus

1. DINESH TIWARI

S/o Sh. Ram Nath Tiwari

R/o Village Bhagola Pvr. PS Kotwall Bilgram

Distt. Hardol, UP.

2. DHARMENDER @ PEHELWAN

S/o Late Sh. Ram Awadh

R/o 188/3, Gali No. 5m Nehru Nagar,

Anand Parbat, Delhi.

.....Respondents

Through: Mr. Siddharth Yadav and Mr.
 Anant Aditya Patro Advocates
 with R-1 and R-2 in person.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Petition has been filed under Section 397 of the Code of Criminal Procedure, 1973 (*hereinafter "Cr.P.C."*), seeking quashing/setting-aside of the *Impugned Order dated 07.06.2012* of the learned Additional Sessions Judge, *vide* which the three accused persons namely, *Dinesh*



*Tiwari/ Accused No. 1, Kaushal @Pappi/ Accused No. 2(since deceased) and Dharmender @Pehelwan/ Accused No. 3, were **discharged** under the Maharashtra Control of Organized Crime Act, 1999 (hereinafter “MCOCA”).*

2. **Briefly stated**, the case of the prosecution is that the *crime syndicate* is led by prime accused Dinesh Tiwari, with Dharmender and Kaushal as its associates, who have been involved in organized crime and have accumulated wealth from their joint criminal activities. Dinesh has been involved in 12 criminal cases, while Dharmender and Kaushal have been involved in 8 and 3 criminal cases, respectively, since 1992.

3. **Dinesh Tiwari** has utilized this wealth for purchase of a parcel of land in Village Mukundpur in 2005 and had spent Rs. 80,000/- on building material for construction. He also acquired a plot measuring 150 sq yards in Janta Vihar, Mukundpur, worth Rs. 11.50 Lakhs.

4. Accused **Kaushal Kumar (since deceased)** purchased a Santro car (registration No. DL-2AE-1259) in the name of his mother, Saroj Bala, for Rs. 1.80 Lakhs. He spent approximately Rs. 5 Lakhs on reconstructing his house, in 2010.

5. Accused **Dharmender** spent Rs. 4-5 Lakhs on the construction of his house at Gall No. 9, Nehru Nagar, Anand Parbat, Delhi. He also spent Rs. 5-6 Lakhs constructing a new house in his village.

6. On the basis of the previous criminal antecedent and involvement of the accused persons, after obtaining the Approval under Section 23 of the MCOCA from the Competent Authority on 07.01.2011, *FIR No. 07/2011 u/S. 3 MCOCA* was registered on 31.05.2011, at P.S. Anand



Parbat, New Delhi, against the three accused. After investigations, the Charge-Sheet was filed u/s. 3 MCOCA.

7. The Learned ASJ, *Vide the Impugned Order dated 07.06.2012*, after due consideration of the evidence on record, found that *no prima facie case* was made out against any of the accused persons under Section 3 MCOCA and discharged them all.

8. Aggrieved, the State has assailed the Impugned Order on the **grounds** that the learned ASJ has erred in observing that the requirement of Section 2(1) (d) of the MCOCA was not met as the cases against the accused registered prior to May 2001 could not have been considered. To constitute "*continuing unlawful activities*" there should be two or more cases within stipulated time of 10 years cases, which was not satisfied.

9. It is submitted on behalf of the Petitioner/ State that Dinesh and Dharmender are prime members of the syndicate, while Kaushal@ Pappi, can be punished under Section 3(2) of MCOCA for his association with the syndicate, as is established by the statement of *PW-Mukesh Prajapati*. Having two or more Charge Sheets against all the accused members is not necessary when it is established that accused were associated with the *gang/organized crime syndicate* in the manner as mentioned u/s 3, (2), (3), (4), & (5) of MCOCA.

10. The learned Trial Court has failed to appreciate that all the accused persons have no permanent source of income despite which they all had obtained the properties from proceeds of organized crime and funds of the Syndicate, as established by the ocular and documentary evidence collected by the Prosecution. A *prima-facie* case was made out against all



the accused; the Court was not required to examine the evidence minutely at the time of framing of Charges.

11. Thus, the Impugned Order dated 07.06.2012 is liable to be set-aside and the Charge under Section 3 of MCOCA against the three accused persons, be directed to be framed.

12. **In the Reply filed by the Respondents**, it has been vehemently contented that the Prosecution has miserably failed to establish that the accused persons were forming any *Gang or Organized Crime Syndicate*, which is a *sine non qua* for the application of MCOCA. Even the requirement of more than one Charge Sheet stipulated in Section 2(1)(d), has not been fulfilled as there is only one common *FIR No. 20/2010* in which all the accused have been involved. Further, the Chargesheets filed prior to 2001 being beyond the period of 10 years, cannot be considered to invoke provisions of MCOCA.

13. It has been further argued that the prosecution has filed the Charge-Sheet under Section 3 of MCOCA without specifying under which specific Section 3(1) or Section 3(2) or Section 3(3), Section 3(4) & Sec. 3(5) MCOCA, prosecution of the respondents was undertaken.

14. Further, the Learned Prosecution has also failed to bring on record any evidence to prove that the acquired properties are either derived or obtained from commission of an organized crime or the same has been acquired from money of the *Organized Crime Syndicate*.

15. Thus, the Learned ASJ has rightly passed the Impugned Order dated 07.06.2012. There is no merit in the Revision Petition which is liable to be dismissed.



16. **Submissions heard and Record perused.**

17. At the outset, it is observed that Accused No. 2/Kaushal @ Pappi (previously, Respondent No. 2) had expired on 26.09.2020 and was thus, deleted from the array of parties *vide* Order dated 23.03.2023.

18. Before embarking upon the factual matrix of the case, it would be pertinent to observe that it is well established that depending upon the facts of each case, where the material placed before the Court discloses grave suspicion; the Court would be fully justified in framing the charge and proceeding with the trial. Before framing the charge, the court must apply its judicial mind on the material placed on record to satisfy that the commission of offence by the accused was possible.

19. ***Further, if two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the trial Court would be justified to discharge the accused.*** At this stage he is not to see whether the trial would end in conviction or acquittal as has been observed by the Apex Court in the case of Sajan Kumar vs. CBI (9) SCC 368.

20. In the light of these principles, it would be worthwhile to refer to the relevant provisions of MCOCA

21. MCOCA was enacted to make special provision for prevention and control and for coping with criminal activity of an organized crime syndicate and gang and for the matters connected therewith or incidental thereto.

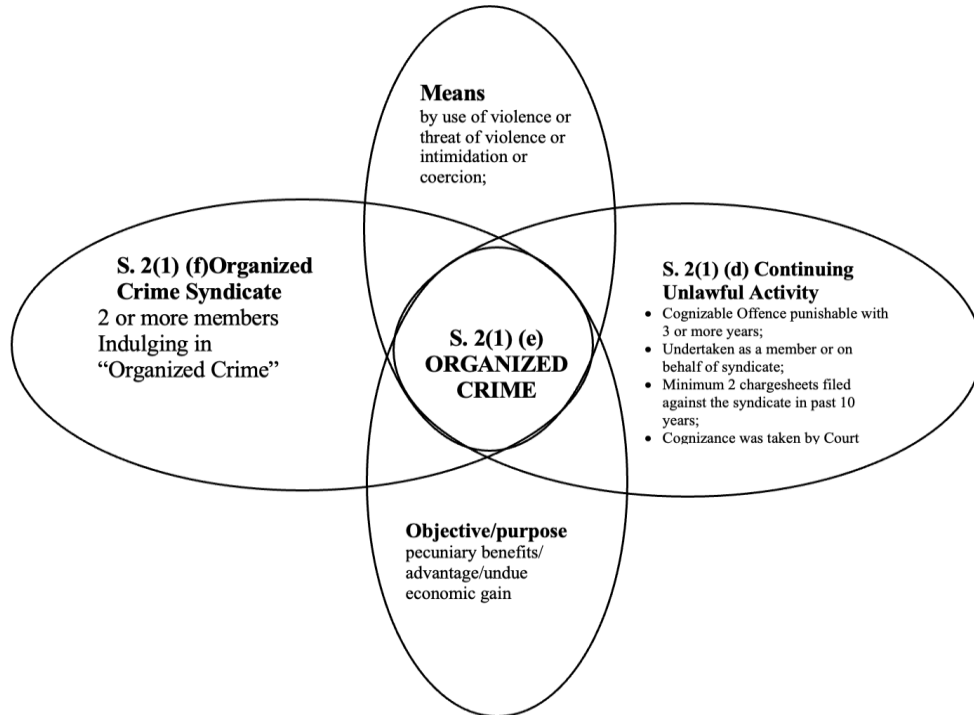


22. *The Statement of Object and Reasons* for enacting this Act gives an important insight to assess the intention of legislature for making this enactment. It was stated that organized crime has become a serious threat to the society in the last few years. This crime has no national boundary and was fueled by illegal wealth generated by contract killing, extortion, smuggling in contrabands, illegal trade and narcotics, kidnappings for ransom, collection of protection money and money laundering, etc. The proportion of amount so generated was so huge that it had serious adverse effect on the economy. It was seen that these organized crime syndicates made a common cause with terrorist gangs and fostered terrorism which extended beyond national boundaries. The existing legal frame work was found to be rather inadequate to curb or control the menace of organized crime. Therefore, it was decided that a special law with stringent and deterrent provisions to be enacted to control the menace of the organized crime.

23. MCOCA as applicable to Maharashtra was made applicable to the National Capital Territory of Delhi by Ministry of Home Affairs *vide* Order dated 02.02.2002.

24. ***To put it simply, an offence under S.3 MCOCA is prima facie made out if there is “continuing unlawful activity” as defined under 2(1)(d) committed by “Organized Crime syndicate” as defined under Section 2(1)(f) to commit “organized crime” as defined under Section 2(1)(e), which is punishable under S.3 MCOCA.***

25. This inter-relation between the 2 (1) (e), (d) and (f) can be explained as under: -



26. Having outlined the contours of the Organized Crime under MCOCA, the facts of the present case, may be considered.

27. *The first aspect for consideration is whether there was any continuing unlawful activity by the three respondents. Section 2 (1)(d) defines “Continuing unlawful activity” as under:*

*“(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 organized 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;”*



28. The prerequisites of constituting “*Continuing Unlawful activity*” as per Section 2(1)(d), is:

(i) the activity must be a cognizable offence punishable with imprisonment of three years or more;

(ii) That it may have been undertaken either singly or jointly, but as a member of or on behalf of an organized crime syndicate; and

(iii) There should be minimum two Charge-sheets filed against such syndicate, within the preceding period of ten years; and

(iv) Court must have taken cognizance of the offence.

29. The present FIR was registered on 31.05.2011, as per Section 2(1)(d) only the Chargesheets which have been filed in the preceding 10 years and of which competent court has taken cognizance can be considered, and this period of 10 years is to be counted from the date of the FIR which is 31.05.2011. Thus, the only Charge Sheets which could have been considered would be within the period of May 2001 to May 2011. Thus, Chargesheets filed prior to 2001 cannot be considered.

30. As per the record, Dinesh Tiwari was found involved in 5 cases since May, 2001 – May 2011, which are as under: -

S. No.	FIR and PS.	Sections	Co-Accused	Chargesheet
1.	11/2002Hari Nagar	25 Arms Act	-	Not Filed
2.	561/2005 Shalimar Bagh	379 IPC	Mahesh and Sugreev	Filed
3.	1061/2005 Shalimar Bagh	392/34IPC	Vishwas Kumar, Sanjiv	Filed



			Prasad, Mahesh Sharma and Satish	
4.	267/2008 Keshav Puram	25 Arms Act	-	Filed
5.	20/2010 Mandir Marg	394/397/34 IPC	Kaushal Kumar and Dharmender	Filed

31. ***Dharmender @ Pehalwan*** was found to be involved in 3 cases May, 2001 – May 2011, which are: -

S. No.	FIR and PS.	Sections	Co-Accused	Chargesheet
1.	266/2008 Keshav Puram	25 Arms Act	-	Filed
2.	20/2010 Mandir Marg	394/397/34 IPC	Kaushal Kumar Dinesh Tiwari	Filed
3.	88/2010 Crime Branch	25 Arms Act	-	Filed

32. Late ***Sh. Kaushal Kumar*** was found involved in the below mentioned 3 cases in the relevant period: -

S. No.	FIR and PS.	Sections	Co-Accused	Chargesheet
1.	248/2010 DGB Road	392/397/411/120B	Bhawar Lal	Filed
2.	20/2010 Mandir Marg	394/397/34 IPC	Dharmender and Dinesh Tiwari	Filed
3.	20/2010 Crime Branch	25 Arms Act	-	Filed

33. Admittedly, out of all these cases, the three accused were involved together only in one case i.e. FIR No. 20/10, Mandir Marg under Section 394/397/34 IPC.



34. Pertinently, requirement of more than one Charge-Sheets is in reference to the *continuing unlawful activities* of the organised crime syndicate and not qua individual member thereof as has been held in the case of 120.Kavitha Lankesh v. State of Karnataka and Others (2022) 12 SCC 753.

35. Similar view has been taken by the Supreme Court in Zakir Abdul Mirajkar vs. State of Maharashtra 2022 SCC OnLine 1092 that more than one Charge Sheet is required to be filed in respect of the *organized crime syndicate* and not in respect of each person, who is alleged to be a member of such a syndicate.

36. In Govind Sakharam Ubhe v. State of Maharashtra (2009) SCC Online Bom 770, it was observed that if within a period of preceding ten years, more than one Charge-Sheet has been filed in respect of *organized crime* committed by a *crime syndicate*, the said Charge-Sheets can be considered against a new member of the crime syndicate, even if he was not involved in previous cases.

37. In the present case, apart from *FIR No. 20/2010* under Section 394/397/34 IPC, there is no other Charge-Sheet in respect of the alleged crime syndicate of Dinesh Tiwari. The Charge Sheets in different FIRs, relied upon by the prosecution are either filed against the accused persons in their individual capacity or along with other co-accused persons, which does not prima facie indicate any *continued unlawful activity*, as defined under Section 2 (1)(d).

38. It rather emerges that the prosecution has tried to establish a case by merely showing a record of previous involvements of the accused



persons. However, it needs no reiteration that an accused cannot be prosecuted merely on the basis of previously filed Chargesheets, if the other ingredients such as existence of crime syndicate, nexus to such syndicate, membership, use of threat or violence and pecuniary advantage etc. are not proved.

39. The “*continuing unlawful activity*” is a *sine qua non* to prove commission of “*Organized crime*” as per Section 2 (1)(e), and not even its *prima facie* existence has been made out. ***Therefore, in the present case, it cannot be said that the accused persons were involved in continuing unlawful activity which would prove the existence of organized crime being committed by an Organized Crime Syndicate.***

40. Section 2(1)(e) of MCOCA defines “*organized crime*”, which reads as under:

“(e) “*organized crime*” means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organized 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;”

41. Term “***Organized Crime***”, as per Section 2(1)(e), means if any individual, either singly or jointly but as a member or on behalf of such a crime syndicate of two or more members as defined in 2(1)(f), engages in such ***continuing unlawful activity*** as defined under Section 2(1)(d), by ***means*** of violence or threat of violence or intimidation or coercion, and with the ***objective*** of gaining pecuniary benefits or gaining undue



economic advantage or promote insurgency, would be said to have committed “**Organized Crime**”.

42. **Likewise, “Organized Crime syndicate”** is defined under Section 2 (1) (f) MCOCA, as under: -

*“(f) “organized 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 **organized crime**;”*

43. To constitute an **Organized Crime Syndicate** under Section 2(1)(f), there has to be **minimum 2 members**, who either singly or collectively, as a syndicate or gang, indulge in **activities of organized crime**. **There is prima facie no evidence to establish any nexus between the three accused of working as part of the Organized Crime Syndicate, merely on the basis of one FIR in which they were all the accused.**

44. Thus, the essential condition is that a *Charge Sheet* must have been filed against the *Organized Crime syndicate*. Nexus or link to an “*organized crime syndicate*” is a crucial factor and can lead to prosecution under MCOCA. Any other person can still be roped in under MCOCA, if his nexus with the Syndicate is established, regardless of whether multiple Charge Sheets have been filed against him as an individual.

45. **However, in the present**, the ingredients of Section 2 (1)(f) **which defines Organized Crime Syndicate** are not satisfied. There is no evidence placed on record to prove that “**organized crime syndicate**” **under Section 2(1)(f)** was formed by two or more members, or to show who are the members of the alleged **crime syndicate**. The Chargesheet merely mentions that accused persons had formed an *organized crime*



syndicate and have been involving in *continuing unlawful activity*. However, apart from these mere allegations, there is nothing on record to link the accused persons as part of a crime syndicate led by Dinesh Tiwari or to show that they have formed any syndicate or have acted as a member of any “*organized crime syndicate*”.

46. ***Thus, the Learned ASJ has rightly observed that the single case i.e. FIR No. 20/2010, is not sufficient to fulfill the conditions of Section 2 (1) (d) of MCOCA.***

47. ***The next aspect of consideration is the whether there is sufficient evidence to establish a case against the accused persons under Section 3 of MCOCA.*** It is noteworthy that in the present case, it is not explicit in the Charge-Sheet for which offence and under which sub-section of Section 3, the accused persons have been charge-sheeted.

48. MCOCA provides punishment for committing “*organized crime*” and not only “*continuing unlawful activity*”. Section 3 categorizes offences based on their nature and the degree of involvement of the accused, ensuring that all aspects of organized criminal activity - commission, facilitation, concealment, and financial gains - are addressed.

49. Thus, it becomes apposite to analyze Section 3 of MCOCA, which provides ***Punishment for Organized Crime***, as under: -

“3. Punishment for Organized Crime--

- (1) Whoever commits an offence of organized 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 organized crime** or any act preparatory to organized 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 organized 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.

(4) Any person who is a **member of an organized 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 organized crime** or which has been acquired through the organized 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.”

50. Section 3(1) provides the most severe penalties for those directly involved in committing organized crime.

51. Section 3(2) extends criminal liability beyond direct perpetrators to those who *conspire, attempt, abet, or knowingly facilitate the commission of an organized crime* or any act preparatory to it.



52. Section 3(3) addresses this by making it a punishable offence to *harbor or conceal, or attempt to harbor or conceal, a member of an organized crime syndicate.*

53. Section 3(4) criminalizes *mere membership in an organized crime syndicate.* Unlike traditional criminal laws that require proof of direct involvement in unlawful acts, this provision targets individuals based on their mere association with organized crime groups.

54. Lastly, since, organized crime thrives on financial gains, Section 3(5) covers *individuals who hold or acquire property through funds of organized crime syndicate or proceeds of organized crime.*

55. Pertinently, the allegations in the Charge Sheet pertain essentially to accumulation of wealth by the accused persons from previous joint criminal activities through a crime syndicate led by prime accused Dinesh Tiwari and utilization of such proceeds of organized crime; ***no case is made out in the Charge Sheet that the accused persons are currently involved offences punishable under Section 3(1), 3(2), 3(3) and 3(4) of MCOCA.***

56. Hence, the question for consideration now becomes *whether there is any evidence to make out a prima-facie case for the offence punishable under section 3(5) MCOCA.*

57. As already discussed above, to make out a case under Section 3(5) of MCOCA, it has to be established that the property occupied by each accused person was acquired from the organized crime syndicate funds, for which there is not an iota of evidence.



58. Even otherwise, to establish the case against **Dharmender @ Pehalwan**, reliance has been placed on the statements under Section 161 Cr.P.C, of *Sudama Yadav and Ambika Prasad*, who stated that they knew the accused Dharmender as *Sudama* was Pardhan of the Panchyat, whereas *Ambika Prasad* is the uncle of the accused, **Dharmender @ Pehalwan**. They stated that accused Dharmender had no source of income except having $\frac{1}{2}$ acre of agriculture land and about 2 $\frac{1}{2}$ years ago, he had reconstructed his house up to two storeys in the village. They further stated that the flooring, windows, door and iron work are yet to be done. They further stated that accused had reconstructed the house from the money generated from crimes.

59. Similarly, *PW/Nathu Lal* stated that accused **Dharmender @ Pehalwan**, had constructed a house up to four storeys over a purchased plot of 50 sq yards in the year 2010. He further stated that the market value of the said house is about 40 lacs and that accused had acquired the said houses from the money generated from crimes.

60. Admittedly, accused Dharmender was not found involved in any criminal activity during 1996-2009. It is too farfetched to say that funds were generated from crime prior to 1996 for which there is no evidence. Moreover, to constitute the offence under MCOCA, the funds have to be of the organized crime committed as member of Organized Crime syndicate, of which there is no evidence.

61. There is only one robbery case of FIR no. 20/2010 against Dharmender, wherein the diamond jewellery worth of Rs. 10 lac was looted. However, the Charge Sheet of the said case, reveals that some



jewellery was already recovered from the possession of accused persons and there are no allegations in the said Charge-Sheet that the looted jewellery was sold to anyone. Rather, as per the Charge Sheet, the remaining un-recovered jewellery is in the possession of their absconded co-accused. Thus, it was never the case of the prosecution that the booty of said robbery was utilized in acquiring the said property. Further, none of the witnesses examined by the investigating officer stated that the said properties were acquired from the fund of organized crime syndicate.

62. It is also noteworthy that the exact amount spent in the construction and sale consideration for purchase of properties has not been ascertained and merely an approx. estimate has been disclosed.

63. ***Thus, it has been rightly observed by the Learned ASJ that the statements of said witnesses do not establish a prima-facie that accused Dharmender@ Pehalwan had acquired the said properties from the organized crime syndicate fund.***

64. The allegations in the Charge Sheet *qua* accused ***Kaushal Kumar @ Pappi(though deceased)*** are that he has purchased one Santro Car No. DL-2AE-1259 for a sum of Rs one lac eighty thousand. He has also reconstructed his old house in the years 2010 and spent about five lac rupees in construction work.

65. Admittedly, Kaushal has not been found involved in any criminal activity prior to 2010. He was found involved in two cases of robbery i.e. FIR No. 248/10 PS DBG Road and FIR No. 20/10 PS Mandir Marg.

66. In case FIR No. 248/10, a sum of Rs. 97,000/- was recovered from his possession whereas in case FIR No. 20/10 no recovery was made



from his possession. In the Charge Sheets of both the cases, there is no reference to expenditure of the looted amount by the accused on the reconstruction of his house nor is it mentioned that some remaining amount/jewellery is yet to be recovered from his possession. There is no reference in the Charge Sheet of any construction over the said property.

67. As per the statement of *PW Manoj* under section 161 Cr.P.C., accused Kaushal had four shops at the ground floor of his house and he had taken one shop on pugree of Rs. 5.00 lac. *PW Manoj and PW Gurdeep* have vaguely stated that accused reconstructed his house from the *money generated from crime*, but they have not stated that accused was involved in any organized crime syndicate or member of any organized crime syndicate. Nor have they deposed that accused had reconstructed the house from the fund of organized crime syndicate fund. There is no disclosure of who were the members of the alleged syndicate or how was the syndicate formed.

68. Moreover, it is the case of the prosecution that the house was already acquired prior to 2011 and amount which has been spent on reconstruction is by utilization of syndicate funds. *PW Radhey Shyam* stated that accused Kaushal “*might have spent about Rs 4-5 lac*” in the construction of said house. This vague statement on the basis of assumption cannot assist the prosecution in any way.

69. As regards the purchase of Santro car, *PW Ravinder Singh* stated that accused had purchased a second hand Santro car in the sum of Rs. 2.80 lac in the year July 2010. He had paid Rs. 1.80 lac in cash and the remaining amount was paid in instalments of Rs. 6800/- per month.



However, on 03.04.2011 the accused had paid the balance amount of Rs. 74,800/- in one go and took the “*No Objection*” Certificate from him.

70. Admittedly, the robbery in case FIR No. 248/10 was committed on 08.12.2010 and accused Kaushal was arrested on 16.12.2010. If the robbery was committed in December 2010, it means the amount of Rs. 1.80 lacs paid in cash to *PW Ravinder Singh* in July, 2010 could not be from the booty of said robbery.

71. Further, in case FIR No. 20/2010, the robbery was committed on 05.02.2010 and accused was arrested on 23.02.2010 and admitted on bail on 15.03.2010 as nothing was recovered from his possession. In the charge sheet of said case it is nowhere mentioned that accused had either made the payment of instalments or spent any amount on the reconstruction of the house and neither was the Santro car seized.

72. ***Hence, it has been rightly observed by the learned ASJ there is no evidence to connect the amount spent, in the reconstruction of the house or purchase of Santro car by accused Kaushal @ Pappi, to the funds of syndicate. There is no evidence to prove that there was any crime syndicate or accused Kaushal was a member of the same or he had utilized syndicate funds in any manner.***

73. As regards the properties acquired by ***Dinesh Tiwari***, it is the case of the prosecution that accused had acquired a plot measuring 150 sq yards in Janta Vihar area with one Mukesh Prajapati in the sum of Rs. 11.50lac in the year 2008. It was also alleged that in the year 2008, he had sold a plot measuring 50 sq yards to Mr. Prahlad Garg. Hence, it has to be



ascertained if the properties were acquired by the accused Dinesh Tiwari from the proceeds of crime committed by him prior to 2008.

74. As per the Charge Sheet, accused was involved in the robbery case of FIR No. 1061/05 PS Shalimar wherein a robbery of Rs. 3.00 with some jewellery had taken place and robbery case of 2010. However, in the said case nothing was recovered from accused Dinesh and in his disclosure statement, the accused had disclosed that he had already spent his booty amount on food and making the payment to his advocates. Thus, when there was no recovery and the amount was already spent, it cannot be said that the proceeds from this offence was utilized by the accused.

75. Even the witnesses, *PW Tilak Raj*, *PW Mukesh* and *PW Prahlad* have only stated the amount contributed by the accused Dinesh Tiwari and none of the witnesses have deposed that the said plot from the fund of organized crime syndicate or how the syndicate is formed and who are its members.

76. ***Hence, it has been rightly observed by the learned ASJ that there is no evidence to show that accused Dinesh Tiwari had acquired the said properties from the organized crime syndicate fund.***

77. ***The last aspect of consideration*** is that heavy reliance had been placed by the prosecution on the ***“Confessional statements”*** of the accused persons to show that they had confessed that the properties have been acquired from the funds of crime syndicate.

78. ***Section 18*** of MCOCA, deals with the admissibility of certain confessional statements made to a police officer. The same provides as under: -



“18. Certain confessions made to police officer to be taken into consideration—

(1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872, but subject to the provisions of this section, a confession made by a person before a police officer **not below the rank of the Superintendent of Police** and recorded by such police officer either in writing or on any mechanical devices like cassettes, tapes or sound tracks from which sounds or images can be reproduced, shall be admissible in the trial of such person or co-accused, abettor or conspirator:

Provided that, the co-accused, abettor or conspirator is charged and tried in the same case together with the accused.

(2) The confession shall be recorded in a **free atmosphere** in the **same language** in which the person is examined and as narrated by him.

(3) The police officer shall, before recording any confession under sub-section (1), **explain** to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him and such police officer shall not record any such confession unless upon questioning the person making it, he is satisfied that it is **being made voluntarily**. The concerned police officer shall, after recording such voluntary confession, **certify in writing below the confession about his personal satisfaction** of the voluntary character of such confession, putting the date and time of the same.

(4) Every confession recorded under sub-section (1) shall be **sent forthwith to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate** having jurisdiction over the area in which such confession has been recorded and such Magistrate shall forward the recorded confession so received to the Special Court which may take cognizance of the offence.

(5) The person from whom a confession has been recorded under subsection (1) **shall also be produced before the**



Chief Metropolitan Magistrate or the Chief Judicial Magistrate to whom the confession is required to be sent under sub-section (4) along with the original statement of confession, written or recorded on mechanical device without unreasonable delay.

(6) The Chief Metropolitan Magistrate or the Chief Judicial Magistrate shall scrupulously record the statement, if any, made by the accused so produced and get his signature and in case of any complaint of torture, the person shall be directed to be produced for medical examination before a Medical Officer not lower in rank than of an Assistant Civil Surgeon.

79. The Supreme Court has stated in State of Maharashtra v. Kamal Ahmed Mohammed Vakil Ansari, (2013) 12 SCC 17 that Section 18 of MCOCA acts as an exception to the law laid in Section 25 of the Evidence Act 1872 and makes confession recorded by the Police Officer not below the rank of the superintendent of Police, admissible. The relevant extract is produced herein below-

*“71. Section 18 of MCOCA through a non obstante clause overrides the mandate contained in Sections 25 and 26 of the Evidence Act, by rendering a confession as admissible, even if it is made to a police officer **(not below the rank of Deputy Commissioner of Police)**. Therefore, even though Sections 25 and 26 of the Evidence Act render inadmissible confessional statements made to a police officer, or while in police custody, Section 18 of MCOCA overrides the said provisions and bestows admissibility to such confessional statements, as would fall within the purview of Section 18 of MCOCA.*

*72. It is however relevant to mention that Section 18 of MCOCA makes such confessional statements admissible only for “the trial of such person, or co-accused, abettor or conspirator”. **Since Section 18 of MCOCA is an exception to the rule laid down in Sections 25 and 26 of the Evidence***



Act, the same will have to be interpreted strictly, and for the limited purpose contemplated thereunder. The admissibility of a confessional statement would clearly be taken as overriding Sections 25 and 26 of the Evidence Act for purposes of admissibility, but must mandatorily be limited to the accused confessor himself, and to a co-accused (abettor or conspirator). ”

80. The Apex Court has further crystallised in Mohd. Farooq Abdul Gafur v. State of Maharashtra, (2010) 14 SCC 641 that even conviction could be based solely on confession recorded u/s. 18 MCOCA of the co-accused. The relevant extract is produced herein below-

*“84. So far as the conviction (of Accused 1) under MCOCA is concerned, it is quite clear that conviction could be based **solely on the basis of the confessional statement itself** and such conviction is also permissible on the basis of the confessional statement of the co-accused which could be used and relied upon for the purpose of conviction.”*

81. It is clearly discernible that a confessional statement made admissible under Section 18 of MCOCA, is a significant deviation from general criminal law principles and can be the sole basis of conviction of accused persons. Thus, the strict compliance of all the provisions of Section 18 is *sine qua non* for securing any such conviction of the accused persons.

82. In the present case, the alleged confessional statements of the accused persons were recorded by ACP Raja Ram Yadav whereas, Section 18 (1) stipulates that the confessional statement must be recorded by an officer not below the Rank of Superintendent of Police/DCP. It is also not disputed that the confessional statements are not signed by the



accused persons and it is recorded in all the statements that the “*accused refused to sign*” thereby the condition stipulated in Section 18 (6) was not fulfilled, making such confessional Statements in admissible.

83. Further, it is also a mandate of Section 18 (3) that the police officer shall not record any such confession unless he is satisfied that it is being made voluntarily. However, in the present case, the concerned police officer has failed to certify in writing below the confession about his personal satisfaction of the voluntary character of such confession and putting the date and time of the same.

84. Hence, the learned ASJ has rightly observed that none of the conditions enumerated in Section 18 MCOCA have been fulfilled at the time of recording the alleged confessional statement, making them inadmissible in evidence.

Conclusion: -

85. It has been rightly observed that no direct nexus of the accused persons with a crime syndicate or involvement in continuing unlawful activity has been proved and there is no money trail or property acquired by the accused person to connect the same to funds of the organized crime syndicate.

86. Hence, the prosecution has failed to establish a *prima facie* case against the accused persons for offence punishable under section 3 MCOCA. **The accused have been rightly discharged and there is no infirmity in the Impugned Order dated 07.06.2012.**

87. There is no merit in the present Petition, which is hereby dismissed, along with the pending Application(s), if any.

2025:DHC:3046



(NEENA BANSAL KRISHNA)

JUDGE

APRIL 02, 2025