

IN THE HIGH COURT OF DELHI AT NEW DELHI
SUBJECT : MAHARASHTRA CONTROL OF ORGANIZED CRIME
ACT, 1999

RESERVED ON : 26th May, 2014

DECIDED ON : 24th July, 2014

CRL.A.484/2012

STATE Appellant
Through : Mr.M.N.Dudeja, APP.

VERSUS

VIPIN SHARMA & ORS. Respondents
Through : Mr.Majid Memon, with Mr.S.Fernandes, Mr.Deepak Pathak
and Mr.Rajnish Chuni, Advocates for R-1 to R-4.
Mr.Ajay Verma with Mr.Gaurav Bhattacharya, Advocates for
R-5.
Mr.Charanjeet Singh, Advocate for R-6.

CORAM:
HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Challenge in this appeal is to an order dated 31.03.2012 of learned Additional Sessions Judge in case FIR No.71/2009 registered at Police Station Special Cell by which the respondents were discharged of offence under Section 3 of the Maharashtra Control of Organized Crime Act, 1999 (hereinafter referred to as 'MCOCA').

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that Vipin Sharma (R-1) arrested in Case FIR No.263/08 under Sections 420/406/506/467/471/120-B IPC read with Section 12 Passports Act Police Station Lajpat Nagar was known for his notorious criminal activities and was involved in 22 criminal cases of cheating, forgery, criminal breach of trust, attempt to culpable homicide not amounting to murder, wrongful confinement and criminal intimidation etc. registered at various Police

Stations in Delhi, Haryana and Punjab. It was further alleged that he and his associates (R-2 to R-6) collectively ran an 'organized crime syndicate' at D-111, Defence Colony, New Delhi and in furtherance of their activities, cheated various persons in different States to gain pecuniary benefits. By their illegal activities, they earned huge wealth in Delhi and NCR. The courts of competent jurisdiction have already taken cognizance of the offences including cases registered vide FIR No.240/2004 under Section 308/342/420/506/34 IPC PS Defence Colony; FIR No.595/2005 under Section 406/420/120-B IPC, PS Defence Colony and many others in which the punishment is more than three years against the respondents during the last ten years. Previous criminal prosecutions failed to bring about any reformation in them. Their unabated criminal activities prejudicial to the interest of public peace and tranquility continued. R-1 to R-6 who are related to each other have continued their activities jointly and singly by running the syndicate. From the nefarious acts and designs of the respondents, it is evident that they are desperate criminals and have cheated innocent people. To curb the menace of the 'organized crime syndicate' and in order to keep peace and tranquility in the society, a proposal for initiating the investigation under Section 3 MCOCA as extended to Delhi was put up before the competent authority. During the course of investigation and after the arrest of the respondents various pan cards, mobile Sim cards, Visa Debit Cards, passports and fake work Visas were recovered besides other articles including one laptop computer and printer used for making and printing fake visas and other travel documents etc. by R-6 on the direction of R-1 and other syndicate members. The prosecution further alleged that 14 bank accounts of respondents having total transactions ranging from `1,10,200/- to `1,83,35,093/- in various banks were found. Initially, Honey Sharma (R-2) avoided her arrest and was declared Proclaimed Offender. During the pendency of the case, R-1 and R-4 planned to flee from judicial custody at Ludhiana. From the details of the cases in which accused persons were involved/wanted/PO, it was evident that the existing law was not sufficient to deliver justice to the victims. Provisions of MCOCA were invoked against them.

3. After hearing the learned Additional Public Prosecutor and the learned counsel for the respondents, the trial court concluded that prima facie, the case under Section 3 MCOCA was not made out for framing of charge against any of the respondents resulting in their discharge with respect to offence under Section 3 of MCOCA. For other offences the respondents were directed to face trial before the regular criminal court. The State has

challenged the discharge order in the appeal in question. Vide order dated 30.04.2012, this Court stayed operation of the impugned order.

4. Learned Additional Public Prosecutor urged that the impugned discharge order cannot be sustained as the State was not afforded opportunity to lead evidence to prove the allegations including validity of the sanction. The trial court erred in analyzing the evidence minutely on merits at the stage of consideration of charge. Respondents' counsel justifying the impugned order urged that there was no material to invoke the stringent provisions of MCOCA as allegations against the respondents of committing offences of cheating and forgery could be dealt with by regular courts. It was highlighted that the object of MCOCA is fundamentally to curb the organized crime only when it is a serious threat to the society. The crime syndicates generate illegal wealth by contract killings, extortion, smuggling in contraband, illegal trade in narcotics, kidnappings for ransom, collection of protection money and money laundering etc. The illegal wealth accumulated due to these activities has a serious adverse effect on the economic fabric of the country. It is further urged that there cannot be an 'organized crime syndicate' among respondent Nos.1 to 6 who all are the family members. The prosecution was unable to bring any material on record as to who was actually running the 'syndicate' and how all the respondents were its members. Only broad perspective of the matter was that as per the prosecution allegations, the respondents used to send people abroad allegedly on bogus Visas thereby committing the offence of forgery, cheating, breach of trust etc. There was no violence or threat of violence, intimidation or coercion as contemplated under Section 2(e) of MCOCA. The alleged offences are petty in nature and there was no loss to the Government exchequer. It was further urged that the respondents have either been acquitted or discharged in many cases; some cases have already been compounded. In pending cases, the respondents have been granted bail. The respondents have duly accounted for the assets obtained by them. Reliance has been placed on different authorities i.e. *Rajjitsing Brahmajeetsingh Sharma Vs. State of Maharashtra and Anr.* (2005) 5 SCC 294; *Chenna Boyanna Krishna Yadav Vs. State of Maharashtra and Anr.* (2007) 1 SCC 242; *State of Maharashtra and Ors. Vs. Lalit Somdatta Nagpal & Anr.*(2007) 4 SCC 171; *Ram Bhai Natha Bhai Gadhvi & Ors. Vs. State of Gujarat with Criminal Appeal No.162/1997* (1997) 7 SCC 744; *State of Maharashtra Vs. Vishwanath Maranna Shetty* (2012) 10 SCC 561; *Hitender Vishnu Thakur & Ors.Vs. State of Maharashtra & Ors.* (1994) 4 SCC 602;

and, State Govt. of NCT of Delhi Vs. Kahlil Ahmed in Crl.Rev.P.No.42/2012 & Crl.M.A.No.975/2012.

5. Allegations against the respondents primarily were that they cheated various persons over a span of a decade at various places on false representation to send them abroad prompting them to part with their hard earned money. Undoubtedly, various cases in Delhi, Punjab and Haryana were registered against the respondents in this regard. List of such 25 pending criminal cases was annexed in Crl.M.A.No.796/2014 in Bail Appl. No.15566/2013. It reveals that in case FIR Nos.592/02, 595/05, 104/07, 67/02, and 521/08, the matter have been compromised/compounded resulting in acquittal of the accused therein. In other cases, they have been granted bail. In case FIR Nos.104, 105 and 106/2007 registered at PS Rahon, Nawa Shehar, Punjab, under Section 420 IPC, by judgments dated 07.03.2014, R-1 has been convicted under Section 420 IPC and sentenced to undergo RI for three years with fine `10,000/- each. On perusal of bail orders in other cases, it transpires that respondents were granted anticipatory/regular bail after they agreed to return the complete/partial amount received from the complainants therein. It is also not disputed that earlier R-2 (Honey Sharma) w/o Vipin Sharma (R-1) was declared Proclaimed Offender. Subsequently, supplementary charge-sheet was filed after her arrest. By an order dated 02.11.2012, her bail application was dismissed by this Court. Her Petition being W.P.(Crl.) No.169/2012 was dismissed by Supreme Court vide order dated 07.12.2012. All the contentions raised in the instant proceedings were subject matter of bail application which did not find favour with the courts. Learned Public Prosecutor emphasized in those proceedings that R-2 was member of 'organized crime syndicate' along with her husband, brothers and brothers-in-law. The 'syndicate' was involved in 31 cases including attempt to commit culpable homicide not amounting to murder, wrongful confinement, criminal intimidation, cheating, forgery and criminal breach of trust and the offences under the Passports Act etc. registered in various Police Stations in Delhi, Haryana and Punjab. It was also informed that R-2 was declared Proclaimed Offender in 7 out of 11 cases and she could be arrested after about two years of registration of cases. In FIR No.263/08, the complaint Mr.Harish Idnani, husband of real sister of Honey Sharma (R-2), alleged that she was actually involved in activities of 'organized crime syndicate' and had not even spared her own blood relations. Complainant alleged that the offences had been committed by Honey Sharma (R-2) either jointly or individually for pecuniary benefits in which they had used violence and

criminal intimidation besides committing cheating, forgery etc. According to prosecution, the accused persons as a syndicate, had allegedly cheated an amount of Rs. 4.5 crores from various victims. It was pointed out that R-2 had five bank accounts in her name as well as aliases showing transactions worth `1,83,35,093/-. These accounts were in the name of R-2 and that of one fake Honey Bhardwaj. In order to conceal her identity, R-2 got a PAN card issued in the name of Honey Bhardwaj. In her income tax returns filed between the years 2007 and 2010, she declared gross receipt of `26,84,770/- and gross profit `8,43,030/- as against her actual total transaction of `1,83,35,093/-. She owned two cars; Audi A4 car bearing No. DL-3CAY-0130 registered in her name and Maruti Swift bearing No. HR-51-AD-3187 in the name of Honey Bhardwaj. Various passports containing fake visa stamps of New Zealand were recovered from her house and the car being driven by her husband at the time of her arrest. There were allegations in other FIR under Section 506 IPC. These facts led this court to dismiss R-2's bail application. These facts are not under challenge.

6. Declining to accept the respondents' justification for accumulation of wealth, the Trial Court observed that providing of fake passports or visas, as alleged, could not have been for any other purpose but to have pecuniary gain.

7. The Trial Court based discharge order primarily on the invalidity of sanction/approval as adequate material was not produced before the competent authority and that the offences of cheating and forgery sans violence or threat of violence were not sufficient to attract the provisions of MCOCA. The alleged unlawful activities having been undertaken by the accused persons did not qualify to fall within the ambit of the Act. The reasoning given by the Trial Court for discharge is unacceptable.

8. In Mahipal Singh (Dr.) Vs.CBI & Anr. 2012 V AD (Delhi) 767, this court relying upon various authorities observed that Aims and Objects of MCOCA reveals that it was enacted to curb organized crime which had posed a very serious threat to the society. The activities mentioned therein ranged from killing, extortion, smuggling, terrorism, illegal trade in narcotics, money laundering etc. It was categorical to further hold that the list was not exhaustive.

The petitioner-Mahipal Singh faced criminal proceedings in six cases under Sections 120B/ 420/511/467/471 IPC etc. where provisions of Section 3 MCOCA were invoked. Rejecting the contentions that the offences of

cheating and forgery could not constitute the offence of organized crimes as the same did not involve 'element' of coercion or violence, it held:-

11 "As regards the other limb of argument of the Petitioner that is the essential ingredients of organized crime that the continuing unlawful activity should have been committed 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 the other advantage for himself or any other person, the provision was considered by the Hon'ble Supreme Court in Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra and State of Maharashtra & Ors. Vs. Lalit Somdatta Nagpal & Anr.(supra). In Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra 2005 (2) JCC 689 their Lordships held:

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32. The Statement of Objects and Reasons clearly state as to why the said Act had to be enacted. Thus, it will be safe to presume that the expression 'any unlawful means' must refer to any such act which has a direct nexus with the commission of a crime which MCOCA seeks to prevent or control. In other words, an offence falling within the definition of Organized crime and committed by an Organized crime syndicate is the offence contemplated by the Statement of Objects and Reasons. There are offences and offences under the Indian Penal Code and other penal statutes providing for punishment of three years or more and in relation to such offences more than one chargesheet may be filed. As we have indicated hereinbefore, only because a person cheats or commits a criminal breach of trust, more than once, the same by itself may not be sufficient to attract the provisions of MCOCA."

12. In State of Maharashtra & Ors. Vs. Lalit Somdatta Nagpal & Anr. (2007) 2 SCC (Crl) 241 their Lordships held:

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63. As has been repeatedly emphasized on behalf of all the parties, the offence under MCOCA must comprise continuing unlawful activity relating to organized crime undertaken by an individual singly or jointly, either as a member of the organized crime syndicate or on behalf of such syndicate by use of coercive or other unlawful means with the objective of gaining pecuniary benefits or gaining undue economic or other advantage for himself or for any other person or for promoting insurgency. In the instant case, both Lalit Somdutt Nagpal and Anil Somdutt Nagpal have been shown to have been involved in several cases of a similar nature which are pending trial or are under investigation. As far as Kapil Nagpal is concerned, his involvement has been shown only in respect of CR No. 25/03 of Rasayani

Police Station, Raigad, under Sections 468, 420, 34, Indian Penal Code and Sections 3, 7, 9 & 10 of the Essential Commodities Act. In our view, the facts as disclosed justified the application of the provisions of the MCOCA to Lalit Nagpal and Anil Nagpal. However, the said ingredients are not available as far as Kapil Nagpal is concerned, since he has not been shown to be involved in any continuing unlawful activity.”

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67. To apply the provisions of MCOCA something more in the nature of coercive acts and violence is required to be spelt out so as to bring the unlawful activity complained of within the definition of ‘organized crime’ in Section 2(1)(e) of MCOCA.

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16. Though simplicitor offences of forgery and cheating committed more than once would not come within the ambit of "organized crime" however the same would not be applicable to a case where cheating and forgery are done continuously so as to rig/manipulate the results of the examinations. Their Lordships in Lalit Somdatta Nagpal (supra) held that violation of Sales Tax and Excise Laws are not intended to be the basis of application of the provisions of MCOCA and to apply the said provisions something in the nature of coercive acts and violence is required to be spelt out so as to bring the unlawful activity complained of within the definition of "organized crime.

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20. In view of the aims and objects of MCOCA though cases of simplicitor cheating and forgery may not come under the "unlawful means" however, if the same are committed in manner as an organized crime, particularly effecting the results of the examination, thus, de-stabilizing the education system, the said activity would certainly fall within the ambit of "unlawful means" as required in "organized crimes". The said "unlawful activity" has some semblance to coercion, intimidation etc. as the same is performed by manipulating at an extensive level.

21. From the facts alleged against the Petitioner it is evident that the Petitioner was not involved in a simple case of forgery and cheating. He was rigging/manipulating the results by using "unlawful means" to obtain pecuniary gains. In view thereof I do not find any merit in the contention of the learned counsel for the Petitioner that MCOCA cannot be invoked against the Petitioner on the facts of the case as the basic ingredients of "organized crime" are not satisfied. Thus, the Petitioner will be proceeded for offence under Section 3 MCOCA only in RC/219/2011/E0007.”

9. In *Kamaljeet Singh (in judicial custody) Vs.State* 148 (2008) Delhi Law Times 170, this Court dismissed Kamaljeet Singh's appeal to assail order on charge dated 12.10.2006 in FIR No.96/05, PS Chankya Puri, registered under Sections 4 and 5 of Immoral Traffic (Prevention) Act, 1956, Section 3(1) (ii), 3(4), 3(5) and Section 4 of MCOCA and Section 420 read with Section 120B IPC. It was contended that the appellant and his associates were involved in a common, apparently soft crime which did not involve 'use of violence or threat of violence or intimidation or coercion'. It was also alleged that the sanction was cryptic in nature and did not show any application of mind. The Court observed :-

“55. The charges in the present case not being for cheating simplicitor or for violation of any tax or excise laws, and the present being a case of 'continuing unlawful activity' by an 'organized crime syndicate' with a wide network for illegal trafficking and prostitution, in my considered opinion, it is not possible to hold that the invocation of MCOCA in the present case was unjustified. It is also not possible to hold that the words "other unlawful means" contained in Section 2(e) are to be read as ejusdem generis/noscitur a sociis with the words violence, threat of violence, intimidation or coercion. However, even assuming the words "other unlawful means" are to be so construed, illegal trafficking of persons can safely be said to involve the use of violence, threat of violence, intimidation or coercion.”

10. Regarding sanction, the observations of this Court in para 60 are relevant to note:-

“The further contention of the learned Counsel for the appellant that the sanction under Section 23(2) of the MCOCA is cryptic and shows non-application of mind, is also wholly misconceived as the sanction order clearly sets out that all the papers were perused by the sanctioning authority and thus it cannot be said that there was non-application of mind by the sanctioning authority as alleged. Apart from this, learned Counsel for the appellant has also not been able to point out any cogent reason to buttress his contention that the sanction has been wrongly accorded by the sanctioning authority. There is, Therefore, no merit in his contention that Section 23(2) of the MCOCA, reproduced above, comes to the aid of the appellant.”

11. Similarly in *CrI.M.C.No.4341/2011 Shiv Murat Dwivedi @ Shiva*, this Court vide order dated 26.03.2012 upheld the charges under Section 3 MCOCA, in FIR No.44/2010 registered at Police Station Saket whereby the petitioner was accused of running a racket of prostitution. It observed:

“For the purpose of initiating proceedings under MCOCA Section 2 (d)(e)(f) defines and indicates that the organized crime syndicate is a gang which indulges in organized crime. This gang may consist of two or more persons, either acting singly or collectively, such a gang should be found to indulge in continuing unlawful activities, i.e. activities which is prohibited by law and is a cognizable offence punishable with imprisonment for three years and more. The activity would be terms as a continuing unlawful activity if more than one charge-sheet has been filed before the competent court against the members of gang either individually or jointly within the preceding ten years. However, it must be established that such an offence or unlawful activity is undertaken by a person with the objects of gaining pecuniary benefits or gaining undue economic or other advantages for himself or any other persons or for promoting insurgency. Such unlawful activity could include the use of violence or threat of violence or intimidation or coercion”.

12. In the instant case as per Annexure ‘A’ respondents either singly or jointly were involved in 31 criminal cases at various police stations at Delhi, Punjab and Haryana for cheating number of victims of their hard earned money ranging from `1 lac to `90 lacs, spread over a period of about ten years. Apparently, registration of criminal cases under the ordinary law did not have any deterrent effect and they unabatedly continued to indulge in the unlawful activities in an organized manner. They accumulated huge wealth by making false and fraudulent representation to the victims to send them abroad for getting jobs on payment of huge money by illegal means. They were found in possession of various fake visas of various countries; they also obtained fake PAN numbers; obtained bail orders on payment or return of part of the cheated amount. In number of cases they remained absconded. R-1 and R-4 even attempted to flee from judicial custody. In FIR No.240/04 registered at Police Station Defence Colony under Sections 308/342/420/506/34 IPC allegedly the complainant was assaulted on demand of money back. In FIR No.263/08 registered at Police Station Lajpat Nagar under Section 420/406/506/120B IPC and FIR No.104/2007 registered under Section 420/34 IPC at Police Station Chankyapuri allegation of criminal intimidation on asking for return of cheated amount were leveled. In case FIR No.521/08 registered at Police Station City Karnal under Section 306 IPC, Const.Mangat Singh in the suicide note levelled serious allegations against some of the respondents. In case FIR No.494/00 registered at Police Station Shakarpur under Sections 420/506/34 IPC, the respondents were charged by an order dated 17.09.2011 whereby they

cheated Sham Lal who had to remain in custody at Jamaica due to over stay. Allegedly R-1 took him to Thailand and threatened to kill when he demanded his money back. The victims were cheated to the tune of `4.5 crores. R-5 had five accounts in different banks, two PAN cards in different names. From the above referred cases, it cannot be said at this stage that the acts by which the victims were cheated and various documents were forged and fabricated, the respondents did not indulge in violence. Only when various criminal cases were registered, the respondents, to save their skin and to obtain bail, offered to return some of the cheated amount.

13. The matter was at its initial stage of consideration of charge. The Trial Court was not required to enter into meticulously consideration of evidence and material placed before it. Even a very strong suspicion founded upon materials leading the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, was enough for framing of charges. The Trial Court was not expected to make a roving enquiry into the pros and cons of the matter and to weigh evidence as if it was conducting a trial. Discharge of the accused of the offences under Section 3 MCOCA, at this stage was improper.

14. The prosecution was not accorded a reasonable opportunity to produce evidence to prove that the sanction/approval granted was on merits and after proper application of mind. The respondents not only indulged in unlawful activities by cheating innocent victims on the false inducement of sending them abroad by illegal means but also allegedly forged passports and visas playing fraud upon the authorities. Registration of number of criminal cases did not have any effect to prevent them to discontinue their illegal activities. Under these circumstances, initiation of stringent provisions of Section 3 MCOCA cannot be held unjustified to curb the illegal activities for which the Act has been enacted.

15. Taking into consideration all the facts and circumstances of the case, the impugned order whereby the respondents were discharged of the provisions of Section 3 MCOCA cannot be sustained and is set aside. Appeal filed by the State/appellant is allowed.

16. The trial court is directed to proceed with trial on merits by framing charges under the provisions of MCOCA in accordance with law. The observation made in this order will not have any impact on the merits of the

case. Trial Court record along with copy of the order be sent back forthwith.
All pending applications stand disposed of.

Sd/-
(S.P.GARG)
JUDGE

JULY 24, 2014