



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 433 OF 2023

- | | | | |
|----|--|---|----------------|
| 1. | Nilesh Anand Pawar, |] | |
| | Aged about 30 years, |] | |
| | Residing at Karmaveer Dadasaheb |] | |
| | Gaikwad Nagar, P. Y. Thorat Marg, |] | |
| | Chembur, Mumbai – 89. |] | |
| 2. | Rahul Anil Gaikwad |] | |
| | Aged about 26 years, |] | |
| | Residing at Chawl No.22, Karmaveer |] | |
| | Dadasaheb Gaikwad Nagar, |] | |
| | P. Y. Thorat Marg, |] | |
| | Chembur, Mumbai – 89. |] | |
| | (Both are at present in Judicial custody |] | |
| | and lodged at Mumbai Central Prison) |] | ... Appellants |
| | V/s. | | |
| | The State of Maharashtra |] | |
| | (At the instance of |] | |
| | Assistant Commissioner of Police, |] | |
| | Trombay Division, Mumbai |] | |
| | vide C.R. No. 407 of 2020 |] | |
| | registered with the Deonar Police Station) |] | ... Respondent |

Mr. Nitin A. Sejpal for Appellant.
 Ms. A.A. Takalkar, A.P.P. for Respondent-State.
 Mr. Sanjay Dahake, A.C.P., Deonar, present.

**CORAM : A. S. GADKARI AND
 SHYAM C. CHANDAK, JJ.**

RESERVED ON : 24th April 2024.

PRONOUNCED ON : 11th June 2024.

ORAL JUDGMENT (PER : A. S. Gadkari, J.) :-

1) Appellants, Original accused Nos.2 & 4 respectively, have filed present Appeal under Section 12 of The Maharashtra Control of Organised Crime Act, 1999 (*for short, "M.C.O.C. Act"*), impugning the Order dated 29th December 2022 passed below Exh.6 in Special Case No. 431 of 2021 by the learned Special Judge, City Civil & Sessions Court, Greater Bombay, rejecting the said application for dropping the charges under M.C.O.C. Act and for transferring the said case to the Court of Additional Sessions Judge, as contemplated under Section 11 of the M.C.O.C. Act.

2) Heard Mr. Sejpal, learned Advocate for Appellants and Ms. Takalkar, learned A.P.P. for Respondent-State. Perused entire record and the Affidavit dated 12th April 2023 filed by Mr. Nitin K. Jadhav, Assistant Commissioner of Police, Deonar Division, Mumbai.

3) At the outset, it is to be noted here that, Mr. Sejpal, learned Advocate for the Appellants submitted that, he is challenging the application of provisions of M.C.O.C. Act to the present crime and not the provisions of other Acts applied to it. He submitted that, after dropping of the provisions of the M.C.O.C. Act from the present crime, the case of the Appellants will have to be transferred to a Court having jurisdiction under the Cr.P.C. as per

Section 11 of M.C.O.C. Act.

3.1) Mr. Sejpal, learned Advocate for Appellants submitted that, in the present crime, the provisions of M.C.O.C. Act have been wrongly applied by the prosecution at least qua the Appellants. That, the Appellants did not actively participate in commission of the said crime. That, the medical report of the first informant indicates that, he suffered only blunt trauma and therefore Section 307 of the Indian Penal Code (I.P.C.) has been wrongly applied to the present crime. He submitted that, the Appellants are falsely implicated in the present crime due to business rivalry between the accused No.1 Shraavan @ Aawan J. Chavan and the father of the informant. There is no pecuniary gain from the crime, as per as the Appellants are concerned. That, the Appellants are not accused in the other two crimes registered against the head of Organised Crime Syndicate i.e. accused No.1 Shraavan @ Aawan and therefore the basic ingredients of M.C.O.C. Act are not complied with against the Appellants. There is no material to indicate that, the Appellants were the members of the said crime syndicate headed by Shraavan @ Aawan. That, there is no role at all prescribed to the Appellant No.2. That, no Test Identification Parade (T.I.P) is conducted by the prosecution to establish the identity of the Appellant No.2, to contend that he was present at the scene of offence. That, there is no material for application of the provisions of the M.C.O.C. Act against the Applicants and therefore the said provisions may be dropped from the present case. In support of his

contentions he relied on three decisions of this Court namely, (i) State of Maharashtra Vs. Bharat Baburao Gavhane & Ors., reported in 2006 ALL MR (Cri.) 2895, (ii) Sherbahadur Akram Khan & Ors. Vs. State of Maharashtra, reported in 2007 ALL MR (Cri.) 1 and (iii) State of Maharashtra Vs. Jagan Gagansingh Nepali @ Jagya & Anr., reported in 2011 ALL MR (Cri.) 2961. He submitted that, the trial Court has committed error in not appreciating the aforementioned points and therefore the Appeal may be allowed.

4) Per contra, learned A.P.P. opposed the Appeal and submitted that, there is sufficient material available on record to show the active involvement of the Appellants in the present crime along with their gang leader i.e. Accused No.1 Shraavan @ Aawan. She submitted that, the present crime is committed by an Organised Crime Syndicate for pecuniary gains and therefore the Competent Authority has rightly accorded sanction to apply the provisions of M.C.O.C. Act and to prosecute the Appellants and co-accused under the said Act. She submitted that, the trial Court has rightly considered the material available on record in its impugned Order. There are no merits in the Appeal and it may be dismissed.

5) It is the prosecution case that, the father of informant was running a sand/cement shop under the name of 'Lakshmi Lime Depot' in their locality. The informant and his family members were residing above the said shop. His father used to take petty contracts of construction work in their locality. His father had received a contract of construction work of Mr.

Sanjay Nigade in lane No.15 in the said area. As accused No.1 Shravan @ Aawan J. Chavan did not get the said contract, he was having grudge in his mind and had threatened the father of informant. The father of informant had therefore lodged N.C. No. 3015/2020 under Section 506 of I.P.C. with Deonar Police Station. On 18th December 2020 at about 11.30 p.m. somebody gave a call to the informant and therefore he came out of his house. A person wearing round cap and covered his face with red handkerchief was present there. The said person showed a knife concealed to his waist to the informant and took him aside. At the said place, Shravan @ Aawan along with Appellant No.1 Nilesh, other two known and four unknown persons were present. Shravan @ Aawan told the informant that, his father had taken the said contract, which was supposed to be for him and abused the informant in filthy language. Hearing their commotion, the father of informant and other close relatives, came at the spot. One of the accused slapped the informant. The Appellant No.1 pushed informant, due to which he fell down. Other accused persons assaulted the informant with fists and kick blows. The accused also assaulted father of informant. Shravan @ Aawan assaulted mother of informant with hands. The co-accused Santosh Talekar assaulted with knife on the chest of the father of informant and tried to give a blow on his neck, when the father of informant warded it off with his right hand, due to which he suffered an injury on his right hand wrist. When the persons residing in the adjoining houses, came to the rescue of the

informant and his family members, the accused showed knife to them and threatened with dire consequences if somebody intervenes. The informant thereafter took his mother and father to Sion Hospital and thereafter went to Deonar Police Station for reporting the said crime. At that time, the wife of informant told him that, subsequently accused No.1 Shravan @ Aawan along with other accused barged into their house and committed theft of a television set worth Rs.40,000/- and damaged other furniture therein. In this brief premise, C.R. No. 407 of 2020 dated 19th December 2020 registered with Deonar Police Station, Mumbai for the offence punishable under Sections 307, 451, 452, 380, 324, 323, 504, 427, 143, 144, 147, 148, 149 of I.P.C..

6) During the course of investigation, it was revealed that, the said crime was committed by the Organised Crime Syndicate headed by Shravan @ Aawan J. Chavan along with the members of his syndicate with a motive of pecuniary gain and other advantages. That, more than two chargesheets in the preceding 10 years have been filed against the Organised Crime Syndicate of Shravan @ Aawan before the Court of competent jurisdiction and the concerned Court has taken cognizance of it. The Senior Inspector of Police, Deonar Police Station therefore submitted a proposal dated 21st December 2020 to the competent Authority for application of provisions of M.C.O.C. Act to the present crime. The competent Authority therefore granted 'Prior Approval' under Section 23(1)(a) of the M.C.O.C. Act, by its

Order dated 1st January 2021. After completion of investigation, the competent Authority accorded sanction under Section 23(2) of M.C.O.C. Act by its Order dated 25th March 2021. The Investigating Agency thereafter filed chargesheet against in all 9 accused under Sections 307, 451, 452, 380, 324, 323, 504, 427, 143, 144, 147, 148, 149 of I.P.C. read with Sections 3(1)(ii), 3(2), 3(4) of M.C.O.C. Act and Section 37(A), (1), 135 of Maharashtra Police Act.

7) Record indicates that, the Appellant No.1 was present at the scene of offence and actively participated in assaulting the informant along with accused No.1 Shraavan @ Aawan. The C.C.T.V. footage seized by the police during the course of investigation indicates that, on 19th December 2020 at 12:3:47 a.m. both the Appellants along with Shraavan @ Aawan assaulted first informant and his brother Yashwant Yadav with fist and kick blows. The statement of brother of informant is recorded by the learned Metropolitan Magistrate, 45th Court, Kurla, Mumbai, under Section 164 of Cr.PC., wherein he has categorically stated that, both the Appellants assaulted him with fist and kick blows and torned his t-shirt while committing the said offence. The medical certificate of witness No.21 discloses that, the said witness suffered two C.L.W.'s on face with a sharp weapon and it is the reason to apply Section 307 of I.P.C. to the present crime.

The statement of witness No.24 indicates that, he had given contract of construction of his house to the father of informant and it was started on 17th December 2020. That, on 17th December 2020 at about 8:30 p.m. he received a call on his mobile from co-accused Santosh Talekar @ Buva. The said co-accused told him that, he is a person of Aawanbhai @ Shravan and asked him why he gave the work of construction of his house to Motilal Yadav. The co-accused told the said witness to meet him, after he comes home. At about 11:30 p.m. when the said witness was proceeding from lane No.15, a boy came there and told him that, somebody is calling him to meet. When the witness went to the said spot, co-accused Jaysing Sherrkar was sitting in a rickshaw and threatened the witness as to with whose permission he gave the said work to Motilal Yadav. The co-accused told the said witness that, the construction work should be given to Aawanbhai and his persons. That, at about 12:15 a.m. again the co-accused Santosh Talekar along with two accomplices came to the residence of the said witness and told him that, Aawanbhai @ Shravan Chavan is calling him outside. The witness along with his brother therefore went outside their lane No.15, where Aawanbhai @ Shravan Chavan, co-accused Santosh Talekar @ Buva along with other 5 to 6 persons was standing thereon. After the witness went near Aawan @ Shravan, he told the said witness that the work of his home would not be carried out, unless and until it is given to him. That, on 18th December 2020 at about 8:15 p.m. the said witness received a phone

call from accused Santosh Talekar @ Buva, to which the said witness informed him that, his work would be completed by Motilal Yadav only, whereupon the said accused cut the conversation.

8) It is thus apparent that, the Organised Crime Syndicate headed by Aawan @ Shravan was indulging into committing crimes for pecuniary benefit, by taking construction work from the residence of the said locality by pressurizing and/or threatening them. As noted earlier, in the present crime the presence of Appellants at the scene of offence and their active participation is revealed from the statements of witnesses, which is duly corroborated by the C.C.T.V. footage seized during the course of investigation.

9) We do not find substance in the contention of the learned Advocate for the Appellants that, there are no two crimes registered against the Appellants along with Aawan @ Shravan i.e. the head of Organised Crime Syndicate and therefore the provisions of M.C.O.C. Act cannot be applied to them. It is not the mandate of law that, against each of the member of an Organised Crime Syndicate, two crimes must be registered for invoking and for applying the provisions of M.C.O.C. Act. The necessity of lodgment of two crimes in preceding 10 years of which cognizance is taken is qua the Organised Crime Syndicate and not against each and every member of it. The said legal position is no more *res integra*. A useful reference at this stage can be made to a decision of this Court in the case of *Govind Sakharam*

Ubhe Vs. State of Maharashtra, reported in 2009(3) Bom. C.R. (Cri.) 144.

Para Nos. 33 to 37 of the said decision reads as under :-

33. *Section 1(f) defines 'organized crime syndicate' to mean a group of two or more persons who acting singly or collectively as a syndicate or gang indulge in activities of organized crime. Section 1(e) defines 'organized crime' to mean 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 objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency.*
34. *Therefore, the MCOCA 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.*
35. *It is now necessary to go to the definition of 'continuing unlawful activity'. Section 2(1)(d) defines 'continuing unlawful activity' to mean 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-sheet have been filed before a Competent Court within*

the preceding ten years and that Court have taken cognizance of such offence. 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*
- e) in respect of which more than one charge-sheet have been filed before a Competent Court.*

36. The words 'in respect of which more than one charge-sheet have been filed' cannot go with the words 'a member of a crime syndicate' because in that case, these words would have read as 'in respect of whom more than one charge-sheet have been filed'.

37. But even otherwise, if all provisions are read together we reach the same conclusion. Section 2(1)(d) which defines 'continuing unlawful activity' sets down a period of 10 years within which more than one charge-sheet have to be filed. The members of the crime syndicate operate either singly or jointly in commission of organized crime. They operate in different modules. A person may be a part of the module which jointly undertakes an organized crime or he may singly as a member of the organized crime syndicate or on behalf of such syndicate undertake an organized crime. In both the situations, the MCOCA can be applied. It is the membership of organized crime syndicate which makes a person liable under the MCOCA. This is evident from section 3(4) of the MCOCA which states that any person who is a member of an organized crime syndicate shall

be punished 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 fine, subject to a minimum of fine of Rs.5 lakhs. The charge under the MCOCA ropes in a person who as a member of the organized crime syndicate commits organized crime i.e. acts of extortion by giving threats, etc. to gain economic advantage or supremacy, as a member of the crime syndicate singly or jointly. Charge is in respect of unlawful activities of the organized crime syndicate. Therefore, if within a period of preceding ten years, one charge-sheet has been filed in respect of organized crime committed by the members of a particular crime syndicate, the said charge-sheet can be taken against a member of the said crime syndicate for the purpose of application of the MCOCA against him even if he is involved in one case. The organized crime committed by him will be a part of the continuing unlawful activity of the organized crime syndicate. What is important is the nexus or the link of the person with organized crime syndicate. The link with the 'organized crime syndicate' is the crux of the term 'continuing unlawful activity'. If this link is not established, that person cannot be roped in.

9.1) Therefore according to us there is no substance in the contention of the learned Advocate for the Appellants in the said submission. The decisions relied upon by the learned Advocate for the Appellant are delivered in the facts and circumstances of the said cases and the same are of no avail to the Appellants.

10) It is to be noted here that, whether the allegations made against the Appellants along with the evidence against them are true or not, is a matter of trial. After perusing the entire record, we are of the considered view that, there is sufficient material available on record to show the indictment of the Appellants in the crime committed by the Organised Crime Syndicate headed by Aawan @ Shravan Chavan. Therefore the provisions of M.C.O.C. Act cannot be dropped qua the Appellants herein. The trial Court has taken into consideration the necessary factual aspects of the case and has not committed any error either in law or on facts while passing the impugned Order.

11) We are of the opinion that, there are no merits in the Appeal and is accordingly dismissed.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)

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