

MAHIPAL SINGH

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v.

C.B.I. & ANR.

(Criminal Appeal No. 682 of 2014)

MARCH 27, 2014

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**[CHANDRAMAULI KR. PRASAD AND PINAKI
CHANDRA GHOSE, JJ.]**

Maharashtra Control of Organised Crime Act (MCOCA) – ss.2(1)(e), 2(1)(d) and 3 – “Organised crime” – “Continuing unlawful activity” – Entrance examinations to Postgraduate and undergraduate courses in Medical Science and undergraduate courses in Veterinary Science – Rigging of results – Invocation of s.3 of MCOCA – Permissibility – Held: For punishment for offence of organised crime u/s.3 of MCOCA, the accused is required to be involved in continuing unlawful activity which inter alia provides that more than one charge-sheet have been filed before a competent court within the preceding period of ten years and the court had taken cognizance of such offence – Submission of charge-sheets in more than one case and taking cognizance in such number of cases are ingredients of the offence and have to be satisfied on the date the crime was committed or came to be known – An act which is not an offence on the date of its commission or the date on which it came to be known, cannot be treated as an offence because of certain events taking place later on – Procedural requirement for prosecution of a person for an offence can later on be satisfied but ingredients constituting the offence must exist on the date the crime is committed or detected – In the case at hand, the examinations alleged to have been rigged had taken place in January, 2010, June, 2010, November, 2010 and January, 2011 and the date on which the FIRs were registered, more than one charge-sheets were not filed against the accused for the

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A *offence of specified nature within the preceding period of ten years and further, the court had not taken cognizance in such number of cases – On the date of commission of the offence, all the ingredients to bring the act within s.3 of MCOCA were not satisfied – Therefore, the accused could not be prosecuted*
B *for the offence u/s.3 of MCOCA – Constitution of India, 1950 – Art. 20(1) – Penal Code, 1860 – s.120B r/w ss.420, 467, 471 and 511.*

'M' was accused in a number of cases related to rigging of results of entrance examinations. The prosecution case was that 'M' was the kingpin, who facilitated the interpolation and manipulation of the OMR Answer Sheets of certain candidates enabling them to qualify in the postgraduate and undergraduate courses in Medical Science and undergraduate courses in Veterinary Science. 'M' was alleged to have committed the offence under Section 120B read with Section 420, 467, 471 and 511 IPC.

'M' was charge-sheeted in four cases. The DIG, CBI granted approval for invoking Section 3 of Maharashtra Control of Organised Crime Act (MCOCA) against him. 'M' challenged the orders in four separate writ petitions filed before the High Court. Meanwhile, the investigating agency secured M's remand under MCOCA from the Designated Court in two cases. 'M' also challenged those orders of remand in two separate writ petitions.

All the writ petitions were heard together and by a common judgment, the High Court set aside the orders of the DIG, CBI granting approval in three cases on its finding that CBI "could not have invoked MCOCA in four different cases on same set of facts and four different charge-sheets". However, in the fourth case, the order of DIG, CBI invoking Section 3 of MCOCA was upheld by the High Court. The High Court dismissed both the writ petitions filed against the orders of remand for offence

under the provisions of MCOCA as infructuous. Hence the cross-appeals by the accused 'M' and the CBI.

Allowing the appeal preferred by the accused and dismissing the appeals preferred by the CBI, the Court

HELD:1. Section 3 of Maharashtra Control of Organised Crime Act (MCOCA) is the penal provision which provides for punishment for organized crime. "Organised crime" has been defined under Section 2(1)(e) of MCOCA. The definition, inter alia, makes it clear that to come within the mischief of organised crime, continuing unlawful activity with the objective of gaining pecuniary benefits or gaining undue economic or other advantage for himself or any other person or promoting insurgency are essential. "Continuing unlawful activity" has been defined under Section 2(1)(d) of MCOCA. From a plain reading of the aforesaid provision, it is evident that to come within the mischief of continuing unlawful activity, it is required to be established that the accused is involved in activities prohibited by law which are cognizable offence punishable with imprisonment of three years or more and in respect thereof, more than one charge-sheets have been filed against such person before a competent court within the preceding period of ten years and that court has taken cognizance of such offence. [Paras 7, 8 and 9] [537-C, G-H; 538-C-F]

2. It is trite that to bring an accused within the mischief of the penal provision, ingredients of the offence have to be satisfied on the date the offence was committed. Article 20(1) of the Constitution of India permits conviction of a person for an offence for violation of law in force at the time of commission of the act charged as an offence. In the case in hand, examinations alleged to have been rigged had taken place in January, 2010, June, 2010, November, 2010 and January, 2011 and the date on which the first

A information reports were registered, more than one
charge-sheets were not filed against the accused for the
offence of specified nature within the preceding period of
ten years and further, the court had not taken cognizance
in such number of cases. For punishment for offence of
B organised crime under Section 3 of MCOCA, the accused
is required to be involved in continuing unlawful activity
which inter alia provides that more than one charge-sheets
have been filed before a competent court within the
preceding period of ten years and the court had taken
C cognizance of such offence. Therefore, in the case in hand,
on the date of commission of the offence, all the
ingredients to bring the act within Section 3 of MCOCA
have not been satisfied. There may be a case in which on
the date of registration of the case, one may not be aware
D of the fact of charge-sheet and cognizance being taken in
more than one case in respect of the offence of specified
nature within the preceding period of ten years, but during
the course of investigation, if it transpires that such charge-
sheets and cognizance have been taken, Section 3 of the
MCOCA can be invoked. There may be a case in which
E the investigating agency does not know exactly the date
on which the crime was committed; in such a case the
date on which the offence comes to the notice of the
investigating agency, the ingredients constituting the
offence have to be satisfied. An act which is not an offence
F on the date of its commission or the date on which it came
to be known, cannot be treated as an offence because of
certain events taking place later on. There may not be any
impediment in complying with the procedural requirement
later on in case the ingredients of the offence are satisfied,
G but satisfying the requirement later on to bring the act
within the mischief of penal provision is not permissible.
In other words, procedural requirement for prosecution
of a person for an offence can later on be satisfied but
ingredients constituting the offence must exist on the date

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the crime is committed or detected. Submission of charge-sheets in more than one case and taking cognizance in such number of cases are ingredients of the offence and have to be satisfied on the date the crime was committed or came to be known. [Para 10] [538-G-H; 539-A-H; 540-A-B]

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3. In the case at hand, on the date the offence was committed or came to be known, one of the ingredients of the offence, i.e. submission of charge-sheet and cognizance of offence of specified nature in more than one case within the preceding period of ten years, has not been satisfied. Therefore, the accused cannot be prosecuted for the offence under Section 3 of MCOCA. [Para 11] [540-B-C]

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 682 of 2014.

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From the Judgment and Order dated 21.05.2012 of the High Court of Delhi at New Delhi in WP (Crl) No. 1555 of 2011.

WITH

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Criminal Appeal Nos. 683-685 of 2014.

Indira Jaising ASG, Gopal Subramaniam, R. Basant, S.K. Katriar, Sushil Karanjkar, Abdul Majid, Gaurav Khanna, Karthik Ashok, K.N. Rai, Rajiv Nanda, M. Khairati, Anindita Pujari, Sonakshi Malhan, B.V. Balaram Das for the appearing parties.

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The Judgment of the Court was delivered by

CHANDRAMAULI KR. PRASAD, J. 1. In these special leave petitions, Mahipal Singh figures as an accused. He was initially named as an accused in Hasan Ganj, Lucknow P.S. Case No. 151 of 2005. This case was registered on 26th of May, 2005 and after investigation the accused Mahipal Singh was charge-sheeted on 26th of April, 2006. On the basis of a report given by Inspector Manoj Kumar, another case E0005

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A was registered against him by the Central Bureau of Investigation (for short "CBI"), on 2nd of June, 2011. Further, on the basis of the report given by the same Inspector, four other cases i.e. E0007, E0008, E0009 and E0010 were registered on 28th of July, 2011 by the CBI. All these cases
B excepting E0009 related to rigging of results of various entrance examinations for admission to postgraduate courses in medical colleges conducted by the All India Institute of Medical Sciences (for short "AIIMS"). Case No. E0009 also related to the rigging of the result of entrance examination but it is in connection with
C admission to undergraduate course in medical colleges. Another case i.e. E0006 was registered by the CBI on 3rd of June, 2011 concerning the rigging of the result of entrance examination of Pre-Veterinary test conducted by the AIIMS. In all these cases, Mahipal Singh figured as an accused and alleged to be the kingpin, who facilitated the interpolation and
D manipulation of the OMR Answer Sheets of certain candidates enabling them to qualify in the postgraduate and undergraduate courses in Medical Science and undergraduate courses in Veterinary Science. In all these first information reports, accused Mahipal Singh was alleged to have committed the
E offence under Section 120B read with Section 420, 467, 471 and 511 of the Indian Penal Code. In E0005 and E0006, charge-sheets were submitted on 1st of September, 2011 and the learned Judge in sesin of the case took cognizance of the offence on 13th of September, 2011 and 1st of September,
F 2011 respectively. Accused Mahipal Singh was charge-sheeted in E0007 and E0008 and the Deputy Inspector General (for short "DIG") of CBI granted approval for invoking Section 3 of Maharashtra Control of Organised Crime Act (hereinafter referred to as "MCOCA"), against him by order dated 18th of
G October, 2011. Accused Mahipal Singh was further charge-sheeted in E0009 and E0010 and by order dated 14th of January, 2012, the DIG, CBI granted approval for invoking Section 3 of MCOCA against him. Accused Mahipal challenged the orders dated 18th of October, 2011 and 14th
H of January, 2012 passed by the DIG, CBI invoking Section 3

of MCOCA in the four cases detailed above in four separate writ petitions filed before the Delhi High Court. The investigating agency secured Mahipal Singh's remand under MCOCA from the Designated Court in E0006 and E0007 by separate orders passed on 30th of November, 2011. Accused Mahipal Singh challenged those orders of remand in two separate writ petitions. Thus, altogether accused Mahipal Singh filed six writ petitions. All those writ petitions were heard together and by a common judgment dated 21st of May, 2012, the High Court set aside the orders of the DIG, CBI granting approval in E0008, E0009 and E0010 on its finding that CBI "could not have invoked MCOCA in four different cases on same set of facts and four different charge-sheets". However, it upheld the order of the DIG, CBI invoking Section 3 of MCOCA in E0007. The High Court further dismissed both the writ petitions filed against the orders of remand for offence under the provisions of MCOCA as infructuous.

2. Accused Mahipal Singh, aggrieved by the order upholding the order of the DIG, CBI invoking Section 3 of MCOCA, has preferred Special Leave Petition (Criminal) No. 6401 of 2012, whereas the CBI and its functionary, aggrieved by setting aside of the orders of DIG invoking Section 3 of MCOCA in three cases, have filed Special Leave Petition (Criminal) Nos. 2377-2379 of 2013 and both of them pray for grant of special leave to appeal to assail the judgment.

3. Leave granted.

4. We have heard Mr. Gopal Subramaniam, learned Senior Counsel for the accused Mahipal Singh and Ms. Indira Jaising, Additional Solicitor General for the CBI. At the outset, Mr. Subramaniam attempted to argue that the provisions of MCOCA cannot be applied in cases where the offence has been committed outside the State of Maharashtra. He points out that in the present case, the offence has admittedly been committed in Delhi and, therefore, the case shall not be governed by the provisions of MCOCA. However, when

A confronted that no such question was raised before the High Court or for that matter, in the special leave petition, he gave up this submission.

B 5. While assailing the order, Mr. Subramaniam has made a large number of submissions, but as the accused is to succeed on a very short point, we deem it inexpedient either to incorporate or answer those submissions. Mr. Subramaniam submits, even if it is assumed for the sake of these appeals that the allegations made against the accused satisfy all other ingredients of continuing unlawful activity, the requirements of submission of more than one charge-sheets before a competent court within the preceding period of ten years for offence punishable with imprisonment of three years or more and further, the competent court taking cognizance of the offence, have not been satisfied. He submits that in case D Nos. E0007 and E0008, DIG gave approval for invoking Section 3 of MCOCA on 18th of October, 2011 and in E0009 and E0010 on 14th of January, 2012 whereas the charge-sheets in E0005 and E0006 were submitted on 1st of September, 2011 and the competent court took cognizance of the offence on 13th of September, 2011 and 1st of September, 2011 respectively. He points out that in all those four cases i.e. E0007, E0008, E0009 and E0010, in which Section 3 of the MCOCA has been invoked, first information reports were registered on 28th of July, 2011 and the examinations were held in January, 2010, November, 2010, June, 2010 and January, 2011 respectively. Therefore, according to Mr. Subramaniam, on the dates the crimes were committed or the cases registered or the crimes came to be known, more than one charge-sheets in respect of offence of specified nature were not submitted within ten years nor the competent court had taken cognizance of the offence in more than one case of specified nature, against the accused. G

H 6. Ms. Jaising, however, contends that the ingredients constituting the offence under Section 3 of MCOCA have to be

satisfied on the date MCOCA was invoked. She points out that there is no dispute that the date on which MCOCA was invoked, more than two charge-sheets for the commission of the offence of specified nature were filed and the competent court had taken cognizance of the same. According to her, the ingredients of the offence have to be satisfied with reference to the date the DIG gave approval for invoking Section 3 of MCOCA and not on the date the offence was committed or came to be known. A B

7. Section 3 of MCOCA is the penal provision which provides for punishment for organised crime. "Organised crime" has been defined under Section 2(1)(e) of MCOCA and the same reads as follows: C

"2. Definitions-

(1) In this Act, unless the context otherwise requires,- D

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(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 person or promoting insurgency; E F

xxx xxx xxx"

8. The definition aforesaid, inter alia, makes it clear that to come within the mischief of organised crime, continuing unlawful activity with the objective of gaining pecuniary benefits or gaining undue economic or other advantage for himself or any other person or promoting insurgency are essential. "Continuing unlawful activity" has been defined under Section 2(1)(d) of MCOCA. It reads as follows: G H

A "2. Definitions-

(1) In this Act, unless the context otherwise requires,-

xxx xxx xxx

B (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;

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D xxx xxx xxx'

9. From a plain reading of the aforesaid provision, it is evident that to come within the mischief of continuing unlawful activity, it is required to be established that the accused is involved in activities prohibited by law which are cognizable offence punishable with imprisonment of three years or more and in respect thereof, more than one charge-sheets have been filed against such person before a competent court within the preceding period of ten years and that court has taken cognizance of such offence.

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H 10. We have given our most anxious consideration to the rival submissions and in the light of what we have observed above, the submissions advanced by Mr. Subramaniam commend us. It is trite that to bring an accused within the mischief of the penal provision, ingredients of the offence have to be satisfied on the date the offence was committed. Article 20(1) of the Constitution of India permits conviction of a person for an offence for violation of law in force at the time of commission of the act charged as an offence. In the case in hand, examinations alleged to have been rigged had taken place in January, 2010, June, 2010, November, 2010 and

January, 2011 and the date on which the first information reports were registered, more than one charge-sheets were not filed against the accused for the offence of specified nature within the preceding period of ten years and further, the court had not taken cognizance in such number of cases. As observed earlier, for punishment for offence of organised crime under Section 3 of MCOCA, the accused is required to be involved in continuing unlawful activity which inter alia provides that more than one charge-sheets have been filed before a competent court within the preceding period of ten years and the court had taken cognizance of such offence. Therefore, in the case in hand, on the date of commission of the offence, all the ingredients to bring the act within Section 3 of MCOCA have not been satisfied. We are conscious of the fact that there may be a case in which on the date of registration of the case, one may not be aware of the fact of charge-sheet and cognizance being taken in more than one case in respect of the offence of specified nature within the preceding period of ten years, but during the course of investigation, if it transpires that such charge-sheets and cognizance have been taken, Section 3 of the MCOCA can be invoked. There may be a case in which the investigating agency does not know exactly the date on which the crime was committed; in our opinion, in such a case the date on which the offence comes to the notice of the investigating agency, the ingredients constituting the offence have to be satisfied. In our opinion, an act which is not an offence on the date of its commission or the date on which it came to be known, cannot be treated as an offence because of certain events taking place later on. We may hasten to add here that there may not be any impediment in complying with the procedural requirement later on in case the ingredients of the offence are satisfied, but satisfying the requirement later on to bring the act within the mischief of penal provision is not permissible. In other words, procedural requirement for prosecution of a person for an offence can later on be satisfied but ingredients constituting the offence must exist on the date the crime is committed or detected. Submission of charge-

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A sheets in more than one case and taking cognizance in such number of cases are ingredients of the offence and have to be satisfied on the date the crime was committed or came to be known.

B 11. Now we proceed to apply the principle aforesaid to the facts of the present case. We find that on the date the offence was committed or came to be known, one of the ingredients of the offence, i.e. submission of charge-sheet and cognizance of offence of specified nature in more than one case within the preceding period of ten years, has not been satisfied. Therefore,
C we have no other option than to hold that the accused cannot be prosecuted for the offence under Section 3 of MCOCA.

D 12. To put the record straight, Mr. Subramaniam as also Ms. Jaising, in order to assail the impugned order, have raised various other submissions, but the view taken by us goes to the root of the matter and, therefore, we do not consider it expedient either to incorporate or answer those submissions.

E 13. In the result, we allow the appeal preferred by the accused and dismiss the appeals preferred by the CBI.

B.B.B.

Appeals disposed of.