

STATE OF MAHARASHTRA

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v.

SHIVA @ SHIVAJI RAMAJI SONAWANE & ORS. ETC.

(Criminal Appeal Nos. 458-460 of 2009)

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JULY 24, 2015

[T.S. THAKUR AND R. BANUMATHI, JJ.]

*Maharashtra Control of Organised Crime Act, 1999 : s.3
– Requirement under – Mere charge sheets in the past not
enough to hold the persons accused in such charge sheets
guilty for offence of organised crime u/s.3 – It is also required
to prove that the accused continued such unlawful activities
– It is only if an organised crime is committed by the accused
after promulgation of MCOCA that he may, seen in the light
of previous charge sheets and the cognizance taken by the
competent court be said to have committed an offence u/s.3
of the Act – Organised crime.*

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Dismissing the appeals, the Court

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HELD: 1. The filing of charge sheets or taking of the cognizance in the same did not by itself constitute an offence punishable under Section 3 of the MCOCA. That is because the involvement of respondents in previous offences was just about one requirement but by no means the only requirement which the prosecution has to satisfy to secure a conviction under MCOCA. What was equally, if not, more important was the commission of an offence by the respondents that would constitute “continuing unlawful activity”. The very fact that more than one charge sheets had been filed against the respondents alleging offences punishable with more than three years imprisonment is not enough. Continuation of unlawful activities is the second and

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A equally important requirement that ought to be satisfied. It is only if an organised crime is committed by the accused after the promulgation of MCOCA that he may, seen in the light of the previous charge sheets and the cognizance taken by the competent court, be said to have committed an offence under Section 3 of the Act. [Para 8] [217-D-H; 218-A-C]

2. In the case at hand, the offences which the respondents are alleged to have committed after the promulgation of MCOCA were not proved against them. The acquittal of the respondents in Crimes No.37 and 38 of 2001 signified that they were not involved in the commission of the offences with which they were charged. Not only that the respondents were acquitted of the charge under the Arms Act even in Crimes Case No.1 and 2 of 2002. No appeal against that acquittal was filed by the State. This implied that the prosecution had failed to prove the second ingredient required for completion of an offence under MCOCA. The High Court was, therefore, right in holding that Section 3 of the MCOCA could not be invoked only on the basis of the previous charge sheets for Section 3 would come into play only if the respondents were proved to have committed an offence for gain or any pecuniary benefit or undue economic or other advantage after the promulgation of MCOCA. [Para 9] [218-D-G]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 458-460 of 2009

From the Judgment and Order dated 18.11.2008 of the High Court of Judicature at Bombay, Bench at Nagpur in Criminal Appeal Nos. 717, 664 and 665 of 2002

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Crl. A. Nos. 461-464 of 2009

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Dr. R. R. Deshpande, Aniruddha P. Mayee, Yuvraj Gaikwad, Prachiti Deshpande, Asha Gopalan Nair and Ravindra Keshavrao Adsure, for the Appellant.

Dr. J.P. Dhanda, Raj Rani Dhanda, Vineet Dhanda, N.A. Usmani and Irshad Ahmad for the Respondents.

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The Judgment of the Court was delivered by

T. S. THAKUR, J. 1. High Court of Bombay has, by a common order dated 18th November, 2008, impugned in these appeals, set aside orders passed by the Special Court under Maharashtra Control of Organised Crime Act, 1999 and acquitted the respondents of the charges framed against them. The High Court has relying upon several earlier pronouncements on the subject, held that mere proof of filing of charge sheets in the past was not enough to hold the persons accused in such charge sheets to be guilty of the offences of committing organised crime punishable under Section 3 of MCOCA for such charge sheets satisfy but one of the requirements under the said Act. What is according to the High Court equally important is to prove that the accused were guilty of committing the offence of organised crime by reason of their continuing unlawful activities. The High Court further held that any such unlawful activity should be by use of threat of violence, intimidation, coercion or other unlawful means with the objective of "gaining pecuniary or other advantages", and that the provisions of MCOCA can be invoked only by strictly complying with the provisions of Section 23 of the Act. The competent authority was, declared the High Court, duty bound to apply its mind to the attendant facts while permitting registration of an FIR under MCOCA or granting sanction for prosecution. The High Court held that the competent authority, in the case at hand, had not applied its mind properly which rendered the

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A registration of the cases and the filing of the charge sheets against the respondents legally unsustainable. The High Court further held that the respondents were, in the facts of the cases before it, not shown to have committed any offence for pecuniary, economic or similar other advantage which was one of the requirements to be satisfied before they could be held guilty of an organised crime. The orders of conviction recorded by the Special Court, and the sentences awarded to the respondents were on those findings set aside.

C 2. We have heard learned counsel for the parties at considerable length. We have also been taken through the record including the judgments of the trial court and that passed by the High Court. The factual matrix in which the respondents were prosecuted and found guilty for offences punishable under D MCOCA, have been set out at great length by the Trial Court and even by the High Court. Recapitulation of the same all over again would, therefore, serve no useful purpose. All that need be mentioned is that the respondent Shiva @ Shivaji E Sonwane, accused in Special Criminal Case No.1 of 2001 and Mehmood Khan Pathan, accused in Special Case No.2 of 2001 started off as partners in crimes which they committed with the help of other gangsters in the industrial town of F Khaparkheda situate on the outskirts of the city of Nagpur. The gang, in due course, appears to have split into two, one each led by Shivaji Ramaji Sonwane and Mehmood Khan Pathan.

G 3. The prosecution case is that the two gangs have over ten years prior to the enactment of MCOCA been involved in commission of several crimes which constitutes "continuing unlawful activity" within the meaning of Section 2(d) of MCOCA. This, according to the prosecution, was evident from the fact that a very large number of charge sheets had been filed against them in which the competent jurisdictional Courts had H taken cognizance. To be precise, as many as 42 charge-sheets

had been filed against the gang led by Shiva Sonwane, whereas 30 similar charge-sheets were presented against the rival gang led by Mehmood Khan Pathan. What led to the invocation of MCOCA in Criminal Case No.1 of 2002 against the gang led by Shiva Sonwane is an incident that took place on 16th March, 2001 at about 9.15 a.m. when Shiva Sonwane is alleged to have gone to the shop of one Rameshwar Bawankar in which one Sunil Bante PW-8/I was working as an employee. Respondent-Shiva and his companion gangsters are alleged to have beaten up Sunil Bante and set the shop on fire resulting in a loss of 1.5 lacs to the owner. Crime No.37 of 2001 for several offences punishable under the Indian Penal Code and the Arms Act was registered with the police station Khaparkheda, in connection with the incident.

4. So also MCOCA was invoked against respondents Mehmood Khan Pathan, Sanjay Girhe and Samad Pathan on the basis and in connection with Crime Case No.38 of 2001 registered at police station Khaparkheda for offences punishable under the I.P.C. and the Arms Act. Interestingly, this crime (Criminal Case No.38 of 2001) was registered on a complaint made by Shiva Sonwane the rival gangster in which the latter alleged that on 16th March, 2001 the accused had barged into the complainant's house, demanded a gold chain, beat up the complainant's father and set the house on fire.

5. The prosecution version is that PW-13/1, PI Abdul Razzak, Investigating Officer in Crime No.37 of 2001, had on the basis of his investigation come to the conclusion that Shiva had formed and was heading an organised crime syndicate. He, therefore, prepared a proposal for invocation of the provisions of MCOCA in connection with Crime No.37/2001 and requested for permission to record information and register a case under Sections 3(1)(ii) and 3(4) of MCOCA. The proposal was forwarded to the Special Inspector General of

A Police examined at the trial as PW-15/1. The proposal was upon consideration, accepted and registration of information under MCOCA in terms of Section 23 of the Act permitted. The information relating to the commission of the offence under MCOCA was accordingly registered against Shiva Sonwane and his gang on 21st March, 2001 which eventually is presented to this Court as Crime Case No.1 of 2001 under MCOCA.

6. In Crime Case No.2 of 2001 also under MCOCA a similar version has been put forth by the prosecution. The proposal for invoking MCOCA was moved even in that case by PI Abdul Razzak resulting in grant of approval for invocation and registration of information under Section 3(i)(ii) read with Section 3(4) of MCOCA. According to the prosecution, investigation into the cases was entrusted to Deputy Superintendent of Police examined as PW-16 in Criminal Case No.1 of 2001 and PW-20 in Criminal Case No.2 of 2001. According to this witness, investigation in both the cases was made over to him on 21st March, 2001 when Shiva was in jail. The custody of accused Shiva was secured by him in terms of a production warrant on 28th March, 2001 and his house searched on 10th April, 2001 leading to the seizure of a sword. As regards respondent Mehmood Khan Pathan, he was arrested on 8th May, 2001 and his house searched on 30th May, 2001 resulting in the recovery of a sword and a 'Hattimar' knife which was seized. After completion of investigation in both the crimes, the Deputy Superintendent of police filed two separate and independent charge sheets one each against the two gangs for offences punishable under Section 3(i)(ii) of the MCOCA and Section 4 read with Section 25 of the Arms Act.

7. The significant feature of the two cases is that for Crimes No.37 of 2001 and 38 of 2001 the respondents were separately

tried and acquitted on 18th January, 2008 in the case of Shiva A
and on 28th February, 2006 in the case of Mehmood Khan
Pathan. In the said charge sheets, the respondents were
accused of committing offences only under the IPC and the
Arms Act. For the offences punishable under MCOCA separate
and independent charge sheets were filed against the accused B
persons in which they were convicted by the Trial Court which
conviction was reversed by the High Court as noticed earlier.

8. It was in the above backdrop that the High Court held
that once the respondents had been acquitted for the offence C
punishable under the IPC and Arms Act in Crimes No.37 and
38 of 2001 and once the Trial Court had recorded an acquittal
even for the offence punishable under Section 4 read with
Section 25 of the Arms Act in MCOCA Crimes No.1 and 2 of D
2002 all that remained incriminating was the filing of charge
sheets against the respondents in the past and taking of
cognizance by the competent court over a period of ten years
prior to the enforcement of the MCOCA. The filing of charge
sheets or taking of the cognizance in the same did not, declared E
the High Court, by itself constitute an offence punishable under
Section 3 of the MCOCA. That is because the involvement of
respondents in previous offences was just about one
requirement but by no means the only requirement which the
prosecution has to satisfy to secure a conviction under F
MCOCA. What was equally, if not, more important was the
commission of an offence by the respondents that would
constitute "continuing unlawful activity". So long as that
requirement failed, as was the position in the instant case,
there was no question of convicting the respondents under G
Section 3 of the MCOCA. That reasoning does not, in our
opinion, suffer from any infirmity. The very fact that more than
one charge sheets had been filed against the respondents
alleging offences punishable with more than three years
imprisonment is not enough. As rightly pointed out by the High H

A Court commission of offences prior to the enactment of MCOCA does not by itself constitute an offence under MCOCA. Registration of cases, filing of charge sheets and taking of cognizance by the competent court in relation to the offence alleged to have been committed by the respondents in the past is but one of the requirements for invocation of Section 3 of the MCOCA. Continuation of unlawful activities is the second and equally important requirement that ought to be satisfied. It is only if an organised crime is committed by the accused after the promulgation of MCOCA that he may, seen in the light of the previous charge sheets and the cognizance taken by the competent court, be said to have committed an offence under Section 3 of the Act.

9. In the case at hand, the offences which the respondents are alleged to have committed after the promulgation of MCOCA were not proved against them. The acquittal of the respondents in Crimes No.37 and 38 of 2001 signified that they were not involved in the commission of the offences with which they were charged. Not only that the respondents were acquitted of the charge under the Arms Act even in Crimes Case No.1 and 2 of 2002. No appeal against that acquittal had been filed by the State. This implied that the prosecution had failed to prove the second ingredient required for completion of an offence under MCOCA. The High Court was, therefore, right in holding that Section 3 of the MCOCA could not be invoked only on the basis of the previous charge sheets for Section 3 would come into play only if the respondents were proved to have committed an offence for gain or any pecuniary benefit or undue economic or other advantage after the promulgation of MCOCA. Such being the case, the High Court was, in our opinion, justified in allowing the appeal and setting aside the order passed by the Trial Court.

10. In the light of what we have said above, it is not necessary for us to go into the question whether the competent

authority had duly and properly applied its mind while granting A
permission to the registration of the information under MCOCA
or sanctioning the prosecution of the respondents under
Section 3(2) of the Act. It is also unnecessary for us to examine
whether the expression "any other advantage" appearing in
Section 2(e) can be read *ejusdem generis* which aspect is B
left open to be decided in an appropriate case.

11. These appeals accordingly fail and are hereby
dismissed.

Devika Gujral

Appeals dismissed.

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