(2007) 10 DEL CK 0142

In the Delhi High Court

Case No : Writ Petition (Criminal) 1229 of 2003

Brahm Prakash APPELLANT

Vs

State and Others RESPONDENT

Date of Decision : 23-10-2007

Acts Referred:

Arms Act, 1959 — Section 27
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 307, 323, 34, 341, 387

Citation : (2007) 10 DEL CK 0142

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : K.K. Sharma, for the Appellant; Mukta Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—This Writ Petition has been filed under Article 226 of the Constitution of India for quashing of FIR No. 325/03 u/s 3 of Maharashtra Control of organized Crime Act, 1999.

2. The petitioner had earlier filed criminal Writ No. 1369/02 seeking quashing of FIR No. 699/2001, PS Shalimar Bagh and FIR No. 713/2002, PS Saraswati Vihar. The petitioner contends that during the pendency of Criminal Writ No. 1369/02 and Criminal Miscellaneous No. 624/03, respondent Nos. 1 and 2 failed to disclose to this Court that the FIR in question (325/03) was already registered. This concealment of the fact of registration of FIR against the petitioner shows that respondent Nos. 1 and 2 were working hand in glove with each other to detain the petitioner under MOCOCA. It is further submitted that petitioner was not a member of any gang and had not been engaged in committing any organized crime as required for registration of FIR under MOCOCA, neither the FIR discloses the fact of petitioner being member of a gang.

3. The petitioner was arrested in FIR No. 713/02 u/s 387/506/34 IPC and 27 of

Arms Act on the complaint of one Amit Gupta, a contractor, that the petitioner along with three of his associates came in a Skoda car and threatened him at gun point saying that he would have to pay 10% of the tender amount as ''Rangdari'' to him or he and his family would be eliminated. The petitioner was also involved in FIR No. 11/89 u/s 307/34, PS Roshanara Road and FIR No. 323/95 u/s 307/427/34 IPC, PS Keshavpuram. In these FIRs also the complaint was that he and his associates had stopped one Anand Singh a Munshi of MCD contractor and threatened him regarding tender application. The petitioner faced another FIR No. 329/2000 u/s 323/341/506, PS Saraswati Vihar. The complaint was that petitioner threatened one Om Prakash, MCD contractor against bidding tenders. Petitioner is also involved in FIR No. 699/01. The complainant (Umed Singh) a MCD contractor in this case alleged that petitioner along with his associates threatened him against the bidding in tenders.

4. The present FIR was registered against the petitioner in view of his activities of threatening MCD contractors to pay ''Rangdari'' on tenders or to disclose tender documents.

5. The Writ Petition No. 1369/02 filed by the petitioner for quashing of aforesaid two FIRs was dismissed by this Court vide judgment dated 24th July, 2003. Even in that Writ Petition, the petitioner had alleged that the local police was under pressure of respondent No. 3 and political parties and was trying to fix the petitioner in a case so that the petitioner does not get bail. However, this Court found that these allegations had no substance. The petitioner had now filed this petition for quashing of FIR No. 325/03 under MOCOCA on the aforesaid ground as well as on the ground that the case registered against the petitioner at various Police Stations were false cases. Petitioner has been acquitted in two cases namely, FIR Nos. 11/89 and 323/95. The present FIR showed high handedness of the police in connivance with his rival businessmen and the successive use of punitive and the preventive action by the police in infringing personal liberty of the petitioner was unconstitutional.

6. It is undisputed that the FIR in question was the only FIR registered against the petitioner under MOCOCA and all other FIRs were against the different provisions of IPC and not under MOCOCA.

7. As far as contention of the petitioner that he was not a member of any gang is concerned, this contention must fail. The allegation against the petitioner are that he along with his accomplices had been threatening contractors either refraining from tendering in MCD or asking them to pay him 10% ''Rangdari'' and in case of their not complying with his dictates, suffering elimination of self and entire family.

8. Section 2(d) of MOCOCA defines continuing unlawful activities as under:

''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; Section 2(e) defines organized crime as under:

''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;

Section 2(f) defines organized crime syndicate as under:

''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 or organized crime;

9. A perusal of above provisions would show that in order to be a member of gang it is not necessary that the petitioner had to be a member of some already known gang. The petitioner himself can form a gang and be head of the gang and indulge into activities as defined under MOCOCA. In order to constitute a gang only two or more persons are required and it is alleged in the FIRs registered against the petitioner that petitioner was in the company of his associates when petitioner had indulged into activities of threatening municipal contractors. The contention of the petitioner that he was falsely implicated cannot be looked into while considering quashing of FIR. Whether the case is false or true has to be decided during the trial and not during the proceedings u/s 482 Cr.P.C. or in the Writ Petition. Considering the entire material placed on record and the previous involvement of the petitioner at various Police Stations, I consider that it is not a fit case for quashing of FIR against the petitioner.

10. The Writ Petition is hereby dismissed.

