
(2011) 08 BOM CK 0029

In the Bombay High Court

Case No : Criminal Appeal No. 919 of 2010 with Criminal Writ Petition No. 3346 of 2010

Sanjay Kamlakant Rao and Another

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 01-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3)
Maharashtra Control of Organised Crime Act, 1999 — Section 12, 23
Penal Code, 1860 (IPC) — Section 120B, 323, 34, 386, 406

Citation : (2011) 08 BOM CK 0029

Hon'ble Judges : Chavan R.C., J

Bench : Single Bench

Advocate : M.G. Shukla, for the Appellant; D.R. More, Addl. P.P., for State in Both Matters K.H. Holambe Patil, in Appeal and Respondent No. 3, for the Respondent

Judgement

Chavan R.C., J.—Heard. Appeal admitted. The learned APP and the learned Counsel appearing on behalf of the respective respondents waive notice of admission. By consent, the appeal along, with the connected writ petition is taken up for final hearing. The criminal appeal is filed by the original accused No. 4 Sanjay and the writ petition is filed by the original accused No. 2 Mohammed Shamim Badgujar questioning the order passed by the learned Additional Special Judge under the Maharashtra Control of Organised Crime Act, 1999 (for short, "the MCOC Act") on 7-9-2010 to the following effect:

1. ACP Shri T.R. Chavan of Borivali Division, Mumbai is directed to register separate crime against accused No. 2 Mohammed Shaameem Badgujar, accused No. 3 Rajendra Sadashiv Nikalje @ Chhota Rajan, accused No. 4 Sanjay Kamlakant Rao at Malad Police Station and after completion of investigation to file charge-sheet against them in the Court of Additional Chief Metropolitan Magistrate, 17th Court, Borivali, Mumbai.

2. If required, the Investigating Officer ACP Shri T.R. Chavan is permitted to receive the original investigation papers by placing Xerox copies of same for record of this Court.

3. Accordingly, the application is disposed of.

2. The context in which this order came to be passed could be briefly stated as under:

The complainant M/s. B.K. Appa through its proprietor Mr. B.P. Appa filed a complaint in the Special Court constituted under the MCOC Act on 29-4-2008 requesting the Court to invoke its power u/s 156(3) of Cr.P.C. and forward the complaint to DCB-CID, Crime Branch or the Senior Police Inspector of Malad Police Station for investigation and report for various offences. Accordingly, by order dated 17-12-2008 the complaint was sent by the learned Special Judge for investigation u/s 156(3) of the Cr.P.C. An offence was registered under the MCOC Act and u/s 386 of the IPC. On 10-6-2009 the officer investigating into the crime submitted a Summary. The learned Judge refused to accept the Summary and directed further investigation. This further investigation was conducted by ACP T.R. Chavan who submitted a report on 26-2-2010. Since the competent authority refused to grant u/s 23 of the MCOC Act prior approval for registration of offence, the investigating officer concluded that filing of charge-sheet under the MCOC Act was ruled out. The officer, however, concluded that possibly Mohammed Shamim Badgujar and the appellant Sanjay along with others had committed offences under sections 504, 506, 427, 323, 406, 418 and 420 r/w sections 34 and 120B of the IPC and that there was sufficient material to submit a charge-sheet against them. He concluded his report by stating that since these offences were disclosed, they may be registered afresh and after completion of the investigation charge-sheet could be filed before the Addl. Chief Metropolitan Magistrate, 17th Court, Borivali, Mumbai for which he sought appropriate orders. On this report, the impugned order came to be passed.

3. As already stated, one of the accused has filed the writ petition challenging the impugned order and the other accused has filed the appeal. The learned Counsel for the complainant has an objection to the tenability of the appeal contending that u/s 12 of the MCOC Act the appeal had to be preferred within thirty days of the order and not from thirty days of the knowledge of the order and therefore the appeal was barred by limitation. Though the appellant has not specifically sought any condonation of delay, the appellant has explained that he came to know of the order only after reading a newspaper report since he was not a party to the proceedings before the Special Court. Therefore, though no specific prayer is made for condonation of delay, in the circumstances, delay, if any, would have to be condoned and it is not necessary to go into the technicality of whether the limitation would start from the date of the order or from the date of knowledge of the order, since the appellant was not a party to the proceedings. As to the tenability of the writ petition, the learned Counsel for the complainant states that since an appeal is provided, writ petition would not lie.

Ordinarily, this Court does not entertain writ petition where an alternate efficacious remedy is available. However, this is a self-imposed restriction and if the Court finds that an order needs correction, merely because an appropriate remedy available under the enactment is not availed of, this Court cannot be prevented from looking into the correctness of the order passed and therefore this objection to the tenability of the writ petition would also have to be rejected.

4. The learned Counsel for the appellant and the petitioner submitted that once it was settled that an offence punishable under the provisions of the MCOC Act was not made out, the Additional Special Judge under the MCOC Act would cease to have jurisdiction to deal with the matter and should not have passed any order. In any case, they contend that there is absolutely no warrant for direction to register a separate crime, when the crime had already been registered in the past on the complaint of the complainant which had been ordered to be investigated by the learned Special Judge. There could not be a second FIR in respect of the same crime. They further submit that there was absolutely no warrant for the learned Judge to direct Assistant Commissioner of Police T.R. Chavan of the Borivali Division by name to register the crime or to carry out investigation and file charge-sheet.

5. There can be no doubt that there was no question of registering a second FIR in respect of the same crime. Crime is already registered and investigation has also been carried out by a Police Officer who has come to some conclusions. The learned APP is right in submitting that since the investigation was carried out on the directions of the learned Special Judge under MCOC Act, the officer was obliged to report to the Court about the conclusions reached and therefore there is nothing wrong in the officer informing the Court that charge-sheet under the MCOC Act could not be filed, but that offences under the IPC had been made out by the investigation carried. Even so, though the officer may have out of courtesy, while placing the report before the Court, sought appropriate directions from the Court, the learned Judge should have seen that it was absolutely unnecessary for him to issue any direction for registering a separate crime or asking a particular officer to carry out investigation or file charge-sheet in the appropriate Court. The learned Judge should have seen that the Police Officer had already noticed commission of cognizable offences and therefore he was expected to proceed further and take appropriate steps as contemplated under the Cr.P.C. Therefore, to that extent the impugned order was unwarranted and deserves to be set aside and is accordingly set aside. The appeal to the afore-stated extent stands allowed. The Police Officer concerned would be at liberty to pursue such course of action as may be required to be pursued under the provisions of the Cr.P.C. In view of the order passed in the appeal, the writ petition also accordingly stands disposed of.