
(2012) 01 DEL CK 0593

In the Delhi High Court

Case No : Writ Petition (Criminal) No. 893 of 2009

Shankar Lal

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 27-01-2012

Acts Referred:

Citation : (2012) 01 DEL CK 0593

Hon'ble Judges : M.L. Mehta, J

Bench : Single Bench

Advocate : Shahid Ali, Mr. U.A. Khan and Mr. Mohd. Shariq, for the Appellant;
Dayan Krishnan, ASC for State, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Mehta, J.—This Writ Petition is filed under Article 226 and 227 of the Constitution of India read with Section 482 Cr.P.C., 1973 for quashing of FIR No. 163/2009 under Sections 3/4 of Maharashtra Control of Organized Crime Act (MCOCA), 1999, registered at Police Station Seema Puri.

2. The said FIR was registered on 12.05.2009 after obtaining approval from the Joint Commissioner of Police for registration of case u/s 3(2) and 4 of MCOCA against the petitioner and his syndicate vide Order No. 2145/Pers. Sec./JT. CP (NDR). The FIR was lodged relying upon the criminal antecedents of the petitioner and five FIRs registered against him.

3. The details of the five FIRs relied upon are as hereunder:

Brief facts of FIR No. 184/01 dated 02.06.2001 u/s 379/411 IPC, P.S. Civil Lines, Delhi.

On 02.06.2001 accused Shanker Lal had stolen Rs. 8,140/- from a sick. Later on accused Shankar Lal was apprehended and the case property was recovered in this case and charges have been framed.

Brief facts of FIR No. 329/04 dated 28.09.2004 u/s 25A. Act, P.S. Lohori Gate,

Delhi.

On 28.09.2004 accused Shankar Lal was apprehended. On frisking one loaded country made pistol was recovered from his possession. In this case, charge has been framed. Brief facts of FIR No. 324/06 dated 17.05.2006 u/s 12/9/55 G.Act, P.S. Seema Puri, Delhi.

On 17.05.2006 accused Shankar Lal along with his associates Smt. Saheli W/o Sarafat & Sarafat @ Chhotu S/o Rasid were apprehended. Betting slips and cash were recovered. In this case all accused persons have been convicted on 09.01.2007 by M.M., Delhi.

Brief facts of FIR No. 293/08 dated 03.10.2008 u/s 186/353/332/147/148/149 IPC, P.S. Seema Puri, Delhi.

On 02.10.2008 accused Shankar Lal alongwith his associates were involved in rioting with another faction of criminals headed by Seikh Nisar. When Police intervened they attacked the police party in which Sub-Inspector was injured. The Ld. MM has taken cognizance.

Brief facts of FIR No. 32/09 dated 29.01.2009, u/s 20/20/61/85 NDPS Act, P.S. Seema Puri, Delhi.

On 29.01.2009 a secret information was received and raiding party was constituted and raid was conducted, during which accused Shankar Lal was apprehended and three Kgs. of "Ganja" was recovered from his possession. In this case charge sheet has been filed in the trial court which has taken cognizance in the case.

4. In addition, the allegations against the petitioner herein are that he has criminal antecedents as far back as 1972. In the beginning of his criminal life, several cases under Excise Act for sale of illicit liquor were registered against him. Moreover, different cases of hurt, threatening, Arms Act, rioting and theft were registered against him. It is also alleged that he has organized a gang which is involved in performing gambling activities in public places and thus, has amassed huge wealth from such activities.

5. The aforesaid FIR 163/2009 under MCOCA is sought to be quashed mainly on the ground that MCOCA had prospective applicability and being not in force at the time of registration of other FIRs against the petitioner, those FIRs were outside the purview and scope of consideration. In this regard, reliance is placed on State of Maharashtra Vs. Bharat Shanti Lal Shah and Others, . It is urged by learned counsel for the petitioner that registration of FIR under MCOCA is violative of Article 14, 20 and 21 of the Constitution of India. Further, it is also submitted that the petitioner has been involved in all these cases due to the vendetta and has been continuously harassed by the police. The sanction by the police officer granting registration of FIR was also alleged to be violative of Section 23, being due to non-application of mind by the concerned officer. The counsel for the petitioner further submitted that the definition of "Organized

Crime", "Organized Crime Syndicate" and "Continuing Unlawful Activity" under MCOCA are vague and ambiguous.

6. Per contra, it has been submitted by the learned APP for the State that there is no illegality in the registration of FIR against the petitioner under MCOCA as he is a hardened criminal having history of being involved in various anti-social activities which includes gambling, theft committed by using psychotropic substance, rioting etc. and has created a terror in his locality and in the nearby areas. He has also been convicted in several cases and as many as 46 FIRs are registered against him and out of which he has been convicted in five cases and cognizance has been taken of many offences committed by him and other cases are in the process of trial. The petition is opposed vehemently stating that it is in the interest of the society that the offences mentioned in the FIR are thoroughly investigated and the law must take its own course.

7. I have heard learned counsel for the petitioner as also the State.

8. For appreciating the controversy, it would be necessary to refer to certain provisions of MCOCA, namely, section 2 (d), 2 (e), 2 (f), and section 23 which read as under:

2 Definitions

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

(a) - (c)

(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 field before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence;

(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;

(f) "organised crime syndicate" means a group of two or more persons who, acting either singly or collectively, as a syndicate of gang indulge in activities of organised crime;

23. Cognizance of, and investigation into, an offence.

(1) Notwithstanding anything contained in the Code

(a) no information about the commission of an offence of organised crime under

this Act, shall be recorded by a police officer without the prior approval of the police officer not below the rank of the Deputy Inspector General of Police;

(b) no investigation of an offence under the provisions of this Act shall be carried out by a police officer below the rank of the Deputy Superintendent of Police.

(2) No Special Court shall take cognizance of any offence under this Act without the previous, sanction of the police officer not below the rank of Additional Director General of Police.

9. From the perusal of provisions of Section 2 (d) and (e), it can be seen that the following ingredients will be necessary to make out the case of an organized crime; (i) that there has to be continuing unlawful activities; (ii) that such an activity (continuing unlawful activity) will have to be by an individual, singly or jointly; (iii) that such an activity is either by a member of an organized crime syndicate or on behalf of such syndicate; (iv) that there has to be use of violence or threat of violence or intimidation or coercion or other unlawful means; (v) that such an activity has to be with an objective of gaining pecuniary benefits or gaining undue economic or other advantage for the person who undertakes such an activity or any other person or promoting insurgency; (vi) that such an activity should be prohibited by law for the time being in force; (vii) that such an activity is cognizable offence punishable with imprisonment of three years or more (viii) that such an activity is undertaken either singly or jointly, as a member of an organized crime syndicate or on behalf of such syndicate; (ix) that in respect of such an activity more than one charge-sheet must have been filed before a competent court; (x) that the charge-sheet must have been filed within a preceding period of ten years; and (xi) that the courts have taken cognizance of such offences.

10. In *Bharat Shanti Lal Shah, Shamim Mirza Arif Beg & Sanjay Patil Vs. State of Maharashtra* (supra), the definitions contained in Section 2(1)(d), (e) and (f) were alleged to be so interwoven and interdependent that they were unconstitutional when taken together as they violate the requirement of Article 13(2) and 14(2) of the Constitution of India. While rejecting the contentions that provisions of Section 2 (d) and (f) are violative of Constitution and also vague and ambiguous, the Supreme Court in this case observed as under:

19. Even otherwise, when the said definitions as existing in Section 2(d) (e) and (f) of the MCOCA are read and understood with the object and purpose of the Act which is to make special provisions for prevention and control of organized crime it is clear that they are worded to sub serve and achieve the said object and purpose of the Act. There is no vagueness as the definitions defined with clarity what it meant by continuing unlawful activity, organized crime and also organized crime syndicate. As the provisions treat all those covered by it in a like manner and does not suffer from the vice of class legislation they cannot be said to be violative of Article 14 of the Constitution.

...If we read the definition again, what has been defined as continuing unlawful

activity is a member of organized crime syndicate in respect of which any activity prohibited by law and done repeatedly i.e. more than one for which charge sheet has been filed in the court of competent jurisdiction in the past ten years. The purpose of definition is to define what continuing unlawful activity is and it is for the purposes of defining what is continued unlawful activity that those charges are to be taken into consideration. Mere taking into consideration of such charges cannot result in discrimination of the kind alleged by Shri Manohar. The activity must be continuing unlawful activity and to define it with clarity it is provided that any person who in the past was charge sheeted for more than one charge of such activity or crime the cognizance of which has been taken and imprisonment for which is more than three years should be taken into account. The fact of the person having been charge sheeted in such cognizable offences in the past makes the unlawful activity, continuing unlawful activity. This section only defines what the activity is. It does not itself provide for any punishment for that activity. Had punishment been provided the submission that it treats while punishing unequal as equals may carry weightage. That being not the case in the challenge to Section 2(1)(d) of the Act we see no vagueness or violation of Article 14 by the definition. We find that the provision treats all those covered by it in a like manner and does not suffer from the vice of class legislation.

11. In view of the above, I find no merit in the contention of the petitioner that the provisions of MCOCA are vague and ambiguous and violative of his constitutional rights.

12. The contentions of the petitioner that he is not covered under the provisions of MCOCA as the Act came into force in NCT of Delhi w.e.f. 02.01.2002 and hence, it cannot have any retrospective effect. The contention of learned counsel for the petitioner was that the FIRs and the charge-sheets recorded against the petitioner prior to coming into operation of MCOCA IN Delhi cannot be considered as this law had prospective effect. To my view, this was an entirely untenable contention. Identical contention was raised in the case of Jag Mohan @ Mohar Singh v Commissioner of Police & Ors. [JCC (Delhi) 2007(1)] wherein a Division Bench of this Court held as under:

21 ... It is submitted by the counsel for the petitioners that the offences committed prior to 2nd January, 2002 could not be termed as organized crime and the petitioners could not have been termed as organized crime syndicate because at that time the Act was not in force and the offence of the petitioners, if any, could not be either "organized crime" or "continuing unlawful activity". In case the argument of the learned Counsel for the petitioners has to be accepted the first case under this Act can be registered only after two cases of the nature described in the Act had been registered against a person or against an organized crime syndicate after 2nd January, 2002. As the definition shows for making a crime punishable under Sections 3 & 4 of MCOCA, there has to be more than one case registered or in other words it is the third case which can be registered for an offence under Sections 3 & 4 of MCOCA. Such an interpretation

will come directly in conflict with the very purpose of the Act. The object of the Act as stated in the extended title of the Act is, "The Act to make special provisions for prevention and control of and for coping with criminal activity by organized crime syndicate or gang and for matters connected with and incidental thereto." If such an interpretation is accepted then the state will have to wait and helplessly watch organized crime taking place till it is the third time a person or a syndicate is found involved in the offence after the Act came into operation in Delhi. It is further to be noticed that "continuing unlawful activity" could have taken place ten years prior to the registration of the new case. Obviously the intention of the legislature could not have been other than giving immediate effect to the Act by taking note of all the offences or charge-sheets registered within ten years prior to the commencement of the Act.

13. It was next contended by learned counsel for the petitioner that provisions of this enactment have to be interpreted strictly and not liberally to include more and more persons, is without any basis as the five FIRs mentioned in the registration of the FIR in question were registered within ten years and four out of five cases, if proved, have three or more than three years of punishment which fulfils the ingredients applicable of MCOCA. Moreover, the FIR No. 163/2009 prima facie fulfils all the ingredients of Section 2(d) of MCOCA as it is seen that the petitioner was involved in continued unlawful activities along with his associates for pecuniary benefits. With regard to the liberal interpretation of MCOCA, the purpose behind the enactment of MCOCA must be taken into account. It was that the existing legal framework i.e. the penal and procedure laws and the adjudicatory system was found to be inadequate to curb and control the menace of organized crimes. It was found that the organized crimes had become a serious threat to the society and is fuelled by illegal wealth gained by contract killing, extortion, smuggling in contrabands, illegal trade in narcotics, kidnapping for ransom, collection of production money, money laundering etc.

14. Regarding the contention of the petitioner that the sanction for registration of FIR against him has been accorded with non-application of mind, the allegations in the said FIR and past record of the petitioner must be looked into. In FIR No. 184/2001 and FIR No. 329/2004, the petitioner is charged with the offence of theft and possessing one loaded country made pistol respectively. In both these cases, charge has been framed. In FIR No. 293/2008 cognizance has been taken for the offence of the involvement of petitioner along with his associates in rioting and attack on the police party. In FIR No. 32/2009, the petitioner was apprehended with 3 Kgs of Ganja recovered from his possession. In this case, charge sheet has been filed in the court and the learned M.M. has taken cognizance of the same. In FIR No. 324/2006, the petitioner along with his associates were apprehended with betting slips and all the accused persons have been convicted on 09.01.2007 by learned M.M., Karkardooma Courts. Also, it is a matter of record that there are 46 FIRs registered against the petitioner from way-back in 1972. The perusal of the order of the Joint Commission of Police reveals the involvement of the petitioner and his associates namely Jaswant,

Rafique and some unidentified persons in running Organized Crime Syndicate with the objective of gaining pecuniary benefits and other advantages by unlawful means. Having regard to these facts, it can be noted that the sanction accorded by the Joint Commissioner of Police for registration of FIR against the petitioner was given after the careful consideration of the past criminal record of the petitioner who is involved in various illegal activities along with his associates. Hence, it cannot be said that the approval u/s 23 of MCOCA was unjustified or arbitrary.

15. It is pertinent to note that in both Statement of Objects and Reasons and the Preamble, though certain activities have been mentioned the same are followed by the term "etc". It is clear that the activities mentioned in the Statement of Objects and Reasons and the Preamble are only illustrative in nature and not exhaustive. It is, thus, clear that the legislative intent is not only to curb the activities mentioned in the Statement of Objects and Reasons or Preamble but to curb various other activities of the organized crime syndicate so that unlawful elements spreading terrorism in the society can be controlled to a great extent, with an intention that the feeling of fear spread in the society is minimized. The perusal of the Preamble and the Statement of Objects and Reasons, in my considered view, also does not lead to any narrower meaning that MCOCA has been enacted only for the purpose of curbing activities which involve pecuniary gains or undue economic advantages. The mischief which is sought to be cured by enactment of MCOCA is to curb and control menace of organized crime. If a narrower meaning as sought to be place is accepted, it will frustrate the object rather than curing the mischief for which the Act has been enacted.

16. The power of High Court u/s 482 CrPC has been discussed at length in various pronouncements. In the State of Haryana and others Vs. Ch. Bhajan Lal and others, , the Supreme Court defined the categories of cases wherein the extraordinary power under Article 226 or Section 482 Cr.P.C. can be exercised by the High Court by illustrating as under :

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

17. In State of Bihar Vs. Rajendra Agrawalla, , the Supreme Court has shed light on the power of this Court u/s 482 Cr. P.C and held as under:

It has been held by this Court in several cases that the inherent power of the court u/s 482 of the Code of Criminal Procedure should be very sparingly and cautiously used only when the court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the court, if such power is not exercised. So far as the order of cognizance by a Magistrate is concerned, the inherent power can be exercised when the allegations in the first information report or the complaint together with the other materials collected during investigation taken at their face value, do not constitute the offence alleged. At that stage it is not open for the court either to sift the evidence or appreciate the evidence and come to the conclusion that no prima facie case is made.

18. Having regard to the object of MCOCA and the material on record, as discussed above, I have no hesitation in recording that the registration of FIR against the petitioner u/s 3 and 4 of MCOCA did not suffer from any illegality or malafide.

19. In view of the discussion above, the writ petition being without any merit is accordingly dismissed.