

(2014) 06 BOM CK 0099

In the Bombay High Court

Case No : Criminal Appeal Nos. 1325 of 2011 and 722 of 2012

The State of Maharashtra

APPELLANT

Vs

Ajay Jagdish Pande

RESPONDENT

Date of Decision : 25-06-2014

Acts Referred:

Arms Act, 1959 — Section 25, 3
Criminal Procedure Code, 1973 (CrPC) — Section 173, 2(d), 372
Environment (Protection) Act, 1986 — Section 15, 19
Maharashtra Control of Organised Crime Act, 1999 — Section 11, 2(d), 2(e), 2(f), 23(1)
Penal Code, 1860 (IPC) — Section 120B, 302, 34, 399, 402

Citation : (2014) 4 BomCR(Cri) 87

Hon'ble Judges : N.H. Patil, J; A.M. Thipsay, J

Bench : Division Bench

Advocate : M.M. Deshmukh, APP, Amit Desai, Senior Advocate, V.V. Purwant and Sachin Deokar, Advocate for the Appellant; Nilesh Oza, Ranjit Ade, Advocates, H.H. Ponda, Vinayak Patil, A.P. Mundargi, Senior Advocate, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Abhay M. Thipsay, J.—These two Appeals can be conveniently disposed of by this common order as they take exception to the same order i.e. the order dated 7th October 2011 passed by the Judge of the Special Court under the Maharashtra Control of Organized Crime Act (hereinafter referred to as "MCOC Act") for Greater Bombay in MCOC Special Case No. 9 of 2011 which was pending before him. The respondents herein are the accused in the said case.

2. The respondent no. 3 had filed an application (Exhibit-21) before the Trial Court praying that the proceedings under the MCOC Act be dropped, and the case be sent for trial to the Court of Sessions. It was the contention of the respondent no. 3 that since no offence punishable under the provisions of the MCOC Act was disclosed from the police report and accompanying documents,

the said Special Court had no jurisdiction to try the offence in question. The learned Judge after hearing the parties, came to the conclusion that the offence allegedly committed by the respondents, as disclosed from the charge-sheet, was not falling "within the purview of the provisions of the MCOC Act" and that, therefore, he had no jurisdiction to try the said offence/offences. He, therefore, by the impugned order, directed the case to be transferred to the Court of Sessions for Greater Bombay, as empowered by section 11 of the MCOC Act. Being aggrieved thereby, these two appeals have been filed.

3. Criminal Appeal No. 722 of 2012 has been filed by the State of Maharashtra while Criminal Appeal No. 1325 of 2011 has been filed by one Sandhya Prafulla Patil who is the wife of the deceased Prafulla Patil, claiming to be a victim of the alleged offence/offences.

4. We have heard Mrs. M.M. Deshmukh, learned APP for the State in support of the Appeal filed by the State. We have also heard Mr. Amit Desai, learned Senior Advocate who appeared for the wife of the deceased. We have also heard Mr. Nilesh Oza, Advocate for respondent nos. 1 and 2, Mr. H.H. Ponda for respondent no. 3 and Mr. A.P. Mundargi, learned Senior Advocate for respondent no. 4.

5. A reference to the facts of the case as appearing from the police report and the accompanying documents would be necessary at this stage. In brief, the prosecution case is that one Prafulla K. Patil who was a leader of Congress-I party, a former Mayor, and President of an Education Trust and who as such, was well known as a social worker in Thane District, was having inimical relations with the respondents. The respondents attempt to grab government land was obstructed by the said Prafulla Patil and therefore, the respondents were having grudge against him. That, on 15th March 2010, the respondents had trespassed upon the property belonging to the educational trust run by Prafulla Patil and had damaged the property situated therein. That, on 8th May 2010, Prafulla Patil had gone to inspect the newly constructed building of the said educational institution. At that time, he was fired at by some unknown persons, and was also assaulted by deadly weapons like choppers causing serious injuries to him. He was removed to the hospital, but was declared dead. Amol Patil, brother of Prafulla Patil, lodged a report with Navghar Police Station, alleging commission of offences punishable u/s 302 of the IPC, 120B of the IPC read with section 34 of the IPC, and an offence punishable under the Arms Act; and in this report, he expressed suspicion against the respondent no. 3-Vishal Mhatre--and others.

In the course of investigation, the involvement of the respondents was revealed and they were arrested on different dates. The Investigating Agency came to the conclusion that the offence in question was an organized crime as defined u/s 2(e) of the MCOC Act. After obtaining prior approval u/s 23(1) of the MCOC Act, a case in respect of offences punishable under sections 3(1)(i), 3(2) and 3(4) of the MCOC Act was registered, and further investigation was carried out. On obtaining sanction u/s 23(2) of the MCOC Act, a charge-sheet came to be filed in the Special Court for the offences punishable under sections 3(1)(i), 3(2) and

3(4) of the MCOC Act at Thane. The case was, later on, transferred to the Special Court under the MCOC Act at Greater Bombay.

6. We have carefully gone through the impugned order. The learned Judge noticed the facts of the case as reflected from the charge-sheet correctly. He also took the contentions advanced by the counsel for the parties into consideration and made a number of observations about the ingredients of an offence punishable under the MCOC Act while ultimately coming to a conclusion that no such offence was disclosed from the police report and accompanying documents.

7. Mrs. M.M. Deshmukh, learned APP and Mr. Amit Desai, learned Senior Advocate contended that the impugned order has been passed on misconstruing the provisions of the MCOC Act. According to them, all the ingredients of an offence punishable under the MCOC Act, were clearly made out from the police report and accompanying documents, and there was no scope for taking a view that no offence punishable under the MCOC Act, was disclosed. It was submitted that the notion of the learned Judge of the Special Court as regards the ingredients of an offence of organized crime, as reflected from the impugned order, is not proper or legal. Mr. Desai contended that the propositions of law on which the learned Judge based his conclusion, are contrary to the authoritative pronouncements of the Superior Courts and the Apex Court.

8. Before going into the real question needing determination, and in order to appreciate the arguments advanced by the learned counsel for the parties in support of their respective contentions, it would be appropriate to reproduce the definitions of certain terms used in the MCOC Act.

9. Section 2(e) of the MCOC Act defines "Organized Crime" as under:-

(e) "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 person or promoting insurgency.

(Emphasis supplied).

It is clear that an "organized crime" should first qualify as a continuing unlawful activity.

10. The term "continuing unlawful activity" has been defined in section 2(d) as under:-

(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

11. The term "Organised Crime Syndicate" has been defined in section 2(f) as under:-

organized crime syndicate" means a group of two or more persons who, acting either singly or collectively, as syndicate or gang indulge in activities of organized crime

12. The learned Judge of the Special Court came to the conclusion that the offences disclosed from the police report and accompanying documents, were not such as would be covered by the penal provisions of the MCOC Act on a number of considerations. The learned Judge, inter alia, noted that in order to constitute an activity as a "continuing unlawful activity", there was a requirement that at least two previous charge-sheets must have been filed in respect of the activities of the organized crime syndicate, in question, and the observations made by him in the impugned order indicate that he was not satisfied that the previous two charge-sheets relied upon in this case, prima facie indicated that the activities alleged therein were undertaken as a member of an "organized crime syndicate" or on behalf of such syndicate. The learned Judge observed that the two previous charge-sheets that had been relied upon in the present case, did not show any violence or threat of violence, or intimidation with the objective of gaining pecuniary benefit, and that therefore, the offences disclosed in the said previous charge-sheets, would not be in respect of activities of the organized crime syndicate. Some of the observations made by the learned Judge indicate that he was of the opinion that the "continuing unlawful activity" must be such as would involve force or violence. On this, and on a number of other grounds, he concluded that no offence punishable under the MCOC Act, was disclosed from the police report and accompanying documents, and that, therefore, he had no jurisdiction to try the case.

13. In the context of the observations made by the learned Judge of the Special Court, the learned counsel for the parties have advanced extensive arguments and cited much case law dealing with the aspect as to what are the ingredients of an offence of organized crime, and how the terms used in defining "organized crime", "continuing unlawful activity" etc, have been interpreted.

14. It has been submitted Mrs. M.M. Desmukh, learned APP and Mr. Amit Desai, the learned Senior Advocate for the appellant in Criminal Appeal No. 1352/11 that violence is not an essential requirement to constitute an activity as an "unlawful activity" as contemplated under the MCOC Act. To support this proposition, Mr. Desai has relied upon the following reported decisions:

(i) State of Maharashtra and Others Vs. Lalit Somdatta Nagpal and Another,

(ii) Cr. Appeal No 1088/07 decided on 17/8/07 (SUPREME COURT) CBI Vs. Pradeep Bhalchandra Sawant & Anr..

- (iii) Chenna Boyanna Krishna Yadav Vs. State of Maharashtra and Another,
- (iv) Dattatray Krishnaji Ghule Vs. State of Maharashtra and Another,
- (v) Mohammed Chand Mulant Vs. Union of India, 2006 BCR (Cri.)-1-610.
- (vi) Kamaljeet Singh (In Judicial Custody) Vs. State,
- (vii) Shiv Murat Dwivedi @ Shiva Vs. State,

15. Since the learned Judge has made some remarks about the legality and validity of the sanction granted u/s 23(2) of the MCOC Act, Mr. Desai has relied upon the following authorities to support a contention that the question of validity of the sanction and the application of mind by the sanctioning authority can be gone into only during the trial.

- (i) Ganesh Nivrutti Marne Vs. The State of Maharashtra,
- (ii) Vinod G. Asrani Vs. State of Maharashtra,
- (iii) Parkash Singh Badal and Another Vs. State of Punjab and Others,

16. Since the maintainability of the appeal filed by the wife of the deceased claiming to be a victim was challenged, Mr. Desai has relied upon the following authoritative pronouncements on the issue of locus standi of a victim to file such an Appeal.

- (i) Jamiruddin Ansari Vs. Central Bureau of Investigation and Another,
- (ii) Cr. Appeal No. 991/11 with 992/11 Balasaheb Rangnath Khade vs. The State of Maharashtra & ors. decided on 27.4.2012.
- (iii) A.R. Antulay Vs. Ramdas Srinivas Nayak and Another,
- (iv) M/s. J.K. International Vs. State, Govt of NCT of Delhi and Others,
- (v) Manohar Lal Vs. Vinesh Anand and Others,
- (vi) Sukhbir Singh and Others Vs. State of Haryana,
- (vii) Tarachand Damu Sutar Vs. The State of Maharashtra,
- (viii) Prithvi Raj and Others Vs. Kamlesh Kumar and Another,
- (ix) Garikapatti Veeraya Vs. N. Subbiah Choudhury,
- (x) P.S.R. Sadhanantham Vs. Arunachalam and Another,
- (xi) AIR 1928 254 (Privy Council)
- (xii) State of Maharashtra vs. Jagan Gagansingh Nepali, Criminal Appeal No. 20 of 2011.

17. A number of arguments based on the principles of Interpretation of Statutes have also been advanced by him, and in support thereof, he has placed reliance

on the following reported decisions.

- (i) State of Maharashtra Vs. Jagan Gagansingh Nepali @ Jagya and another and Sandhya Prafulla Patil,
- (ii) State of Kerala Vs. Mathai Verghese and Others,
- (iii) Balram Kumawat Vs. Union of India (UOI) and Others,
- (iv) Jonnalagadda Samrajyam and Others Vs. Registrar, The Special Court constituted under A.P. Land Grabbing (Prohibition) Act, 1982 and Another,
- (v) Criminal Appeal No. 829 of 2005, Mrs. Sarah Mathew vs. The Institute of Cardio Vascular Diseases by its Director-Dr. K.M. Cherian & ors.
- (vi) Dinesh Kumar Vs. Chairman, Airport Authority of India and Another,
- (vii) Superintendent and Remembrancer of Legal Affairs to Government of West Bengal Vs. Abani Maity,
- (viii) State of Maharashtra Vs. Natwarlal Damodardas Soni,
- (ix) Murlidhar Meghraj Loya and Another Vs. State of Maharashtra and Others,
- (x) N. Kannapan Vs. State (Union Territory) Andaman and Nicobar Islands,

18. Certain broad observations made by the learned Judge of the Special Court, have given rise to a number of arguments as regards "how whether a particular activity has been undertaken as a member of an organized crime syndicate or on behalf of any such syndicate should be decided"; "Whether such activity must necessarily involve violence"; "Whether making some pecuniary gain would be absolutely essential for bringing such activity within the scope of the term as defined in section 2(d) of the MCOC Act" etc.

19. Mr. H.H. Ponda, learned counsel for the respondent no. 3, however, emphasized only one aspect of the matter. While maintaining that the order passed by the learned Judge, is proper and legal, and that there were several reasons for coming to a conclusion that the activity in question could not be termed as a "continuing unlawful activity, Mr. Ponda submitted that he would point out only a direct and clear lacuna in the case of the prosecution in that regard. He submitted that even assuming-just for the sake of arguments-that the other requirements to make an activity a "continuing unlawful activity" had been fulfilled, still the requirement of filing of atleast two charge-sheets before a competent court within preceding period of 10 years, and of the Court/Courts having taken cognizance of the offences contained in the said charge-sheet, was not fulfilled. He therefore, submitted that since the activity in question, therefore, could not be termed as a "continuing unlawful activity", the question of it amounting to an organized crime, does not arise.

20. In view of this contention raised by Mr. Ponda, we do not think it necessary to deal with all the contentions advanced before us by the learned Additional

Public Prosecutor and Mr. Desai, and to examine whether they are supported by the authoritative pronouncements relied upon by them. Though the contentions cannot be said to be irrelevant in view of the broad observations made by the learned Judge of the Special Court, in view of the specific contention raised by Mr. Ponda, what really needs to be decided is whether the requirement of filing of at least two charge-sheets (indicated by the phrase "more than one charge-sheets") which is an essential ingredient of "continuing unlawful activity" as defined u/s 2(d), has been fulfilled in the present case. It is quite elementary that unless the activity in question can be termed, or is qualified to be termed as "continuing unlawful activity" it can never amount to an organized crime. Clearly, an essential ingredient of an "Organized Crime" is that it must be a part of any continuing unlawful activity.

21. We may straightaway, therefore, proceed to examine this aspect of the matter.

22. On an analysis of section 2(d) reproduced earlier, it becomes clear that an activity to be qualified as "continuing unlawful activity" it must be:-

- (i) an activity prohibited by law for the time being in force;
- (ii) it should be a cognizable offence punishable with Imprisonment for three years or more;
- (iii) it should have been undertaken, (either singly or jointly) as a member of an organized crime syndicate, or on behalf of such syndicate;
- (iv) in respect of such activity, "more than one charge-sheets" should have been filed before a competent court:-

(a) such filing should be within the preceding period of 10 years.

and;

(b) the Court should have taken cognizance of the offence/s contained in the said charge-sheets.

We are concerned with the requirement at (iv) above.

23. The two charge-sheets that have been mentioned in this case are the charge-sheets arising out of C.R. No. 173/05 registered at Mira Road police station, in respect of offences punishable u/s 399 and 402 of the IPC as also the offences punishable u/s 25 r/w section 3 of the Arms Act, and the charge-sheet submitted in C.R. No. II-30 of 2008 alleging commission of an offence punishable u/s 15 of the Environment(Protection) Act, 1986, (for short "the Environment Act") by the respondent no. 3 and other accused.

24. That it is on the basis of these two charge-sheets that it is claimed that the activity in question is a part of a continuing unlawful activity, is not in dispute.

25. Mr. Ponda submitted that the police could not have filed a charge-sheet in

respect of an offence punishable u/s 15 of The Environment Act, at all. He submitted that the police had no power to file a charge-sheet in the matter and that, at any rate, there was no question of the Court taking cognizance of an offence punishable under the Environment Act on the basis of a charge-sheet filed by the police in view of the provisions of section 19 of the said Act.

26. Section 19 of the said Act reads as under:-

19. Cognizance of offences:-No court shall take cognizance of any offence under this Act except on a complaint made by-

(a) the Central Government or any authority or officer authorized in this behalf by that Government, or

(b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government or the authority or officer authorized as aforesaid.

27. There can be no doubt that the filing of a charge-sheet in respect of an offence punishable u/s 15 of the Environment Act, was not contemplated by law and the police could not have filed a charge-sheet in the matter.

28. According to Mr. Ponda, if this charge-sheet, filing of which is itself contrary to law, cannot be taken into consideration at all, there would be only one charge-sheet in respect of the alleged activities of the alleged organized crime syndicate. According to him, one of the essential requirements of "continuing unlawful activity" not having been fulfilled there would be no question of the offence disclosed by the police report and accompanying documents being an "organized crime".

29. In reply to this contention, Mr. Amit Desai has advanced arguments which have two shades. His first contention is that the word "charge-sheets" appearing in the definition of "continuing unlawful activity" is required to be broadly considered. According to him, the use of the word "charge-sheets" is only incidental, and what is contemplated by legislature thereby, is any document on the basis of which cognizance of a particular type of the offence [as mentioned in section 2(d) of the MCOC Act], is taken. According to him, the word "charge-sheet" is to be construed and interpreted as a document on the basis of which Court can take cognizance of the offence in question. He submitted that there are a number of serious crimes made punishable by different statutes providing for severe punishments and separate procedure for investigating into them. He submitted that many serious offences can be taken cognizance of, on the basis of complaints filed by public servants or statutory authorities. He submitted that it could not have been the intention of the legislature to exclude such offences from being considered for the purposes of making an activity "continuing unlawful activity". He, therefore, submitted that even if the police could not have filed a charge-sheet with respect to the offence punishable u/s 15 of the Environment Act, such invalid charge-sheet could be treated as a complaint/

document on the basis of which cognizance of the said offence, was taken by the Court. The other shade of his argument is that the fact that the charge-sheet could not have been filed by the police in respect of an offence under the said Act, is not at all relevant. He contended that charge-sheet had, in fact been filed, was the factor that was material. He submitted that the validity of the filing of the charge-sheet could not be examined in the present proceeding, as the requirement of filing of at least two charge-sheets is only for the purpose of deciding whether the activity in question is "continuing unlawful activity". He contended that a Special Court under the MCOC Act cannot go into the question of validity of the action of filing of the previous charge-sheets, and the special Court's jurisdiction would be limited only to examine whether in fact, at least two charge-sheets in respect of the particular type of offence have been filed, and whether cognizance of the offences mentioned therein, has been taken. He submitted that the validity of the action of taking cognizance by the concerned Courts in respect of the offences mentioned in the previous two charge-sheets cannot obviously be gone into by the Special Court.

30. Thus, the substance of the contentions advanced by Mr. Amit Desai is that "charge-sheet" for the purposes of section 2(d) of the MCOC Act should be construed as any document submitted to the Court alleging commission of offences, and further, that the propriety or validity of taking of cognizance on the basis of such "charge-sheet" cannot be examined for the purpose of deciding whether the provisions of the MCOC Act, have been properly applied.

31. We have considered the rival contentions and the different shades of the basic arguments advanced by the learned counsel for the parties.

32. The word "charge-sheet" is not found in the Code of Criminal Procedure. It is found in Police Manual. However, it has acquired a particular meaning by usage. The term "charge-sheet", though not defined or spoken about in the Code of Criminal Procedure, has become popular and the Courts of all levels-including the Apex Court-use this term in their judgments and orders. Thus, the term "charge-sheet" has acquired a meaning by usage and undoubtedly, that meaning is "a police report" u/s 173 of the Code, which discloses commission of an offence by a certain person or persons. Thus, "charge-sheet" is popularly and commonly understood to mean a final report submitted by a police officer after investigation, disclosing commission of a cognizable offence/offences by a certain person/persons, not only in common parlance, but also in legal parlance.

33. Admittedly, what has been submitted by the police in respect of an offence punishable u/s 15 of the Environment Act, is a police report u/s 173 of the Code. A police report is specifically excluded from the definition of a complaint, as given in section 2(d) of the Code. Therefore, the police report erroneously filed by the police cannot be treated as a complaint.

34. Coming to the other aspects of the matter and dealing with the contention advanced by Mr. Desai, about the propriety of filing of charge-sheet and his

contention that the validity of the taking of cognizance of the offences mentioned in the charge-sheet, cannot be questioned or considered by the Special Court under the MCOC Act, we may observe as follows.

35. It is true that whether the cognizance of the offences in respect of which the previous two charge-sheets have been filed, was rightly taken or not, would not be a matter for the Special Court under the MCOC Act to determine. If the Court/Courts before which the previous two charge-sheets have been filed, has/have in fact taken cognizance of the offences in question, then the Special Court cannot refuse to accept that the activity in question would be "continuing unlawful activity" within the meaning of section 2(d) of the MCOC Act, on the ground that the cognizance ought not to have been taken. However, a distinction has to be drawn between cases where cognizance is taken on insufficient basis, or by coming to an erroneous conclusion; and cases where cognizance is taken without having a power to do so, or by violating an express provision of law prohibiting such taking of cognizance. If cognizance is taken by the concerned Courts on the basis of material insufficient for taking cognizance, then that would be clearly erroneous, but still, that would not be a matter to be considered by the Special Court under the MCOC Act. This however, cannot apply where there would be a legal bar to taking of cognizance of the offences in question. Invalid cognizance on the basis of the merits of the case would not be a ground to take away the activity outside the purview of the concept of "continuing unlawful activity". However, cognizance taken in spite of a specific bar created by a statute, has to be treated on a totally different footing. In the previous case, the decision or order of taking cognizance would be erroneous, but the error would not be a jurisdictional error. In the latter case, the error would be clearly a jurisdictional error. Taking cognizance by violating the specific bar created by a statute would be of no cognizance at all in the eyes of law, and would be non est. The distinction between cognizance erroneously taken i.e. in spite of insufficiency of material, and the cognizance taken by disregarding the specific bar or prohibition created by the statute, is clear, basic and must be clearly recognized.

36. We are unable to accept the contention of Mr. Amit Desai that the charge-sheet filed by the police in respect of the offence punishable u/s 15 of the Environment Act, ought to be treated as a complaint, and by giving an extended meaning to the term "charge-sheet", the requirement of section 2(d) be treated as having been complied with.

37. In any case, even assuming for the sake of arguments, that the report (along with documents) that has been submitted by the police, in respect of the said offence, to the court, is to be treated as a complaint, and further, even if the word "charge-sheets" appearing in section 2(d) of the MCOC Act, is to be given an extended meaning so as to include within its fold, a "complaint", still the further requirement i.e. of the Court having taken cognizance on the basis of such a complaint/charge-sheet, cannot be met. Even if the distinction between a charge-sheet and a complaint is ignored, still, it not having been filed by the

authority specified in section 19 of the said Act, there would be no question of the Court having taken cognizance of the offence on the basis of the documents submitted to it. It cannot be doubted that the provisions of section 19 of the Environment Act are mandatory.

38. Clearly, the Court would have no jurisdiction to take cognizance of the offence punishable u/s 15 of the Environment Act, on the basis of the document submitted to it by the police. Even if any action has been taken by the Court pursuant to the filing of such document, such action would be without jurisdiction, void and ab initio. The cognizance taken in violation of a specific provision. would be no cognizance at all, and would be non-est.

39. Thus, in our opinion, the requirement of filing of two charge-sheets in respect of the alleged activities of an Organized Crime Syndicate in the preceding 10 years, and the requirement of the Court having taken cognizance of the offences mentioned in the charge-sheets, have not been met with, in this case. Since one of the essential ingredient for constituting an unlawful activity as "continuing unlawful activity" is missing, even if all the other ingredients required by section 2(d) of the MCOC Act are treated as present, still, the activity cannot amount to "continuing unlawful activity". Since it fails to satisfy the requirements of "continuing unlawful activity" the activity in question can never amount to an organized crime as defined u/s 2(e) of the MCOC Act. It is therefore, clear that the provisions of the MCOC Act, could not have been applied to the facts of the case.

40. Undoubtedly, the learned Judge has made some other observations about the nature and scope of the activities or offence that would amount to an organized crime, and there is substance in the contentions advanced by Mr. Amit Desai, that some of these observations are not legally correct. However, when one of the basic requirements to attract the provisions of the MCOC Act, has clearly not been met in the present case, the other observations made by the learned Judge of the Special Court, need not bother us. In the ultimate analysis, the conclusion arrived at, by the learned Judge-that no offence punishable under the MCOC Act was disclosed-is proper and legal.

41. A question about the maintainability of the Criminal Appeal No. 1325 of 2011, as has been filed by the widow of Praful Patil, purportedly, in view of the proviso to Section 372 of the Code, was raised before this Court initially. A Division Bench after hearing the parties, came to the conclusion that the Appeal, purportedly filed under the proviso to Section 372 of the Code, was not maintainable, and dismissed the same. The matter was taken to the Supreme Court of India by the Appellant, and Their Lordships of the Supreme Court of India were pleased to set aside the order passed by this Court, and remit the matter back for reconsideration of the issues/questions involved in the matter. However, before us, the learned counsel for the respondents stated that they were not raising any issue regarding the maintainability of the Criminal Appeal, and were ready to argue the matter on merits. Moreover, the Appellant Sandhya

Patil-widow of Praful Patil-had also filed an application for intervention in the matter, and such intervention was permitted by us. The appellant Sandhya Patil was permitted not only to file her affidavit in the matter, but also to advance full and extensive oral arguments through her counsel. We have given full hearing to Mr. Amit Desai, learned counsel appointed by her. Since the issue about the maintainability of the Criminal Appeal No. 1325/11 arose out of the objection taken by the respondents, and since the objection was given up, and the said Criminal Appeal was fully heard on merits, there has been no occasion to decide the question of maintainability of the said Appeal.

42. Both the Appeals, therefore, fail.

43. The Appeals are dismissed.