

CASE NO.:
Special Leave Petition (crl.) 6312 of 2006

PETITIONER:
VINOD G. ASRANI

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT: 21/02/2007

BENCH:
Dr.AR. Lakshmanan & Altamas Kabir

JUDGMENT:
J U D G M E N T

ALTAMAS KABIR, J.

Four writ petitions, in which the petitioners had challenged their prosecution under the Maharashtra Control of Organized Crime Act, 1999 (hereinafter referred to as 'the MCOCA') and seeking quashing of the First Information Report and the grant of approval under Section 23 (1) (a) and sanction under Section 23 (2) of MCOCA, were disposed of by a common order passed by the Bombay High Court on 10th November, 2006. The writ petitioners had contended that no case had been made out against them regarding their complicity in the organized criminal activity or organized crimes alleged to have been committed by the organized crime syndicate known as Chhota Rajan gang under the leadership of Rajan Sadashiv Nikalje alias Chhota Rajan alias Nana alias Sheth. All the said writ petitions were dismissed by the said order but only Vinod G. Asrani is before us in this special leave petition. While the other writ petitioners as part of the organized crime syndicate led by Chhota Rajan are alleged to have indulged in extortion of large sums of money from developers who undertake redevelopment work of old buildings in Tilak Nagar and other areas of Bombay, by extending threats of violence including murder, the petitioner herein is alleged to have been found working for the organized crime syndicate and had facilitated the appropriation of funds extorted from builders in Tilak Nagar area, Chembur, Mumbai, at the behest of Pradip Madgaonkar @ Bandya Mama, which have been siphoned off in the accounts of the family members of Chhota Rajan and M/s. Khushi Developers Private Limited and others. It was further alleged that the petitioner had acted as an intermediary and had played an active role in the conspiracy and had also invested and/or diverted huge amounts which had been collected by way of extortion. The further allegation against the petitioner is that he had helped one of the other writ petitioners, namely, Sujata Rajendra Nikalje @ Nani to launder large amounts of money and acted as a money changer by manipulating accounts so that the fruits of the organized crime could be enjoyed by members of the organized crime syndicate and their leader Chhota Rajan and his family members.

While disposing of the writ applications, the High Court made it clear at the very outset that it was not going into the question as to whether the material collected by the investigating agency against the petitioners was sufficient to prosecute them under the provisions of the MCOCA and that

the writ petitioners, who were the accused in the case, would have sufficient opportunity to contest the same before the Special Court. The High Court confined itself only to the question as to whether the prosecution had complied with the provisions of Section 23 (1) and (2) of MCOCA. Although, it was brought to the notice of the High Court that the name of the petitioner herein was not included in the approval granted under Section 23 (1) (a) of MCOCA and that his name was subsequently included in the sanction granted by the Commissioner of Police under Section 23 (2) of MCOCA, the High Court did not accept the petitioner's contention that as no prior approval had been granted as far as the petitioner was concerned, the Investigating Officer could not have proposed to charge sheet the petitioner. The High Court also rejected the petitioner's contention that the sanction granted by the Commissioner of Police on the basis of the said proposal was illegal and not in accordance with the procedure established by law. The High Court accordingly dismissed the writ application filed by the petitioner herein along with the writ applications filed by the others.

Appearing for the petitioner, Mr. Sushil Kumar, learned senior counsel, reiterated the submissions made before the High Court. He emphasized the fact no approval had been obtained to commence the investigation against the petitioner under Section 23 (1) (a) of MCOCA and consequently the Investigating Officer did not have the authority to commence investigation under MCOCA into the offences alleged to have been committed by the petitioner. He urged that if the very initiation of the investigation stood vitiated by the failure to obtain approval under Section 23 (1) (a), the subsequent sanction granted under Section 23 (2) also stood vitiated and the proceedings before the Special Court on the basis thereof were liable to be quashed.

Apart from the above, Mr. Kumar urged that there was hardly any justification to involve or to implicate the petitioner under the provisions of the MCOCA. It was urged that there was no material on record to connect the petitioner with the commission of the offences relating to extortion as complained of against the other accused. The only allegation against the petitioner is that he had acted as an intermediary in investing and/or diverting huge amounts which had been collected by the crime syndicate and had helped the accused No.4 Sujata Rajendra Nikalje to launder large sums of money and had also acted as money changer by manipulating accounts. Mr. Kumar submitted that the said activities could not be said to be organized crime in relation to the provisions of MCOCA or that the petitioner was a member of an organized crime syndicate involved in such organized crime.

It was submitted that the complicity of the petitioner with the offences alleged against the others was not established by the materials on record and the High Court was not justified in dismissing the writ application filed by the petitioner challenging the invocation of the provisions of MCOCA in his case.

Mr. Sushil Kumar's submissions were strongly opposed by Mr. Altaf Ahmed, learned senior advocate, appearing for the respondent-State of Maharashtra. He submitted that the process of investigation under MCOCA was similar to the provisions relating to investigations under the Code of Criminal Procedure. He urged that a complaint may not always disclose the names of all the persons involved in the commission of an offence but such names could surface during investigation. Mr. Ahmed urged that the information given to the investigating authorities regarding the commission of a cognizable offence as per Section 154 of the Code did not

always contain the names of all persons connected with the alleged offence. Subsequently, however, during investigation such names may come to light and charges could be laid against them also. Similarly, in a complaint under Section 3 of MCOCA, an information is given of the commission of an offence in respect whereof approval to investigate is sought under Section 23 (1) (a). Upon receipt of such approval, the investigating authority proceeds to investigate the offence. Thereafter, if the charge is proved to be true and the complicity of others, other than those named in the F.I.R., is also prima facie established, sanction under Section 23 (2) is prayed for for prosecuting all those persons who were found during the investigation to be involved in the commission of the offence.

According to Mr. Altaf Ahmed, the non-inclusion of the petitioner's name in the approval granted under Section 23 (1) (a) is of no consequence since during investigation his complicity was established and thereafter sanction was sought to prosecute him along with the others under Section 23 (2) of MCOCA. Mr. Ahmed submitted that the allegations against the petitioner were sufficient to charge sheet him under the provisions of MCOCA along with other accused as being part of an organized crime syndicate involved in the commission of organized crimes.

We have carefully considered the submissions made on behalf of the respective parties and the relevant provisions of MCOCA and we are of the view that the High Court did not commit any error in dismissing the petitioner's writ application. We are inclined to accept Mr. Altaf Ahmed's submissions that non-inclusion of the petitioner's name in the approval under Section 23 (1) (a) of MCOCA was not fatal to the investigation as far as the petitioner is concerned. On the other hand, his name was included in the sanction granted under Section 23 (2) after the stage of investigation into the complaint where his complicity was established. The offences alleged to have been committed by the petitioner has a direct bearing and/or link with the activities of the other accused as part of the Chhota Rajan gang which was an organized crime syndicate.

As pointed out by Mr. Ahmed, this Court in the case of Kari Choudhary vs. Mst. Sita Devi & Ors., (2002) 1 SCC 714, had while considering a similar question observed that the ultimate object of every investigation is to find out whether the offences alleged have been committed and, if so, who had committed it. The scheme of the Code of Criminal Procedure makes it clear that once the information of the commission of an offence is received under Section 154 of the Code of Criminal Procedure, the investigating authorities take up the investigation and file charge sheet against whoever is found during the investigation to have been involved in the commission of such offence. There is no hard and fast rule that the First Information Report must always contain the names of all persons who were involved in the commission of an offence. Very often the names of the culprits are not even mentioned in the F.I.R. and they surface only at the stage of the investigation. The scheme under Section 23 of MCOCA is similar and Section 23 (1) (a) provides a safeguard that no investigation into an offence under MCOCA should be commenced without the approval of the concerned authorities. Once such approval is obtained, an investigation is commenced. Those who are subsequently found to be involved in the commission of the organized crime can very well be proceeded against once sanction is obtained against them under Section 23 (2) of MCOCA.

As to whether any offence has at all been made out against the petitioner for prosecution under MCOCA, the High Court has rightly pointed out that the accused will have sufficient opportunity to contest the same before the Special Court.

Having regard to the above, we are not inclined to interfere with the order passed by the High Court and the special leave petition is accordingly dismissed.

By way of an interim order dated 15th December, 2006, the petitioner had been granted interim bail which was extended from time to time. In view of this judgment, the petitioner's bail stands cancelled and he is directed to surrender forthwith before the Special Court.

JUDIS