**IN THE HIGH COURT OF JUDICATURE OF BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.544 OF 2001

Gulab Jethanand Khemnani,
Age adult, Occupation Business,
Resident of C/o 41-B, Ground Floor,
Sindhi Society, Chembur,
Mumbai - 400 071.
(At present Yerwada Central Jail, Pune). ...Appellant (Ori.Accd.No.5)

Versus

The State of Maharashtra ...Respondent

WITH

CRIMINAL APPEAL NO.201 OF 2002

Mohd. Parvez Mohd. Jaffar Soda,
Residing - Pakistan Nation,
(At present lodged in Yerwada Central Prison, Pune - 6) ...Appellant (Ori.Accd.No.1)

Versus

The State of Maharashtra ...Respondent

WITH

CRIMINAL APPEAL NO.445 OF 2001

Gullu @ Gul Ghansham Hashmatrai Lakhani,
Hindu, aged about 38 years,
Permanently residing at Navjivan
Society, R.C.Market, Chembur,
Mumbai - 400 071, and Presently
undergoing sentence at Nasik Road
Central Prison, Nasik Road. ...Appellant (Ori.Accd.No.6)

Versus

The State of Maharashtra
(At the instance of Sakinaka
Police Station, Mumbai). ..Respondents

WITH

CRIMINAL APPEAL NO.456 OF 2001

1.Tejas @ Teja Manjibhai Patel,
aged about 41 years, residing at
Room No.23, Building No.46,
B-10, Sector-15, Vashi,
Navi Mumbai - 400 705.
(Ori.Accused No.7)

2.Ajgarali Kurban Hussain Mandsarewala,
aged about 47 years, residing at
Essali Palace, IVth floor,
Victoria Garden Road, Byculla,
Mumbai - 400 008.
(Ori.Accused No.8)

3.Raju Ramchand Sachdeo,
aged about 41 years, residing at
MGA Zopadpatti, Room No.4,
Opp. to Building No.26,
Chembur Colony, Chembur,
Mumbai - 400 074.
(Ori.Accused No.9)

(All the Appellants are in Jail now lodged at Ahmednagar Central Prison) ...Appellants (Ori.Accd.Nos. 7 to 9)

Versus

1.Asstt.Commissioner of Police,
Sakinaka Division, Mumbai in
respect of Sakinaka Police Station
C.R. No.184/99

2. The State of Maharashtra ...Respondents

WITH

CRIMINAL APPEAL NO.516 OF 2001

Ashok Durgashankar Avasti,
Age: 41 yrs., Occ: business,
r/o.Khandak Road, Dist.Haveli,
Karnataka State.
(At present lodged at Yerwada Central Prison, Pune). ...Appellant (Ori.Accd.No.4)

Versus

The State of Maharashtra,
(At the instance of Assistant
Commissioner of Police, Sakinaka
Police Station, Bombay-400 072). ...Respondent

WITH

CRIMINAL APPEAL NO.518 OF 2001

Salim Yaqub Kara,
Age : Adult, R/at Sector 7,
Building NO.60, Room No.9325,
Antop Hill, Sion, Mumbai - 400 022.
(presently undergoing sentence
at Nashik Road Central Prison, ...Appellant
Nashik Road). (Ori.Accd.No.3)

Versus

The State of Maharashtra ...Respondent
(At the instance of Sakinaka
Police Station, Mumbai).

.....

Mr.Naveen Chomal for appellant in Appeal No.544 of 2001(org.accused No.5)

Mr.U.S.Vanjara for appellant in Cr.Appeal No.201 of 2002(org.accused No.1)

Mr.Anil Lalla i/b Lalla & Lalla for appellant in Cr.Appeal No.445 of 2001(org.accused No.6)

Mr.S.G.Rajput for appellant in Cri.Appeal No.456 of 2001(org.accused No.7 to 9).

Mr.Amit Sale i/b. M.L.Patil for appellant in Cr.Appeal No.516 of 2001(org.accused No.4).

Mr.Q.A.Siddiqui, for appellant in Cri.Appeal No.518 of 2001(org.accused No.3)

Dr.S.S.Tatkare, APP for State in all the matters.

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**CORAM: A.M.KHANWILKAR,J**

**DATE : DECEMBER 20/22, 2006.**

**JUDGMENT :**

1. All these appeals can be disposed of together by a common judgment. These appeals are filed by accused Nos.1 and 3 to 9 against the Judgment and Order dated 7th June, 2001 passed by Special Judge under Maharashtra Control of Organised Crime Act, 1999 (hereinafter referred to as 'MCOCA'), Greater Bombay, in M.C.O.C.Special Case No.3 of 1999. The accused No.2 has died. In so far as accused No.3 is concerned, he is reported to be absconding. As none appeared for him, I thought it appropriate to appoint advocate Siddiqui to espouse the cause of accused No.3 as amicus curiae.

2. The prosecution case is that, on 2nd July, 1999, a secret reliable information was received by the North-West Region of Mumbai Police about some persons likely to transact and carry on or engage in the deal of fake or counterfeit Indian currency from Twilight building in Raheja Vihar Housing Complex. On receipt of the said information, API Mr.Nadgouda and Mr.Pirjadhe working in North-West Region, Mumbai

Police, gave intimation in that behalf to the Sakinaka police. The Sakinaka Police were also informed about the possibility of offenders running away by motor car. On receipt of this information, Police Inspector Padwal (P.W.21), PSI Repale (P.W.14) and staff of Sakinaka Police Station formed a team and proceeded towards Raheja Vihar Complex. They waited near thee gate for sometime. At about 1.30 a.m., they noticed a Tata Estate car bearing No.MH-01-R-4594 approaching near the security gate of Raheja Complex. The same was intercepted by the raiding party. Gulab Jethanand Khemnani-accused No.5 and Salim Yaqub Kara-accused No.3 were found inside the car. Accused no.5 was driving the car. The accused No.3 and 5 were searched separately on the spot. During the said search, the accused were found in possession of huge quantity of counterfeit currency notes (in the sum of Rs.5,50,000/-), which were immediately seized under panchanama. On further interrogation of accused Nos. 3 and 5, they led the police party to flat No.4 of Twilight building in Raheja Complex. Mohd. Parvez Mohd. Jaffer Soda-accused No.1, Kishore @ Lala Chetanmal Lalwani-Accused No.2 and Ashok Durgashankar Awasti-Accused No.4 were found inside the said flat. The accused No.1 is a Pakistani national and was found in possession of counterfeit notes (Indian currency)

in the denomination of Rs.500/- in the sum of Rs.3 Lakhs. Search of Accused No.2-Kishore Lalwani, who was another occupant of the flat, was taken. From his personal search six bundles each consisting of 100 fake or counterfeit notes in the denomination of 500 (Rs.3 Lakhs) were found. Search of Accused No.4-Ashok Awasti, who was also found in the said flat, was taken. He was found in possession of fake or counterfeit notes of total sum of Rs. One Lakh in the denomination of Rs.500/-. In addition, genuine Indian currency notes in the total sum of Rs.2,70,000/- were also found in a carry bag in the flat. All these five accused were taken to the Sakinaka Police Station and a case was registered, being C.R.No.184 of 1999, under sections 489-A, 489-B, 489-C, 467 r/w 120B read further with section 34 of the Indian Penal Code, 1860 (hereinafter referred to as the 'I.P.C.'). It is the prosecution case that the accused No.3 during the interrogation, volunteered that he had kept some counterfeit currency notes in a house and was willing to point out the same. On the basis of such disclosure made by accused No.3 the police party alongwith panchas went to the place shown by him, which was his house in Antop Hill Central Government Servants' Colony. From the said house, seven bundles each containing 100 fake or counterfeit currency notes

in the denomination of Rs.500/- of total sum of Rs.3,50,000/- as also genuine Indian currency notes valued about Rs.5,90,000/- were seized at his instance under panchanama. According to the prosecution, during interrogation it was learnt that the accused No.2 had handed over some counterfeit Indian currency notes to accused Nos. 6 to 9. On that information, accused Nos. 6 to 9 were arrested on or about 9th July, 1999. Each of these accused during interrogation showed willingness to disclose the place where they had kept the counterfeit notes received by them. Each of these accused Nos.6 to 9 led the police to recover counterfeit notes from the places shown by them. The accused Nos. 6, 7 and 8 are concerned, each of these accused have contributed to the recovery of three counterfeit notes in the denomination of Rs.500/- respectively. Whereas, the accused No.9 led to the recovery of two counterfeit notes of Rs.500/- each. Counterfeit currency notes recovered at the instance of accused Nos. 6 to 9 were seized under separate panchanama. The prosecution case is that during the investigation, it transpired that the accused were engaged in continuing unlawful activities as members of an Organised Crime Syndicate. The unlawful activities were carried on with the objective of gaining pecuniary benefits and to destabilise the

national economy. On the basis of available information, the concerned officer made recommendation to the appropriate authority to grant prior approval for registration of offence under the provisions of MCOCA, as the provisions of MCOCA had already come into force by way of MCOCA Ordinance, 1999. After prior approval was granted by the concerned Authority, offence under provisions of M.C.O.C. Act came to be registered against the named accused. After application of MCOCA provisions, investigation was proceeded by Assistant Commissioner of Police Mr. Patil (P.W.22) and after him, by Assistant Commissioner of Police Mr.Nimgaonkar (P.W.23), aided and assisted by other police officers under their control.

3. According to the prosecution, during the investigation accused No.5 showed willingness to give his confessional statement. Accordingly, Investigating officer produced the accused no.5 before the Officer competent to record such confessional statement under the provisions of MCOCA. The said officer in turn himself after being satisfied that the accused No.5 was willing to make disclosure or confessional statement voluntarily and without any pressure whatsoever, only then proceeded to record the

confessional statement given by him. In his confessional statement accused No.5 has spoken about the details as to how he got into this unlawful activity. He has disclosed about the involvement of different persons and that similar operations have since been carried on with a view to make financial gains and also to destabilise the national economy. He has named the concerned persons who are mastermind and those who were associated with the said unlawful activity, which was being carried on for some time. During the course of investigation, printout of the telephone numbers furnished by the accused was taken out; and from the said printouts it was evident that the accused were in constant communication interse. Besides it was noticed that frequent calls were made by the accused to Karachi in Pakistan and Dubai on telephone numbers which purportedly belonged to one Tariq @ Baba (A 12) based in Karachi who was the henchman of Dawood Ibrahim Kaskar (A 11). On conclusion of the investigation, charge sheet came to be filed against the accused including five others. In all 14 accused have been named by the prosecution as engaged in the continuing unlawful activity as an Organised Crime Syndicate including mastermind Dawood Ibrahim Kaskar and Tariq Baba. However, as the accused Nos. 10 to 14 are absconding and wanted

accused, the trial proceeded only against accused Nos. 1 to 9 who were in custody. The Special Court on the basis of material before it proceeded to frame charges against accused Nos. 1 to 9, which read thus:

> "FIRSTLY: That you accused nos. 1 to 9 abovenamed are members of the organised crime syndicate/gang aided by Dawood Ibrahim Kaskar operating from Karachi (Pakistan) indulging into unlawful activities since July 1998 in Mumbai and in other parts of India with common object of gaining undue economic or other advantages for yourselves singularly and jointly, as the members of the organised crime syndicate mentioned above in pursuance of criminal conspiracy hatched between you and Dawood Ibrahim Kaskar's O.C.S. to indulge into unlawful activity to distribute fake or counterfeit currency notes in the denomination of Rs.500/- of Indian currency with object of gaining pecuniary benefits or such other advantage to yourselves and with a view to create chaos in the Indian currency notes system and economy and thereby you had committed an offence punishable under section 120-B I.P.C. read with section 3(4) of the M.C.O.C Act 1999 and therefore within the cognizance of this Court.
>
> SECONDLY: On 2.7.1999 at about 1.00 a.m. near the gate known as Raheja Security Gate, Raheja Vihar Housing Complex, Powai, Mumbai you accused no.3 Salim Yaqub Kara and you accused no.5 Gulab Jethanand Khemnani while you were travelling in a motor car bearing No.MH-01-R-4594, the said car was intercepted by police and searched you accused no.5 Gulab Jethanand Khemnani was found in possession of fake or counterfeit currency notes totalling sum of Rs.50,000/- in the denomination of Rs.500/- of Indian currency while you accused no.3 Salim Yaqub Kara was found in possession of fake or counterfeit currency notes totalling sum of Rs.5 Lakhs in the denomination of Rs.500/- of Indian currency

notes. Thus you possessed counterfeit or fake currency notes knowing or having reason to believe that the same are forged or counterfeit currency notes, you had intended to use them a genuine Indian currency notes and thereby you had committed an offence punishable under section 120-B read with section 489(C) of the I.P.C. as you were found in possession of counterfeit currency notes in pursuance of criminal conspiracy at the instance of or on behalf of the organised crime syndicate head by Dawood Ibrahim Kaskar Operating from Karachi (Pakistan).

THIRDLY: On 2.7.1999 during the same night at about 3.00 a.m. at room No.004 in the Twilight Building, Raheja Vihar Housing Complex, Powai, Mumbai, you accused No.2 Kishore @ Lala Chetanmal Lalwani was found in possession of fake or counterfeit currency notes totalling sum of Rs.3 Lakhs in the denomination of Rs.500/- of Indian currency notes as also one Ericson mobile phone while you accused no.4 Ashok Durgashankar Awasti was found in possession of fake or counterfeit currency notes of total sum of Rs.1 lakh in the denomination of Rs.500/- of Indian currency notes as also you were found in possession of genuine Indian currency notes in the total sum of Rs.2,70,000/-. While you accused no.1 Mohd.Parvez Mohd.Jaffar Soda was found in possession of Pakistan Passport bearing No.E163607 and Pakistan Airline ticket as also in possession of fake or counterfeit currency totalling sum of Rs.3 Lakhs in the denomination of Rs.500/- or Indian currency notes. Thus you all were knowing or were having reason to believe that the fake or counterfeit currency notes were intended to be used as genuine in the Indian currency system with a view to destroy India’s economy in pursuance of criminal conspiracy hatched at the instance of organised crime syndicate of Dawood Ibrahim Kaskar operating from Karachi (Pakistan). Thus you all have committed an offence punishable under section 120-B read with section 489(C) of I.P.C.

FOURTHLY: You accused no.2 Kishor @ Lala Chetanmal Lalwani in pursuance of criminal conspiracy as stated above distributed fake or

counterfeit currency notes in the denomination of Rs.500/- of Indian Currency notes to various persons including you accused no.6 Gullu @ Gul @ Ghansham Hasmatrai Lakhani, you accused no.7 Tejas @ Teja Manjibhai Patel, you accused no.8 Ajgarali Kurban Hussain Mandsarewala and you accused no.9 Raju Ramchand Sachdeo. Thus you accused no.2 in pursuance of the criminal conspiracy trafficked in counterfeit or fake currency notes in the denomination of Rs.500/- of Indian currency notes knowing or having reason to believe that the same were counterfeit or fake currency notes, thereby you accused no.2 had entered into criminal conspiracy with you accused No.6, you accused no.7 you accused no.8 and you accused no.9 as you have committed an offence punishable under section 120-B read with section 489(B) of the I.P.C.

FIFTHLY: Thus since July 1998 more particularly in July, 1999 you accused nos. 1 to 9 in pursuance of criminal conspiracy hatched with organised crime syndicate aided by Dawood Ibrahim Kaskar operating from Karachi(Pakistan) you had derived fake or counterfeit Indian currency notes of the denomination of Rs.500/- for total sum of Rs.16,05,500/- and trafficked in the same to obtain illegal monetary advantage in the genuine currency notes in the sum of Rs.8,60,000/- obtained from the commission of organised crime or acquired through the organised crime syndicate funds. Thus you have indulged into organised crime punishable under section 120-B I.P.C. read with section 3(1)(II) of the M.C.O.C.Act 1999.

SIXTHLY: You accused nos. 1 to 9 on the date, time and place mentioned aforesaid in pursuance of your criminal conspiracy were found possessing unaccountable wealth in the form of genuine currency notes in the sum of Rs.8.60,000/- derived or obtained from the commission of organised crime or acquired through organised crime syndicate, thereby you have committed an offence punishable under section 120-B I.P.C. read with section 3(5) of the M.C.O.C.Act 1999.

SEVENTHLY: Further on the aforesaid date, time and place you accused nos. 1 to 9 having entered into criminal conspiracy at the instance of organised crime syndicate of Dawood Ibrahim Kaskar operating from Karachi, Pakistan were associated with each other knowingly facilitated the organised crime in pursuance of the criminal conspiracy hatched in secret with Dawood Ibrahim Kaskar operating from Karachi (Pakistan) and with members of organised crime syndicate, thereby each of you have committed an offence punishable under section 3(2) of the M.C.O.C.Act 199 read with section 120-B I.P.C read further with section 489(A & B ) of the I.P.C

EIGHTHLY: That you accused no.1 Mohd. Parvez Mohd. Jaffar Soda and you accused No.2 Kishor @ Lala Chetanmal Lalwani knowingly furnished false information or suppressed material information with a view to obtain a passport and thereby you accused no.1 and accused no.2 have committed an offence punishable under section 12(1)(b) of the Passport Act and therefore within the cognizance of this court."

4. The prosecution examined as many as 26 witnesses. Besides the oral evidence, prosecution also relied on the documentary evidence. On analysing the evidence on record, the trial court, in the first place, held that there is no legal evidence to proceed against the accused that they were "members of" the Organised Crime Syndicate as such. However, the trial Court then held that there is evidence to hold that accused Nos. 1 to 5 were party to the conspiracy for carrying on unlawful activities of the Organised crime Syndicate. The trial Court has positively held that

the evidence against the accused No.6 to 9 was not adequate to record similar finding against them. The trial Court then accepted the prosecution case that the accused Nos. 1 to 9 were found in possession of counterfeit notes as well as genuine Indian currency notes in huge quantity, in particular accused Nos. 1 to 5. Consistent with the reasoning given in the Judgment, the trial Court proceeded to pass order on 7th June, 2001 which reads thus:

"ORDER

1. Accused nos. 1 to 5 are found guilty and convicted for offences punishable under section 120-B I.P.C. and Section 3(2) r/w section 2(1)(a) of the M.C.O.C.Act 1999 and each of them are sentenced to suffer R.I. for 10 years and fine in the sum of Rs.5 lakhs payable by each of them. In default of payment of fine each of them shall undergo further R.I.for one year.

2. Accused nos. 1 to 5 are also found guilty and convicted for offences punishable under sections 489-B and 489-C I.P.C. read with section 120-B I.P.C. and each of them are sentenced to suffer R.I.for 5 years and fine in the sum of Rs.5000/- payable by each of them. In default of payment of fine each of them shall undergo further R.I.for six months.

3. Accused nos. 1 to 5 are also found guilty and convicted for offence punishable under sections 3(5) read with sections 4 of the M.C.O.C. Act, 1999 read further with section 120-B I.P.C.and each of them are sentenced to suffer R.I.for 5 years and fine in the sum of Rs.2 Lakhs payable by each of them. In default of payment of fine each of them shall undergo further R.I. for three months.

4. However, for offences under section 12(1)(b) of the Passport Act as against accused nos. 1 and 2 they are found not guilty for want of evidence. Hence they are acquitted of offences punishable under section 12(1)(b) of the Passport Act.

5. Further the offences punishable under section 3(1)(ii) and section 3(4) of the M.C.O.C.Act 1999 are held not proved as against accused nos. 1 to 9 though they were charged accordingly. Hence they are hereby acquitted of offences under section 3(1)(ii) and section 3(4) of the M.C.O.C.Act 1999.

6. Further the offences under sections 3(2), r/w 2(1)(a), 3(5) r/w sec. 4 of the M.C.O.C.Act read further with section 120-B I.P.C.are held not proved as against accused nos. 6 to 9. Hence they are hereby acquitted of offences punishable under sections 3(2) r/w section 2(1)(a), 3(5) read with section 4 of the M.C.O.C.Act read further with section 120-B I.P.C.

7. Accused nos. 6 to 9 are found guilty and convicted for offences punishable under sections 489-B and 489-C I.P.C. and sentenced to suffer R.I. for 3 years each and fine in the sum of Rs.3000/- each. In default of payment of fine each of them shall undergo further R.I. for a period of three months.

8. Substantive sentences of imprisonment to run concurrently with each other except sentences imposed in default of payment of fine. Each of the accused is entitled for set-off for period imprisonment already undergone.

9. The genuine currency notes seized in this case shall stand forfeited to the State Government and shall be deposited in the State Treasury.

10. Fake or counterfeit currency notes seized in the present case shall be sent to the Government Mint through Commissioner of Police, Mumbai for final disposal or destruction according to law.

11. Article no.13 Mobile phone of Ericson make shall be sold by auction after Appeal period is over and sale proceeds thereof shall be deposited in the State Treasury as it also stands forfeited to the State Government.

12. The Pakistani Passport, identity card and Pakistan Airline ticket recovered from accused no.1 Mohd. Parvez Mohd. Jaffer Soda shall be returned to the accused no.1 after he serves out his sentences as directed and subject to decision in the Appeal if any.

13. The case shall remain on dormant file as against wanted accused named in the charge sheet and the case shall revive on application by the prosecution when wanted accused are traced and brought to justice.

14. The Judgment dictated in the open court would require few days time for transcription thereof. hence the accused be called to collect copy of judgment on 20th June, 2001."

5. It appears that the accused No.2 has not filed any appeal questioning the correctness of the finding of guilt recorded against him by the trial Court. It is also seen that the accused No.2 has died on 5th June, 2005. Significantly, the finding of no guilt against accused Nos.1 to 9 for offences under Sections 3(1)(ii) and 3(4) of M.C.O.C.A; accused Nos.6 to 9 additionally for offences under Section 3(2) r/w 2(1)(a), 3(5) r/w 4 of MCOCA r/w Section 120B of I.P.C.; and accused Nos.1 and 2 of Section 12(1)(4) of the Passport Act, has not been challenged before this Court.

6. For the sake of completeness of narration of events, it needs to be noted that although the accused No.3 has filed appeal before this Court being Criminal Appeal No.518 of 2001, however, the said appellant is reported to be absconding. At the commencement of the hearing of the companion appeals, therefore, I thought it necessary to appoint an advocate to espouse the cause of accused No.3 as amicus curiae. This was done with a view that if the appeals filed by similarly placed co-accused were to succeed, the benefit of that decision would become available to accused No.3 as well. Even at short notice Mr. Siddiqui, advocate accepted the request to appear as amicus curiae for accused No.3. Notably, Mr.Siddiqui gave able assistance to this Court and presented the case of accused No.3 from different perspective. Although I heard Mr.Siddiqui for accused no.3 on merits, I am disposed to dismiss the appeal of accused No.3, being a fugitive accused. It is well established that remedy of appeal is a statutory right. The convict cannot be permitted to pursue the appeal while he is absconding. For, one who approaches the Court should do so with clean hands. If any authority is required in support, it will be useful to refer to the Judgment of the Division Bench in the case of **Vijay**

**S.Kshirsagar vs. State of Maharashtra reported in 2004 All M.R.(Cri) 1603**. Accordingly, the appeal preferred by the accused No.3 is not only dismissed but direction is issued to the State to forthwith secure custody of accused No.3 so as to require him to undergo punishment imposed by the lower Court. If necessary, the State shall take recourse to remedy under section 82 and/or 83 of Code of Criminal Procedure, 1973, if already not done. The State shall submit compliance report to this Court in that behalf.

7. At the outset, it will be apposite to deal with the argument of the counsel for accused No.4. According to him, the State has no legislative competence to pass or enact a law on the matters connected with Counterfeit Currency, which subject is covered by entry 36 read with entry 93 of List-I of Seventh Schedule of the Constitution. To buttress the argument that the law relating to the Counterfeit currency notes is covered by List-I, the learned counsel would press into service the decision of the Apex Court in the case of **G.V.Ramnarayan V/s. Superintendent Central Jail reported in AIR 1974 page 41**. Reliance is placed on the exposition in paragraphs 8 and 9 of this decision. It was argued that as the accused were tried for offence of

Counterfeit Currency Notes, the provisions of MCOCA applied to the said prosecution has the effect of accused being tried for offence in respect of which laws could be made exclusively by the Parliament and not the State Legislature.

8. This argument is ill-conceived for more than one reason. In the first place, this is not an argument of legislative incompetence of the State legislature to enact a law to cope up with the criminal activities of Organised Crime Syndicate or Gang or for matters connected therewith or incidental thereto. There can be no argument about legislative competence of the State legislature to enact such law having regard to the enabling provisions in the State List - List II of the seventh schedule such as Entry Nos.1 and 64 including the entry Nos.1 to 3 of the Concurrent List - List-III of the Seventh Schedule of the Constitution. Moreover, the constitutional validity of the enactment has already been tested by this Court. The Division Bench of this Court, in the case of **Bharat Shah vs. State of Maharashtra reported in 2003 Bom.C.R. (Cri.) 947**, had occasion to declare that the Act of 1999 was intravires the Constitution, except the provisions (Sections 13 to 16 thereof) which are not relevant for our case.

9. As mentioned earlier, the argument canvassed on behalf of the accused No.4 was not one of legislative competence of the State to enact such a law, but is, that the prosecution of accused in relation to the offence of counterfeit currency notes cannot be made the foundation to prosecute the accused for offence punishable under Act of 1999. Else, it tantamounts to legitimation of power with the State Legislature to make law on subject which is an occupied field. This argument clearly overlooks that the two enactments deal with two different set of offences. The provisions of Indian Penal Code enacted by the Parliament deal with the offence of counterfeit currency notes under Chapter XVIII of the Code, classified as offence of counterfeit currency notes and bank notes (Sections 489A to 489E). In the present case, the accused Nos.1 to 5 have been tried and found guilty of offence punishable under section 489B and 489C of the I.P.C. At the same time, they (accused Nos.1 to 5) were tried and have been found guilty in relation to the offence under the enactment which is intended for prevention and control of, and for coping with, criminal activity of organised crime syndicate or gang or for matters connected therewith or incidental thereto. The offence under this

enactment deals with the criminal activities of organised crime syndicate or gang. The organised crime has been defined under section 2(1)(e) of the said enactment. For understanding the purport of the said definition, it will be essential to understand the definition of "continuing unlawful activities" (section 2(1)(d)). The expression "organised crime syndicate" has been defined in section 2(1)(f). Suffice it to observe that 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, 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, results in organised crime. To make the criminal activities continuing unlawful activities, the quintessence is that the last criminal activity indulged by the accused must be a cognizable offence punishable with imprisonment of 3 years or more, undertaken either singly or jointly as a member of organised crime syndicate or on behalf of the syndicate in respect of which more than one charge-sheet have been filed before competent court within preceding period of ten years and that Court

has taken cognizance of such offence. In other words, singular specified criminal activity would not warrant action under this enactment. At the same time, if the earlier criminal activity indulged by organised crime syndicate or gang, but was anterior to preceding period of 10 years, cannot be the basis to proceed against the accused. The enactment of 1999 has been introduced with the objective of prevention and control and coping with the organised crime. The continuing unlawful activity can be with reference to any enactment. Be it a central enactment or a State Legislation. That will make no difference. The sweep of the enactment of 1999 is to deal with the continuing unlawful activities, which activity is prohibited by law, for the time being in force. Accordingly, the argument of accused No.4 about the legislative competence of the State legislature to enact the law on the subject is devoid of merit.

10. I shall now proceed to consider the argument on merits of the case. I propose to segregate the consideration in two parts. The first is to deal with the offence under the provisions of MCOCA and I.P.C. offences, which charges are proved by the prosecution against the accused Nos. 1 to 5 only, as held by the Trial Court. The second part will deal with the

prosecution case against accused Nos. 6 to 9, as they have been convicted simplicitor under section 489B and 489C of I.P.C.

11. Insofar as the prosecution case in relation to the offence under provision of MCOCA is concerned, as mentioned earlier, the trial Court has recorded a clear finding of fact that the prosecution has not been able to establish that the accused Nos. 1 to 9, who were tried alongwith other accused Nos. 10 to 14 were "members" of the organised crime syndicate as such. At the same time, the Trial Court has rightly taken notice of the fact that other similar cases of MCOCA offences were pending in the same Court against the co-accused who were the mastermind of the criminal conspiracy and were indulging in continuing unlawful activities and committing organised crime as organised crime syndicate. The trial Court then has proceeded to record finding of guilt against accused Nos. 1 to 5 only for offence under Section 120B of I.P.C. and Section 3(2) r/w Section 2(1)(a) of the MCOCA, as prosecution succeeded in establishing that the said accused had conspired, abetted or knowingly facilitated the commission of an organised crime or any act preparatory to the organised crime. The trial Court has also found the accused Nos. 1 to 5 guilty

of offence under section 3(5) r/w section 4 of MCOCA r/w section 120B of I.P.C. It is in this context I shall now consider whether the finding reached by the trial Court on these aspects can be said to be perverse, manifestly wrong or unacceptable in any manner.

12. The trial Court has adverted to the relevant prosecution evidence to record finding against the accused Nos. 1 to 5, as there is evidence about their involvement in criminal conspiracy of commission of organised crime or any act preparatory to organised crime. On analysing the entire evidence on record with the assistance of counsel appearing for the parties, I have no hesitation in taking the view that the conclusion so reached by the trial Court in this behalf is unexceptionable. The prosecution case is established from the evidence of P.W.1, 2 to 4, 12, 13, 17, 18 and 20 to 26. P.W.2 to 4 are panch witnesses regarding search and seizure of counterfeit currency notes. P.W.1, P.W.13, P.W.20 to 23 and 26 are police officials, who were engaged in the act of raiding and collection of evidence. P.W.20 to 23 were investigating officers at different stages. P.W.12 has deposed about the close association of accused No.5 and accused No.2. P.W.13 has been examined to

prove the confessional statement of the accused No.5 recorded under his supervision, being the Deputy Police Commissioner. P.W.17 and P.W.18 have been examined as experts, who have opined that the currency notes recovered from the possession of the accused were counterfeit currency notes. P.W.24 and 25 have been examined to establish that the mobile phones recovered from the custody of the accused, amongst others, were used to contact the kingpin of the organised crime syndicate such as Dawood Ibrahim Kaskar (A 11) operating from Karachi through his henchman Tariq @ Baba (A 12). The said Dawood Ibrahim Kaskar and Tariq @ Baba have been named as accused alongwith the present set of accused, being members of the organised crime syndicate. However, as the said accused are absconding, the trial proceeded only against the present accused Nos. 1 to 9.

13. Indeed, the prosecution witnesses have deposed about the manner in which the accused Nos. 3 and 5 came to be accosted while going towards Twilight building in Tata Estate car and were found to be in possession of huge quantity of counterfeit currency notes. The total value of counterfeit currency notes recovered from accused no.3 is stated to be Rs.5 Lakhs, whereas from accused No.5 is stated to be

Rs.50,000/- in the denomination of Rs. 500/- respectively. The accused Nos.3 and 5, after their arrest, during interrogation on the spot disclosed that they were going towards flat No.4 in Twilight building where other accused were waiting for them. On that information, the police party accordingly proceeded towards flat No.4 in Twilight building. After the flat was opened three other accused were found inside that flat, namely, accused No.1, 2 and 4. Each of them was found in possession of huge quantity of counterfeit notes in the denomination of Rs.500/-. Even large quantity of genuine Indian currency notes was recovered from the flat. Accused No.1 was found in possession of counterfeit currency notes in the value of Rs. 3 lakhs, whereas the accused no.2 in possession of Rs.3 Lakhs; and accused No.4 in possession of notes valued at Rs.1 lakh. Besides, genuine Indian currency notes in the sum of Rs.2,70,000/- were found in a plastic bag. After such huge haul of counterfeit currency notes as well as genuine Indian currency by the raiding police party from the accused Nos.1 to 5 who came to be apprehended **FLAGRANTE DELICTO**, they were taken to the police station and placed under arrest.

14. During the interrogation, accused No.3

volunteered to point out a place where he had concealed some more counterfeit notes as well genuine Indian currency notes. Accused No.3 accordingly, led to the discovery of further counterfeit notes valued at Rs.3,50,000/- from his house, in the denomination of Rs.500/-, which was kept in concealed manner. He also led to the discovery of genuine Indian currency notes from the same house, kept in a concealed manner in the value of Rs.5,90,000/-. Significantly, the accused No.5, during the interrogation, volunteered to give his confessional statement. P.W.13 has deposed about this fact. Accordingly, accused No.5 was produced before P.W.13 Deputy Police Commissioner on 16th August, 1999. P.W.13 has deposed about the precautions taken by him to ascertain whether the said accused was willing to make voluntary statement. P.W.13 after taking custody of accused No.5 in his office from the staff of Sakinaka Police Station on behalf of I.O.(ACP) Sakinaka Police Station, had kept the accused under his control and lock-up in Bandra Police Station. The accused No.5 was again produced before him on 18th August, 1999 when P.W.13 decided to give the accused further time to reconsider whether he wanted to make voluntary statement. Eventually, when the P.W.13 was completely satisfied about the willingness and voluntariness of accused No.5 to make

the statement before him, proceeded to record his statement on 19th August, 1999. This statement of accused No.5 gives all necessary details about the modus operandi of the accused in the commission of the unlawful activities as well as the persons involved and the nature of their participation. The accused No.5 was produced before the Magistrate on 20th August, 1999, immediately on the next day. No grievance was made by accused No.5 about any force or coercion exercised on him to extract the statement from him. With such overwhelming evidence on record, conclusion reached by the trial Court recording finding of guilt against the accused Nos. 1 to 5 is unexceptionable.

15. Nevertheless, we shall now turn to the contents of the prosecution evidence. The first set of prosecution witnesses are those who have deposed that secret information was received by Shri Nadgauda and Pirzada about some transaction in respect of fake/counterfeit currency notes was to take place in Raheja complex. They have deposed that, that information was passed on to Sakinaka Police Station. Pursuant to the said information, a team of police officials of Sakinaka Police Station was asked to immediately proceed towards Raheja Complex. The said

team of police officials reached the spot at around 1.00 a.m. and kept watch near the gate of Raheja Complex. After waiting for some time at about 1.30 a.m., one Tata Estate car in which the accused Nos. 3 and 5 were found, arrived on the scene. Search of the said accused and the car was taken, when huge quantity of counterfeit currency notes were recovered from accused No.3 (Rs.5 Lakhs) and accused No.5 (Rs.50,000/-). This is deposed by police officials, PW1, PW20 and PW 21. Their version regarding recovery of huge quantity of counterfeit currency notes on the spot is corroborated by the evidence of Panch witness PW 2. These witnesses have also deposed about the disclosure made by said accused Nos.3 and 5 that they were proceeding towards Flat No.4 in Twilight building where other accused were waiting for them. Accordingly, the police party alongwith the said accused proceeded towards Flat No.4 where accused Nos. 1, 2 and 4 were arrested on the spot inside the said flat with incriminating evidence. Before the arrest, their search was taken when huge quantity of counterfeit currency notes were recovered from each of them, namely, Rs.3 Lakhs from accused No.1, Rs.3 Lakhs from accused No.2 and Rs.1 lakh from accused No.4. Besides, genuine Indian Currency in the sum of Rs.2,70,000/- were also found with them in a plastic

bag. Mobile telephones were recovered from these accused. These events have been unfolded by the witnesses - P.W.1, P.W.14, P.W.20 and P.W.21 and corroborated by the evidence of panch witness P.W.2. P.W.1 has given all the minutest details of the events as unfolded. He has spoken about the secret information received by Nadgauda which was passed on to the Sakinaka Police Station at 1 a.m. when police Inspector Padwal, PSI Repale P.W.14 and Jadhav P.W.20 and other police staff were present. He has spoken about the fact that API Nadgauda had also disclosed that certain persons were likely to escape in a motor car bearing no. MH-01-R-4594. He has then stated about the fact that he alongwith API Nadgauda, PSI Repale (P.W.14) and other police staff went near the security gate of Raheja Complex. After waiting for a while the specified car arrived on the scene at 1.30 p.m., which was intercepted and searched. The car was driven by accused No.5. Accused No.5 has been identified by this witness in Court. This witness has also spoken about the recovery of counterfeit currency notes of Rs.50,000/- in the denomination of Rs.500/- from accused No.5. This witness has also deposed that Accused No.3 was also found in the same car and upon his search counterfeit currency notes in the sum of Rs.5 Lakhs in the denomination of Rs.500/- were

recovered from him. He has also deposed that necessary panchanama was drawn. Out of two panchas prosecution has examined panch witness P.W.2 to support this position. P.W.1 has then deposed that the police party proceeded towards Flat No.4 in Twilight building in Raheja Complex. On reaching there it was noticed that the accused Nos. 1,2 and 4 were inside the flat and found in possession of huge quantity of counterfeit currency notes as well as genuine currency notes. He has spoken about the procedure followed regarding search and seizure of the currency notes. This witness has identified the concerned accused in Court. He has also identified the fake currency notes seized from the accused persons. This witness was extensively cross-examined. Except bringing some minor discrepancies on record, the defence was unable to shake this witness. In fact, this witness was cross-examined after the evidence of panch witnesses was completed. The so called discrepancies, omissions or improvements brought on record during the cross of this witness are not of such a nature so as to doubt the credibility of this witness. Those are minor variations or embellishments and trivial discrepancies which are very natural when the witness is required to depose before the Court after gap of over one year after the

date of the incident. Emphasis of the accused was on the fact that Nadguada who is supposed to have given secret information has not been examined nor the station diary which records disclosure made by the Nadgauda has been produced on record. However, these lapses or shortcomings of the prosecution are not fatal; nor can be the basis to doubt the truthfulness of the version given by P.W.1 on material points about the secret information received and immediately thereafter raiding party proceeded towards Raheja Complex for interception of car No. MH-01-R-4594 and the arrival of vehicle on the scene at about 1.30 a.m. and the events that are unfolded thereafter. On those matters the witness has shown consistency even during the cross-examination. I have no hesitation in taking the view that this witness has established the prosecution case on relevant matters to indicate complicity of the accused Nos. 1 to 5 in the commission of the alleged offence. Even P.W.20 and P.W.21, who incidentally also acted as investigating officers during different stages have corroborated the version of P.W.1. Even their version is replete of minor details about the events that unfolded after the disclosure was made by API Pirzada and API Nadgauda till the seizure and arrest of accused Nos. 1 to 5 in flat No.4 of Twilight building in Raheja complex.

Version of these witnesses on material points is consistent with the version given by P.W.1. Even these witnesses have been extensively cross-examined by each of the accused. However, their version has remained unshaken on relevant matters. There is nothing on record to assume that these police officials had some grudge against the accused Nos. 1 to 5 so as to falsely implicate them. On the other hand, the version of these witnesses is corroborated by the seizure of huge quantity of counterfeit currency notes as well as genuine Indian currency notes and arrest of accused Nos. 1 to 5 on the spot on 2nd August, 1999. Besides, mobile phones were recovered from the accused. Several international calls (particularly to Karachi-Pakistan and Dubai) made from the stated mobile phones have been established from the evidence of P.W.24 and 25. It is a different matter that the prosecution has not been able to further establish that the international numbers were actually of Dawood Ibrahim Kaskar (A 11) or Tariq @ Baba (A 12). Significantly, however, the same telephone numbers were disclosed by accused no.5 in his voluntary confessional statement. Be that as it may, during the interrogation, Accused No.3 volunteered to show the place where he had concealed some more counterfeit currency notes as well as

genuine Indian currency notes in huge quantity. On his disclosure, recovery of further counterfeit currency notes in the sum of Rs.3,50,000/- in the denomination of Rs.500/- was made, kept in a concealed manner in a flat at Antop Hill. In addition, genuine Indian currency notes in the value of Rs.5,90,000/- kept in a concealed position in a plastic bag was recovered from the said house at Antop Hill.

16. Be that as it may, during interrogation, accused no.5 showed his willingness to give his confessional statement to the Investigation Officer in the Sakinaka Police Station. Accordingly, as required by the provisions of MCOCA, the matter was taken at the level of Additional police Commissioner Zone VII who in turn instructed P.W.13, who at the relevant time in August, 1999 was working as Deputy Police Commissioner Zone-VII, to record the confessional statement of accused No.5 (accused in Sakinaka Police station in C.R.No. 14 of 1999). That intimation was received in writing by P.W.13 on 12th August, 1999. He has proved the said communication in his evidence. P.W.13 has then deposed that on 16th August, 1999 the accused No.5 was produced before him in his office by staff of Sakinaka Police station on behalf of the Investigating Officer (ACP) of Sakinaka division. He

has deposed that he ordered the staff of Sakinaka Police Station to leave his office and to leave behind accused No.5 in his office. He has stated that the accused No.5 was then initially kept in the custody of police constable in his office; and later on asked the police constable to leave his chamber. On ensuring that there was no one else, PW 13 asked certain questions to accused No.5 about his willingness to make confessional statement. PW 13 has deposed that he recorded the questions and answers given by the accused in his own handwriting in Hindi language. He has then stated that the accused No.5 answered those questions. He has then stated that contents were typed by steno in his office contemporaneously. He has also deposed that he read over the contents of the statement to accused no.5 and he signed below the statement whereafter the accused no.5 put his initial below the statement. He has also deposed that he countersigned the statement. The said statement is proved in the evidence (Exh.70). He has categorically stated that besides him, stenographer and accused No.5, there was no one else in his chamber when the questions were recorded. He has also deposed that he had informed the accused that he was not bound to give confessional statement regarding his involvement in the offence. P.W.13 has also deposed

that he had disclosed his designation to the accused no.5 that he was Deputy Police Commissioner Zone VII and was not concerned with the investigation in any way. He has also deposed that the accused No.5 was asked whether police had harassed him or used any force, ill-treatment or induced or promised him - to which the accused No.5 replied in the negative. He has also deposed that the accused No.5 was informed that whatever statement was to be made by him will be used in evidence against him, on the basis of which he may suffer some punishment. He has then deposed that he thought it necessary to free the accused No.5 from any pressure, for which he gave 36 hours to the said accused to reconsider the matter. He has deposed that custody of accused No.5 was then given to Bandra Police Station with instructions that the accused should be kept in the custody of Bandra Police Station and no relatives, friends or anybody connected with the case should be allowed to meet the accused during the reflection period. Those instructions were given by him in writing, which have been proved in evidence (Exh.71). He has deposed that the accused was accordingly kept in Bandra Police Station and produced before him on 18th August, 1999 at about 16.00 hours. He has given the details of the procedure followed by him to ascertain whether the accused was wanting to

give statement willingly or was under any pressure. Even on 18th August, 1999, P.W.13 was satisfied that the accused No.5 was willing to make statement and there was no influence over him. Nevertheless, he thought of giving one more opportunity to the said accused. Therefore, the accused was sent back to Bandra Police Station for being produced on 19th August, 1999. He has deposed about the proceedings on 18th August, 1999, which has been proved (Exh.72). He has also produced letter sent to Senior Police Inspector Bandra Police Station regarding written instructions of ensuring not to allow any one connected with the case to meet the said accused. That document is also proved. He has then deposed that the accused No.5 was produced before him by Bandra Police Station on 19th August, 1999 at Government Guest House, Kherwadi at about 10 a.m. PW 13 has explained that this was done to provide free atmosphere to the accused and relieve him of all pressures. PW 13 has deposed that he then asked all the police staff to go out of the room and ensured that nobody connected with the case was present in his chamber during the question answer session. He has then deposed that on talking with the accused No.5, he was more than satisfied that the said accused was willing to make voluntary confessional statement.

Only thereafter he proceeded to record statement of accused No.5. Proceeding were recorded by P.W.13 himself in his own handwriting in question answer form. He has deposed about the measures taken by him to impress upon the accused that he was free not to make confessional statement. He also ensured that the accused was not making statement under any pressure threat, coercion or inducement. He has deposed that after recording the confession, signature of accused was obtained after the contents were read over to the accused. Thereafter, P.W.13 himself countersigned the statement. While doing that, he certified that he was fully satisfied that the statement given by the accused No.5 was voluntary. That confessional statement has been proved and exhibited as Exh. 70A. The evidence indicates that almost two and a half hours were consumed in recording of this confessional statement (Exh. 70A). This witness has then deposed that the accused was immediately produced before the Magistrate on the next day i.e. on 20th August, 1999 in compliance of section 18 of the MCOCA. This witness has identified the accused No.5 in Court. It needs to be mentioned that when the accused No.5 was produced before the Magistrate on 20th August, 1999 no grievance was made by this accused about any pressure, coercion or inducement, on account of which he gave

the statement before P.W.13. The Magistrate has recorded statement of accused No.5 which is proved and marked Exh.75. Although the P.W.13 has been extensively cross-examined by the accused there is nothing to doubt the credentials of P.W.13. On the other hand, on reading the entire evidence as a whole, it is more than obvious that P.W.13 took utmost care and adopted a fair procedure and also complied with all the essential formalities to ensure that the accused No.5 was making statement voluntarily. Indeed the accused No.5 has retracted the statement, however, that was done only on 15th November, 1999. Obviously this retraction was under legal advise. Neither before P.W.13 nor before the Magistrate when accused No.5 was produced on 20th August, 1999, or even thereafter for almost three months, the accused made any grievance or complaint about involuntariness of the statement recorded by P.W.13. It is well established position that such retraction is of no avail. Even such retracted statement is admissible in evidence and the court can safely rely on such retracted statement if the same is worthy of reliance. **(See 2001(6) SCC 550 - State of T.N. v. Kutty** and **2005 (11) SCC 600 State (NCT of Delhi) v. Navjot Sandhu**).

17. Interestingly, the disclosures made by accused No.5 in the confessional statement Exh. 70A are clinching ones. He has spoken about the modus operandi of the continuing unlawful activities as well as the persons who are associated with the said activities. He has mentioned that the accused No.2, accused No.3 and accused No.4 and accused No.7 are his good friends and accused No.2 was his best friend. He has disclosed as to how he came in contact with accused No.2 and others. He has disclosed that alongwith accused No.2 Kishore he came in contact with accused No.3 Salim Yakub Kara, accused No.4 Ashok Awasthi, Accused No.6 Gullu, accused No.9 Raju, accused No.8 Asgar Ali and others. He has also stated that he came in contact with accuse No.1 Mohd. Parvez of Pakistan. He was asked as to what was the occasion for him to interact with these persons. In response, he has stated that alongwith Kishore accused No.2 all these persons were in the business of counterfeit currency notes and he used to accompany accused No.2 Kishore at the time of deal. Then he got involved in this business of counterfeit currency notes. He has then disclosed that he was aware for last two years accused No.2 Kishore was in this business and he himself got engaged in counterfeit currency notes transaction for about one year back. He has also

explained how he alongwith other accused undertook journey to Nepal, Kathmandu and other places in connection with this business. When he was asked where from he used to get the counterfeit currency notes, he replied that on two occasions he and accused No.2 Kishore went to Kathmandu and thrice in Mumbai. The transaction was struck with unknown persons. He has stated that the counterfeit currency notes comes from Pakistan sent by Tariq @ Baba(A12) who is the agent of Dawood Ibrahim(A11), which information was disclosed to him by accused No.2 Kishore. He has denied having ever met either of the two. When he was asked whether accused No.2 Kishore has met Dawood Ibrahim or Tariq, he replied that accused No.2 Kishor used to talk to Tariq and Dawood Ibrahim in his presence on mobile phone on many occasions. He has heard him talking to them. He has then disclosed the mobile phone numbers of accused No.2 Kishore. He has then disclosed that the counterfeit currency notes are sold by them to Salim (A3), Vishal (A10), Tejas (A7), Gullu (A6), Asgar Ali (A8), Ashok Awasthi (A4), Nand (A13) and Raju (A9) on commission between 10 to 15 %. He has then stated the purpose for which the counterfeit currency notes are circulated in the market. He first mentioned that he earns commission by selling counterfeit currency notes. He then stated

that accused No.2 Kishore told him that Tariq and Dawood wanted counterfeit currency notes to be circulated in India to create financial destability in the nation, which is the conspiracy. Besides, he and other associated in the trade have been assured that they will be extended complete support if they come in difficulty. He has then stated that he used to give genuine Indian currency notes to accused No 2 Kishore. Tariq used to inform Kishore on mobile phone as to whom,the amount should be delivered. Whereafter genuine currency was handed over to such unknown person. He has stated that the currency was exchanged with unknown person on tallying the number of ten rupees note possessed by such person. All information regarding the unknown person about his structure, colour, height, clothes worn by him etc. was made known in advance on telephone. He has then stated that he and Salim Kara (accused No.3) were about to leave the complex by car when they were accosted by police. He has stated that they had gathered in flat No.4 Twilight building, Raheja Complex alongwith accused No.2 Kishore accused No.3 Salim Kara, accused No.4 Ashok Awasthi, accused No.1 Mohd.Parvez to transact in counterfeit currency notes.

18. Insofar as accused No.5 is concerned, the

confessional statement being voluntary and spells out incriminating material, could be used against the said accused. That can be the primary basis to record finding against accused No.5 of his complicity in the commission of the alleged offence. In other words, the confessional statement can be used as substantive evidence against the accused No.5. Insofar as co-accused Nos. 1 to 4 are concerned, this confession can also be used against them as a corroborative piece of evidence alongwith other material [**See Kashmira Singh v. State of M.P. - AIR 1952 SC 159**. Also **see Navjot Sandhu (supra)**]. There is already substantive evidence against accused No.1 to 4 to indicate their complicity in the commission of unlawful activities. They have been arrested on the spot and huge quantity of counterfeit currency notes have been seized from their custody. This evidence would be sufficient to bring home the guilt even against them.

19. To get over this position it is argued that, it is not the prosecution's case that any of the accused Nos. 1 to 5 are already involved in any activity prohibited by law for the time being in force which is cognizable offence punishable with imprisonment of three years or more in respect of which charge-sheet has been filed and competent Court

has taken cognizance within the preceding period of 10 years. On this premiss, it is argued that the provisions of MCOCA cannot be invoked against accused Nos.1 to 5 at all. This argument clearly overlooks that the accused Nos. 1 to 5 have been arraigned as accused for MCOCA offence alongwith other absconding accused Nos. 10 to 14. The prosecution case is that, the absconding accused, in particular, Dawood Ibrahim Kaskar (A11) and Tariq @ Baba (A12), are the kingpin or mastermind of the organised crime syndicate and were engaged in the commission of organised crime. As is rightly held by the Trial Court, as there were already more than one similar criminal case pending against the said accused Nos.11 and 12 in the same Court, the provisions of MCOCA was justly invoked by the prosecution against them as well as the present accused Nos.1 to 5.

20. The prosecution case as established against the accused Nos. 1 to 5 is that they were party to the conspiracy and of abetment and knowingly facilitating commission of organised crime or act preparatory to organised crime. That case has been clearly established against accused Nos.1 to 5, even though there is no legal evidence to hold that they (A1 to 5) were members of the organised crime

syndicate as such. It is well established position that a person need not necessarily be a member of the organised crime syndicate/gang; and yet be liable to be proceeded for offence of being party to a conspiracy by virtue of Section 120B of I.P.C. read with Section 3(2) read with Section 2(1)(a) of the MCOCA. The fact that at the relevant time, there was no other criminal case or trial pending against him in respect of a specified cognizable offence and Court not having taken cognizance thereof, will not absolve such person from the alleged offence of MCOCA by virtue of Section 120B of I.P.C. read with Section 3(2) and Section 2(1)(a) of MCOCA.

21. It is well established that there can be no direct evidence of conspiracy. Ordinarily, conspiracy is to be inferred from different set of established circumstances. Besides, a person can be party to the conspiracy at any stage of the conception, planning, preparation or execution of the crime. **[See K.R.Purshottaman v. State - 2005(12) SCC 631. Also see Navjot Sandhu (supra)]**. In the present case, there is clinching evidence that accused Nos. 1 to 5 had come together to consciously transact in the sale and purchase of counterfeit notes. The quantity of counterfeit notes seized from custody of each of these

accused on the spot is very huge. All the accused Nos.1 to 5 have been arrested on the spot with the incriminating evidence, **FLAGRANTE DELICTO.** These accused have not been able to explain the circumstances, in which they came in possession of such huge quantity of counterfeit notes as well as genuine Indian currency notes recovered from Flat No.4 in Twilight Building in Raheja complex in the sum of Rs.2,70,000/-. In the Statement under section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.'), accused No.4 did make an attempt to explain the circumstances in which the said genuine Indian currency notes were recovered at his behest. He has positively stated that he was arrest much earlier to the date of incident when he was carrying the genuine currency notes in the sum of Rs.30,000/- with him. He was accompanied by his friend. The police on duty suspected his movements. For that reason, he (A4) and his friend was taken to the local police station and thereafter further sum of Rs.2,40,000/- was recovered from the residence of his sister in Mumbai. That amount, kept at the residence was sale proceeds received by him. However, except these bare words no attempt has been made by the accused no.4 to substantiate his defence, even on the principle of preponderance of probabilities. If so,

by virtue of section 17(2) and 22(1) of the MCOCA, the Court is duty bound to draw presumption against the said accused persons (A 1 to 5) that the counterfeit currency notes as well as genuine currency notes so recovered from them were used in the commission of offence under section 3 of the Act.

22. Having realised this difficulty, it was vehemently argued on behalf of the accused that the evidence regarding search and seizure be discarded as there was no independent witness examined by the prosecution. Even this submission does not commend to me. The prosecution has examined P.W.2 as panch witness, who has fully supported the prosecution case. He has deposed as to how he came on the scene on 2nd July, 1999. He had received telephone call from Mr. Padwal- P.W.21 to reach at Raheja complex which is in the area of Sakinaka police station. He has deposed about the procedure of search and seizure and recovery of counterfeit currency notes from the possession of accused Nos. 3 and 5 respectively, whose car was intercepted at the gate. He has also deposed about the search and seizure procedure at flat No.4 in Twilight building where recovery of huge quantity of counterfeit currency notes as well as genuine currency notes from accused Nos.1, 2 and 4 was made. He has

spoken about the panchanama prepared on the spot. He has also spoken about the airline tickets of Pakistan airlines found with the accused No.1 and all other articles recovered. Panchanama regarding seizure at the gate is Exh.36 and the panchanama regarding seizure in flat No.4 in Twilight building is Exh. 37. He has proved these panchanamas. He has also spoken about the recovery of mobile phones from accused No.2 Kishore Lala. He has identified counterfeit currency notes and genuine currency notes and mobile phones seized at the relevant time. He has also deposed about the sample notes taken out from the bundle to be sent for experts opinion. This witness has been cross-examined at length, but he has stood the cross-examination on all material aspects and supported the version of P.W.1, P.W.20 and P.W.21. According to the accused however, the P.W.2 was not an independent panch witness and was amenable to the police officials of Sakinaka Police Station. Learned Public Prosecutor has rightly refuted this submission by relying on the decision reported in **1980 Cri.L.J. 1181 - Deepak G.Naik v. State (Para 7),** which takes a view that engaging persons who have already acted as panch in the past cannot be the only basis to discard the evidence of panch witness. The offence in which the accused persons were engaged was not an ordinary

offence. In such matters, local inhabitants do not come forward to act as panch witness. In any case, the incident in question took place at dead of night at 1.30 a.m. The secret information was received in the police station and immediately police party proceeded and waited near the gate of Raheja Complex at around 1 a.m. After waiting for some time, the vehicle in which the accused No.3 and 5 were travelling arrived on the scene which was intercepted at around 1.30 a.m. There is some discrepancy between the number of watchmen at the gate and also about movements of persons in the locality. Such discrepancies cannot be the sole basis to discard the version of P.W.2. P.W.2 was preferred as panch witness as he was a known social worker and associated in peace keeping activity in the locality. Merely because this witness is not highly educated also cannot be the basis to discard his version. Presence of this witness at the relevant time cannot be disputed, rather has gone unchallenged. He has witnessed the events as unfolded and recovery of counterfeit currency notes as well as genuine currency notes from accused Nos.1 to 5. The Public Prosecutor has rightly relied on the decision reported in **1961 Cri.L.J. 70 Kochan v. State, 1987 Cri.L.J.284 State v. Dolagobinda (Paras 9 to 11) and 1976 Cri.L.J. 465**

**Khalil v. State** to persuade the Court to uphold the evidence of PW 2 as also to contend that the legality of search would remain unaffected. On the other hand, Counsel for the accused would rely on the decision reported in **2003 Cri.L.J. 2302 = 2003 All.M.R.(Cri.) 1167 Salim v. State (Paras 8, 11 & 12)**. In the first place, this decision deals with recovery under Section 27 of Evidence Act. Whereas, PW 2 is examined to support the prosecution case of search and seizure on the spot. Besides, the view taken therein is on facts of that case. Same is the position in respect of another decision pressed into service, reported in **2002 All.M.R. (Cri.) 305 in Haribhau v. State (Para 11)**. Assuming that the evidence of this panch witness was to be discarded even then, it will not be fatal to the prosecution case. Prosecution has examined P.W.1, P.W.14, P.W.20 and P.W.21. No doubt these witnesses are police officials. That cannot be the sole basis to discard their evidence. There is nothing to show that these witnesses had any axe to grind against the accused persons or were out to falsely implicate the accused in the alleged offence. Their version, by itself, is sufficient. Panch witness is examined only to reassure the Court or lend credibility to the prosecution case. In the present case, we additionally have the confessional statement of

accused No.5, which is admissible.

23. Counsel for the accused, however, relied on the decisions reported in **1989 Cri.L.J. 1412 - State v. Sudarshan Kumar; 1987 Cri.L.J.1539 Prem Lata v. State; AIR 1995 SC 1930 Pradeep Madgaonkar v. State; and 2004 All.M.R. (Cri.) 1308 Pradeep Rajgure v. State** to question the procedure of search and seizure followed in the present case. However, as observed by the Apex Court in State of **State of Rajasthan v. Teja Ram AIR 1999 SC 1776 (Paras 28 to 30),** the Investigating Officer is not obliged to obtain the signature of an accused in any statement attributed to him while preparing seizure memo. Moreover, as observed by the Apex Court in **AIR 1956 SC 411** at 412 in the case of **Sunder Singh v. State of U.P.**, which has been followed in **Khalil v. State (supra)**, the irregularity in the search procedure would only affect the weight of the evidence in support of the search and recovery, but would not invalidate the search. It was also argued that the evidence on record would not reassure the Court that the seized currency notes kept in packets were preserved properly. It is argued that there was every possibility of tampering or planting of packets. Even this submission deserves to be rejected. For, the concerned prosecution witnesses

have spoken about the details of the currency notes seized and kept in sealed packets. Their version is corroborated by the contents of the panchanama. Whenever the packets were unsealed and resealed, separate panchanama was drawn. The Police Officials who were required to do that exercise have done that with great sense of responsibility. There is nothing in the evidence to suggest that they had any reason to tamper the packets or change the contents so as to falsely implicate the accused. The fact that same panchas were employed for that process will not permit the Court to draw an adverse inference, as is suggested. This argument is devoid of merits. Indeed, the Counsel for accused No.1 has emphasised other irregularities in the preparation of panchanama; however, taking overall view of the oral evidence and as the witnesses are found to be trustworthy and reliable and their version on material points is broadly corroborated by contemporaneous record, the conclusion reached by the Trial court to record finding of guilt will be inevitable.

24. In my opinion, on analysing the entire evidence on record, there can be no doubt about the complicity of the accused Nos. 1 to 5 in the commission of offence punishable under section 120B of

I.P.C. read with section 3(2) r/w section 2(1)(a) of the MCOCA. There is clear evidence to establish the ingredients of **actus reus** and **mens rea.** It is established that the said Accused persons were found in possession of huge quantity of counterfeit currency notes on the spot having come together to transact therein; there is good reason to draw the legal presumption under section 17(2) and 22(1) of the MCOCA. That no prudent person would come together at one place at such odd hours with huge quantity of currency notes muchless counterfeit or forged currency notes, but for using the same in the commission of alleged offence. Admittedly, the accused Nos.1 to 5 have not adduced any evidence in rebuttal of the legal presumption. A priori, it will have to be presumed that they were in possession of such large quantity of counterfeit currency notes for being used in the commission of offence. The fact that accused nos. 1 to 5 are found in possession of such large quantity of counterfeit currency notes at such odd hours in a flat which was a tenanted flat taken in the name of accused No.2, is a strong circumstance. It will have to be inferred that each of them had knowledge or reason to believe that the said counterfeit currency notes were intended to be used as genuine notes. Interestingly, the case of the accused is one of total denial. In

view of the overwhelming prosecution evidence, it is not possible to accept the defence plea of mere denial. No evidence of rebuttal of legal presumption has been adduced, though required by virtue of section 17 and 22 of the Act. Accused Nos. 1 to 5 have been rightly found guilty by the trial Court not only for offence under section 120B of I.P.C. read with section 3(2) and 2(1)(a) of the MCOCA but also section 489B and 489C of the I.P.C. I shall elaborate on the finding of guilt in respect of the latter offence a little later.

25. Even if the trial Court has held in favour of the accused Nos. 1 to 5 that they are not members of organised crime syndicate, as already observed earlier, that will make no difference to the charge of conspiracy and abetment and of knowingly facilitating commission of organised crime. It is not necessary that every named accused for offence of conspiracy should have a direct link with the main kingpin or mastermind of the conspiracy. It is well established that conspiracy can be at different levels, though part of one whole scheme of conspiracy. Persons associated at any level of such conspiracy are liable to be proceeded with, **[See K.R.Purshottaman (supra)** and **Navjot Sandhu (supra)]**. Nevertheless, in view of

the finding of the trial Court that accused Nos. 1 to 5 were not members of the organised crime syndicate, and the said finding having remained unchallenged, the finding of no guilt of the trial court in relation to the offence under section 3(4) of the MCOCA is unexceptionable. This is so because, to attract offence under section 3(4) of the Act, the accused should be a person who is a "member" of the organised crime syndicate. As the quintessence of the said offence is lacking, the charge under section 3(4) has been rightly negatived.

26. The next question is about the appropriateness of the finding and conclusion reached by the trial Court against the accused Nos. 1 to 5 in relation to the offence punishable under section 3(5) read with section 4 of the MCOCA and further read with section 120B of I.P.C. To consider this submission, it is apposite to advert to section 3(5) and section 4 of the MCOCA.

. Section 3(5) of the Act reads thus:

> **"3. Punishment for organised crime....**
>
> (5) Whoever holds any property derived or obtained from commission of an organised crime or which has been acquired through the

organised crime syndicate funds shall be punishable with a term which shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine, subject to a minimum fine of rupees two lacs." (emphasis supplied)

. Section 4 of the Act reads thus:

**"4. Punishment for possessing unaccountable wealth on behalf of member of organised crime syndicate....** If any person on behalf of a member of an organised crime syndicate is, or, at any time has been, in possession of movable or immovable property which he cannot satisfactorily account for, he shall be punishable with imprisonment for a term which shall not be less than three years which may extend to ten years and shall also be liable to fine, subject to a minimum fine of rupees one lac and such property shall also be liable for attachment and forfeiture, as provided by section 20."

. In addition, it will be apposite to advert to the other two provisions of the Act of 1999 which are of relevance to this case. Sections 17 and 22 of MCOCA read thus :

**"17.Special Rules of evidence.**---(1) Notwithstanding anything to the contrary contained in the Code, or the Indian Evidence Act, 1872(I of 1872), for the purposes of trial and punishment for offences under this Act or connected offences, the Court may take into consideration as having probative value, the fact that the accused was,---

(a) on any previous occasion bound under section 107 or section 110 of the Code;

(b) detained under any law relating to

preventive detention; or

(c) on any previous occasion was prosecuted in the Special court under this Act.

(2) Where it is proved that any person involved in an organised crime or any person on his behalf is or has at any time been in possession of movable or immovable property which he cannot satisfactorily account for, the Special Court shall, unless contrary is proved, presume that such property or pecuniary resources have been acquired or derived by his illegal activities.

(3) Where it is proved that the accused has kidnapped or abducted any person, the Special Court shall presume that it was for ransom."

**"22.Presumption as to offences under section 3.**---(1) In a prosecution for an offence of organised crime punishable under section 3, if it is proved---

(a) that unlawful arms and other material including documents or papers were recovered from the possession of the accused and there is reason to believe that such unlawful arms and other material including documents or papers were used in the commission of such offence; or

(b) that by the evidence of an expert, the finger prints of the accused were found at the site of the offence or on anything including unlawful arms and other material including documents or papers and vehicle used in connection with the commission of such offence,

the Special Court shall presume, unless the contrary is proved, that the accused had committed such offence.

(2) In a prosecution for an offence of organised crime punishable under sub-section (2) of section 3, if it is proved that the accused rendered any financial assistance to a person accused of, or reasonably suspected of, an offence of organised crime, the Special

> Court shall presume, unless the contrary is proved, that such person has committed the offence under the said sub-section (2)."
>
> **(emphasis supplied)**

27. On the plain language of the abovesaid provisions, it is obvious that abovenoted two offences are independent and distinct and cannot be rolled into one offence. Notably, section 3(5) of the Act opens with the word "whoever", unlike section 3(4) refers to "any person who is a member of an organised crime syndicate". A priori, section 3(5) will be attracted if the accused were to hold any property derived or obtained from commission of an organised crime or which has been acquired through the organised crime syndicate funds. In the first place, the concerned accused need not be a "member" of the organised crime syndicate as such. However, even if the stated accused is party to conspiracy and has been arraigned as accused by virtue of section 120B of I.P.C. r/w section 3(2) of the MCOCA, he can be additionally proceeded against for offence under section 3(5) of the Act, if the facts of the case so demand. In fact, the language of Section 3(5) is so expansive that "any person" ("whoever" - is neither member of the organised crime syndicate/gang nor a party to conspiracy or abetment of commission of the organised

crime) can be proceeded for this offence if the facts of the case so demand. In other words, the quintessence to attract offence under Section 3(5) is that the person should hold property derived or obtained from commission of an organised crime or have been acquired through the funds of the organised crime syndicate/gang. Any person, therefore, can be charged simplicitor for this offence in a given case. Be that as it may, in the present case, prosecution evidence proves beyond doubt that accused Nos. 1 to 5 possessed large number of counterfeit currency notes which were for selling, buying or otherwise trafficking in, knowing or having reason to believe that the same were forged or counterfeit. It is doubtful whether possession of such counterfeit currency notes will be of any consequence so as to attract section 3(5) of MCOCA. For, counterfeit currency notes only have paper value and cannot be treated as "property". The expression "property" will have to be given its natural meaning. In criminal law, "property" as defined in Black’s Law Dictionary, means anything of value, including real estate, tangible and intangible personal property, contract rights, choses-in-action and other interests in or claims to wealth, admissions or transportation tickets, captured or domestic animals, food and drink,

electric or other power.

28. However, in the present case, the accused, in particular accused No.4, were found in possession of genuine currency notes in the sum of Rs.2,70,000/- which was in a plastic bag in Flat No.4 of Twilight Building situated in Raheja Complex. Assuming that section 3(5) or for that matter, section 4 of the Act will be attracted only in relation to the genuine currency notes, there is clinching evidence that huge quantity of genuine Indian currency notes were found in possession of these accused on the spot, in particular, accused No.4 and also independently from accused No.3. The genuine Indian currency so recovered, will have to be treated as "property". The question is, whether the same is derived from commission of an organised crime or through the organised crime syndicate funds. In the present case, there is no legal evidence to show that the genuine Indian currency was acquired through the organised crime syndicate funds. However, there is enough evidence to hold that the genuine Indian currency notes found in possession of accused or held by them were derived or obtained from commission of an organised crime, keeping in mind the overwhelming evidence on record already referred to earlier as also

the legal presumption under Section 17(2) and 22(1) of the Act.

29. Accused No.4 has made an attempt to offer explanation about the presence of such large amount of Rs.2,70,000/- of genuine currency notes. However, as is observed earlier, except his bald plea in the statement under section 313 of Cr.P.C., no attempt has been made to rebut the legal presumption.

30. The next question is, whether the recovery of these notes valued at Rs.2,70,000/- from accused No.4 can be the basis to proceed against other accused Nos. 1,2,3 and 5. As the amount was recovered from the flat No.4 in Twilight building where all the five accused, including accused Nos. 1, 2, 3 and 5 were present and as there is evidence that they had decided to come together in that flat to transact in counterfeit currency notes; and having been charged with section 120B of I.P.C., all of them are liable. None of the accused Nos. 1, 2, 3 and 5 have offered any explanation except denial of recovery of the said amount. Thus understood, the trial Court has rightly convicted each of the accused Nos. 1 to 5 for offence under section 3(5) of MCOCA r/w 120B of I.P.C.

31. Assuming for the sake of argument that charge under section 3(5) cannot be proceeded against the accused Nos. 1,2,3 and 5 for the recovery of Rs.2,70,000/- from the possession of accused No.4, in that case, the finding of guilt recorded against the accused No.4 by the trial Court for offence under section 3(5) will have to be upheld. Besides the accused No.4, on the same analogy, even the finding of guilt for offence punishable under section 3(5) will have to be upheld as against accused No.3. In as much as, recovery of genuine Indian currency notes at the behest of accused No.3 from place shown by him has been made which is in the sum of Rs.5,90,000/-. The said amount has been recovered from a plastic bag which was kept in a concealed manner in the house shown by the accused No.3. The accused No.3 except denial has not offered any other explanation. Interestingly, no other accused has put forth his claim for the genuine Indian currency in the sum of Rs.5,90,000/- so recovered. Suffice it to observe that even the accused No.3 has been rightly found guilty for offence under section 3(5) of the Act.

32. There is one more aspect in the context of the provisions of MCOCA. The trial Court has found accused Nos. 1 to 5 guilty of offence punishable

under section 3(5) r/w section 4 of MCOCA read further with section 120B of I.P.C. I have already considered in the earlier part of this Judgment about the efficacy of section 3(5) of the Act read with section 120B of I.P.C. I have also already reproduced section 4 of the Act. On plain reading of section 4 of the Act, the essential ingredient is that the possession of unaccounted movable or immovable property by the accused should be on behalf of member of an organised crime syndicate. There is marked difference between the sweep of section 3(5) and section 4 of the Act. Section 4 of the Act deals with the situation where the accused is in possession of unaccounted movable or immovable property, which is held by him on behalf of a member of an organised crime syndicate. In other words, the stated accused necessarily should claim to be in possession of unaccounted movable or immovable property on behalf of a member of an organised crime syndicate. In relation to offence under Section 4 of the Act, the accused has no ownership in the unaccounted movable or immovable property recovered from him, but is only holding the same as a trustee and is in control thereof on behalf of a member of the organised crime syndicate. Even on close scrutiny of the entire evidence on record of the present case it is not possible to infer such a case having been made

out by the prosecution against the accused Nos. 1 to 5. On the other hand, the case of the prosecution is that, the concerned accused were in possession of the property derived or obtained by them from commission of an organised crime. There is perceptible difference in both these situations/allegations ascribable to Section 3(5) and Section 4. The trial Court has found that none of the accused Nos. 1 to 9 committed offence as members of organised crime syndicate as such. Viewed thus, no finding of guilt can be recorded against accused Nos. 1 to 5 for offence under section 4 of the Act. The trial Court, perhaps, has loosely invoked that provision against the accused Nos. 1 to 5. Presumably, for that reason, no separate sentence has been awarded by the trial Court for offence under section 4 of the Act. In other words, even if the accused Nos.1 to 5 would succeed to the extent that section 4 of the MCOCA was inapplicable to the fact situation of the present case, that will make no difference to them insofar as the period of sentence or punishment awarded by the trial Court.

33. That takes us to the finding and conclusion of the trial Court against the accused nos. 1 to 5 for offence punishable under section 489B and 489C read

with 120B of I.P.C. Section 489B and 489C of I.P.C. reads thus:

> **"489B. Using as genuine, forged or counterfeit currency-notes or bank-notes.--** Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.
>
> **489C. Possession of forged or counterfeit currency-notes or bank-notes.**-- Whoever has in his possession any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

34. The sweep of the two provisions is plainly clear from the language of the sections. Indeed, in a given case the accused can be proceeded in respect of one of the charge under section 489 B or 489 C. But, if there is legal evidence to proceed against the accused for both the charges, then the Court can proceed accordingly. In the present case, the accused Nos.1 to 5 are found guilty under sections 489 B and 489 C r/w 120 B of I.P.C. For, there is clear

evidence that the accused Nos. 1 to 5 were engaged in selling, buying, receiving from other person or otherwise trafficking in the counterfeit currency notes to be used as genuine, knowing or having reason to believe the same to be forged or counterfeit currency notes. There is also evidence that each of the accused Nos. 1 to 5 were found in possession of huge quantity of counterfeit currency notes intending to use the same as genuine, knowing or having reason to believe the same to be forged or counterfeit. The volume of those notes recovered and seized on the spot, coupled with the confessional statement of accused No.5, leaves no manner of doubt that the accused knew or had reason to believe that the said currency notes are forged or counterfeit or intended to pass off as genuine in the open market for profit. The plea of each of the accused is of total denial of possession of any counterfeit currency notes. If that plea is to be rejected, which I am inclined to do, having regard to the overwhelming evidence on record; it necessarily follows, as it can be inferred that, each of the accused had knowledge or had reason to believe that the currency notes in their possession were counterfeit currency notes and that the same were intended to be used as genuine. The Public Prosecutor has rightly relied on the exposition in **Ponnusamy v.**

**State reported in 1997 SCC (Cri.) 217** that the onus was on accused to offer explanation as to the source from where he had obtained the forged currency notes. Counsel for the accused made attempt to persuade the Court to discard the evidence regarding search and seizure. However, I am inclined to consider the totality of evidence on record. In the present case, therefore, both these offences (Section 489B and 489C) are established from the evidence on record. Moreover, by virtue of provisions of MCOCA, legal presumption will have to be drawn that the forged or counterfeit currency notes were used in the commission of the offence. None of the accused, except denial, have produced any evidence in rebuttal. It will have to be borne in mind that so far as accused Nos. 1 to 5 are concerned, they are not tried for offence simplicitor under section 489B or 489C of the I.P.C., but for being party to conspiracy of continuing unlawful activities. Viewed thus, finding of guilt recorded by the trial Court against the accused Nos. 1 to 5 under section 489B and 489C read with 120B of I.P.C. will have to be upheld.

35. That takes me to the second set of prosecution case which is against accused Nos. 6 to 9. We have already noticed that so far as these accused are

concerned, the trial Court has found them guilty for offence simplicitor under section 489B and 489C of I.P.C. No case is made out against them for offence under provisions of MCOCA. Incidentally, the number of counterfeit currency notes recovered at the behest of each of these accused Nos. 6 to 9 are very paltry. For, three counterfeit currency notes have been recovered from each of the accused Nos. 6, 7 and 8 and two counterfeit currency notes from accused No.9 respectively. No other recovery is attributed to any of these accused. Moreover, the prosecution has relied on independent set of witnesses to establish the case against each of these accused.

36. It is necessary to note that the prosecution proceeded against the accused Nos. 6 to 9 essentially on the basis of disclosure made by accused No.5 about their involvement, presumably, in his confessional statement. Besides that evidence, there is no other evidence to connect these accused Nos. 6 to 9 with the charge of conspiracy. The trial Court has thus positively recorded finding in favour of the accused Nos. 6 to 9 in this behalf; for which reason proceeded to eventually convict them only for offence simplicitor under section 489B and 489C of I.P.C. Assuming that the investigating officer proceeded

against the accused Nos. 6 to 9 on some other material than the confessional statement of accused No.5, however, during the evidence the only other material that is pressed against each of these accused is the evidence of police officials that the concerned accused during interrogation showed willingness to disclose the place where the counterfeit currency notes were concealed by them. Separate panchanamas have been drawn about the said disclosure. Separate discovery of counterfeit notes was made in the presence of respective panchas. Concerned panch witness has also been examined to support this position. This evidence, however, cannot be said to be substantive evidence to proceed against the accused Nos. 6 to 9. It is well established position that evidence regarding discovery under Section 27 of the Evidence Act can be used only as a corroborative piece of evidence. In other words, there is no substantive evidence to indicate complicity of accused Nos. 6 to 9 either having sold or purchased or received or otherwise trafficked in or used as genuine any forged or counterfeit currency notes knowing or having reason to believe the same as forged or counterfeit. Assuming that the prosecution were to rely on the confessional statement of accused No.5, which points finger towards the involvement of these accused (Nos.6

to 9), it is well established that the confessional statement of co-accused cannot be used against the accused as substantive piece of evidence. It can be used only as a corroborative piece of evidence to support the other materials. Assuming that there is legal evidence about the discovery of counterfeit notes from the places shown by the concerned accused, however, in absence of substantive evidence indicating involvement of the accused in selling or buying or receiving from other persons or otherwise trafficking in or using as genuine any forged or counterfeit notes knowing or having reason to believe the same to be forged or counterfeit; Much less of intending to use the same as genuine. In such a case, the question of recording finding of guilt under section 489B and/or 489C of I.P.C. against these accused does not arise. This legal aspect has clearly been glossed over by the trial Court while considering the case of accused Nos. 6 to 9.

37. In so far as accused No.6 is concerned, as mentioned earlier, the prosecution has relied on the evidence of police official(P.W.15) and panch witness P.W.5. The same pattern of evidence is in relation to the accused No.7. Police official P.W.14 has spoken about the willingness shown by the accused No.7 to

show place where the counterfeit notes were concealed. The panch, who attended discovery procedure, P.W.6, has supported that case. In addition, prosecution has examined P.W.11 who has spoken only about the acquaintance of accused No.7, but this witness does not throw any light on any other material fact. In relation to the accused No.8 prosecution has examined P.W.16 Police official who is the author of the panchanama as well as both the panch witnesses P.W.7 and P.W.8. Second panch witness P.W.8 was examined, as P.W.7 turned hostile. In so far as accused No.9 is concerned, prosecution relies on evidence of police witness Pradeep Khanvilkar (PW 19), and panch witness P.W.10. In absence of substantive evidence to establish the ingredients of offence under section 489B and/or 489C, it is unfathomable that finding of guilt recorded by the Trial Court can be sustained. Indeed, the prosecution would rely on the evidence of experts PW 17 and PW 18 who have spoken about the fact that the recovered currency notes were counterfeit. However, that does not take the matter any further. The evidence of the expert P.W.18 who has established that the currency notes were forged or counterfeit, will be of no avail.

38. In so far as accused No.6 is concerned, it is

argued that the evidence does not show that there was any nexus of this accused with the place from where the counterfeit notes were recovered. Some lady was present in that house when the discovery panchanama was prepared. But that lady has not been examined. Three counterfeit currency notes are stated to have been recovered from a book, which has not been seized. No other article has been seized from the said house. Counsel for these accused would, therefore, contend that it was a case of planting of evidence. In any case, it is argued that, the crucial fact as to whether this accused had knowledge or had reason to believe that the three currency notes were forged or counterfeit, no finding of guilt can be recorded. To buttress this argument, reliance is placed on the decision of the Supreme Court reported in **2001 All.M.R. (Cri.) 2398 - Umashankar v. State (Paras 7 and 8)**. It is then argued that the basis on which investigating officer P.W.21 issued instructions to arrest accused Nos.6 to 9 on 9th July, 1999, that material is not forthcoming. It is also argued that the panch witnesses are not independent witnesses. Panch witnesses were amenable to police officers in Sakinaka Police Station. There were criminal cases pending against panchas. Besides, no signature of panch was obtained on the document, namely, offending

currency notes. No proper procedure was followed for recording of panchanama. To persuade the Court to discard this evidence, reliance is placed on **AIR 1951 Bom.468 - Simon Fernandez v. State, 2003 Cri.L.J. 2302 - Salim v. State (Para 8); 2003 Cri.L.J. 894 - State v. Arun Kumar (Para 17), 2005(1) Acquittal 262 - Ravinder v. State (Para 16); 1991 Cri.L.J. 232 - Usman Haiderkhan Shaikh v. State (Para 7); 1972 Cri.L.J.292 - Karim Kunja v. State (Paras 8 to 12); 2005(2) Bom.C.R. (Cri.) 929 - Rajesh J.Avasthi v. State (Para 16); 1994 Cri.L.J. 1020 - Mohd.Hussein Babamiyan Ramzan v. State (Para 8); and 2006 All.M.R. (Cri.) 2089 Aspaq N.Ahmed v. State**. It is then contended that none of the circumstances regarding arrest of accused Nos. 1 to 5 were put to accused Nos. 6 to 9, during the recording of statement of these accused under section 313 of Cr.P.C., resulting in serious prejudice to these accused; as they did not get opportunity to explain the nexus with the accused Nos. 1 to 5. Reliance is placed on **2001 Cri.L.J. 4748 - State v. Dharampal**. It is argued that, as there is evidence of experts (P.W.17 and 18), about the similarity in the forged or counterfeit currency notes recovered from them with genuine currency notes, it was essential for the prosecution to prove factum of knowledge or of accused

having reason to believe that the said currency notes were forged or counterfeit and they possessed the same with intent to use the same as genuine. Reliance is placed on **1979 Cri.L.J. 1383 - M.Mammutti v. State; 1990 Cri.L.J. 215 Madan Lal v. State (Paras 5 & 17); 2005(1) Bom.C.R. (Cri.) 401 - Ashok Shinde v. State (Paras 6 to 8)**. Reliance was also placed on the provisions of Police Manual, in particular Rule 177, to contend that the panchas examined in the present case did not conform to the requirements provided under that provision. On the above basis it was contended that even the prosecution evidence regarding discovery at the instance of accused is of no avail.

39. To get over this position Public Prosecutor would contend that such infirmities cannot be the basis to doubt the prosecution case. According to the public prosecutor, merely because criminal cases are pending against the panch, that cannot be the basis to discard his evidence. To buttress this position, reliance is placed on the decision in **State of Rajasthan v. Teja Ram & Ors. (supra) and Khalil v. State (supra).**

40. Having given thoughtful consideration, in my opinion, in absence of substantive evidence against

the accused No.6 to 9 regarding commission of offence either under section 489B and/or 489C of the Act, the other evidence which is pressed into service by the prosecution cannot be the basis to record finding of guilt. That evidence can be used only by way of corroborative piece of evidence. Identical situation obtains in respect of all the accused Nos.6 to 9. In so far as accused No.9 is concerned, the learned advocate for that accused has additionally contended that there is material discrepancy in the prosecution version. In the first place, the author of the panchanama is not examined and no explanation for that is forthcoming. Besides, one witness says that two offending notes were recovered from the office of that accused, whereas panchanama records that the recovery was from his residence. The panch supports the place mentioned in the panchanama. Certainly, the lapses pointed out by the accused No.9 are fatal.

41. As mentioned earlier, in absence of substantive evidence against the accused Nos.6 to 9 to establish the ingredients of section 489B and/or 489C, it is not possible to sustain the finding of guilt recorded by the trial Court against them. Instead, the said accused will have to be given benefit of doubt. Accordingly, appeals preferred by those

accused Nos. 6 to 9 will have to succeed by giving benefit of doubt.

42. In the circumstances, following operative order is passed.

(i) Appeal preferred by Accused No.3 is dismissed. However, direction is given to the State Government to take appropriate steps to forthwith secure custody of the said accused to undergo period of sentence awarded against him by the trial Court; and if required, take recourse to Section 82 and/or 83 of the Code of Criminal Procedure, 1973, if already not done. Compliance in this behalf be reported to this Court within 8 (eight) weeks.

(ii) The appeals filed by accused Nos. 6 to 9 are allowed. The Judgment and order

passed by the trial Court recording finding of guilt against them for offence punishable under section 489B and 489C of I.P.C. is set aside. Instead, they are acquitted of the said charges by giving benefit of doubt. The bail bonds of the accused Nos. 6 to 9 to stand cancelled. Muddemal concerning the accused Nos. 6 to 9 be disposed of in accordance with the law.

(iii) In the appeals preferred by Accused Nos. 1, 4 and 5, the finding of guilt recorded by the trial Court for the offence punishable under section 120B of I.P.C. and Section 3(2) r/w Section 2(1)(a) of MCOCA and section 489B, 489C r/w 120B of I.P.C. and Section 3(5) of MCOCA read further with Section 120B of I.P.C. is upheld. However, on the point of sentence, as counsel appearing for the parties intend to make submissions and in particular the Public Prosecutor desires to take instructions from the Jail authority about the report in so far as accused Nos. 1, 4 and 5 are concerned, hearing of these appeals on the point of sentence is deferred till 22nd December, 2006.

**Dt.22/12/2006.**

43. In terms of order dated December 20, 2006, appeals preferred by accused Nos.1,4 and 5 were placed for hearing on the point of sentence. Counsel appearing for each of these appellants would contend that the appellants have undergone substantial period of sentence. It is submitted that taking into account the remission earned by the respective appellants it would be seen that the appellants have already undergone the sentence of around 9 years. It is submitted that the sentence provided by law in relation to the offence punishable under section 120B of I.P.C. r/w sections 3(2), 2(1)(a) of MCOCA is imprisonment for life. Nevertheless, the minimum sentence provided for the said offence is not less than five years. None of the appellants have argued that the quantum of fine imposed by the Court below for the offences for which they have been held guilty should be reduced in any manner. This submission was advisedly not made as there is no provision in the MCOCA permitting the Court to reduce the quantum of fine than the minimum fine amount provided under section 3 being sum of Rs.5 lakhs. The Court below

has also provided the sentence that in default to pay fine amount each of the said accused will have to suffer further rigorous imprisonment for one year. It is therefore, submitted on behalf of the appellants that in so far as the sentence of rigorous imprisonment for 10 years imposed by the trial Court, the same be reduced to the period already undergone by the appellants/accused Nos. 1, 4 and 5 respectively.

44. In so far as accused No.1 is concerned, it is submitted that admittedly he is a Pakistani national and on being released will be deported forthwith out of India. It is submitted that he has aged and ailing mother to be looked after who is alone in Pakistan. There is no other family member who can serve his aged mother.

45. In so far as accused No.4 is concerned, it is submitted that his mother is presently about 70 years of age and is suffering from old age problems. Besides, his daughter has grown-up and is likely to get married in May, 2007. Even this appellant, contends the learned Counsel, having undergone substantial period of sentence, i.e actual imprisonment of over 7 years and also taking into account remission earned of about 605 days the accused

has suffered sentence of nine years for the offence in question.

46. In so far as accused No.5 is concerned, even he has to look after his aged mother who is presently having heart problem, as also his young children.

47. The learned APP appearing for the State fairly accepts that the report received from the jail authority indicates that each of the accused namely accused Nos. 1,4 and 5 have conducted fairly well while in jail. They have earned remission period of over 600 days. Accused No.1 has earned remission of 612 days, whereas accused Nos. 4 and 5 have earned remission of 605 days. He further submits that having regard to the seriousness of the offence and recovery of huge quantity of counterfeit and genuine Indian currency from the accused, no fault can be found with the opinion recorded by the trial Court of imposing sentence of 10 years. He submits that no sympathy should be shown to such accused.

48. Having regard to the fact that each of the accused Nos. 1, 4 and 5 have already undergone over seven years of actual imprisonment and also earned

remission of more than 600 days as of now for their good behaviour while in jail, coupled with the fact that none of these accused are pleading for reducing the quantum of fine nor it is open to do so, I am inclined to accept the prayer of accused Nos. 1, 4 and 5 to reduce the quantum of sentence to the period already undergone by them, in so far as the sentence to suffer rigorous imprisonment imposed by the trial Court is concerned. This is so because, the minimum sentence provided by sections 3(2) of MCOCA is five years. Similarly, the punishment for offence under section 489-B and 489-C of I.P.C. provided is punishment with imprisonment for life or with imprisonment of either description for term which may extend to 10 years and shall also be liable to fine. In the case of each of these accused, the Court below has already ordered to pay fine in addition to the period of rigorous imprisonment ordered for the offence in question. As is mentioned earlier, the accused Nos.1, 4 and 5 are already in jail for seven years and taking into account the remission period earned by them while in jail, they have already undergone the sentence of over nine years respectively. Even if the order passed by the trial Court was to be confirmed the said accused will have to undergo further imprisonment of only about two

months as they would be entitled for further remission while in jail. As is mentioned earlier as the accused Nos. 1, 4 and 5 have conducted themselves well while in jail as is reported by the jail authority, it is obvious that these accused have shown inclination to reform themselves. In any case as the substantive period of imprisonment has already been completed by each of these accused, ends of justice would be met if the period of sentence imposed by the trial Court for 10 years is reduced to the sentence already undergone by accused Nos. 1, 4 and 5.

49. At the same time it is made clear that the accused Nos. 1, 4 and 5 are not absolved of their liability to pay the amount of fine imposed by the trial Court. In the event they fail to pay the said amount, they will have to undergo commensurate period of imprisonment awarded by the lower Court i.e. rigorous imprisonment for one year on each count. At the hearing it was submitted that it is a matter of record that genuine currency of Rs.8,60,000/-(i.e.Rs.2,70,000/- and Rs.5,90,000/-) was recovered from the accused, the said amount instead of being forfeited be adjusted towards fine amount. It is not possible to accept this submission. The Trial Court has rightly not acceded to such request and

passed order to recover fine amount from the accused, consistent with the mandate of Section 20 of the Act. Accordingly, the accused will have to comply with the order of the trial Court to pay specified amount of fine for M.C.O.C.A offences as well as I.P.C. offences, failing which they will have to undergo commensurate imprisonment as awarded by the trial Court for default in paying the fine amount. In other words, the accused Nos.1,4 and 5 would succeed only to the limited extent of sentence period of 10 years would stand reduced to the period already undergone by them for the MCOCA offences as well as I.P.C. offence which sentence was to run concurrently as was ordered by the trial Court.

50. Before parting, this Court would like to place on record a word of gratitude to Mr.Siddiqui for having accepted the request to appear in the appeal preferred by the Accused No.3 to espouse the cause of the said accused as amicus curiae at short notice and for having given able assistance.

51. In the circumstances, following operative order is passed.

. Accordingly, appeals preferred by the

accused Nos. 1, 4 and 5 would succeed in part. In that, finding of guilt recorded by the trial Court against each of these accused for offences punishable under Sections 120B of I.P.C. r/w 3(2) r/w 2(1)(a) of MCOCA is upheld. Similarly, finding of guilt in respect of offences punishable under sections 489B and 489C r/w 120B of I.P.C. is also upheld. However, in so far as order of sentence imposed by the trial Court for the said offences, the same would stand altered in the following terms.

(i) In relation to the offences punishable under section 120B of I.P.C. r/w section 3(2), r/w 2(1)(a) of MCOCA, each of the accused Nos.1, 4 and 5 are sentenced to suffer rigorous imprisonment for the period already undergone by them and pay fine in the sum of Rs. 5 Lakhs payable by each of them, in default to suffer further rigorous imprisonment for one year.

(ii) In so far as offences punishable under sections 489B and

489(C) r/w 120B of I.P.C., each of the accused Nos. 1, 4 and 5 are sentenced to suffer rigorous imprisonment for five years, which period is already undergone by them. They are further ordered to pay fine of Rs.5,000/- payable by each of them, in default to suffer rigorous imprisonment for six months, if already not undergone.

(iii) The substantive sentences of imprisonment to run concurrently with each other, except the sentence imposed in default of payment of fine.

(iv) Accused Nos. 1, 4 and 5 be released subject to above and if not required in any other offence.

(v) Muddemal in relation to the accused Nos.1,4 and 5 be disposed of in terms of the directions given by the trial Court.

A.M. KHANWILKAR, J.