

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 682 OF 2014
(@SPECIAL LEAVE PETITION (CRL.) NO. 6401 OF 2012)

MAHIPAL SINGH ...APPELLANT

VERSUS

C.B.I. & ANR. ...RESPONDENTS

WITH

CRIMINAL APPEAL NOS. 683-685 OF 2014
(@SPECIAL LEAVE PETITION (CRL.)NOS.2377-2379 OF 2013)

CENTRAL BUREAU OF INVESTIGATION
NEW DELHI & ANR. ...APPELLANTS

VERSUS

MAHIPAL SINGH ...RESPONDENT

JUDGMENT

CHANDRAMAULI KR. PRASAD,J.

In these special leave petitions, Mahipal Singh figures as an accused. He was initially named as an accused in Hasan Ganj, Lucknow P.S. Case No. 151 of 2005. This case was registered on 26th of May, 2005 and after investigation the accused Mahipal Singh was charge-sheeted on 26th of April, 2006. On the basis of a report given by Inspector Manoj Kumar, another case E0005 was registered against him by the Central Bureau of Investigation (for short "CBI"), on 2nd of June, 2011. Further, on the basis of the report given by the same Inspector, four other cases i.e. E0007, E0008, E0009 and E0010 were registered on 28th of July, 2011 by the CBI. All these cases excepting E0009 related to rigging of results of various entrance examinations for admission to postgraduate courses in medical colleges conducted by the All India Institute of Medical Sciences (for short "AIIMS"). Case No. E0009 also related to the rigging of the result of entrance examination but it is in connection with admission to undergraduate course in medical colleges. Another case i.e. E0006 was registered by the CBI on 3rd of June, 2011 concerning the rigging of the result of entrance examination of Pre-Veterinary test conducted by the AIIMS. In all these cases, Mahipal Singh figured as an accused and alleged to be the kingpin, who facilitated the interpolation and manipulation of the OMR Answer Sheets of certain candidates enabling them to qualify in the postgraduate and undergraduate courses in Medical Science and undergraduate courses in Veterinary Science. In all these first information reports, accused Mahipal Singh was alleged to have committed the offence under Section 120B read with Section 420, 467, 471 and 511 of the Indian Penal Code. In E0005 and E0006, charge-sheets were submitted on 1st of September, 2011 and the learned Judge in sesin of the case took cognizance of the offence on 13th of September, 2011 and 1st of September, 2011 respectively. Accused Mahipal Singh was charge-sheeted in E0007 and E0008 and the Deputy Inspector General (for short "DIG") of CBI granted approval for invoking Section 3 of Maharashtra Control of Organised Crime Act (hereinafter referred to as "MCOCA"), against him by order dated 18th of October, 2011. Accused Mahipal Singh was further charge-sheeted in E0009 and E0010 and by order dated 14th of January, 2012, the DIG, CBI granted approval for invoking Section 3 of MCOCA against him. Accused Mahipal challenged the orders dated 18th of October, 2011 and 14th of

January, 2012 passed by the DIG, CBI invoking Section 3 of MCOCA in the four cases detailed above in four separate writ petitions filed before the Delhi High Court. The investigating agency secured Mahipal Singh's remand under MCOCA from the Designated Court in E0006 and E0007 by separate orders passed on 30th of November, 2011. Accused Mahipal Singh challenged those orders of remand in two separate writ petitions. Thus, altogether accused Mahipal Singh filed six writ petitions. All those writ petitions were heard together and by a common judgment dated 21st of May, 2012, the High Court set aside the orders of the DIG, CBI granting approval in E0008, E0009 and E0010 on its finding that CBI "could not have invoked MCOCA in four different cases on same set of facts and four different charge-sheets". However, it upheld the order of the DIG, CBI invoking Section 3 of MCOCA in E0007. The High Court further dismissed both the writ petitions filed against the orders of remand for offence under the provisions of MCOCA as infructuous.

Accused Mahipal Singh, aggrieved by the order upholding the order of the DIG, CBI invoking Section 3 of MCOCA, has preferred Special Leave Petition (Criminal) No. 6401 of 2012, whereas the CBI and its functionary, aggrieved by setting aside of the orders of DIG invoking Section 3 of MCOCA in three cases, have filed Special Leave Petition (Criminal) Nos. 2377-2379 of 2013 and both of them pray for grant of special leave to appeal to assail the judgment.

Leave granted.

We have heard Mr. Gopal Subramaniam, learned Senior Counsel for the accused Mahipal Singh and Ms. Indira Jaising, Additional Solicitor General for the CBI. At the outset, Mr. Subramaniam attempted to argue that the provisions of MCOCA cannot be applied in cases where the offence has been committed outside the State of Maharashtra. He points out that in the present case, the offence has admittedly been committed in Delhi and, therefore, the case shall not be governed by the provisions of MCOCA. However, when confronted that no such question was raised before the High Court or for that matter, in the special leave petition, he gave up this submission.

While assailing the order, Mr. Subramaniam has made a large number of submissions, but as the accused is to succeed on a very short point, we deem it inexpedient either to incorporate or answer those submissions. Mr. Subramaniam submits, even if it is assumed for the sake of these appeals that the allegations made against the accused satisfy all other ingredients of continuing unlawful activity, the requirements of submission of more than one charge-sheets before a competent court within the preceding period of ten years for offence punishable with imprisonment of three years or more and further, the competent court taking cognizance of the offence, have not been satisfied. He submits that in case Nos. E0007 and E0008, DIG gave approval for invoking Section 3 of MCOCA on 18th of October, 2011 and in E0009 and E0010 on 14th of January, 2012 whereas the charge-sheets in E0005 and E0006 were submitted on 1st of September, 2011 and the competent court took cognizance of the offence on 13th of September, 2011 and 1st of September, 2011 respectively. He points out that in all those four cases i.e. E0007, E0008, E0009 and E0010, in which Section 3 of the MCOCA has been invoked, first information reports were registered on 28th of July, 2011 and the examinations were held in January, 2010, November, 2010, June, 2010 and January, 2011 respectively. Therefore, according to Mr. Subramaniam, on the dates the crimes were committed or the cases registered or the crimes came to be known, more than one charge-sheets in respect of offence of specified nature were not submitted within ten years nor the competent court had taken cognizance of the offence in more than one case of specified nature, against the accused.

Ms. Jaising, however, contends that the ingredients constituting the offence under Section 3 of MCOCA have to be satisfied on the date MCOCA was

an offence. In the case in hand, examinations alleged to have been rigged had taken place in January, 2010, June, 2010, November, 2010 and January, 2011 and the date on which the first information reports were registered, more than one charge-sheets were not filed against the accused for the offence of specified nature within the preceding period of ten years and further, the court had not taken cognizance in such number of cases. As observed earlier, for punishment for offence of organised crime under Section 3 of MCOCA, the accused is required to be involved in continuing unlawful activity which inter alia provides that more than one charge-sheets have been filed before a competent court within the preceding period of ten years and the court had taken cognizance of such offence. Therefore, in the case in hand, on the date of commission of the offence, all the ingredients to bring the act within Section 3 of MCOCA have not been satisfied. We are conscious of the fact that there may be a case in which on the date of registration of the case, one may not be aware of the fact of charge-sheet and cognizance being taken in more than one case in respect of the offence of specified nature within the preceding period of ten years, but during the course of investigation, if it transpires that such charge-sheets and cognizance have been taken, Section 3 of the MCOCA can be invoked. There may be a case in which the investigating agency does not know exactly the date on which the crime was committed; in our opinion, in such a case the date on which the offence comes to the notice of the investigating agency, the ingredients constituting the offence have to be satisfied. In our opinion, an act which is not an offence on the date of its commission or the date on which it came to be known, cannot be treated as an offence because of certain events taking place later on. We may hasten to add here that there may not be any impediment in complying with the procedural requirement later on in case the ingredients of the offence are satisfied, but satisfying the requirement later on to bring the act within the mischief of penal provision is not permissible. In other words, procedural requirement for prosecution of a person for an offence can later on be satisfied but ingredients constituting the offence must exist on the date the crime is committed or detected. Submission of charge-sheets in more than one case and taking cognizance in such number of cases are ingredients of the offence and have to be satisfied on the date the crime was committed or came to be known.

Now we proceed to apply the principle aforesaid to the facts of the present case. We find that on the date the offence was committed or came to be known, one of the ingredients of the offence, i.e. submission of charge-sheet and cognizance of offence of specified nature in more than one case within the preceding period of ten years, has not been satisfied. Therefore, we have no other option than to hold that the accused cannot be prosecuted for the offence under Section 3 of MCOCA.

To put the record straight, Mr. Subramaniam as also Ms. Jaising, in order to assail the impugned order, have raised various other submissions, but the view taken by us goes to the root of the matter and, therefore, we do not consider it expedient either to incorporate or answer those submissions.

In the result, we allow the appeal preferred by the accused and dismiss the appeals preferred by the CBI.

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.....J
(CHANDRAMAULI KR. PRASAD)

NEW DELHI,
MARCH 27, 2014.

ITEM NO.1-C

COURT No.9

SECTION II

(For judgment)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRL APPEAL NO.682/2014 @ SLP(Crl) No.6401/2012

Mahipal Singh

Appellant(s)

Versus

C.B.I. & Anr.

Respondent(s)

WITH CRL.A. NOs.683-685/2014 @ SLP(Crl) Nos.2377-2379/2013

DATE :27/03/2014 These matters were called
 on for pronouncement of judgment today.

For Appellant(s) Mr.K.N. Rai, Adv.

 Mr. B.V. Balram Das, Adv.

For Respondent(s) Mr. B.V. Balram Das, Adv.

 Mr.K.N. Rai, Adv.

Hon'ble Mr. Justice Chandramauli Kr. Prasad pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice Pinaki Chandra Ghose.

Leave granted.

The appeal preferred by the accused is allowed and the appeals preferred by the CBI are dismissed.

(Usha Bhardwaj)
(A.R.-cum-P.S.)

(Indu Satija)
(Assistant Registrar)

[Signed reportable judgment is placed on the file]