

(2015) 08 BOM CK 0088

Bombay High Court

Case No: Criminal Appeal No. 752 of 2015

Mahendra Keshav Patil

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision: Aug. 14, 2015

Acts Referred:

- Arms Act, 1959 - Section 25, 3
- Criminal Procedure Code, 1973 (CrPC) - Section 167(2)
- Maharashtra Control of Organised Crime Act, 1999 - Section 21, 21(2)(b)
- Penal Code, 1860 (IPC) - Section 115, 120-B, 302

Hon'ble Judges: B.P. Dharmadhikari, J; A.S. Gadkari, J

Bench: Division Bench

Advocate: Sudeep Passbola and Deepesh L. Yadav, for the Appellant; A.S. Pai, APP,
Advocates for the Respondent

Final Decision: Partly Allowed

Judgement

A.S. Gadkari, J

Rule. Rule made returnable forthwith and by consent of the parties the matter is taken up for final hearing.

2. The present Appeal was heard at some length on 10th August, 2015 and the record and proceedings pertaining to the present Appeal i.e. MCOC Special Case No. 13 of 2015 were called for. In view of the receipt of the record and proceedings by this Court, the prayer clauses (a), (b) and (c) of the present Appeal are worked out and as of today they do not survive. Therefore, the challenge to the order dated 24th May, 2015 passed below Exhibit 21 only survives in the present Appeal.

3. The Appellant who has been arraigned as original accused No. 7, as per the charge-sheet is an accused in C.R. No. 92 of 2015 dated 23rd February, 2015 originally registered at Mulund Police Station under Section 115 read with Sections

302 and 120-B of the Indian Penal Code and under Sections 3 and 25 of the Indian Arms Act and under Section 37(1) read with Section 135 of the Maharashtra Police Act. It was revealed during the investigation of the said C.R. No. 92 of 2015 that the organized crime syndicate, headed by absconding and overseas based gangster Ravi Pujari is involved in the said crime and therefore the competent authority transferred the investigation of the said crime to D.C.B. C.I.D. (A.E. Cell) for investigation. The said crime was renumbered as C.R. No. 31 of 2015 by the D.C.B. C.I.D. The provisions of the Maharashtra Control of Organised Crime Act 1999 ("M.C.O.C. Act" for short) came to be applied to the said crime.

4. In the present case, i.e. in C.R. No. 31 of 2015 which has now been culminated into M.C.O.C. Special Case No. 13 of 2015, accused Nos. 1 to 4 have been arrested on 23rd February, 2015. The Appellant who is accused No. 7 has been arrested on 27th February, 2015 and as per the modified provisions of Section 21 of the M.C.O.C. Act, the period of ninety days for submitting charge-sheet would have come to an end on 29th May, 2015 as far as the present Appellant is concerned. The period of ninety days for submitting charge-sheet with reference to accused Nos. 1 to 4 would have come to an end on 24th May, 2015.

5. As the period of ninety days was supposed to come to an end on 24th May, 2015, the investigating agency filed an application below Exhibit 18, dated 22nd May, 2015 as contemplated under Section 21(2)(b) of the M.C.O.C. Act 1999 for extension of the period for filing of the charge-sheet beyond the period of ninety days. As the said period of ninety days was to come to an end on 24th May, 2015, the Special Court constituted under the M.C.O.C. Act gave a returnable date of 24th May, 2015. The record discloses that the Appellant was served with a copy of the said application below Exhibit 18 and on 24th May, 2015 the Appellant filed his reply bearing Exhibit No. 20 to the said Exhibit 18.

6. The said Exhibit 18 came up for hearing on 24th May, 2015 before the holiday Court, when the learned Judge noticed that the Investigating Officer had produced the acknowledgment receipts of accused with their signature that they have received a copy of Exhibit 18. That some of the accused persons refused to accept the application below Exhibit 18 for extension of period for filing of charge-sheet beyond a period of ninety days. The learned Judge of the holiday Court has therefore observed in the Roznama dated 24th May, 2015 that the learned APP appearing therein submitted that on account of refusal of a copy of Exhibit 18, copy of Exhibit 18 was served on the respective advocates. The learned Special Court, therefore, directed the Investigating Officer to serve copies of application below Exhibit 18 on the accused persons who have not engaged advocates. All the seven accused persons were produced from the jail before the learned Special Court on that day. As the service was not complete and replies were to be filed to Exhibit 18 by all the accused persons, the hearing of Exhibit 18 was therefore adjourned to 8th June, 2015 by extending the judicial custody of all the accused persons till 8th June,

2015. According to us the order dated 24th May, 2015 thereby granting extension of time upto 8th June, 2015 was an interlocutory order thereby firstly adjourning the hearing of Exhibit 18 to 8th June, 2015 and secondly granting extension of time to judicial custody till then. The record discloses that at that relevant time the Investigating Officer filed an application below Exhibit 21 for extension of time to file charge-sheet. The Special Court after taking into consideration the fact that it had extended the period of judicial custody of the accused persons upto 8th June, 2015, allowed the application below Exhibit 21 for filing charge-sheet till 8th June, 2015.

7. It is the contention of the Appellant that he completed the period of ninety days in police custody on 29th May, 2015 and as the prosecution did not file the charge-sheet against him till that date, he filed an application on 5th June, 2015 under Section 21(2)(b) of the M.C.O.C. Act read with Section 167(2) of the Criminal Procedure Code praying for "in default" bail. The said application was numbered as "Exhibit- A" (B.A.).

8. The record further discloses that on 8th June, 2015 when the application below Exhibit 18 came up for hearing, the Special Court passed the order as under:

"ORDER BELOW EXH. 18

Perused application. Heard both sides. Prosecution has filed application u/s. 21(2)(b) of MCOC Act for extension of period for filing charge-sheet. However, subsequent thereto prosecution has filed application Exh. 21 seeking extension of judicial custody of accused. The matter was placed before the holiday Court on 24.5.2015. The application was allowed and time for filing charge-sheet was extended till 8.6.2015 i.e. till today. Present application i.e. Exh. 18 is kept for final hearing today.

The charge-sheet is already filed. The application to that effect is considered and allowed by the Court today vide its order below MA 73/15. In view thereof nothing survive in Exh. 18 because the time to file charge-sheet is already extended till 8.6.2015 and the charge-sheet is filed on 8.6.2015. Hence application Exh. 18 is disposed off as does not survive."

9. The application filed by the present Appellant which is at "Exhibit- A" came up for hearing before the Special Court on 24th June, 2015 when the Special Court after quoting the aforesaid order dated 8th June, 2015 has come to the conclusion that as the holiday Court extended time to file charge-sheet upto 8th June, 2015 on 24th May, 2015, and the charge-sheet is filed on 8th June, 2015, the application filed by the Applicant on 5th June, 2015 does not survive and the Applicant is not entitled to be released on bail under Section 167(2) of the Criminal Procedure Code. The Special Court has further observed that the Applicant could not have filed application under Section 167(2) of the Criminal Procedure Code on 5th June, 2015 as the Special Court had already extended the time to file charge-sheet beyond a period of ninety days and had further extended the judicial custody of all the accused persons till 8th June, 2015 by allowing the application below Exhibit 21.

10. In this background, learned counsel for the Appellant submitted before us that the learned Trial Court has erred in holding that the application filed by the prosecuting agency below Exhibit 18 does not survive as on 8th June, 2015 on two counts i.e. the charge-sheet was filed on 8th June, 2015 and the application below Exhibit 21 was already disposed of on 24th May, 2015. He submitted that as the application below Exhibit 18 was not heard itself on 24th May, 2015 and the same was kept for final hearing on 8th June, 2015, treating the application disposed of as does not survive, by the Special Court is contrary to the settled position of law. In support of his contention he relied upon the decision of the Supreme Court in the case of [Hitendra Vishnu Thakur and Others Vs. State of Maharashtra and Others](#), AIR 1994 SC 2623 : (1995) CriLJ 517 : (1994) 2 Crimes 916 : (1994) 4 JT 255 : (1994) 3 SCALE 109 : (1994) 3 SCALE 105 : (1994) 4 SCC 602 : (1994) 1 SCR 360 Supp : (1994) 2 UJ 786 .

11. The learned APP per contra submitted that when the applications below Exhibit 18 and Exhibit 21 were heard by the Special Court on 24th June, 2015, the Appellant was produced in the Court and was being represented by his advocate. She further contended that after hearing the learned counsel for the Appellant the learned Trial Court was pleased to allow the application which was filed below Exhibit 21 and was further pleased to extend the period to file charge-sheet upto 8th June, 2015. She further submitted that though the Appellant alleges that the right under Section 167(2) accrues in his favour on 29th May, 2015, the Appellant did not file the said application till 5th June, 2015 which is at "Exhibit-A" on the record of the Trial Court. She further contended that in view of the extension granted by the Special Court, the prosecuting agency filed the charge-sheet on 8th June, 2015 i.e. in the extended period allowed by the Special Court and therefore, the alleged right accrued in favour of the Appellant did not arise at all.

12. There cannot be any dispute about the settled position of law that in an application filed for extension of period for filing of charge-sheet beyond a period of ninety days under a special statute (in the present case under Section 21 of the M.C.O.C. Act), an opportunity of being heard to the accused persons must be afforded by the concerned Court before granting the said application.

13. We have considered the arguments as advanced before us. It is clear from the record that on 24th May, 2015 the application Exhibit 18 which was filed by the investigating agency for extension of time for submitting charge-sheet came up for hearing before the Special Court when it extended the period of judicial custody upto 8th June, 2015. At that relevant time the Investigating Officer submitted an application below Exhibit 21 for extension of the judicial custody of the accused persons as application below Exhibit 18 was/is pending. In our view, the said application below Exhibit 21 was imperative to be filed by the Investigating Officer as the period for filing of the charge-sheet was extended by the Special Court till 8th June, 2015. We may note here that the extension of the judicial custody of the accused persons in pursuance of the order dated 24th May, 2015 below Exhibit 18.

The Trial Court held that Exhibit 21 was filed seeking extension of time to file charge-sheet. It is further to be noted here that on 24th May, 2015 Exhibit 18 was not ready for final hearing and the same was adjourned to 8th June, 2015 as the legal formalities were to be completed as stated herein above and therefore, it was postponed for final hearing upto 8th June, 2015. According to us, at that relevant juncture, it prompted the prosecuting agency to file application below Exhibit 21 for extension of custody. That the application below Exhibit 21 was the interim application filed by the Investigating Officer in Exhibit 18 and the said application below Exhibit 21 came to be disposed of on 24th May, 2015 thereby simply extending the period of judicial custody of the accused persons. We are of the considered view that the Special Court on 8th June, 2015 ought not to have disposed of the application below Exhibit 18 simply by observing that the prosecution has filed charge-sheet on 8th June, 2015 and therefore the application below Exhibit 18 does not survive. In view of the ratio laid down by the Supreme Court in the case of Hitendra Vishnu Thakur (supra) the learned Special Court ought to have afforded an opportunity of being heard to the Appellant on the application below Exhibit 18 to oppose the same and thereafter the Special Court ought to have passed an order either allowing the said application or rejecting the same. If the Special Court would have allowed the application, after hearing the Appellant, the alleged indefeasible right which was alleged to have accrued on 29th May, 2015 in favour of the Appellant then would not have survived and if the Special Court would have rejected the said application below Exhibit 18, then the said alleged indefeasible right would have accrued in favour of the Appellant. In our considered opinion, Exhibit 18 cannot be held to be infructuous in view of the order passed below Exhibit 21 on 24th May, 2015 as Exhibit 18 was not at all finally heard on 24th May, 2015. The order which was passed thereby disposing of the application below Exhibit 21 simply extends the judicial custody in view of the interim order dated 24th May, 2015 and it cannot be said that the order passed below Exhibit 21 purportedly extending time to file charge-sheet eclipsed the application below Exhibit 18 in any manner. We are therefore, of the considered opinion that the order below Exhibit 21 needs to be construed as an interim order regulating the period till 8th June, 2015 and the Special Court ought to have afforded an opportunity to the accused persons of being heard before disposing of the application filed by the Investigating Officer below Exhibit-18.

14. In view of the peculiar facts and circumstances of the present case, we partly allow the Appeal by passing the following order:

"(i) The application filed by the investigating agency below Exhibit 18 dated 22nd May, 2015 is restored to the file of the Special Court in M.C.O.C. Special Case No. 13 of 2015.

(ii) The Special Court is hereby directed to grant an opportunity to the Appellant and other accused persons before passing the final order in the application below

Exhibit 18."

The Appeal is partly allowed in the aforesaid terms.