(2012) 05 DEL CK 0484

Delhi High Court

Case No: Writ Petition (Criminal) 1555 and 1556 of 2011 and Criminal M.A. No. 17832 and 17834 of 2011 (Stay) , W.P. (Criminal) 244 and 245 of 2012 and Criminal M.A. No. 2050 and 2052 of 2012

DR. Mahipal Singh	APPELLANT
Vs	
CBI and Another	RESPONDENT

Date of Decision: May 21, 2012

Acts Referred:

- Constitution of India, 1950 - Article 19, 21, 226, 227
- Criminal Procedure Code, 1973 (CrPC) - Section 154, 156, 162, 173(2), 173(8)
- Essential Commodities Act, 1955 - Section 10, 3, 7, 9
- Penal Code, 1860 (IPC) - Section 146, 153, 153A, 34, 400
- United Towns Electrical Company Act, 1902 - Section 30

Citation: (2012) 5 AD 767 : (2013) CriLJ 3110 : (2013) 1 JCC 403 : (2012) 1 JCC 403

Hon'ble Judges: Mukta Gupta, J

Bench: Single Bench

Advocate: Sudeep Pasbola, Mr. R.S. Kundu and Mr. Abdul Majid, for the Appellant; P.K. Sharma for the CBI and Mr. Uday Prakash, for the Respondent

Judgement

Hon''ble Ms. Justice Mukta Gupta

1. By W.P.(CRL) Nos. 1555/2011 and 1556/2011 the Petitioner challenges the order dated 18th October, 2011 granting prior approval by the DIG CBI for invoking the provisions of Section 3 of Maharashtra Control of Organized Crime Act, 1999 (in short the MCOCA) against the Petitioner in RC/219/2011/E0007 and RC/219/2011/E0008 as illegal. Vide W.P.(CRL) Nos. 242/2012 and 243/2012 the Petitioner challenges the order dated 30th November, 2011 passed by the Learned Designated Court remanding the Petitioner to judicial custody under MCOCA u/s 23(1)(a) in the abovementioned RC Numbers. Vide W.P.(CRL) Nos. 244/2012 and 245/2012 the Petitioner challenges the order dated 14th January, 2012 passed by

the DIG CBI according prior approval for invoking the provisions of Section 3 MCOCA u/s 23(1)(a) in RC/219/2011/E009 and RC/219/2011/E0010 respectively. The two principal contentions of learned counsel for the Petitioner are that for the same set of charge-sheet MCOCA has been invoked in 4 cases and secondly the basic ingredients of organized crime are missing in the present cases. Learned counsel for the Petitioner contends that all the exams were over by May, 2011. Thus when the offence of continuing unlawful activity was invoked against the Petitioner, Petitioner was not continuing any unlawful activity. Further, one single person cannot be said to organize a crime syndicate. Though the accused in the FIR are common, however MCOCA has been invoked only against the Petitioner and against no other person. It is further contended that the offences of cheating and forgery cannot constitute offence of organized crime as the same do not involve an element of coercion or violence. Reliance is placed on Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra 2005 (2) JCC 689, State of Maharashtra & Ors. Vs. Lalit Somdatta Nagpal & Anr. (2007) 2 SCC (Crl) 241 and Sherbahadur Akram Khan & Ors. Vs. State of Maharashtra 2007 ALL MR (Crl) 1, Jaisingh Asharfilal Yadav & Ors. Vs. State of Maharashtra & Anr. 2003 ALL MR (Crl) 1506, Prafulla Vs. State of Maharashtra 2009 ALL MR (Crl) 870 and Madan Vs. State of Maharashtra 2009 ALL MR (Crl) 1447. It is contended that the two charge-sheets should have been filed before the person commits an offence and not after the offence is committed two charge-sheets are filed and then MCOCA is invoked in the third charge-sheet. Since the approval of DIG CBI is illegal and unwarranted, the consequential order of remand passed by the Learned Designated Court is also illegal.

2. Learned counsel for the CBI on the other hand contends that the allegations against the Petitioner are of rigging the results of various entrance examinations conducted by AIIMS and Veterinary Council of India wherein the Petitioner was able to manipulate the marks of candidates who had scored 3/4 marks as successful candidates. The definition of "continuous unlawful activity" is to be determined on the basis of filing of the charge-sheet and cognizance taken thereon and not on the registration of FIR. It is further contended that the provisions of MCOCA can be invoked in more than one case when the cause of action in each case is different and the conspiracies are different. The only three statutory requirements for invoking the provisions of MCOCA are filing of more than one charge-sheet, within preceding 10 years and the Court having taken cognizance of such offence. Since the basic ingredients for invoking MCOCA were duly attracted, the competent authority gave its prior approval after due application of mind. Relying upon State of Maharashtra and Ors. Vs. Lalit Somdatta Nagpal & Anr. (supra) it is contended that for invoking MCOCA there is no necessity of the offence containing coercion or threat or intimidation or violence. Thus, there is no merit in the petitions and the same be dismissed.

3. I have heard learned counsel for the parties at length. Briefly the facts giving rise to the filing of the present petitions are that 6 FIRs have been registered against the

Petitioner wherein the allegations are that the Petitioner along with the other accused manipulated the Post Graduate Entrance examination and Undergraduate Entrance Examination conducted by AIIMS and Pre-Veterinary Test (AIPVT-2011). The 6 cases registered against the Petitioner by the CBI are RC/219/2011/E0005 u/s 120B/420/511/467/471 IPC; RC/219/2011/E0006 u/s 120B/420/511/467/471 IPC; RC/219/2011/E0007 u/s 120B/420/511/467/471 IPC; RC/219/2011/E0008 u/s 120B/420/511/ 467/471 IPC; RC/219/2011/E0009 u/s 120B/420/511/467/471 IPC and RC/219/2011/E0010 u/s 120B/420/511/467/471 IPC. Besides these 6 cases the Petitioner was also involved in one FIR No. 151/2005 dated 26th May, 2005 PS Hasan Ganj, Lucknow wherein the charge-sheet was filed on 26th April, 2006 and the cognizance was taken by the Court of competent jurisdiction on 23rd May, 2006. The CBI did not invoke MCOCA against the Petitioner in RC/219/2011/E0005 and RC/219/2011/E0006 however on filing of a charge-sheet in RC/219/2011/E0005 and RC/219/2011/E0006 and cognizance taken thereon on 3rd September, 2011 and 1st September, 2011 respectively, the CBI on the basis of these two charge-sheets and the charge-sheet filed in FIR No. 151/2005 by Lucknow Police invoked MCOCA in RC/219/2011/E0007, RC/219/2011/E0008, RC/219/2011/E0009 & RC/219/2011/E0010. Thus it would be seen that on the basis of the same three charge-sheets MCOCA has been invoked 4 times in 4 different cases. On a query being put to the learned counsel for the CBI that on the same set of charge-sheet whether MCOCA can be invoked 4 times, learned counsel could neither show any provision nor place any precedent on record.

4. To illustrate the facts it would be appropriate to show the same by the chart below:

W.P. (CRL) No.	Case/ RC	Date of FIR	Activity/Exam Date	Date of Arrest	Status base/ ground for invoking MCOCA
	151/2005 LKO	26.05.2005	May 2005	Not arrested	-
	RC-219-2011-E0005 AIIMS MD/MS Exam	2.6.2011 by CBI EOUI New Delhi	8.5.11 May-11 AIIMS MD/MS Exam conducted by AIIMS	4.6.2011. Date of FIR 02.06.11. (PC 10 day 04.06.11 to 14.06.11)	Submitted charge sheet on 01.09.11 (90 days) cognizance on 13.09.11

	RC-219-2011 E0006 Aipvt Exam	03.06.11 by CBI EOUI New Delhi	14.05.11 May-11 Aipvt Exam conducted by VCI	Arrested after filing of charge sheet. (04.11.11)	Submitted charge sheet on 01.09.11 (within 90 days). Cognizance on 01.09.11.
W.P.(Crl) 1555/2011 approval W.P.(Crl) 242/2012 remand	RC-219-2011 E0007 All India PG MD/ MS Exam	28.07.11 Time 10.10 by CBI EOUI New Delhi	Jan-11 All India PG MD/MS Exam conducted by AIIMS	The Petitioner moved a surrender application on 10.08.11. CBI refused to take custody in present case and finally on 01.09.11 custody was ordered by CMM.	Submitted charge sheet 25.02.12 and invoked MCOCA Act on 18.10.11. MCOCA invoked on the basis of 3 charge sheet. RC-219-2011 E0005 RC-219-2011 E0006 151/2005 LKO Police
W.P.(Crl) 1556/2011 approval	RC-219-2011 E0008 AIIMS MD/ MS Exam	28.07.11 Time 10.20 by CBI	Nov-10 AIIMS Exam MD/ MS conducted by	The Petitioner moved a surrender application on	Not submitted chargesheet (within 90 days) and invoke MCOCA Act on 18.10.11. MCOCA invoked on

W.P.(Crl) 243/2012 remand		EOUI New Delhi	AIIMS	10.08.11. CBI refused to take custody in present case and finally on 01.09.11 custody was ordered by CMM.	the basis of similar identifical 3 charge-sheets 1.RC-219-2011 E0005 2,RC-219-2011 E0006 3.151/2005 LKO Police.
W.P.(Crl.) 244/2012 approval	RC-219-2011 E0009 AIIMS MBBS Exam	28.07.11 Time 10.30 by CBI	June-10 AIIMS MBBS Exam	The Petitioner moved a surrender application on 10.08.11. CBI refused to take custody in present case and finally on 01.09.11 custody was ordered by CMM.	Not submitted charge-sheet (within 90 days) and bail order on 01.12.11 [167(2)Cr.P.C.] and invoked MCOCA Act 14.01.12. MCOCA invoked on the basis of 3 charge-sheets. 1.RC-219-2011 E0005 2.RC-219-2011 E0006 3.151/2005 LKO Police.
W.P.(Crl.) 245/2012 approval	RC-219-2011 E0010 All India PG & MD/MS Exam	28.07.11 Time 10.40 by CBI	Jan-10 All India PG &	The Petitioner moved a surrender application on	Not submitted charge-sheet and bail order on 01.12.11 [167(2) Cr.P.C.) and on 14.01.12 invoked MCOCA

MD/ MS Exam.	EOUI New Delhi	10.08.11. CBI refused to take custody in present case and finally on 01.09.11 custody was ordered by CMM.	Act. MCOCA invoked on the basis of 3 charge-sheets. 1.RC-219-2011 E0005 2.RC-219-2011 E0006 3. 151/2005 LKO Police

5. Before going into the issues raised by the Petitioner it would be appropriate to reproduce relevant provisions of the Act i.e. Section 2(d), 2(e), 2(f), 21(2) and 23.

Section 2 - Definitions

(d)"continuing unlawful activity" means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence;

(e) "organised crime" means 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 or 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;

(f) "organised crime syndicate" means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organised crime;

Section 21 - Modified application of certain provisions of the Code

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modifications that, in sub-section (2),-

(a)the references to "fifteen days", and "sixty days", wherever they occur, shall be construed as references to "thirty days" and "ninety days", respectively;

(b)after the proviso, the following proviso shall be inserted, namely:-

Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Special Court shall extend the said period upto one hundred and eighty days, on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days."

Section 23 - Cognizance of, and investigation into, an offence

(1) Notwithstanding anything contained in the Code,-

(a) no information about the commission of an offence of organised crime under this Act, shall be recorded by a police officer without the prior approval of the police officer not below the rank of the Additional Comissioner of Police;

(b) no investigation of an offence under the provisions of this Act shall be carried out by a police officer below the rank of the Assistant Commissioner of Police.

(2) No Special court shall take cognizance of any offence under this Act without the previous sanction of the police officer not below the rank of Additional Commissioner of Police."

6. A perusal of Section 2(d) demonstrates that the cause of action for invoking MCOCA is the continuing unlawful activity undertaken by a person singly or jointly as a member of an organized crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent Court within the preceding period of 10 years and the Court has taken cognizance of such offence. There is no doubt that when MCOCA was first invoked in RC/219/2011/E0007 and RC/219/2011/E0008 there were three charge-sheets filed before the competent Court within the preceding 10 years and the Courts had taken cognizance thereon. However the moot question is whether on the basis of same three charge-sheets MCOCA can be invoked in two different cases. The answer to the same has to be in the negative. A person cannot be tried for the same offence repeatedly in different trials. Similarly in RC/219/2011/E0009 and RC/219/2011/E0010 on the basis of the same three charge-sheets, the competent authority has granted sanction for invoking the MCOCA.

7. In T.T. Antony Vs. State of Kerala and Others, their Lordships held:

27. A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. There cannot be any controversy that sub-section (8) of Section 173 CrPC empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In Ram Lal Narang Vs. State (Delhi Administration), it was, however, observed that it would be appropriate to conduct further investigation with the permission of the court. However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh

investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report u/s 173(2) CrPC. It would clearly be beyond the purview of Sections 154 and 156 CrPC, nay, a case of abuse of the statutory power of investigation in a given case. In our view a case of fresh investigation based on the second or successive FIRs, not being a counter-case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is under way or final report u/s 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power u/s 482 CrPC or under Articles 226/227 of the Constitution.

8. This view was further reiterated in Upkar Singh Vs. Ved Prakash and Others, wherein it was held:-

17. It is clear from the words emphasised hereinabove in the above quotation, this Court in the case of T.T. Antony Vs. State of Kerala and Others, has not excluded the registration of a complaint in the nature of a counter-case from the purview of the Code. In our opinion, this Court in that case only held that any further complaint by the same complainant or others against the same accused, subsequent to the registration of a case, is prohibited under the Code because an investigation in this regard would have already started and further complaint against the same accused will amount to an improvement on the facts mentioned in the original complaint, hence will be prohibited u/s 162 of the Code. This prohibition noticed by this Court, in our opinion, does not apply to counter-complaint by the accused in the first complaint or on his behalf alleging a different version of the said incident.

9. In view of the fact the Respondent could not have invoked MCOCA in 4 different RC numbers for the same charge-sheets i.e. for the same set of facts, the approval granted by the DIG for invoking MCOCA in RC/219/2011/E0008, RC/219/2011/E0009 & RC/219/2011/E0010 is set aside.

10. As regards the other limb of argument of the Petitioner that is the essential ingredients of organized crime that the continuing unlawful activity should have been committed by use of violence or threat of violence or intimidation or coercion or other unlawful means with the objective of gaining pecuniary benefits or gaining undue economic or the other advantage for himself or any other person, the provision was considered by the Hon''ble Supreme Court in Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra and State of Maharashtra & Ors. Vs. Lalit Somdatta Nagpal & Anr.(supra). In Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra 2005 (2) JCC 689 their Lordships held:

31. Interpretation clauses contained in Sections 2(d), 2(e) and 2(f) are inter-related. An ''Organized crime syndicate'' refers to an ''Organized crime'' which in turn refers to ''continuing unlawful activity''. As at present advised, it may not be necessary for

us to consider as to whether the words "or other lawful means" contained in Section 2(e) should be read "ejusdem generics"/ "noscitur-a-sociis" with the words (i) violence, (ii) threat of violence, (iii) intimidation or (iv) coercion. We may, however, notice that the word ''violence'' has been used only in Section 146 and 153A of the Indian Penal Code. The word ''intimidation'' alone has not been used therein but only Section 506 occurring in Chapter XXII thereof refers to ''criminal intimidation''. The word ''coercion'' finds place only in the Contract Act. If the words ''unlawful means'' is to be widely construed as including any or other unlawful means, having regard to the provisions contained in Sections 400, 401 and 413 of the IPC relating to commission of offences of cheating or criminal breach of trust, the provisions of the said Act can be applied, which prima facie, does not appear to have been intended by the Parliament

32. The Statement of Objects and Reasons clearly state as to why the said Act had to be enacted. Thus, it will be safe to presume that the expression ''any unlawful means'' must refer to any such act which has a direct nexus with the commission of a crime which MCOCA seeks to prevent or control. In other words, an offence falling within the definition of Organized crime and committed by an Organized crime syndicate is the offence contemplated by the Statement of Objects and Reasons. There are offences and offences under the Indian Penal Code and other penal statutes providing for punishment of three years or more and in relation to such offences more than one chargesheet may be filed. As we have indicated hereinbefore, only because a person cheats or commits a criminal breach of trust, more than once, the same by itself may not be sufficient to attract the provisions of MCOCA."

11. In State of Maharashtra & Ors. Vs. Lalit Somdatta Nagpal & Anr. (2007) 2 SCC (Crl) 241 their Lordships held:

62. However, we are in agreement with the submission that having regard to the stringent provisions of MCOCA, its provisions will have to be very strictly interpreted and the concerned authorities would have to be bound down to the strict observance of the said provisions. There can be no doubt that the provisions of the MCOCA have been enacted to deal with organized criminal activity in relation to offences which are likely to create terror and to endanger and unsettle the economy of the country for which stringent measures have been adopted. The provisions of the MCOCA seek to deprive a citizen of his right to freedom at the very initial stage of the investigation, making it extremely difficult for him to obtain bail. Other provisions relating to the admission of evidence relating to the electronic media have also been provided for. In such a situation it is to be seen whether the investigation from its very inception has been conducted strictly in accordance with the provisions of the Act.

63. As has been repeatedly emphasized on behalf of all the parties, the offence under MCOCA must comprise continuing unlawful activity relating to organized

crime undertaken by an individual singly or jointly, either as a member of the organized crime syndicate or on behalf of such syndicate by use of coercive or other unlawful means with the objective of gaining pecuniary benefits or gaining undue economic or other advantage for himself or for any other person or for promoting insurgency. In the instant case, both Lalit Somdutt Nagpal and Anil Somdutt Nagpal have been shown to have been involved in several cases of a similar nature which are pending trial or are under investigation. As far as Kapil Nagpal is concerned, his involvement has been shown only in respect of CR No. 25/03 of Rasayani Police Station, Raigad, under Sections 468, 420, 34, Indian Penal Code and Sections 3, 7, 9 & 10 of the Essential Commodities Act. In our view, the facts as disclosed justified the application of the provisions of the MCOCA to Lalit Nagpal and Anil Nagpal. However, the said ingredients are not available as far as Kapil Nagpal is concerned, since he has not been shown to be involved in any continuing unlawful activity. Furthermore, in the approval that was given by the Special Inspector General of Police, Kolhapur Range, granting approval to the Deputy Commissioner of Police (Enforcement), Crime Branch, C.I.D., Mumbai to commence investigation u/s 23(1) of MCOCA, Kapil Nagpal has not been mentioned. It is only at a later stage with the registering of CR No. 25/2003 of Rasayani Police Station, Raigad, that Kapil Nagpal was roped in with Lalit Nagpal and Somdutt Nagpal and permission was granted to apply the provisions of the MCOCA to him as well by Order dated 22ndAugust, 2005.

67. In the instant case, though sanction had been given by the Special Inspector General of Police, Kolhapur Range, on 31stAugust, 2004, granting permission u/s 23(1)(a) of the MCOCA 1999 to apply its provisions to the alleged offences said to have been committed by Anil Nagpal, Lalit Nagpal and Vijay Nagpal, such sanction reveals complete non- application of mind as the same appears to have been given upon consideration of an enactment which is non est. Even if the subsequent approval order of 22ndAugust, 2005 is to be taken into consideration, the organized crime referred to in the said order is with regard to the alleged violation of Sales Tax and Excise Laws, which, in our view, was not intended to be the basis for application of the provisions of the MCOCA 1999. To apply the provisions of MCOCA something more in the nature of coercive acts and violence in required to be spelt out so as to bring the unlawful activity complained of within the definition of "organized crime" in Section 2(1)(e) of MCOCA."

12. In Grasim Industries Ltd. Vs. Collector of Customs, Bombay, it was held that the rule of ejusdem generis has no application where the preceding words do not constitute a specific genus. It was held:

12. In the background of what has been urged by the assessee it has to be further seen whether the principles of ejusdem generis have application. The rule is applicable when particular words pertaining to a class, category or genus are followed by general words. In such a case the general words are construed as limited to things of the same kind as those specified. The rule reflects an attempt to

reconcile incompatibility between the specific and general words in view of the other rules of interpretation that all words in a statute are given effect if possible, that a statute is to be construed as a whole and that no words in a statute are presumed to be superfluous. The rule applies only when (1) the statute enumerates the specific words, (2)the subjects of enumeration constitute a class or category, (3) that class or category is not exhausted by the enumeration, (4) the general terms follow the enumeration, and (5) there is no indication of a different legislative intent. If the subjects of enumeration belong to a broad-based genus, as also to a narrower genus there is no principle that the general words should be confined to the narrower genus. In interpreting Section 30 of the United Towns Electrical Company Act, 1902 which reads "the company shall be liable for water rates on all lands and buildings owned by it in the aforesaid towns, but otherwise the company shall be exempt from taxation", the Privy Council rejected the contention that the word "taxation" should be considered ejusdem generis with "water rate". It was held that there is no room for application of the principle in the absence of any mention of a genus, since the mention of a single species, for example of water rates, does not constitute a genus. (See: United Towns Electric Co. Ltd. v. Attorney-General for Newfoundland [(1939) 1 All ER 423 (PC)].) The rule cannot be applied unless there is genus constituted or a category disclosed. If the preceding words do not constitute mere specifications of a genus but constitute description of a complete genus, the rule has no application. The rule has to be applied with care and caution. This is not an inviolable rule of law, but it is only permissible inference, in the absence of any indication to the contrary. Where the context and the object and mischief of the enactment do not require restricted meaning to be attached to words of general import it becomes the duty of the courts to give those words their plain and ordinary meaning. The following enunciation in Craies on Statute Law (7th Edn.), at pp. 181-82 succinctly states the principle:

The modern tendency of the law, it was said, (by Asquith, J. in Allen v. Emmerson [1944 KB 362 : (1944) 1 All ER 344 (KBD)]) is "to attenuate the application of the rule of ejusdem generis". To invoke the application of the ejusdem generis rule there must be a distinct genus or category. The specific words must apply not to different objects of a widely differing character but to something which can be called a class or kind of objects. Where this is lacking, the rule cannot apply, (Hood-Barrs v. IRC [(1946) 2 All ER 768 : 176 LT 283 (CA)]) but the mention of a single species does not constitute a genus. (Per Lord Thankerton in United Towns Electric Co. Ltd. v. Attorney-General for Newfoundland [(1939) 1 All ER 423 (PC)].) "Unless you can find a category," said Farwell, L.J., (in Tillmanns and Co. v. S.S. Knutsford [(1908) 2 KB 385 : 77 LJ KB 778 : 99 LT 399 (CA)] "there is no room for the application of the ejusdem generis doctrine," and where the words are clearly wide in their meaning they ought not to be qualified on the ground of their association with other words. For instance, where a local Act required that "theatres and other places of public entertainment" should be licensed, the question arose whether a "funfair" for which no fee was

charged for admission was within the Act. It was held to be so, and that the ejusdem generis rule did not apply to confine the words "other places" to places of the same kind as theatres. So the insertion of such words as "or things of whatever description" would exclude the rule. (Attorney-General v. Leicester Corpn. [(1910) 2 Ch 359 : (1908-10) All ER Rep Ext 1002 : 103 LT 14]) In N.A.L.G.O. v. Bolton Corpn. [1943 AC 166 : (1942) 2 All ER 425 (HL)] Lord Simon, L.C. referred to a definition of "workman" as any person who has entered into a works under a contract with an employer whether the contract be by way of manual labour, clerical work "or otherwise" and said: "The use of the words "or otherwise" does not bring into play the ejusdem generis principle: for "manual labour" and "clerical work" do not belong to a single limited genus" and Lord Wright in the same case said: "The ejusdem generis rule is often useful or convenient, but it is merely a rule of construction, not a rule of law. In the present case it is entirely inapt. It presupposes a "genus" but here the only "genus" is "a contract with an employer.

13. The words preceding "unlawful means" are violence, threat of violence, intimidation and coercion. The meaning of the words threat, violence, intimidation and coercion as defined in the Oxford English Dictionary (Fifth Edition) are as under:

(a)Threat: Oppression, compulsion; torment; distress; misery; danger; press, urge, try to force or induce esp. by means of threat rebuke; reprove.

(b)Violence: The state or quality of being violent in action or effect; great force or strength in operation; vehemence, severity, intensity. Also, an instance of this.

(c)Intimidation: the action of intimidating someone, now esp. in order to interfere with the free exercise of political or social rights; the fact or condition of being intimidated.

(d)Coercion: constraint, restraint, compulsion; the controlling of a voluntary agent or action by force; physical pressure; compression.

14. The word "violence" has been used in Section 146 and 153 of the IPC. The word intimidation has not been used in IPC and u/s 506 IPC the act that is punishable is "criminal intimidation". The word "coercion" finds place in the Contract Act only. Thus, it would be seen that the words violence, intimidation & coercion do not belong to the same specific genus, and thus the words "unlawful means" cannot be read "ejusdum generis" to the preceeding words and are required to be widely construed keeping in mind the intent of the Statute.

15. Though simplicitor offences of forgery and cheating committed more than once would not come within the ambit of "organized crime" however the same would not be applicable to a case where cheating and forgery are done continuously so as to rig/manipulate the results of the examinations. Their Lordships in Lalit Somdatta Nagpal (supra) held that violation of Sales Tax and Excise Laws are not intended to be the basis of application of the provisions of MCOCA and to apply the said

provisions something in the nature of coercive acts and violence is required to be spelt out so as to bring the unlawful activity complained of within the definition of "organized crime".

16. In Burrakur Coal Co., Ltd. Vs. The Union of India (UOI) and Others, it was held:-

5. Mr Das contended that the preamble to an Act is a key to understanding the provisions of the Act and referred us in this connection to the advisory opinion of this Court in re the Kerala Education Bill, 1957 (1959) SCR 995, 1022 In that case Das, C.J., who delivered the opinion of the Court has observed:

The long title of the said Bill (the Kerala Education Bill, 1957) describes it as "A Bill to provide for the better organisation and development of educational institutions in the State''. Its Preamble recites thus:

Whereas it is deemed necessary to provide for the better organisation and development of educational institutions in the State providing a varied and comprehensive educational service throughout the State.'' We must, therefore, approach the substantive provisions of the said Bill in the light of the policy and purpose deducible from the terms of the aforesaid long title and the Preamble and so construe the clauses of the said Bill as will subserve the said policy and purpose."

While holding that it is permissible to look at the Preamble for understanding the import of the various clauses contained in the Bill this Court has not said that full effect should not be given to the express provisions of the Bill even though they appear to go beyond the terms of the preamble. It is one of the cardinal principles of construction that where the language of an Act is clear, the preamble must be disregarded. Though, where the object or meaning of an enactment is not clear, the preamble may be resorted to to explain it. Again, where very general language is used in an enactment which, it is clear must be intended to have a limited application, the preamble may be used to indicate to what particular instances the enactment is intended to apply (Craies - Interpretation of Statutes, 5th Edn. pp. 188, 189). We cannot, therefore, start with the preamble for construing the provisions of an Act, though we would be justified in resorting to it, nay, we will be required to do so, if we find that the language used by Parliament is ambiguous or is too general though in point of fact Parliament intended that it should have a limited application.

17. Tindal, C.J., while delivering the opinion of the Judges in the Sussex Peerage case, 8 E.R. 1034 stated-

My Lords, the only rule for the construction of Acts of Parliament is, that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver. But if any doubt arises from the terms employed by the Legislature, it has always

been held a safe mean of collecting the intention, to call in aid the ground and cause of making the statute, and to have recourse to the preamble, which according to Chief Justice Dyer (Stowel v. Lord Zouch, Plowden, 369), is "a key to open the minds of the makers of the Act, and the mischiefs which they intended to redress.

18. The aims and objections of MCOCA provides-

Organized crime has for quite some years now come up as a very serious threat to our society. It knows no national boundaries and is fueled by illegal wealth generated by contract killings, extortion, smuggling in contrabands, illegal trade in narcotics, kidnapping for ransom, collection of protection money and money laundering, etc. The illegal wealth and black money generated by the organized crime is very huge and has serious adverse effect on our economy. It is seen that the organized criminal syndicates make a common cause with terrorist gangs and foster narco terrorism which extend beyond the national boundaries. There is reason to believe that organized criminal gangs are operating in the State and thus, there is immediate need to curb their activities.

19. Thus as held in Burrakur Coal Co. Ltd.(supra) here the language used by the Parliament is too general, the preamble of the enactment may be resorted to to explain it. As per the aims and object of MCOCA, it was enacted to curb organized crime which has posed a very serious threat to our society. The activities mentioned therein range from killing, extortion, smuggling, terrorism, illegal trade in narcotics, money laundering etc. The list is not exhaustive. Further, one of the essential considerations is also the activities covered under the money laundering. As per the Schedule, offences of forgery and cheating by personation etc. are also covered in the Prevention of Money Laundering Act, 2002. In view of the aims and objects of MCOCA though cases of simplicitor cheating and forgery may not come under the "unlawful means" however, if the same are committed in manner as an organized crime, particularly effecting the results of the examination, thus, de-stabilizing the education system, the said activity would certainly fall within the ambit of "unlawful means" as required in "organized crimes". The said "unlawful activity" has some semblance to coercion, intimidation etc. as the same is performed by manipulating at an extensive level.

20. From the facts alleged against the Petitioner it is evident that the Petitioner was not involved in a simple case of forgery and cheating. He was rigging/manipulating the results by using "unlawful means" to obtain pecuniary gains. In view thereof I do not find any merit in the contention of the learned counsel for the Petitioner that MCOCA cannot be invoked against the Petitioner on the facts of the case as the basic ingredients of "organized crime" are not satisfied. Thus, the Petitioner will be proceeded for offence u/s 3 MCOCA only in RC/219/2011/E0007.

21. In WP(Crl.) Nos. 242/2012 and 243/2012 the Petitioner has sought setting aside of the orders dated 30th November, 2011 whereby the learned Trial Court granted

remand of the Petitioner in RC Nos. 219/2011/E0007 and 219/2011/E0008 respectively. Since the remand period had already expired on 24th December, 2012 when the present petitions came up for hearing, no orders are required to be passed in the two writ petitions as they have become infructuous. Petitions and applications are disposed of accordingly.