STATE (NCT OF DELHI) A

v.

BRIJESH SINGH @ ARUN KUMAR AND ANR.

(Criminal Appeal No. 1750 of 2017) B

OCTOBER 09, 2017

[S. A. BOBDE AND L. NAGESWARA RAO, JJ.]

Maharashtra Control of Organized Crime Act, 1999 (As applicable in Delhi): C

ss. 1(2), 2(1)(d), 2(1)(e), 3 and 4 – Prosecution under s. 3 – Validity of – Charge-sheet filed against the respondent-accused – Charge-sheet mentioned two FIRs (FIR No. 69 of 2007 and FIR No. 122 of 2010) which were filed in Delhi and referred to six other cases, cognizance whereof was taken by the competent courts in Uttar Pradesh – Request made to Special Court to take cognizance of the offences u/ss. 3/4 of MCOCA – Special court discharged the accused holding that it had no jurisdiction to frame charges, as except FIR No. 69 of 2007 there was no other case which had been taken cognizance by competent court in Delhi (FIR No. 122 of 2010 not being relevant) and the criminal cases filed in Uttar Pradesh could not be taken into account for satisfying the ingredients of 'continuing unlawful activity' u/s. 2(1)(d) – Appeal against the order of Special Court was dismissed by High Court – On appeal, held: Organised crime which is an offence punishable u/s. 3 means a continuing unlawful activity – Relevant pre-condition for considering an activity as continuing unlawful activity, is that there should be two charge-sheets within 10 years and a competent court has taken cognizance of such charge-sheets – Organized crime is not an activity restricted to a particular State – 'Competent Courts' in the definition of 'continuing unlawful activity' is not restricted to courts in Delhi alone – Therefore charge-sheets filed in competent courts in State other than Delhi not to be excluded – In case the nexus between charge-sheets filed in competent courts outside Delhi and the those filed in Delhi are sufficiently established, prosecution under MCOCA cannot be held invalid on account of extra-territoriality – Therefore, in the present case, charge-sheets filed in competent courts in Uttar D E F G H

A *Pradesh should not have been excluded from consideration – However, an activity of organised crime in Delhi is* sine qua non *for registration of a crime under MCOCA – In the absence of an organised crime being committed in Delhi, accused cannot be prosecuted on the basis of charge-sheets filed outside Delhi – Only an activity which is a cognizable offence punishable with minimum* B *sentence of three years or more would be a continuous unlawful activity u/s. 2(1)(d) – In the present case FIR No. 122 of 2010 cannot be taken into account, as punishment for two of the offences therein is less than 3 years and one of the offences is non-cognizable – In FIR No. 69 of 2007, there was no criminal activity pertaining to* C *organised crime within the territory of Delhi – Thus, no cause of action arises for initiation of proceedings under MCOCA.*

Interpretation of Statutes:

Interpretation of penal statute – The principles of strict construction are adopted for interpretation of penal statutes – D *However, even a penal provision should be interpreted to advance the object which the legislature had in view – MCOCA was promulgated with the object of arresting organised crime – The provisions of MCOCA should be interpreted in a manner which would advance the object of MCOCA – Maharashtra Control of* E *Organised Crime Act, 1999.*

Disposing of the appeal, the Court

HELD: 1.1 The principles of strict construction have to be adopted for interpretation of the provisions of Maharashtra Control of Organised Crime Act, 1999 (MCOCA) which is a penal F **statute. However, even a penal provision should be interpreted to advance the object which the legislature had in view. [Para 13] [913-C]**

Ranjitsing Brahamajeetsing Sharma v. Maharashtra **(2005) 5 SCC 294 : [2005] 3 SCR 345 ;** *State of* G *Maharashtra and ors. v. Lalit Somdutta Nagpal and Anr.* **(2007) 4 SCC 171 : [2007] 2 SCR 473 ;** *Murlidhar Meghraj Loya v. State of Maharashtra* **(1976) 3 SCC 684 : [1977] 1 SCR 1 – relied on.**

1.2 The commission of crimes like contract killings, H **extortion, smuggling in contrabands, illegal trade in narcotics,**

kidnappings for ransom, collection of protection money and money laundering, etc. by organised crime syndicates was on the rise. To prevent such organised crime, an immediate need was felt to promulgate a stringent legislation. The Government realized that organised crime syndicates have connections with terrorist gangs and were fostering narcotic terrorism beyond the national boundaries. MCOCA was promulgated with the object of arresting organised crime which was posing a serious threat to the society. The interpretation of the provisions of MCOCA should be made in a manner which would advance the object of MCOCA. [Para 14] [914-A-C]

2.1 Statutes made by a Sovereign States cannot be said to be invalid on the ground of extra territoriality subject to certain conditions. There is no distinction between the applicability of the aforesaid principle to civil or criminal statutes. [Para 23] [917-D]

2.2 In the present case, it is sufficient to examine whether there is a territorial nexus between the charge sheets filed in competent Courts within the State of Uttar Pradesh and the State of NCT of Delhi where the Respondents are being prosecuted. The prosecution of the Respondents under MCOCA cannot be said to be invalid on the ground of extra territoriality in case the nexus is sufficiently established. [Para 24] [917-E-F]

2.3 Organised crime which is an offence punishable under Section 3 of MCOCA means a continuing unlawful activity committed by the use of force or violence for economic gain. One relevant pre-condition which has to be satisfied before any activity can be considered as a continuing unlawful activity is that there should be at least two charge sheets filed against the members of an organised crime syndicate within the previous 10 years and a 'competent Court' has taken cognizance of such charge sheets. In the instant case, there are eight charge sheets filed against the Respondents, six out of which are in the State of Uttar Pradesh. The Courts below are not correct in holding that only charge sheets filed in competent Courts within Delhi have to be taken into account. [Para 25] [917-G-H; 918-A-B]

2.4 Organised crime is not an activity restricted to a particular State which is apparent from a perusal of the Statement

A **of Objects and Reasons. A restrictive reading of the words "competent Court" appearing in Section 2 *(1)(d)* of MCOCA will stultify the object of the Act. It is not correct to say that it is impermissible for the Special Courts to take into account charge sheets filed outside the National Capital Territory of Delhi as that would result in giving extra-territorial operation to MCOCA.**
B **A perusal of the charge-sheets filed against the Respondents in the State of Uttar Pradesh which are relied upon by the prosecution to prove that organised crime was being committed by them shows clear nexus between those charge sheets and the NCT of Delhi where prosecution was launched under MCOCA. The twin**
C **conditions to establish territorial nexus in *_RMD Chamarbaugwala's_ case are fulfilled. If members of an organised crime syndicate indulge in continuing unlawful activity across the country, it cannot by any stretch of imagination said, that there is no nexus between the charge sheets filed in Courts in States other than Delhi and the offence under MCOCA registered in**
D **Delhi. In such view, it cannot be said that charge-sheets filed in competent Courts in the State of Uttar Pradesh should be excluded from consideration. 'Competent Courts' in the definition of 'continuing unlawful activity' is not restricted to Courts in Delhi alone. [Para 26] [918-C-F]**

E **State of Bombay* v. *RMD Chamarbaugwala* **[1957] SCR 874** ; *The Tata Iron & Steel Co., Ltd.* v. *The State Of Bihar* **[1958] SCR 1355** ; *State of Bihar v. Charusila Dasi* **(1959) Supp. 2 SCR 619 – relied on.**

F *Macleod v. Attorney General for New South Wales* **(1891) A.C. 455** ; *Trustees Executors and Agency Co. Ltd.* v. *Federal Commissioner of Taxation* **(1933) 49 C.L.R. 220** ; *Union Steamship Co. of Australia PTY. Ltd.* v. *King* **(1988) 166 CLR 1** ; *Broken Hill South Limited (Public Officer) v. The Commissioner of*
G *Taxation (New South Wales)* **50 C.L.R. 337** ; *Christopher Strassheim v. Milton Daily* **221 U.S. 280 (1911)** ; *Chua Han Mow v. United States* **730 F.2D. 1308 (1984)** ; *The Governor General in Council* v. *The Raleigh Investment Co. Ltd.* **(1944) FCR 229 – referred to.**

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3.1 The principle that crime is local is not applicable to the present case. The offences alleged to have been committed by the Respondents beyond the territories of Delhi are not being tried within the National Capital Territory of Delhi. The existence of filing of the charge sheets, as a matter of fact, is taken into consideration merely for the purpose of determining the antecedents of the Respondents. The Respondents would still be liable to face trial in competent Courts where the charge sheets are filed. [Paras 27 and 28] [919-B-C]

The State of Bombay v. *Narayandas Mangilal Dayame* **AIR 1958 Bom 68 (FB) – distinguished.**

Bharat Shanti Lal Shah v. State of Maharashtra **(2003) Bom. L.R. (Cri.) 947 ;** *State of Maharashtra v. Bharat Shanti Lal Shah & Ors.* **(2008) 13 SCC 5 : [2008] 12 SCR 1083;** *Om Prakash Shrivastava v. State of NCT of Delhi* **164 (2009) DLT 218 ;** *Jaisingh v. Maharashtra* **(2003)BomCR(Cri) 1606 – referred to.**

3.2 Even if a crime is committed in one State, the accused can be tried in another State if the detrimental effect is in that State. It cannot be said that the crimes committed outside the State cannot be considered for any purpose whatsoever. There should be a minimum of two charge-sheets of organized crime registered against the members of the syndicate either separately or jointly for the purpose of constituting a continuing unlawful activity. Charge-sheets filed outside Delhi can also be taken into account. [Paras 29 and 31] [919-D; 920-G-H; 921-A]

Christopher Strassheim v. Milton Daily; Rocha v. United States **288 F.2d. 545 (1961) ;** *Chua Han Mow v. United States* **730 F.2D. 1308 (1984) ;** *Director of Public Prosecutions v. Stonehouse* **[1977] 2 All ER 909);** *Lawson v. Fox & ors.* **[1974] 1 All ER 783 – referred to.**

4.1 However, an activity of organized crime in Delhi is a *sine qua non* for registration of a crime under MCOCA. In the absence of an organized crime being committed in Delhi, the accused cannot be prosecuted on the basis of charge-sheets filed outside Delhi. [Para 32] [921-B-C]

A **4.2 Only an unlawful activity which is a cognizable offence punishable with minimum sentence of three years or more would be a continuous unlawful activity under section 2(1)(d) of the Act. FIR No.122 of 2010 was registered under Sections 341, 506 read with Section 34 of the IPC. Section 341 IPC is punishable with a maximum sentence of one month, though it is cognizable offence.**
B **Section 506 IPC was a non-cognizable offence at the date of registration of the FIR and filing of the charge sheet. Hence, the FIR No.122 of 2010 cannot be taken into account. [Para 33] [921-C-E]**

C **4.3 FIR No. 69 of 2007 was registered on the basis of information given by one 'S' who is admittedly a resident of Varanasi, Uttar Pradesh. He is a politician and a businessman and when he was on a trip to Delhi, he was threatened by the Respondents due to their business rivalry. Several facts pertaining to the illegal activities of the Respondents in Uttar**
D **Pradesh have been mentioned in the FIR. 'S' complained of extortion by the Respondents. During the course of investigation, it was found that the call that was made on the mobile phone of 'S' was from a PCO at Varanasi. It appears from a close reading of the FIR and the charge- sheet in FIR No.69 of 2007, that there was no criminal activity pertaining to organised crime within the**
E **territory of Delhi and the complaint was filed by the informant at Delhi only for the purpose of invoking MCOCA. There is no mention of any property belonging to the Respondents in Delhi. As there is no organised crime committed by the Respondents within the territory of Delhi, there is no cause of action for initiation**
F **of proceedings under MCOCA. [Para 34] [921-F-H; 922-A-C]**

Case Law Reference

AIR 1958 Bom 68 (FB)	distinguished	Para 9
[2005] 3 SCR 345	relied on	Para 13
G [2007] 2 SCR 473	relied on	Para 13
[1977] 1 SCR 1	relied on	Para 13
[1957] SCR 874	relied on	Para 21
[1958] SCR 1355	relied on	Para 21

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(1959) Supp. 2 SCR 619	**relied on**	**Para 21**	A
(2003) Bom. L.R. (Cri.) 947	**referred to**	**Para 28**	
[2008] 12 SCR 1083	**referred to**	**Para 28**	
164 (2009) DLT 218	**referred to**	**Para 28**	
(2003)Bom CR(Cri) 1606	**referred to**	**Para 28**	B

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1750 of 2017.

From the Judgment and Order dated 16.04.2015 of the High Court C of Delhi at New Delhi in Criminal Appeal No. 358 of 2014.

Sidharth Luthra, Sr. Adv, Anoopam N. Prasad, Ms. Mehak Jaggi, P. K. Dey, K. L. Janjani, B. V. Balram Das, D. S. Mahra, Advs for the Appellant.

U. R. Lalit, Sr. Adv, Akhand Pratap Singh, Ms. Aditi Mittal, Sudhir D Naagar, Chandra Bhushan, Sushil Karanjkar, K. N. Rai, Advs for the Respondents.

The Judgment of the Court was delivered by

L. NAGESWARA RAO, J. Leave granted. E

1. The Respondents were discharged by the Special Judge MCOCA, New Delhi District, Patiala House, New Delhi in S.C. No.139 of 2013 dated 5th February, 2014 pertaining to offences under Sections 3 and 4 of the Maharashtra Control of Organised Crime Act, 1999 (hereinafter referred to as 'MCOCA'). The Appellant- State of NCT F of Delhi filed an appeal under Section 12 of MCOCA before the High Court of Delhi which was dismissed on 16th April, 2015. Aggrieved, the Appellant-State has approached this Court by filing the above Appeal.

2. FIR No. 10 of 2013 was registered in the Special Cell (SB) PS Special Cell (SB) on 5th March, 2013 on the basis of information received G from Shri S.K. Giri, Assistant Commissioner of Police (the ACP for short). The ACP prepared a proposal for registration and investigation of a case under Sections 3/4 of MCOCA. According to the proposal, the first Respondent who was arrested in connection with the FIR No.69 dated 8th October, 2007 under Sections 384, 387, 417, 419, 471, 506 and

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A 34 of the Indian Penal Code (the 'IPC' for short), registered in P.S., Special Cell, New Delhi, was also involved in 20 cases of attempt to murder, murder, extortion, rioting, cheating, forgery and for offences under the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 (hereinafter referred to as 'the UP Gangsters Act'). Respondent No.1 was involved in committing unlawful activities along with other members of a crime syndicate since 1985 in an organized manner. The particulars of eight crimes, the cognizance of which was taken by the competent criminal Courts in and outside Delhi were referred to. It was also mentioned that Respondents manipulated a fake identity for themselves and have floated several companies from the ill-gotten wealth. Several properties were acquired by these companies, the details of which have been specified in the proposal. Considering the magnitude of the criminal activities of the Respondents and their organised crime syndicate, the informant felt that it was necessary to invoke the stringent provisions of MCOCA. The particulars of 14 members of the syndicate was given in the proposal and approval was sought for conducting a thorough investigation into the role of each of them for offences under Section 3 and 4 of MCOCA.

3. A final report under Section 173(2) Cr.P.C. was filed on 26th September, 2013. Briefly, the contents of the charge sheet are as follows:

I. The first Respondent was involved in 39 crimes of different nature including murder, attempt to murder, waging war against the State, extortion, rioting, etc. between 1985 and 2008. On several occasions, he was booked under the UP Gangsters Act but had managed to evade arrest. He was finally arrested on 23rd January, 2008 from Bhubaneswar in connection with FIR No.69 of 2007, PS Special Cell, Delhi.

II. FIR No.69 of 2007 was registered on a complaint made by Sudhir Singh who alleged that at 7.15 p.m. on 28th July, 2007, he received a call from the Respondents who demanded payment of Rs.50 Lakhs as protection money. The Respondents threatened him of dire consequences in case the demand was not met.

III. Another FIR bearing No.122 of 2010 was registered on 17th May, 2010 under Sections 341,506 r/w 34 of the IPC at Subzi Mandi Police Station, Delhi on the complaint filed by Sudhir

Singh alleging that Narender *alias* Mamu and Sushil Singh, MLA, who was the nephew of Respondent No.1, along with others threatened him to withdraw the cases filed against the Respondents. This incident, according to Sudhir Singh, happened when he was attending proceedings in the Tis Hazari Court Complex, Delhi.

IV. There is a reference in the final report of six other cases against the Respondents, cognizance of which was taken up by the competent Courts in Uttar Pradesh. The details of the said six cases are as under:

Sr. No.	ST No.	FIR No..U/s, & PS	Name of Court & Date of cognizance & Charge	Name of Gang Member
1	303/09	26/91 & 98/91 dt.02/05/1991 U/s 147/148/149/302/ 307 IPC PS Bhavarcool, Distt. Gazipur	ASJ Anupati Ram Yadav. Distt. Gazipur (UP) 09/11/2012	Brijesh Singh Tribhuvan Singh Uma Kant Salander @ Papu
2	165/98	120/95 U/s 3(1) Gangster Act, PS Chobey Pur Varanasi (Original FIR & Rukka Missing from Court.)	Spl. Judge Gangster Act, Varanasi 21/11/08	Brijesh Singh Hari Singh @ Harday Narayar Singh
3	304/09	113/01 & 251/01/ U/s 147/148/149/307/ 302/427/120-B IPC, 7 Criminal Law Act, PS Mohamedabad	ASJ-3 Distt. Ghazipur 11/01/13	Brijesh Singh Tribhuvan Singh
4	125/07	8/04 & 09/04 U/s 147/148/149/307/ 427 IPC, 2/3 UP Gunda Act, PS Cantt. Sadar Lucknow	Spl. Judge Gangster Act, Lucknow 14/08/07	Brijesh Singh Tribhuvan Singh Ajay @ Guddu Sunil Rai Anand Rai
5	523/10	62/09 & 81/09 U/s 147/148/149/307/ 120-B IPC 7 Criminal Law Act. PS Lanka Varanasi	ASJ – 3 Varanasi Sh. Sanga M Lal 20/12/10	Tribhuvan Singh Brijesh Singh Sushil Singh Narender @ Mama Ajay Singh @ Khain Ayak.
6	9/13	112/90 & 232/90 U/s 147/148/149/323/ 379/427 IPC, PS Saidpur, Varanasi	CJM Saidpur, Gazipur Sh. Parksh Chand Shukla 25/08/12	Brijesh Singh Tribhuvan Singh Vijay Shankar Singh

A 4. The involvement of the Respondents and the other members of the crime syndicate in several criminal cases was comprehensively dealt with in the charge sheet dated 26.09.2013, the details of which are not relevant for the purpose of adjudication of this case. Though investigation was still in progress regarding involvement of the other accused persons, the charge sheet was filed against the Respondents. After obtaining the B requisite sanction under Section 23(2) of MCOCA from the competent authority, the Special Court was requested to take cognizance of the offences under Sections 3/4 of MCOCA.

5. After hearing both sides, the Special Court held that it had no C jurisdiction to frame charges under Sections 3 and 4 of MCOCA and discharged the Respondents. The Special Court recorded a finding that except FIR No.69 of 2010, there was no other case which has been taken cognizance by a competent Court in Delhi for application of MCOCA. FIR No.122 of 2010 registered at PS Sabzi Mandi was not relevant as it was not a case where there is any allegation against the D members of the crime syndicate acquiring any pecuniary benefits or other advantages.

6. The Special Court held that the criminal cases of which cognizance was taken by Courts situated outside Delhi cannot be taken into account for the purpose of satisfying the ingredients of 'continuing E unlawful activity' under Section 2(1)(d) of MCOCA. Ignoring that six cases in which cognizance was taken by competent Courts outside the National Capital Territory of Delhi as well as FIR No.122 of 2010 registered at police station Sabzi Mandi, the Special Court held that it had no jurisdiction to frame charges under MCOCA against the Respondents only on the basis of one FIR i.e. No.69 of 2007. The F Special Court further held that three out of eight cases referred to in the charge sheet were at the instance of Sudhir Singh and that the offences complained of are in the nature of a gang war between the rival groups in the State of Uttar Pradesh.

7. The Appellant-State preferred an appeal against the judgment G of the Special Court discharging the Respondents before the High Court of Delhi. The High Court rejected the submissions made on behalf of the Appellant and held that the charge sheets filed and taken cognizance of by the Courts outside the National Capital Territory of Delhi are not relevant for the purpose of registering a case under MCOCA. The

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High Court approved the findings of the Special Court that FIR No.122 of 2010 was not in pursuance of activities of organized crime syndicate falling within the purview of MCOCA. As the requirement of a minimum of two charge sheets being taken cognizance of by a competent Court in Delhi was not satisfied, the High Court felt that there was nothing wrong with the decision of the Special Court.

8. Mr. Sidharth Luthra, learned Senior Counsel appearing for the Appellant submitted that organized crime is a serious threat to the society and that statement of objects and reasons have to be taken into account for interpretation of the provisions of the Act. He submitted that the restriction placed by the Courts below on the expression "Competent Court" in the definition of continuing unlawful activity is not correct. According to him, criminal cases in which cognizance was taken by Courts outside Delhi are relevant for the purpose of proceeding against the respondents under MCOCA. He further submitted that organized crime is not restricted to territory within a State and a restrictive reading of the word 'Competent Court' would defeat the purpose for which the statute was enacted.

9. Mr. U.R. Lalit, learned Senior Counsel appearing for Respondent No.1 urged that MCOCA is a special legislation which deals with organized crime and unless the essential ingredients of the offences under Sections 3 and 4 are made out, a case under the said statute cannot be registered. He submitted that MCOCA operates only within the territorial limits of National Capital Territory of Delhi. He submitted that there is no offence of organized crime which was committed within the territory of Delhi. He also argued that it is clear from the material on record that there is no property belonging to the Respondents within the territory of Delhi and hence, Section 4 of MCOCA is not attracted. He also argued that crime is local and anything that is done outside the State cannot be subject matter of consideration for registration of an offence under MCOCA. Reliance was placed on Articles 245 and 246 of the Constitution of India to submit that MCOCA which extended to the National Capital Territory of Delhi cannot have extra territorial operation. He relied upon the judgment of the Bombay High Court in ***The State of Bombay*** v. ***Narayandas Mangilal Dayame***[1] in support of the said submissions. Mr. Lalit argued that the complainant in FIR No.69 of 2007, Sudhir Singh, is a resident of Varanasi and according to him, he

[1] AIR 1958 Bom 68 (FB)

A came to Delhi on a business trip and was threatened over phone by the Respondents. After investigating into the said offence, it was found that a call was made from a public telephone booth at Varanasi, U.P. All the antecedent events that were mentioned in the said FIR pertain to activities in the State of Uttar Pradesh. He submitted that no organised crime was committed in Delhi and FIR No.69 of 2007 cannot be taken into consideration for proceeding against the Respondents under MCOCA. Referring to FIR No.122 of 2010, Mr. Lalit submitted that Section 506 IPC was a non-cognizable offence at the relevant time. As there was no cognizable offence, FIR No.122 of 2010 is of no use for proceeding against the Respondents under MCOCA.

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10. The menace of organized crime posed a serious threat to civil society and a need for making special provisions for prevention and control of criminal activities of the organized crime syndicates and gangs was recognised by the Maharashtra Legislature which passed "the Maharashtra Control of Organized Crime Act, 1999 (hereinafter referred to as "MCOCA"). It was brought into force *w.e.f.* 24th April, 1999. It is clear from the statement of objects and reasons that rapid increase in organised crime was causing serious threat to public order apart from adversely affecting the economy. The Government was of the opinion that the existing legal regime was inadequate to deal with the problem and hence, the necessity for a special law to curb the menace of organised crime. By a Notification dated 2nd January, 2002 the Ministry of Home Affairs, Govt. of India extended the provisions of MCOCA to the National Capital Territory of Delhi.

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11. At this stage, it is necessary to refer to the provisions of the Act which are relevant for adjudication of the dispute in this case. Section 5 of the Act[2] provides for constitution of 'Special Courts' for trying

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[2] **5. Special Courts**

(1) The State Government may, by notification in the Official Gazette, constitute one or more Special Courts for such area or areas, or for such case or class or group of cases, as may be specified in the notification.

G (2) Where any question arises as to the jurisdiction of any Special Court, it shall be referred to the State Government whose decision shall be final.

(3) A Special Court shall be presided over by a judge to be appointed by the State Government, with the concurrence of the Chief Justice of the Bombay High Court. The State Government may also appoint, with the concurrence of the Chief Justice of the Bombay High Court, additional judges to exercise jurisdiction in a Special Court-

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offences under MCOCA. These Special Courts are competent to try all offences punishable under MCOCA which are committed within its local jurisdiction as provided in Section 6 of the Act[3]. An offence of organized crime is punishable under Section 3 of the Act[4].

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4)A person shall not be qualified for appointment as a judge or an additional judge of a Special Court, unless he immediately before such a appointment, is a sessions judge or an additional sessions judge.
(5) Where any additional judge is or additional judges are appointed in a Special Court, the judge of the Special Court may, from time to time, by general or special order in writing, provide for the distribution of the business of the Special Court among himself and the additional judge or additional judges and also for the disposal of urgent business in the event of his absence or the absence of any additional judges.

[3] **6. Jurisdiction of Special Court**
Notwithstanding anything contained in the Code, every offence. punishable under this Act shall, be triable only by the Special Court within whose local jurisdiction it was committed or at the case may be, by the Special Court constituted for trying such offence under subsection (1) of section 5.

[4] **3. Punishment for organised crime-**
(1) Whoever commits an offence of organised crime shall,
(i) if such offence has resulted in the death of any person, be punishable with death or imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees one lac;
(ii) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.
(2) Whoever conspires or attempts to commit or advocates, abets or knowingly facilitates the commission of an organised crime or any act preparatory to organised crime, shall be punishable with imprisonment for a term which shall be not less than five years but which may extend to imprisonment for life, and shall also be liable to a .fine, subject to a minimum of rupees five lacs.
(3) Whoever harbours or conceals or attempts to harbour or conceal, any member of an organised crime syndicate; shall be punishable, With imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to a, fine, subject to a minimum fine of rupees five lacs.
(4) Any person who is a member of an organised crime syndicate shall be punishable with imprisonment for a term which shall not be less, than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.
(5) Whoever holds any property derived of 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

A Section 4[5] of the Act provides for punishment for possessing unaccountable wealth on behalf of a member of organized crime syndicate. 'Organized crime', as defined in Section 2 *(1)(e)*[6] of the Act simply means a continuing unlawful activity committed by use of violence for economic gain. 'Continuing unlawful activity' is defined in Section
B 2*(1)(d)*[7] of the Act as any activity prohibited by law for the time being in force if it is a cognizable offence punishable with imprisonment of three

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[5]**4. Punishment for possessing unaccountable wealth on behalf of member of organised crime syndicate.**

C If any person on behalf of a member of an organised crime syndicate is, or, at any time bus 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 but 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 liable for attachment and forfeiture, as provided by section 20.

Organised criminals are undoubtedly hard core criminals. They have no derth of most
D modern weapons. Extorting money by spreading terrorism in society is their aim. They target elite class of society. Naturally, the money they recover is of unusual proportion. The money is not spent on just causes but to derail state economy. It is therefore, essential to provide for strictest punishment. Punishment envisaged in the Act is 3 to 10 years of imprisonment which can be extended to life imprisonment. Death penalty can also be imposed on the criminals kill anyone. So also a fine of 3 to 10 lacs can also be imposed.

E It will be interesting to compare the criminals under this Act with criminals under recently repealed Tada Act. Criminals under both Acts differ in attitude and approach. Criminals under Tada aim at disruptive activities. They are threat to the sovereignty of Nation. On the contrary criminals under present law are extortionist.

This law also proposes punishment to those who possess any type of property accumulated through illegal means.

F [6](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 person or promoting insurgency;

G [7] (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 field before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence;

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years or more and if it is committed by a member of an 'organized crime syndicate'[8] either singly or jointly within the preceding period of 10 years. Another requirement is the existence of at least two charge sheets which have been taken cognizance of by competent Courts.

12. The points that arise for consideration in this case are:

i) Whether charge sheets filed in competent Courts outside the National Capital Territory of Delhi can be taken into account for the purpose of constituting a "continuing unlawful activity", and

ii) Whether there can be prosecution under MCOCA without any offence of organised crime being committed within Delhi.

13. The principles of strict construction have to be adopted for interpretation of the provisions of MCOCA, which is a penal statute[9]. However, it is no more *res integra* that even a penal provision should be interpreted to advance the object which the legislature had in view[10]. The interpretation of Section *2(1)(d)* of the Protection of Children from Sexual Offences Act, 2012 came up for consideration before this Court and Justice R.F. Nariman held as follows:

> "24. It is thus clear on a reading of English, U.S., Australian and our own Supreme Court judgments that the 'Lakshman Rekha' has in fact been extended to move away from the strictly literal rule of interpretation back to the rule of the old English case of Heydon, where the Court must have recourse to the purpose, object, text, and context of a particular provision before arriving at a judicial result. In fact, the wheel has turned full circle. It started out by the rule as stated in 1584 in Heydon's case, which was then waylaid by the literal interpretation rule laid down by the Privy Council and the House of Lords in the mid 1800s, and has come back to restate the rule somewhat in terms of what was most felicitously put over 400 years ago in Heydon's case."[11]

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

[9] **Ranjitsing Brahamajeetsing Sharma v. Maharashtra (2005) 5 SCC 294** (Para 42); **State of Maharashtra and ors. v. Lalit Somdutta Nagpal and anr. (2007) 4 SCC 171** (para 62)

[10] **Murlidhar Meghraj Loya v. State of Maharashtra,** (1976) 3 SCC 684 ¶6

[11] **Ms. Eera through Dr. Manjula Krippendorf v. State (Govt. of NCT of Delhi) and Anr.** in SLP (Crl.) Nos. 2640-42 OF 2016 at para 24 (concurring judgment of R.F. Nariman J.)

14. The commission of crimes like contract killings, extortion, smuggling in contrabands, illegal trade in narcotics, kidnappings for ransom, collection of protection money and money laundering, etc. by organised crime syndicates was on the rise. To prevent such organised crime, an immediate need was felt to promulgate a stringent legislation. The Government realized that organised crime syndicates have connections with terrorist gangs and were fostering narcotic terrorism beyond the national boundaries. MCOCA was promulgated with the object of arresting organised crime which was posing a serious threat to the society. The interpretation of the provisions of MCOCA should be made in a manner which would advance the object of MCOCA.

Extra Territoriality and Territorial nexus:

15. It was submitted on behalf of the Respondents that MCOCA is applicable only within the territories of Delhi as per Section 1*(2)* of the Act. Therefore, according to the learned senior counsel for the Respondents, the charge sheets filed in a competent Court outside the NCT of Delhi cannot be taken into account for satisfying the requisites of continuing unlawful activity. Support was sought from a judgment of the Privy Council in ***Macleod v. Attorney General for New South Wales***[12]. The Appellant in that case married Mary Manson in the Colony of New South Wales. During her lifetime, the Appellant married another lady at St. Louis in the State of Missouri, United States of America. He was indicted, tried and convicted in the Colony of New South Wales for the offence of bigamy under the Section 54 of the Criminal Law Amendment Act of 1883. Section 54 provided for servitude for seven years for bigamy 'wheresoever' it takes place. Lord Halsbury, Lord Chancellor, held that the Appellant was not liable for prosecution as the offence of bigamy was not committed by him within the Colony of New South Wales. The laws made by the Colony of New South Wales would operate only within its territory.

16. ***Macleod's*** case (supra) was considered by the High Court of Australia in ***Trustees Executors and Agency Co. Ltd.*** v. ***Federal Commissioner of Taxation***[13] wherein it was held that there is no legal restriction of legislative power on the so-called extra territorial ground. It was further held that the mere existence of non-territorial elements in any challenged legislation does not invalidate the law and that the

[12] (1891) A.C. 455

[13] (1933) 49 C.L.R. 220

legislation cannot be said to be invalid if the dominion has some real concern or interest in the matter, thing or circumstances dealt with by the legislation. A

17. ***Macleod's*** case (supra) was again considered in a later judgment of the High Court of Australia in ***Union Steamship Co. of Australia PTY. Ltd.*** v. ***King***[14] wherein it was held that a power to make laws for the peace, order and good governance for the territory was, initially, understood to be limited to the area of the territory. The objection taken by the employer to an award passed by a compensation Court to the jurisdiction of the Courts under Section 46 of the Workers' Compensation Act, 1926 (State Act of New South Wales) was rejected by following an earlier judgment in ***Broken Hill South Limited (Public Officer)*** v. ***The Commissioner of Taxation (New South Wales)***[15] in which it was held as follows: B C

> "..... But it is within the competence of the State Legislature to make any fact, circumstance, occurrence or thing in or connected with the territory the occasion of the imposition upon any person concerned therein of a liability to taxation or of any other liability. It is also within the competence of the legislature to base the imposition of liability on no more than the relation of the person to the territory. The relation may consist in presence within the territory, residence, domicile, carrying on business there, or even remoter connections. If a connection exists, it is for the legislature to decide how far it should go in the exercise of its powers. As in other matters of jurisdiction or authority courts must be exact in distinguishing between ascertaining that the circumstances over which the power extends exist and examining the mode in which the power has been exercised. No doubt there must be some relevance to the circumstances in exercise of the power. But it is of no importance upon the question of validity that the liability imposed is, or may be, altogether disproportionate to the territorial connection or that it includes many cases that cannot have been foreseen." (emphasis supplied) D E F G

18. In ***Christopher Strassheim v. Milton Daily***[16] (supra), a question arose whether the Respondent was liable to be tried in the

[14] (1988) 166 CLR 1
[15] 50 C.L.R. 337
[16] 221 U.S. 280 (1911) H

A State of Michigan for an offence committed outside the State. Justice O.W. Holmes held that the State of Michigan is justified in punishing the Respondent for acts done outside its jurisdiction which were intended to produce a detrimental effect within the State. It was held that:

> "Acts done outside a jurisdiction, but intended to produce and
B producing detrimental effects within it, justify a State in punishing the cause of the harm as if he had been present at the effect, if the State should succeed in getting him within its power".

19. The Judgment of Justice Holmes was followed by the United States Courts of Appeal in ***Chua Han Mow*** v. ***United States***[17] where
C the Petitioner's contention that the United States of America lacked subject-matter jurisdiction to prosecute him for unlawful acts committed in Malaysia was rejected. Prosecution of the Petitioner was held justified under the objective territorial and protective principles as the Petitioner intended to create detrimental effects in the United States and commit acts which resulted in such effect when heroin was unlawfully brought
D into the United States.

20. The Indian Federal Court considered the extra territorial powers of the Union Legislature in ***The Governor General in Council*** v. ***The Raleigh Investment Co. Ltd.***[18] and held that the provisions of the impugned legislation cannot be vitiated on the ground of extra territoriality
E in view of the concern or interest the dominion had with the subject matter. The Federal Court took note of the judgments subsequent to ***Macleod*** *(supra)* in which the limitation imposed by a doctrine forbidding extra territorial legislation was held to be a *'doctrine of somewhat obscure extent'*.

F 21. In ***State of Bombay*** v. ***RMD Chamarbaugwala***[19], this Court considered the point whether the legislature overstepped the limits of its legislative field when the impugned act purported to affect men residing and carrying on business outside the State. It was held that on the basis of the doctrine of territorial nexus between the State and activities of the
G Petitioners which are not in the State, the impugned legislation cannot be held to be beyond the competence of the legislature. This Court recognized the existence of two elements to establish territorial nexus which are:

[17] 730 F.2D. 1308 (1984) (p. 1312) cert. denied, 470 U.S.1031(1985)

[18] (1944) FCR 229

H [19] [1957] SCR 874 (p.901)

a. The connection must be real and not illusory, and

b. The liabilities sought to be imposed must be pertinent to that connection.

22. The doctrine of territorial nexus applied in the ***Chamarbaugwala*** case (supra) which was concerned with tax on crossword competitions, was extended to sales tax legislation in ***The Tata Iron & Steel Co., Ltd.*** v. ***The State Of Bihar***[20] . This Court found that the doctrine of territorial nexus which was applied in Income Tax legislation can be extended to Sales Tax legislation as well. However, this Court did not consider the broad proposition as to whether the theory of nexus, as a principle of legislation, is applicable to all kinds of legislation. The doctrine of territorial nexus was also applied by this Court in ***State of Bihar*** v. ***Charusila Dasi***[21] which dealt with trust properties.

23. As stated above, the doctrine forbidding extra territorial legislation as held in ***Macloed's*** case (supra) was subsequently held to be of somewhat obscure extent. Statutes made by a Sovereign States cannot be said to be invalid on the ground of extra territoriality subject to certain conditions as is clear from the judgments referred to supra. The same principle was applied to State legislations in the United States of America. There is no distinction between the applicability of the aforesaid principle to civil or criminal statutes.

24. In the present case, it is sufficient to examine whether there is a territorial nexus between the charge sheets filed in competent Courts within the State of Uttar Pradesh and the State of NCT of Delhi where the Respondents are being prosecuted. The prosecution of the Respondents under MCOCA cannot be said to be invalid on the ground of extra territoriality in case the nexus is sufficiently established.

25. Organised crime which is an offence punishable under Section 3 of MCOCA means a continuing unlawful activity committed by the use of force or violence for economic gain. One relevant pre-condition which has to be satisfied before any activity can be considered as a continuing unlawful activity is that there should be at least two charge sheets filed against the members of an organised crime syndicate within the previous 10 years and a 'competent Court' has taken cognizance of such charge sheets. In the instant case, there are eight charge sheets

[20] [1958] SCR 1355 (p.1375)

[21](1959) Supp. 2 SCR 619

A filed against the Respondents, six out of which are in the State of Uttar Pradesh. The submission of the Respondents, which was accepted by the Courts below, is that such charge sheets which are filed in the State of Uttar Pradesh are not relevant for the purpose of determining whether the Respondents have indulged in a continuing unlawful activity. The Courts below held that only charge sheets filed in competent Courts B within Delhi have to be taken into account. We are not in agreement with the Courts below.

26. Organised crime is not an activity restricted to a particular State which is apparent from a perusal of the Statement of Objects and Reasons. A restrictive reading of the words "competent Court" appearing C in Section 2 *(1)(d)* of MCOCA will stultify the object of the Act. We disagree with the learned senior counsel for the Respondents that it is impermissible for the Special Courts to take into account charge sheets filed outside the National Capital Territory of Delhi as that would result in giving extra territorial operation to MCOCA. A perusal of the charge D sheets filed against the Respondents in the State of Uttar Pradesh which are relied upon by the prosecution to prove that organised crime was being committed by them shows clear nexus between those charge sheets and the National Capital Territory of Delhi where prosecution was launched under MCOCA. The twin conditions to establish territorial nexus in ***RMD Chamarbaugwala's*** case (supra) are fulfilled. If members of E an organised crime syndicate indulge in continuing unlawful activity across the country, it cannot by any stretch of imagination said, that there is no nexus between the charge sheets filed in Courts in States other than Delhi and the offence under MCOCA registered in Delhi. In such view, we are unable to accept the submission of the Respondents that charge F sheets filed in competent Courts in the State of Uttar Pradesh should be excluded from consideration. We hold that 'competent Courts' in the definition of 'continuing unlawful activity' is not restricted to Courts in Delhi alone.

CRIME IS LOCAL

G 27. The learned senior counsel for the Respondents relied upon the judgment of a full Bench of the High Court of Bombay in ***Narayandas Mangilal Dayame*** case (supra) wherein the constitutional validity of Section 4 of Bombay Prevention of Hindu Bigamous Marriage Act was considered. A second marriage contracted outside the State was a bigamous marriage and void as per Section 4 of the said Act and was H also made punishable under Section 5 with an imprisonment which may

extend to seven years. The Petitioner was tried for contracting a second marriage at *Bikaner* and was found guilty for committing an offence of bigamy. Chief Justice Chagla following ***Macleod's*** case (supra) held that crime is local and that Section 4 was *ultra vires* the Bombay legislature as it suffered from the vice of extraterritoriality. It was further held that the principle of territorial nexus is not applicable to cases of marriage or crime.

28. According to us, the said principle is not applicable to the facts of this case. The offences alleged to have been committed by the Respondents beyond the territories of Delhi are not being tried within the National Capital Territory of Delhi. The existence of filing of the charge sheets, as a matter of fact, is taken into consideration merely for the purpose of determining the antecedents of the Respondents.[22] The Respondents would still be liable to face trial in competent Courts where the charge sheets are filed.

29. Even if a crime is committed in one State, the accused can be tried in another State if the detrimental effect is in that State - ***Christopher Strassheim v. Milton Daily(supra)*** followed by the Federal Court of Appeals in Rocha[23] and Chua Han Mow[24]. It is also relevant to refer to the judgment of the House of Lords in ***Director of Public Prosecutions v. Stonehouse***[25]. A well known politician who was in financial difficulties simulated his death by drowning to start life afresh with a new identity in Australia. He made arrangement with five British insurance companies to issue a policy in his wife's name which would be payable to her on his death. After creating the circumstance of his drowning in Miami, he fled to Australia on a false passport. He was extradited to England where he was prosecuted in respect of several offences including attempt to obtain property by deception. It was held by the House of Lords that the English Courts had jurisdiction to try the offences against the Appellant on the ground that the instant consequences of the physical acts of the accused in United States of America was in England.

[22] **Bharat Shanti Lal Shah v. State of Maharashtra** (2003) Bom. L.R. (Cri.)947 (para 25-27) (to which Justice Bobde was a party) subsequently approved in **State of Maharashtra v. Bharat Shanti Lal Shah & Ors.** (2008) 13 SCC 5 (Para 29-33); **Om Prakash Shrivastava v. State of NCT of Delhi 164 (2009) DLT 218** (Para 33-36); **Jaisingh v. Maharashtra** (2003)BomCR(Cri) 1606 (para 19)

[23] **Rocha v. United States** 288 F.2d. 545 (1961) (p. 548), cert. denied 366 U.S. 948(1961)

[24] **Chua Han Mow v. United States** 730 F.2D. 1308 (1984) (p. 1312) cert. denied, 470 U.S.1031(1985)

[25] [1977] 2 All ER 909)

A 30. In **Lawson v. Fox & ors.**[26] the House of Lords decided the following points of law of general importance:

> 'Whether in deciding if an offence has been committed under section 96 (1) and 96 (3) (a) of the Transport Act 1968 it is right to take into account hours of work and hours of driving done and
B hours of rest taken outside Great Britain which if done or taken inside Great Britain would fall to be taken into account for the purpose of computing a driver's working day and hours of driving.

The Respondent/ driver was convicted for the offence of driving a vehicle for more than 10 hours in a working day, contrary to Section
C 96(1) of the 1968 Act and for working as a driver of a goods vehicle for a working day which exceeded 11 hours, contrary to Section 96(3)(a) of the 1968 Act. The Respondent was driving a goods vehicle on round trips by channel ferry between his employer's depot in England and a destination in France. The Respondent contended that the period during which he drove outside England i.e. in France, cannot be taken into
D account. It was held that this presumption based on international comity that Parliament, while enacting a penal statute, unless it uses plain words to the contrary, did not intend to make it an offence in English Law to do acts in places outside the territorial jurisdiction of the English Courts-unless the act is one which has harmful consequences in England. The
E Respondent was not charged with anything that he did in France but the fact that he was on duty in the course of his employment was taken into consideration for trying him in England.

31. The judgments of the House of Lords pertain to offences committed outside the country being tried when the consequences of
F such offences are within the country. We have referred to these judgments only to explain that the principle of 'Crime is local' is not applicable where the detrimental effect is in another State which can try the offender. In any event, the Respondents are not being tried for the offences which are subject matter of charge sheets filed in the State of Uttar Pradesh. The cases in which charge sheets are filed in competent
G Courts outside Delhi shall be tried in those Courts and are taken into account only for determining the antecedents of the Respondents. Therefore, the submission on behalf of the Respondents that the crimes committed outside the State cannot be considered for any purpose

[26] [1974] 1 All ER 783

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whatsoever is rejected. The upshot of the above discussion is that there should be a minimum of two charge sheets of organized crime registered against the members of the syndicate either separately or jointly for the purpose of constituting a continuing unlawful activity. Charge sheets filed outside Delhi can also be taken into account.

32. However, we are in agreement with the submission of the learned Senior Counsel for the Respondents that an activity of organized crime in Delhi is a *sine qua non* for registration of a crime under MCOCA. In the absence of an organized crime being committed in Delhi, the accused cannot be prosecuted on the basis of charge sheets filed outside Delhi.

33. FIR No.122 of 2010 is registered under Sections 341, 506 read with Section 34 of the IPC. Section 341 IPC is punishable with a maximum sentence of one month, though it is cognizable offence. Section 506 IPC is a non-cognizable which was made a cognizable offence by a notification issued by the Delhi Government. This notification was quashed by the High Court of Delhi on 13.01.2003. A second notification for the same purpose was issued by the Delhi Government on 31.03.2004 which was challenged in W.P. (C) No.2596 of 2007. The High Court of Delhi initially stayed and ultimately struck down the second notification on 18.01.2016. As such, Section 506 IPC was a non-cognizable offence at the date of registration of the FIR and filing of the charge sheet. Only an unlawful activity which is a cognizable offence punishable with minimum sentence of three years or more would be a continuous unlawful activity under section 2(1)(d) of the Act. Hence, the FIR No.122 of 2010 cannot be taken into account.

34. FIR No.69 of 2007 was registered on the basis of information given by one Sudhir Singh, who is admittedly a resident of Plot No.103, Saket Nagar, Varanasi, Uttar Pradesh. He is a politician and a businessman and when he was on a trip to Delhi, he was threatened by the Respondents due to their business rivalry. Several facts pertaining to the illegal activities of the Respondents in Uttar Pradesh have been mentioned in the FIR. Sudhir Singh complained of extortion by the Respondents for payment of Rs.50 Lakhs as protection money. During the course of investigation, it was found that the call that was made on the mobile phone of Sudhir Singh was from a PCO at Varanasi. It appears from a close reading of the FIR and the charge sheet in FIR

A No.69 of 2007, that there was no criminal activity pertaining to organised crime within the territory of Delhi and the complaint was filed by the informant at Delhi only for the purpose of invoking MCOCA. We have thoroughly examined the material placed on record by the prosecution including the charge sheet and found that there is no mention of any property belonging to the Respondents in Delhi. We gave sufficient time to Shri Sidharth Luthra to show us anything from the record pertaining to possession of property by the Respondents in Delhi. After making enquiries with the authorities concerned, Mr. Luthra fairly submitted that the Respondents are not in possession of any property in Delhi. As there is no organised crime committed by the Respondents within the territory of Delhi, there is no cause of action for initiation of proceedings under MCOCA.

35. The Appeal is disposed of as follows:-

(a) The words 'competent Court' in Section 2*(d)* of MCOCA is not restricted to Courts in Delhi and charge sheets filed in Courts in other States can be taken into account for the purpose of constituting continuing unlawful activity;

(b) There cannot be a prosecution under MCOCA without an organised crime being committed within Delhi; and

(c) The judgment of the High Court is upheld though for different reasons.

Kalpana K. Tripathy Appeal disposed of.