

KAVITHA LANKESH

v.

STATE OF KARNATAKA & ORS.

(Criminal Appeal No. 1236 of 2021)

OCTOBER 21, 2021

**[A. M. KHANWILKAR, DINESH MAHESHWARI AND  
C. T. RAVIKUMAR, JJ.]**

*Karnataka Control of Organised Crimes Act, 2000: s.24 – Purport of – The purport of s.24 is that information regarding commission of an offence of organized crime under the 2000 Act can be recorded by a police officer only upon obtaining prior approval of the police officer not below the rank of the Deputy Inspector General of Police – What is crucial in this provision is the factum of recording of offence of organized crime and not of recording of a crime against an offender as such – Thus, only after registration of FIR, investigation for the concerned offence would proceed in which the details about the specific role and the identity of the persons involved in such offence can be unravelled and referred to in the chargesheet to be filed before the competent Court.*

*Karnataka Control of Organised Crimes Act, 2000: ss.3(1), 3(2), 3(3), 3(4) – For offence under ss.3(2), 3(3), 3(4), it is not essential that more than two chargesheets are filed against the person so named, before a competent court within the preceding period of ten years and that court has taken cognizance of such offence – That requirement applies essentially to an offence punishable only under s.3(1) of the 2000 Act – As regards offences punishable under ss.3(2), 3(3), 3(4) or 3(5), it can proceed against any person sans such previous offence registered against him, if there is material to indicate that he happens to be a member of the organized crime syndicate who had committed the offences in question and it can be established that there is material about his nexus with the accused who is a member of the organized crime syndicate.*

**Allowing the appeals, the Court**

**HELD: 1.1 The purport of section 24, upon its textual construct, posits that information regarding commission of an**

- A offence of organized crime under the 2000 Act can be recorded by a police officer only upon obtaining prior approval of the police officer not below the rank of the Deputy Inspector General of Police. That is the quintessence for recording of offence of organized crime under the Act by a police officer. What is crucial in this provision is the factum of recording of offence of organized crime and not of recording of a crime against an offender as such. It is cardinal to observe that only after registration of FIR, investigation for the concerned offence would proceed — in which the details about the specific role and the identity of the persons involved in such offence can be unravelled and referred to in the chargesheet to be filed before the competent Court. [Paras 19, 20][323-D-F, H; 324-A]

- 1.2 Concededly, the original FIR registered in the present case was for an ordinary crime of murder against unknown persons. At the relevant time, the material regarding offence D having been committed by an organized crime syndicate was not known. That information came to the fore only after investigation of the offence by the SIT, as has been mentioned in the report submitted to the Commissioner of Police, Bengaluru City for seeking his prior approval to invoke Section 3 of the 2000 Act.

E Once again, at this stage, the Commissioner of Police had focussed only on the factum of information regarding the commission of organized crime by an organized crime syndicate and on being *prima facie* satisfied about the presence of material on record in that regard, rightly proceeded to accord prior approval for invoking Section 3 of the 2000 Act. The prior approval was not F for registering crime against individual offenders as such, but for recording of information regarding commission of an offence of organized crime under the 2000 Act. Therefore, the specific role of the concerned accused is not required to be and is not so mentioned in the stated prior approval. That aspect would be unravelled during the investigation, after registration of offence G of organized crime. Notably, the High Court, without analysing the material presented along with chargesheet on the basis of which cognizance has been taken by the competent Court including against the writ petitioner-M, concerning commission of organized crime by the organized crime syndicate of which he
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is allegedly a member, committed manifest error and exceeded its jurisdiction in quashing the chargesheet filed before the competent Court *qua* the writ petitioner-M regarding offences under Section 3(1)(i), 3(2), 3(3) and 3(4) of the 2000 Act. [Paras 21, 22][324-B-G]

*State (NCT of Delhi) v. Brijesh Singh @ Arun Kumar & Anr.* (2017) 10 SCC 779 : [2017] 11 SCR 899; *State of Maharashtra & Ors. v. Lalit Somdatta Nagpal & Anr.* (2007) 4 SCC 171 : [2007] 2 SCR 473 – distinguished.

2.1 The fact that the Investigating Agency was unable to collect material during investigation against the writ petitioner-M for offence under Section 3(1) of the 2000 Act, does not mean that the information regarding commission of a crime by him within the meaning of Section 3(2), 3(3) or 3(4) of the 2000 Act cannot be recorded and investigated against him as being a member of the organized crime syndicate and/or having played role of an abettor, being party to the conspiracy to commit organized crime or of being a facilitator, as the case may be. For the latter category of offence, it is not essential that more than two chargesheets have been filed against the person so named, before a competent court within the preceding period of ten years and that court had taken cognizance of such offence. That requirement applies essentially to an offence punishable only under Section 3(1) of the 2000 Act. [Para 23][325-D-F]

2.2 As regards offences punishable under Section 3(2), 3(3), 3(4) or 3(5), it can proceed against any person *sans* such previous offence registered against him, if there is material to indicate that he happens to be a member of the organized crime syndicate who had committed the offences in question and it can be established that there is material about his nexus with the accused who is a member of the organized crime syndicate. [Para 24] [325-G; 326-A]

2.3 The High Court in the present case was essentially concerned with the legality of prior approval granted by the Commissioner of Police, Bengaluru City dated 14.08.2018 for invoking Section 3 of the 2000 Act and thus, to allow recording of information regarding commission of offence of organized crime under the 2000 Act and to investigate the same. While considering

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- A the proposal for grant of prior approval under Section 24(1)(a) of the 2000 Act, what is essential is the satisfaction of the competent authority that the material placed before him does reveal presence of credible information regarding commission of an offence of organized crime by the organized crime syndicate and, therefore, allow invocation of Section 3 of the 2000 Act. As a consequence of which, investigation of that crime can be taken forward by the Investigating Agency and chargesheet can be filed before the concerned Court and upon grant of sanction by the competent authority under Section 24(2), the competent Court can take cognizance of the case. [Para 25][326-G; 327-A-C]
- C 3.1 At the stage of granting prior approval under Section 24(1)(a) of the 2000 Act, therefore, the competent authority is not required to wade through the material placed by the Investigating Agency before him along with the proposal for grant of prior approval to ascertain the specific role of each accused.
- D The competent authority has to focus essentially on the factum whether the information/material reveals the commission of a crime which is an organized crime committed by the organized crime syndicate. In that, the prior approval is *qua* offence and not the offender as such. As long as the incidents referred to in earlier crimes are committed by a group of persons and one common individual was involved in all the incidents, the offence under the 2000 Act can be invoked. [Para 26][327-D-F]
- F 3.2 This Court in *Prasad Shrikant Purohit* in paragraphs 61 and 98 expounded that at the stage of taking cognizance, the competent Court takes cognizance of the offence and not the offender. This analogy applies even at the stage of grant of prior approval for invocation of provisions of the 2000 Act. The prior sanction under Section 24(2), however, may require enquiry into the specific role of the offender in the commission of organized crime, namely, he himself singly or jointly or as a member of the organized crime syndicate indulged in commission of the stated offences so as to attract the punishment provided under Section 3(1) of the 2000 Act. However, if the role of the offender is merely that of a facilitator or of an abettor as referred to in Section 3(2), 3(3), 3(4) or 3(5), the requirement of named person being involved in more than two chargesheets registered against him in the past
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is not relevant. Regardless of that, he can be proceeded under the 2000 Act, if the material collected by the Investigating Agency reveals that he had nexus with the accused who is a member of the organized crime syndicate or such nexus is related to the offence in the nature of organized crime. Thus, he need not be a person who had direct role in the commission of an organized crime as such. [Para 26][327-F-H; 328-A-B]

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4. *A priori*, the conclusion reached by the High Court in partly allowing the writ petition filed by the writ petitioner-M, is manifestly wrong and cannot be countenanced. In any case, the High Court has completely glossed over the crucial fact that the writ petition was filed only after the sanction was accorded by the competent authority under Section 24(2) and more so cognizance was also taken by the competent Court of the offence of organized crime committed by the members of organized crime syndicate including the writ petitioner - to which there was no challenge. The High Court has not analysed the efficacy of these developments as disentitling the writ petitioner belated relief claimed in respect of prior approval under Section 24(1)(a) of the 2000 Act. Further, the High Court has clearly exceeded its jurisdiction in quashing the chargesheet filed against the writ petitioner-M for offences punishable under Section 3(2), 3(3) and 3(4) of the 2000 Act at this stage [of prior approval under Section 24(1)(a)]. [Para 27][328-C-E]

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*Ranjitsingh Brahmajeetsing Sharma v. State of Maharashtra* (2005) 5 SCC 294 : [2005] 3 SCR 345 – relied on.

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*Muniraju R. v. State of Karnataka & Ors. Criminal Petition No. 391 of 2019 decided on 05.02.2019 by the High Court of Karnataka at Bengaluru; Vinod G. Asrani v. State of Maharashtra* (2007) 3 SCC 633 : [2007] 2 SCR 1023; *John D'Souza v. Assistant Commissioner of Police Manu/MH/0797/2007; Prasad Shrikant Purohit v. State of Maharashtra & Anr.* (2015) 7 SCC 440 : [2015] 8 SCR 575; *Govind Sakhararam Ubhe v. State of Maharashtra* 2009 SCC OnLine Bom 770; *Digvijay Saroha v. State* 2019 SCC OnLine Del 10324 – referred to.

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A	<u>Case Law Reference</u>		
	[2007] 2 SCR 473	distinguished	para 8
	[2017] 11 SCR 899	distinguished	para 8
	[2007] 2 SCR 1023	referred to	para 9
B	[2015] 8 SCR 575	referred to	para 9
	[2005] 3 SCR 345	relied on	para 24
	CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1236 of 2021.		
C	From the Judgment and Order dated 22.04.2021 of the High Court of Karnataka at Bengaluru in W.P. No. 9717 of 2019 (GM-RES).		
	With Criminal Appeal No. 1237 of 2021.		
D	Huzefa Ahmedi, Basava Prabhu S. Patil, Sr. Advs., Ms. Aparna Bhat, V. N. Raghupathy, Md. Apzal Ansari, Shailesh Madiyal, Sudhanshu Prakash, Ms. Rakhi M., Vaibhav Sabhrawal, Ms. Sruthi Iyer, Ms. Neha Jain, Advs. for the Appearing Parties.		
	The Judgment of the Court was delivered by		
E	<b>A. M. KHANWILKAR, J.</b>		
	1. These appeals emanate from the judgment and order dated 22.04.2021 passed by the High Court of Karnataka at Bengaluru in Writ Petition No.9717 of 2019 (GM-RES), whereby the High Court partly allowed the writ petition and quashed the order bearing No.CRM(1)/ KCOCA/01/2018 dated 14.08.2018 issued by the Commissioner of Police,		
F	Bengaluru City according prior approval to invoke offences under Section 3 of the Karnataka Control of Organised Crimes Act, 2000 <sup>1</sup> against Mohan Nayak.N (private respondent herein) <sup>2</sup> being crime registered with Rajarajeshwari Nagar Police Station as FIR No.221/2017 dated 05.09.2017 and to enquire into the same.		
G	2. Shorn of unnecessary details, be it noted that the present appeals pertain to the incident which had occurred on 05.09.2017 in which one		

<sup>1</sup> for short, ‘the 2000 Act’

<sup>2</sup> Writ Petitioner before the High Court; not named in FIR No.221/2017 and preliminary chargesheet; shown as accused No.8 in the prior approval and as accused No.11 in the

H additional chargesheet.

Gauri Lankesh, who was a leading journalist, was shot dead by certain unknown assailants near her house at Rajarajeshwari Nagar, Bengaluru. Her sister-Kavitha Lankesh (appellant herein) rushed to the spot and after seeing her sister in a precarious condition, immediately lodged a complaint with the Rajarajeshwari Nagar Police Station, which came to be registered for offences punishable under Section 302 of the IPC and Section 25 of the Arms Act, 1959<sup>3</sup> being FIR No.221/2017 dated 05.09.2017. The investigation of the crime was thereafter entrusted to the Special Investigating Team<sup>4</sup> on 06.09.2017.

3. In the course of investigation, a preliminary chargesheet came to be filed against the concerned accused on 29.05.2018. The crime was then committed to the City Civil and Sessions Judge as CC No.14578 of 2018. The Investigating Officer had sought permission of the Magistrate to file an additional chargesheet under Section 173(8) of the Criminal Procedure Code as the investigation was still underway. The private respondent-Mohan Nayak.N came to be arrested on 18.07.2018 in connection with the stated crime. The further investigation revealed that the accused persons in Special CC No.872 of 2018 were involved in organized crime as a syndicate which attracted the provisions of Section 3 of the 2000 Act. The SIT submitted that report to the Chief Investigating Officer, who then sought approval of the Commissioner of Police, Bengaluru City vide proposal dated 07.08.2018, to invoke Section 3 of the 2000 Act concerning organized crime.

4. After due consideration of the stated report and the entire investigation papers and record of evidence collected by the SIT, the Commissioner of Police, Bengaluru City in exercise of powers under Section 24(1)(a) of the 2000 Act accorded prior approval for invoking Section 3 of the 2000 Act in respect of crime being FIR No.221/2017, vide communication dated 14.08.2018.

5. After completion of the investigation, the Additional Director General of Police and Commissioner of Police, Bengaluru City accorded sanction under Section 24(2) of the 2000 Act. The final police report then came to be filed on 23.11.2018 before the Special Court at Bengaluru, for offences punishable under Sections 302, 120B, 114, 118, 109, 201, 203, 204 and 35 of the IPC. Further charges were also invoked under Sections 25(1), 25(1B) and 27(1) of the Arms Act and Section 3(1)(i), 3(2), 3(3) and 3(4) of the 2000 Act. The additional chargesheet came to

<sup>3</sup> for short, ‘the Arms Act’

<sup>4</sup> for short, ‘the SIT’

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- A be filed against named accused Nos.1 to 18 before the Principal City Civil and Sessions Judge Court (CCH-1) in Special C.C.No.872 of 2018 under the stated provisions, in which private respondent-Mohan Nayak.N was named as accused. The Court then took cognizance on 17.12.2018.
6. It is only after the cognizance was taken by the competent Court, the private respondent-Mohan Nayak.N was advised to file Writ Petition No.9717 of 2019 before the High Court on 25.02.2019, for the following reliefs:

**“PRAYER**

- C WHEREFORE, the Petitioner above named most respectfully prays that this Hon’ble Court may be pleased to;
- (a) Issue a writ in the nature of certiorari or any other writ or order or direction, quashing the order dated: 14.08.2018 passed by the third Respondent herein in No.CRM(1) KCOCA/01/2018 thereby passing an order of approval under section 24(1)(a) of the Karnataka Control of Organised Crimes Act, 2000 (herein after referred to as KCOCA Act for short) to invoke the section 3 of the said Act in Crime No.221/2017 registered by the fifth Respondent herein for the offences punishable under section 302, 120B, 118, 114 read with section 35 of the Indian Penal Code and sections 3 and 25 of the Indian Arms Act and also the additional charge sheet filed by the fourth Respondent herein against the Petitioner in so far as section 3(i), 3(ii), 3(iii) and 3(iv) of the KCOCA Act, which are produced as ANNEXURES-A & B respectively; and
- (b) Grant such other and further reliefs as deems fit in the circumstances of the case in the interest of justice and equity.”

- G 7. The High Court vide impugned judgment noted that it was called upon to examine whether the impugned order dated 14.08.2018 issued by the Commissioner of Police, Bengaluru City in exercise of power under Section 24(1)(a) of the 2000 Act according prior approval to invoke Section 3 of the 2000 Act for investigation against concerned accused including writ petitioner-Mohan Nayak.N is legal and valid. In the context of that relief, the High Court noted the submissions made by the counsel H for the writ petitioner in the following words:

“7. Sri Gautham S. Bharadwaj, learned Counsel for the petitioner challenges the order Annexure-A granting permission under Section 24(1)(a) of the Act against the petition on the following grounds:

- (i) The petitioner was not involved in continuing unlawful activity as contemplated in Section 2(1)(d) of the Act;
- (ii) The charge sheet allegations do not attract organized crime as contemplated under Section 2(e) of the Act; &
- (iii) By such unlawful invocation of Section 24(1)(a) of the Act, personal liberty of the petitioner is violated, thereby the order Annexure-A is violative of Article 21 of the Constitution of India, 1950.”

8. The High Court also adverted to the three decisions pressed into service by the writ petitioner-Mohan Nayak.N, namely, *State of Maharashtra & Ors. vs. Lalit Somdatta Nagpal & Anr.*<sup>5</sup>, *State (NCT of Delhi) vs. Brijesh Singh @ Arun Kumar & Anr.*<sup>6</sup> and *Muniraju R. vs. State of Karnataka & Ors.*<sup>7</sup>.

9. The High Court then proceeded to note the objections taken by the prosecution in the following words:

“9. Sri H.S. Chandramouli, learned Special Public Prosecutor opposes the petition on the following grounds:

- (i) There is no dispute that accused Nos.7 and 10 were involved in two criminal cases each, accused Nos.9, 1 to 4 were involved in one criminal case each. The said offences were cognizable offences and the cognizance was taken in those cases;
- (ii) If one of the members of the organized crime syndicate is involved in more than one case and the charge sheet was filed, Section 2(d) of the Act is attracted. Therefore even if the petitioner was not involved in other cases, respondent No.3 has rightly invoked Section 2(d) of the Act;
- (iii) Annexure-A shows that the approval was granted for investigation on due application of mind;

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<sup>5</sup> (2007) 4 SCC 171

<sup>6</sup> (2017) 10 SCC 779

<sup>7</sup> Criminal Petition No.391 of 2019 decided on 05.02.2019 by the High Court of Karnataka at Bengaluru

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- A (iv) After the charge sheet was filed, the trial Court has taken cognizance of the offences and the petitioner has not sought quashing of the charge sheet or the order taking cognizance, therefore challenge to Annexure-A is not maintainable;
- B (v) The petitioner filed Crl.P.No.8325/2018 seeking bail. In that petition, he raised the same contentions. This Court while passing the order rejected the said contention and that order has attained finality. Therefore it is not open to the petitioner to challenge Annexure-A on the same grounds;
- C (vi) The petitioner did not file any application for discharge on the same grounds, under such circumstances, Annexure-A is vexatious; &
- (vii) The judgments relied upon by learned counsel for the petitioner are not applicable.”

The High Court then adverted to the decisions relied upon by the prosecution, namely, *Vinod G Asrani vs. State of Maharashtra*<sup>8</sup>, *John D'Souza vs. Assistant Commissioner of Police*<sup>9</sup>, *Prasad Shrikant Purohit vs. State of Maharashtra & Anr.*<sup>10</sup>, *Govind Sakharam Ubhe vs. State of Maharashtra*<sup>11</sup>, *Digvijay Saroha vs. State*<sup>12</sup> and *K.T. Naveen Kumar @ Naveen vs. State of Karnataka*<sup>13</sup>.

E 10. After having noted the rival submissions, the High Court posed a question to itself whether Section 3 of the 2000 Act applies to the writ petitioner-Mohan Nayak.N?

F 11. The High Court noted the role of the writ petitioner-Mohan Nayak.N, as imputed by the prosecution, that he had acted on instructions of co-accused Amol Kale<sup>14</sup> to take a house on rent in Tagachukuppe, Kumbalgodu in the guise of running an acupressure clinic, which was in fact meant to accommodate the members of the syndicate and even after commission of murder of Gauri Lankesh, he harboured the actual assailants therein. The High Court then noted the fact that accused Nos.3,

G <sup>8</sup> (2007) 3 SCC 633

<sup>9</sup> Manu/MH/0797/2007

<sup>10</sup> (2015) 7 SCC 440

<sup>11</sup> 2009 SCC OnLine Bom 770

<sup>12</sup> 2019 SCC OnLine Del 10324

<sup>13</sup> Crl. P.No.5507/2019 decided on 10.01.2020 by the High Court of Karnataka at Bengaluru

H <sup>14</sup> Not named in FIR No.221/2017 and in the preliminary chargesheet; shown as accused No.3 in the prior approval and as accused No.1 in the additional chargesheet.

5, 7 to 9, 11, 13 to 16 were not chargesheeted in any single case for cognizable offences, nor cognizance of such offences had been taken by a competent court against them as required under Section 2(1)(d) of the 2000 Act. The High Court then noticing the exposition in *Lalit Somdatta Nagpal*<sup>15</sup>, *Brijesh Singh*<sup>16</sup> and *Muniraju R.*<sup>17</sup>, opined that in absence of at least two chargesheets filed against the writ petitioner-Mohan Nayak.N in respect of specified offences and of which cognizance had been taken by the competent Court as required to attract the offence of organized crime, he was not engaged in continuing unlawful activity. On this finding, the High Court concluded that the writ petitioner-Mohan Nayak.N cannot be proceeded further and thus, partly allowed the writ petition by not only quashing the order dated 14.08.2018 of the Commissioner of Police, Bengaluru City according approval for invoking Section 3 of the 2000 Act, but also the chargesheet filed against the writ petitioner-Mohan Nayak.N for offences punishable under Section 3(1)(i), 3(2), 3(3) and 3(4) of the 2000 Act. As regards the decisions relied upon by the prosecution, the High Court noted that the same were of no avail to the prosecution.

12. Being aggrieved, the complainant-Kavitha Lankesh as well as the State of Karnataka have filed separate appeals before this Court questioning the correctness of the view taken by the High Court. The arguments as canvassed before the High Court have been reiterated by both sides including reliance has been placed on the reported decisions referred hitherto.

13. We have heard Mr. Huzefa Ahmed, learned Senior Counsel appearing for the appellant-Kavitha Lankesh, Mr. V.N. Raghupathy, learned Counsel for the State of Karnataka and Mr. Basava Prabhu S. Patil, learned Senior Counsel appearing for the private respondent.

14. To recapitulate the relevant factual background, be it noted that FIR under Section 154 of the Criminal Procedure Code was registered with Rajarajeshwari Nagar Police Station being Crime No.221/2017 dated 05.09.2017 initially for offences punishable under Section 302 of the IPC and Section 25 of the Arms Act at the instance of the appellant-Kavitha Lankesh against unknown persons. Considering the nature of offence, the Government of Karnataka constituted a SIT vide

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<sup>15</sup> supra at Footnote No.5

<sup>16</sup> supra at Footnote No.6

<sup>17</sup> supra at Footnote No.7

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- A order dated 06.09.2017 headed by Mr. B.K. Singh, IPS, IGP, Intelligence, Bengaluru. Mr. M.N. Anucheth, IPS, DCP (West) was nominated as the Chief Investigating Officer of the SIT. The SIT after taking over the investigation submitted preliminary chargesheet dated 29.05.2018 against accused K.T. Naveen Kumar @ Naveen<sup>18</sup> before the concerned Court
- B for offences punishable under Sections 302, 114, 118, 120B and 35 of the IPC read with Sections 3 and 25 of the Arms Act. The preliminary chargesheet was accompanied with documents and list of witnesses. On the basis of material collected during further investigation, report dated 07.08.2018 was submitted by the Chief Investigating Officer of the SIT to the Commissioner of Police, Bengaluru City for according
- C prior approval for invoking provisions of the 2000 Act in respect of crime already registered. The Commissioner of Police, Bengaluru City after going through the stated report, entire investigation papers and record of evidence collected until then, was satisfied that the accused Parshuram Wagmore<sup>19</sup>, Amith Baddi<sup>20</sup>, and Ganesh Miskin<sup>21</sup> were involved in more
- D than two specified offences in the past through their illegal actions of sedition, promoting enmity between two groups of people, inciting communal violence, assaulting and injuring public servants, damaging public property and causing grave disturbance to public order. The Commissioner of Police also recorded his satisfaction that K.T. Naveen Kumar @ Naveen, Sujith Kumar<sup>22</sup>, Amol Kale and Amit Degvekar<sup>23</sup>,
- E have jointly committed an offence having punishment of three years or more within the preceding period of ten years and the chargesheet(s) had been filed against them before the competent Court and cognizance thereof has been taken. He then formed an opinion that these accused had jointly conspired to assassinate one Prof. K.S. Bhagawan for expressing his views which were inimical to that of their ideology. They intended to instil fear in the hearts and minds of those whose views

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<sup>18</sup> Not named in FIR No.221/2017; shown as accused No.1 in the preliminary chargesheet and in prior approval and as accused No.17 in the additional chargesheet.

<sup>19</sup> Not named in FIR No.221/2017 and in the preliminary chargesheet; shown as accused No.7 in the prior approval and as accused No.2 in the additional chargesheet.

G <sup>20</sup> Not named in FIR No.221/2017 and in the preliminary chargesheet; shown as accused No.10 in the prior approval and as accused No.4 in the additional chargesheet.

<sup>21</sup> Not named in FIR No.221/2017 and in the preliminary chargesheet; shown as accused No.9 in the prior approval and as accused No.3 in the additional chargesheet.

<sup>22</sup> Not named in FIR No.221/2017 and in the preliminary chargesheet; shown as accused No.2 in the prior approval and as accused No.13 in the additional chargesheet.

H <sup>23</sup> Not named in FIR No.221/2017 and in the preliminary chargesheet; shown as accused No.4 in the prior approval and as accused No.5 in the additional chargesheet.

were antithesis to their own views and stifle the fundamental right of free speech and expression. The Commissioner of Police was also convinced that the arrested accused Nos.1 to 12 and the absconding accused No.5 were active members of an organized crime syndicate and have committed the present offence in furtherance of their organized crime activity in order to promote insurgency. The Commissioner of Police adverted to the findings in the investigation record revealing that one Rajesh D. Bangera<sup>24</sup> gave training in arms to various members of the syndicate since 2012 at various places in and around Karnataka and Maharashtra. After having taken note of these facts, the Commissioner of Police recorded his satisfaction in the following words:

“Investigation findings have clearly revealed that these members of the organized crime syndicate were in constant touch with one another and actively underwent arms training, arms shooting practice, crude bomb making and indoctrination. They met, conspired and trained at various places in and around Karnataka and Maharashtra with the intention of promoting insurgency. Documents seized during the investigation clearly reveal the intention of the accused to assassinate 8 writers/thinkers of Karnataka and 26 other writers/thinkers from the rest of the country.

Documents seized in the course of investigation conducted reveal the plans of how the organized crime syndicate intended to cause grave disturbance to public order during the release of a movie titled ‘Padmaavat’ by attacking films theatres where the said movie would have been exhibited by the use of deadly substances like petrol bombs, acid etc. and cause bodily harm to the viewers and economically hurt the film distributors. These documents further reveal the intention of the syndicate to procure and use RDX, petrol bombs, acids, poisons and other incendiary and chemical materials.

Investigation findings have *prima facie* revealed that these members of the organized crime syndicate conspired and murdered Ms. Gauri Lankesh to further their cause and to promote insurgency.

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<sup>24</sup> Not named in FIR No.221/2017 and in the preliminary chargesheet; shown as accused No.11 in the prior approval and as accused No.8 in the additional chargesheet.

- A              Thus, on perusal and evaluation of the entire material brought on record and also taking into consideration the factual circumstances of the case including the proximity and time gap in committing the crimes and having applied my mind, I am satisfied and convinced that the arrested and wanted accused have committed the offence as defined in section 2(1) of the Karnataka Control of Organized Crimes Act, 2000.
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NOW, THEREFORE, in exercise of the powers conferred upon me by Section 24(1)(a) of the said Act, I, T. Suneel Kumar, IPS, Additional Director General of Police and Commissioner of Police, Bengaluru City hereby grant/accord my prior approval to invoke Section 3 of The Karnataka Control of Organized Crimes Act 2000, to Sri M.N. Anucheth, IPS, DCP (Administration), Bengaluru City and Chief Investigating Officer (Special Investigation Team) in the Bengaluru City Rajarajeshwari Nagar Police Station Crime No. 221/217 u/s 302, 120(B), 118, 114 r/w

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- D              35 of Indian Penal Code and 3, 25 of Indian Arms Act.

Sri M.N. Anucheth, Chief Investigating Officer, shall scrupulously follow and comply with the provisions of The Karnataka Control of Organized Crimes Act, 2000.

- E              This order given under my signature and seal today i.e. 14<sup>th</sup> August, 2018."

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15. It is plain that tangible material was placed before the Commissioner regarding information about the commission of an organized crime by the members of organized crime syndicate, which warranted grant of prior approval to invoke Section 3 of the 2000 Act.
- This prior approval was assailed before the High Court by way of writ petition filed much after the appropriate authority had already accorded sanction and the competent court had taken cognizance of that crime on 17.12.2018.

16. The High Court opened the judgment by noting that the challenge is to the order dated 14.08.2018 of the Commissioner of Police, Bengaluru City granting approval to invoke Section 3 of the 2000 Act. In the latter part of the judgment, however, it posed a wrong question to itself which was obviously not relevant at this stage — as to whether Section 3 of the 2000 Act applies to the writ petitioner-Mohan Nayak.N? Notably, the High Court was not called upon nor has it analysed the entire material collected by the Investigating Agency, which had been

made part of the chargesheet filed before the competent Court and in A respect of which cognizance is also taken.

17. For the time being for deciding the matter in issue, there is no need to advert to the contents of the chargesheets and the material collated during the investigation by the SIT against each of the accused in respect of which cognizance has already been taken by the competent B Court.

18. The moot question to be answered in these appeals is about the purport of Section 24 of the 2000 Act. Section 24(1)(a), which is crucial for our purpose, reads thus:

**“24. Cognizance of and investigation into an offence.-**(1) C  
Notwithstanding anything contained in the Code, -

(a) No information about the commission of an offence of organized 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 Deputy Inspector General of Police; D

.....”

19. The purport of this section, upon its textual construct, posits that information regarding commission of an offence of organized crime under the 2000 Act can be recorded by a police officer only upon obtaining prior approval of the police officer not below the rank of the Deputy Inspector General of Police. That is the quintessence for recording of offence of organized crime under the Act by a police officer. E

20. What is crucial in this provision is the factum of recording of offence of organized crime and not of recording of a crime against an offender as such. Further, the right question to be posed at this stage is: whether prior approval accorded by the competent authority under Section 24(1)(a) is valid? In that, whether there was discernible information about commission of an offence of organized crime by known and unknown persons as being members of the organized crime syndicate? Resultantly, what needed to be enquired into by the appropriate authority (in the present case, Commissioner of Police) is: whether the factum of commission of offence of organized crime by an organized crime syndicate can be culled out from the material placed before him for grant of prior approval? That alone is the question to be enquired into even by the Court at this stage. It is cardinal to observe that only after F G H

- A registration of FIR, investigation for the concerned offence would proceed — in which the details about the specific role and the identity of the persons involved in such offence can be unravelled and referred to in the chargesheet to be filed before the competent Court.

21. Concededly, the original FIR registered in the present case was for an ordinary crime of murder against unknown persons. At the relevant time, the material regarding offence having been committed by an organized crime syndicate was not known. That information came to the fore only after investigation of the offence by the SIT, as has been mentioned in the report submitted to the Commissioner of Police, Bengaluru City for seeking his prior approval to invoke Section 3 of the 2000 Act. Once again, at this stage, the Commissioner of Police had focussed only on the factum of information regarding the commission of organized crime by an organized crime syndicate and on being *prima facie* satisfied about the presence of material on record in that regard, rightly proceeded to accord prior approval for invoking Section 3 of the 2000 Act. The prior approval was not for registering crime against individual offenders as such, but for recording of information regarding commission of an offence of organized crime under the 2000 Act. Therefore, the specific role of the concerned accused is not required to be and is not so mentioned in the stated prior approval. That aspect would be unravelled during the investigation, after registration of offence of organized crime. The High Court, thus, examined the matter by applying erroneous scale. The observations made by the High Court in the impugned judgment clearly reveal that it has glossed over the core and tangible facts.

22. Notably, the High Court, without analysing the material presented along with chargesheet on the basis of which cognizance has been taken by the competent Court including against the writ petitioner-Mohan Nayak.N, concerning commission of organized crime by the organized crime syndicate of which he is allegedly a member, committed manifest error and exceeded its jurisdiction in quashing the chargesheet filed before the competent Court *qua* the writ petitioner-Mohan Nayak.N regarding offences under Section 3(1)(i), 3(2), 3(3) and 3(4) of the 2000 Act. The High Court did so being impressed by the exposition of this Court in *Lalit Somdatta Nagpal*<sup>25</sup>, in particular paragraph 63 thereof. Indeed, that exposition would have bearing only if the entire material

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H <sup>25</sup> supra at Footnote No.5

was to be analysed by the High Court to conclude that the facts do not disclose justification for application of provisions of the 2000 Act including *qua* the writ petitioner-Mohan Nayak.N, provided he was being proceeded only for offence of organized crime punishable under Section 3(1) of the 2000 Act. For, the reported decision deals with the argument regarding invocation of provision analogous to Section 3(1) of the 2000 Act. Be it noted that requirement of more than two chargesheets is in reference to the continuing unlawful activities of the organized crime syndicate and not *qua* individual member thereof. Reliance was also placed on **Brijesh Singh**<sup>26</sup>. Even this decision is of no avail to the private respondent-Mohan Nayak.N for the same reason noted whilst distinguishing **Lalit Somdatta Nagpal**<sup>27</sup>. Further, the questions considered in that case, as can be discerned from paragraph 12 of the reported decision, are regarding jurisdiction of the competent Court to take notice of chargesheets filed against the accused outside the State. It is not an authority on the issue under consideration.

23. We may hasten to add that the fact that the Investigating Agency was unable to collect material during investigation against the writ petitioner-Mohan Nayak.N for offence under Section 3(1) of the 2000 Act, does not mean that the information regarding commission of a crime by him within the meaning of Section 3(2), 3(3) or 3(4) of the 2000 Act cannot be recorded and investigated against him as being a member of the organized crime syndicate and/or having played role of an abettor, being party to the conspiracy to commit organized crime or of being a facilitator, as the case may be. For the latter category of offence, it is not essential that more than two chargesheets have been filed against the person so named, before a competent court within the preceding period of ten years and that court had taken cognizance of such offence. That requirement applies essentially to an offence punishable only under Section 3(1) of the 2000 Act.

24. As regards offences punishable under Section 3(2), 3(3), 3(4) or 3(5), it can proceed against any person *sans* such previous offence registered against him, if there is material to indicate that he happens to be a member of the organized crime syndicate who had committed the offences in question and it can be established that there is material about his nexus with the accused who is a member of the organized crime

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<sup>26</sup> supra at Footnote No.6 (paragraph 25)

<sup>27</sup> supra at Footnote No.5

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- A syndicate. This position is expounded in the case of *Ranjitsingh Brahmajeetsing Sharma vs. State of Maharashtra*<sup>28</sup> which has been quoted with approval in paragraph 85 of the judgment in *Prasad Shrikant Purohit*<sup>29</sup>. The same reads thus:
- B “**85.** A reading of para 31 in *Ranjitsingh Brahmajeetsing Sharma case*<sup>30</sup> shows that in order to invoke Mcoca even if a person may or may not have any direct role to play as regards the commission of an organised crime, if a nexus either with an accused who is a member of an “organised crime syndicate” or with the offence in the nature of an “organised crime” is established that would attract the invocation of Section 3(2) of Mcoca. **Therefore, even if one may not have any direct role to play relating to the commission of an “organised crime”, but when the nexus of such person with an accused who is a member of the “organised crime syndicate” or such nexus is related to the offence in the nature of “organised crime” is established by showing his involvement with the accused or the offence in the nature of such “organised crime”, that by itself would attract the provisions of Mcoca.** The said statement of law by this Court, therefore, makes the position clear as to in what circumstances Mcoca can be applied in respect of a person depending upon his involvement in an organised crime in the manner set out in the said paragraph. In paras 36 and 37, **it was made further clear that such an analysis to be made to ascertain the invocation of Mcoca against a person need not necessarily go to the extent for holding a person guilty of such offence and that even a finding to that extent need not be recorded.** But such findings have to be necessarily recorded for the purpose of arriving at an objective finding on the basis of materials on record only for the limited purpose of grant of bail and not for any other purpose. Such a requirement is, therefore, imminent under Section 21(4)(b) of Mcoca.”
- G (emphasis supplied)

25. It is not necessary to multiply authorities in this regard. Suffice it to observe that the High Court in the present case was essentially

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<sup>28</sup> (2005) 5 SCC 294

<sup>29</sup> supra at Footnote No.10

H <sup>30</sup> supra at Footnote No.28

concerned with the legality of prior approval granted by the Commissioner of Police, Bengaluru City dated 14.08.2018 for invoking Section 3 of the 2000 Act and thus, to allow recording of information regarding commission of offence of organized crime under the 2000 Act and to investigate the same. As aforesaid, while considering the proposal for grant of prior approval under Section 24(1)(a) of the 2000 Act, what is essential is the satisfaction of the competent authority that the material placed before him does reveal presence of credible information regarding commission of an offence of organized crime by the organized crime syndicate and, therefore, allow invocation of Section 3 of the 2000 Act. As a consequence of which, investigation of that crime can be taken forward by the Investigating Agency and chargesheet can be filed before the concerned Court and upon grant of sanction by the competent authority under Section 24(2), the competent Court can take cognizance of the case.

26. At the stage of granting prior approval under Section 24(1)(a) of the 2000 Act, therefore, the competent authority is not required to wade through the material placed by the Investigating Agency before him along with the proposal for grant of prior approval to ascertain the specific role of each accused. The competent authority has to focus essentially on the factum whether the information/material reveals the commission of a crime which is an organized crime committed by the organized crime syndicate. In that, the prior approval is *qua* offence and not the offender as such. As long as the incidents referred to in earlier crimes are committed by a group of persons and one common individual was involved in all the incidents, the offence under the 2000 Act can be invoked. This Court in *Prasad Shrikant Purohit*<sup>31</sup> in paragraphs 61 and 98 expounded that at the stage of taking cognizance, the competent Court takes cognizance of the offence and not the offender. This analogy applies even at the stage of grant of prior approval for invocation of provisions of the 2000 Act. The prior sanction under Section 24(2), however, may require enquiry into the specific role of the offender in the commission of organized crime, namely, he himself singly or jointly or as a member of the organized crime syndicate indulged in commission of the stated offences so as to attract the punishment provided under Section 3(1) of the 2000 Act. However, if the role of the offender is merely that of a facilitator or of an abettor as referred to in Section 3(2), 3(3), 3(4)

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<sup>31</sup> supra at Footnote No.10

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- A or 3(5), the requirement of named person being involved in more than two chargesheets registered against him in the past is not relevant. Regardless of that, he can be proceeded under the 2000 Act, if the material collected by the Investigating Agency reveals that he had nexus with the accused who is a member of the organized crime syndicate or such nexus is related to the offence in the nature of organized crime.
- B Thus, he need not be a person who had direct role in the commission of an organized crime as such.

27. *A priori*, the conclusion reached by the High Court in partly allowing the writ petition filed by the writ petitioner-Mohan Nayak.N, is

- C manifestly wrong and cannot be countenanced. In any case, the High Court has completely glossed over the crucial fact that the writ petition was filed only after the sanction was accorded by the competent authority under Section 24(2) and more so cognizance was also taken by the competent Court of the offence of organized crime committed by the members of organized crime syndicate including the writ petitioner — to
- D which there was no challenge. The High Court has not analysed the efficacy of these developments as disentitling the writ petitioner belated relief claimed in respect of prior approval under Section 24(1)(a) of the 2000 Act. Further, the High Court has clearly exceeded its jurisdiction in quashing the chargesheet filed against the writ petitioner-Mohan Nayak.N for offences punishable under Section 3(2), 3(3) and 3(4) of the 2000 Act at this stage [of prior approval under Section 24(1)(a)].

28. Taking any view of the matter, therefore, these appeals deserve to be allowed and the impugned judgment and order of the High Court needs to be set aside.

- F 29. While parting, we may clarify that rejection of writ petition filed by the private respondent-Mohan Nayak.N will not come in his way in pursuing other remedies as may be available to him and permissible in law. We may not be understood to have expressed any opinion either way on the merits of such remedy. In other words, this judgment is limited to the consideration of question whether prior approval dated
- G 14.08.2018 granted by the Commissioner of Police, Bengaluru City, in connection with offence registered as Crime No.221/2017, is valid or otherwise. We have held that the same does not suffer from any infirmity including *qua* private respondent-Mohan Nayak.N having noted his intimate nexus with the brain behind the entire event being none other
- H than Amol Kale and master arms trainer Rajesh D. Bangera who are

part and parcel of an organized crime syndicate and committed organized A crimes as such.

30. In view of the above, the appeals are allowed. The impugned judgment and order dated 22.04.2021 passed by the High Court is set aside and the writ petition filed by Mohan Nayak.N stands dismissed.

Pending application(s), if any, stands disposed of. B

Devika Gujral

Appeals allowed.