

IN THE HIGH COURT OF DELHI

Crl. Appeal No. 28/2007 and Crl. M.A. Nos. 336 and 338/2007

Decided On: 29.01.2008

Appellants: **Kamal Jeet Singh (In Judicial Custody)**

Vs.

Respondent: **State**

Hon'ble Judges:

Reva Khetrapal, J.

Counsels:

For Appellant/Petitioner/Plaintiff: Aman Lekhi, Sr. Adv. Madhukar Pandey, Jaspreet S. Rai, Rajan K., Chourasia Rakesh Kumar and Rohit Nagpal, Advs.

For Respondents/Defendant: Mukta Gupta, Standing Counsel

Acts/Rules/Orders:

Maharashtra Control of Organized Crimes Act, 1999 - Section 2, Maharashtra Control of Organized Crimes Act, 1999 - Section 2(1), Maharashtra Control of Organized Crimes Act, 1999 - Section 3, Maharashtra Control of Organized Crimes Act, 1999 - Section 3(1), Maharashtra Control of Organized Crimes Act, 1999 - Section 3(4), Maharashtra Control of Organized Crimes Act, 1999 - Section 3(5), Maharashtra Control of Organized Crimes Act, 1999 - Section 4, Maharashtra Control of Organized Crimes Act, 1999 - Section 12, Maharashtra Control of Organized Crimes Act, 1999 - Section 14, Maharashtra Control of Organized Crimes Act, 1999 - Section 18, Maharashtra Control of Organized Crimes Act, 1999 - Section 18(1), Maharashtra Control of Organized Crimes Act, 1999 - Section 18(4), Maharashtra Control of Organized Crimes Act, 1999 - Section 23(1), Maharashtra Control of Organized Crimes Act, 1999 - Section 23(2); Immoral Traffic (Prevention) Act, 1956 - Section 2, Immoral Traffic (Prevention) Act, 1956 - Section 4, Immoral Traffic (Prevention) Act, 1956 - Section 5, Immoral Traffic (Prevention) Act, 1956 - Section 8, Immoral Traffic (Prevention) Act, 1956 - Section 9; Immoral Traffic (Prevention) (Amendment) Act, 1986; Contract Act; Narcotics Drugs and Psychotropic Substances Act - Section 21; Terrorist and Disruptive Activities (Prevention) Rules, 1987 - Rule 15; Prevention of Money Laundering Act, 2002; Cattle-Trespass Act, 1871; Essential Commodities Act, 1955

- Section 3, Essential Commodities Act, 1955 - Section 7; Petroleum Storage and Distribution Act; Indian Evidence Act, 1872; Indian Penal Code - Section 34, Indian Penal Code - Section 120B, Indian Penal Code - Section 146, Indian Penal Code - Section 153A, Indian Penal Code - Section 255, Indian Penal Code - Section 249, Indian Penal Code - Section 260, Indian Penal Code - Section 263, Indian Penal Code - Section 376, Indian Penal Code - Section 400, Indian Penal Code - Section 401, Indian Penal Code - Section 413, Indian Penal Code - Section 420, Indian Penal Code - Section 472, Indian Penal Code - Section 474, Indian Penal Code - Section 478; Code of Criminal Procedure (CrPC) - Section 2(4), Code of Criminal Procedure (CrPC) - Section 506; Constitution of India - Article 1, Constitution of India - Article 2, Constitution of India - Article 14

Cases Referred:

Bharat Shanti Lal Shah v. State of Maharashtra: (2002) 1 Bom. L.R. 527; Burakar Coal Co. Ltd. v. UOI: AIR 1961 SC 954; Canada Sugar Refining Co. v. R.: (1898) AC 735, 742; Dr. Devender M. Surti v. The State of Gujarat: AIR 1969 SC 63; Gaurav Jain v. UOI: (1997) 8 SCC 114; Kartar Singh v. State of Punjab: 1994 CrL. L.J 3139; L & N.E. Rly. Co. v. Berriman: 1946 AC 278, 295; Ranjitsing Brahmajeet Sing Sharma v. State of Maharashtra: 2005 (5) SCC 294; Rashtriya Mill Mazdoor Sangh v. National Textile Corporation Ltd. and Ors.: 1995 (6) Scale 609, 615; Shanker @ Gauri Shanker v. State of Tamil Nadu: (1994) 4 SCC 478; State of Bombay v. Hospital Mazdoor Sabha: AIR 1960 SC 610; State of Maharashtra v. Lalit Somdutta Nagpal: 2007 (3) SCALE 49; State of Rajasthan v. Mrs. Leela Jain and Ors.: AIR 1965 SC 1296; Tolaram and Relumal and Anr. v. State of Bombay: AIR 1954 SC 496; Usha Badri Poonawala v. K. Kuriam Babu: AIR 2002 Bombay 292; Vishal Jeet v. UOI: 1990 3 SCC 318

Disposition:

Appeal dismissed

JUDGMENT

Reva Khetrpal, J.

1. By this appeal filed under Section 12 of the Maharashtra Control of Organized Crimes Act, 1999 (for short the MCOCA), the appellant seeks to assail the order on charge dated 12th October, 2006 and the charge dated 3-11-2006 whereby the learned Special Judge, MCOCA, New Delhi has charged the appellant under Sections 4 and 5 of the Immoral Traffic (Prevention) Act, 1956 (for short the ITP Act), Sections 3(1)(ii), 3(4), 3(5) and Section 4 of the MCOCA and Section 420 read with Section 120B of the IPC in FIR No. 96/2005, Police Station Chanakya Puri.

2. The brief facts as they emerge from the record are that on 19th April, 2005, SI Sajjan Singh, on receipt of information that the appellant Kamaljeet Singh and his associate Pappi supply girls for prostitution in Five Star Hotels and carry on their business through mobile No. 9810645454, passed on the said information to ACP Kumar Gyanesh, who directed SI Sajjan Singh to strike a deal on the above mobile number. SI Sajjan Singh accordingly struck a deal on Phone No. 26109027 from the ARC Office Crime Branch and upon talking to the person receiving the call identified himself as Pappi, and agreed to provide a girl for sexual purposes for two hours which would cost Rs. 20,000/-. He was asked to call again on the same telephone number after two minutes, and on his doing so, SI Sajjan Singh was told that he should meet him outside the main gate of Taj Palace Hotel at 4.00 p.m., and asked to pay Rs. 5,000/- in advance for the chosen girl.

3. On the above information, a raiding party was organized with the decoy customer, and currency notes in the sum of Rs. 5,000/- in the denomination of Rs. 500/- each, signed by the A.C.P., were handed over to the decoy customer Charan Singh, who was briefed to enter into a deal and to give a fixed signal once the deal was struck. SI Sajjan Singh was made a shadow witness to watch the transaction. At about 4.15 p.m., a white Maruti car bearing No. DL 3CG 0609 stopped at the main gate of the Hotel, and two girls and a man got down from the car and started conversing with the decoy customer - Charan Singh. On the latter giving the required signal, the raiding party rushed to the car and overpowered Arvinder Pal Singh @ Pappi and the two girls with him, whose names were subsequently revealed as Pooja @ Bijli and Sonali.

4. The decoy customer, Charan Singh told SI Sajjan Singh that Arvinder Pal Singh @ Pappi while presenting both the girls had told him that, to have sex with them Rs. 20,000/- each would be charged and Rs. 5,000/- had to be paid in advance. Meanwhile, Pooja while winking her left eye and stretching herself made gestures presenting herself for sex and the other girl Sonali also displayed vulgar gestures. Arvinder Pal Singh demanded the advance money and Charan Singh handed over the said ten currency notes in the denomination of Rs. 500/- each, which Arvinder Pal Singh kept in his shirt pocket.

5. SI Sajjan Singh, who was a shadow witness corroborated the above facts. Thereafter, on search of Arvinder Pal Singh by SI Ashok Kumar, he was found in possession of the same ten numbered currency notes in the denomination of Rs. 500/- each, signed by the IO. The said currency note were kept in a white polythene, sealed with the seal of SSY, and taken into possession. All the accused persons were apprehended and arrested under Sections 4/5/8 ITP Act.

6. In the course of investigation, accused Arvinder Pal Singh alias Pappi made a disclosure statement that he was carrying on a prostitution racket at the behest of the appellant Kamaljeet Singh, who is a known pimp, and that out of the proceeds of the said business, the major share of 50% was that of Kamaljeet Singh, whereas the remaining amount was equally shared

between him (Arvinder Pal Singh) and the chosen girl. During interrogation, accused Pooja @ Bijli and Sonali Parveen also disclosed that the appellant was indulging in the dubious trade of prostitution in five star hotels, guest houses and posh colony flats. They further disclosed that the said business was being transacted from various cities such as Mumbai, Calcutta, Bangalore, etc. and that Arvinder Pal Singh was acting as the conduit for the appellant. It was also disclosed that Kamaljeet Singh had a wide network and was assisted by Maya Keshwani @ Varsha, Mrinal Kumar, M.K. Menon, William, Tejinder Singh Walia etc., who were the active associates of Kamaljeet Singh. He also disclosed that the appellant Kamaljeet mainly used to contact college girls and models who offered their services to his clients and used to charge exorbitantly. This business was mainly coordinated through mobile phones of Kamaljeet Singh and his associates. Later on, a raiding team was constituted and raid was conducted at H. No. 102, Jal Vaiyu Vihar, where appellant Kamaljeet Singh was arrested.

7. During investigation, it was revealed that appellant Kamaljeet Singh was involved in prostitution racket since 1985-86 and had amassed huge property both movable and immovable out of this trade. So far accused Arvinder Pal Singh is concerned, during the investigation two mobile phones 9810224004 and 9810645454 were seized from his possession, which were registered for billing in the name of Kamaljeet Singh and the third phone 9871047373 seized from Kamaljeet Singh was in the name of Raj Kumar Rana and during call analysis it was found that 911 calls were made from mobile No. 9810224004 to 9871047373 during 1/1/05 to 20/4/05 and 13 calls were between the mobile No. 9810645454 and 9871047373. As many as 475 incoming outgoing calls were traced out from Mobile No. 9891939197 in the name of Arvinder Pal Singh to 9810224004 during the aforesaid period. 858 calls were exchanged between the mobile of Arvinder Pal Singh and Kamaljeet Singh. One other mobile telephone No. 9871375297 activated on 25/3/05 was found to be in the name of Arvinder Pal Singh but at the address of appellant Kamaljeet Singh i.e. M 65 GK Part II, New Delhi. In view of the facts and circumstances of the case and the conduct of the accused persons provisions of Section 3/4 MCOCA were invoked against the accused persons.

8. During investigation the accused Neeraj Chopra @ Dev Chopra was found to be an active associate of Kamaljeet Singh, who was arrested under Section 21 NDPS Act by the NCB on 2/9/05 and was found to be involved in as many as four cases since 16/1/96 till the date of his arrest, the details of which are given in the charge sheet. Out of four cases, three cases are pending under ITP Act and one case under Section 376/34 IPC. Later on, accused Neeraj Chopra was arrested in the present case on the disclosure statement of his co-accused Arvinder Pal Singh. In terms of the provisions of Section 18 MCOCA his confessional statement was recorded by the DCP/N and the CP, the designated officer. He disclosed that in the year 1993 he was introduced to appellant Kamaljeet Singh at Mumbai by one Vijay Solanki, who was stated to be working for Kamaljeet Singh. Vijay Solanki had employed Neeraj Chopra as his driver and he used to collect payments from Five Star Hotel from various clients but was never told about the business. After about 7-8 months he left Mumbai and came back to Delhi. He

was advised by Vijay Solanki to contact Kamaljeet Singh at M-65, GK Part II, New Delhi, for his balance salary. When he met Kamaljeet Singh at his residence, he was employed by him as his driver. Thereafter on the instructions of Kamaljeet Singh, he used to collect air tickets from airports and also used to transport young and glamorous girls and dropped them in lobby of various Five Star Hotels, where Arvinder Pal Singh, Varsha Keshwani and SJ Menon used to receive them. Gradually he came to know that Kamaljeet Singh and his associates were running a prostitution racket spread over several cities.

9. The pendency of a dozen criminal cases spanning more than a decade against the appellant under the ITP Act having been disclosed in the course of investigation, the investigating agency sought and obtained sanction for prosecuting the appellant under the provisions of Sections 4, 5 and 8 ITP Act, Section 3 of the MCOCA and Sections 420/120BIPC, which was granted by the order of the Addl. CP/Crime dated 11.10.2005. On 14th October, 2005, the appellant Kamaljeet Singh and five others were charge-sheeted for offences punishable under Sections 4/5/8 ITP Act, Sections 420/120B IPC and Sections 3 and 4 of the MCOCA. The charge-sheet unraveled the long association of accused Arvinder Pal Singh and his co-accused with the kingpin, Kamaljeet Singh, for more than a decade.

10. From the investigation and an in-depth analysis of the call details, as noticed in the charge-sheet, it emerged that the appellant was operating from his residence M-65, Greater Kailash-II, New Delhi. The call details further revealed that the appellant was in constant touch with the girls coming from outside the city, who were made to stay in five star hotels, mainly in the Ashoka Hotel, Chanakya Puri, New Delhi. Another fact which emerged during the course of investigation was the meticulous modus operandi of the appellant in booking air tickets from M/s. Southend Travels, reflecting the organized manner in which the prostitution racket was being run. The seizure of the bills and the copies of the ledger accounts also revealed the manner in which cash deposits were made at the Standard Chartered Bank or the ICICI Bank, Greater Kailash Branches, and credited to the account of the concerned model/coordinator. The relevant portion of the charge-sheet regarding the modus operandi adopted by the appellant reads as under:

The whole modus operandi and evidences that has emerged against all the accused during investigation may be analyzed and appreciated in light of following:

Several phone connections in the name of Kamaljeet Singh and his associates.

Abnormally high calls between Kamaljeet Singh and his associates and amongst themselves without any explainable business or personal relationship.

Mindboggling phone bills for short durations.

High number of calls made to five star hotels without any related business with them.

Documentary evidence from Bank and hotels corroborating the disclosures of Kamaljeet Singh and Arvinder Pal Singh.

Confessional statement made by co-accused Neeraj Chopra before DCP and Chief Judicial Magistrate.

High number of air tickets (Mostly PTA) booked by Kamaljeet Singh and his associates.

The criminal history of Kamaljeet Singh with more than a dozen cases to his name spanning for more than a decade along with his associates speaks for itself the organized manner in which he was running the show.

Last but not the least that all subsequent evidences collected were totally either based on details found in SMS of Arvinder Pal Singh or documents collected during search in presence of accused. Moreover, all the analysis has been for a short duration of time selected randomly which if seen in totality will take huge proportions.

11. As noticed above, the charge-sheet of the case was filed in the Special Court, MCOCA and charges framed against the appellant under Sections 4 and 5 ITP Act, Sections 3(1)(ii), 3(4), 3(5) and Section 4 of the MCOCA and Section 420/120B IPC by the impugned order dated 03.11.2006 leading to the filing of the present appeal impugning the charges framed.

12. Detailed arguments have been addressed by Mr. Aman Lekhi, the learned senior Counsel on behalf of the appellant and Ms. Mukta Gupta, the learned Standing Counsel for the State.

13. Before considering the submissions of the appellant and the counter submissions made on behalf of the respondent/State, it is deemed expedient to refer to the Statement of Objects and Reasons of the Act, which appear to have a direct bearing on the matter in issue and read as under:

Statement of Objects and Reasons - Organized crime has for quite some years now come up as a very serious threat to our society. It knows no national boundaries and is fueled by illegal wealth generated by contract killings, extortion, smuggling in contrabands, illegal trade in narcotics, kidnapping for ransom, collection of protection money and money laundering, etc. The illegal wealth and black money generated by the organized crime is very huge and has serious adverse effect on our economy. It is

seen that the organized criminal syndicates make a common cause with terrorist gangs and foster narco terrorism which extend beyond the national boundaries. There is reason to believe that organized criminal gangs are operating in the State and thus, there is immediate need to curb their activities.

It is also noticed that the organized criminals make extensive use of wire and oral communications in their criminal activities. The interception of such communications to obtain evidence of the commission of crimes or to prevent their commission is an indispensable aid to law enforcement and the administration of justice.

2. The existing legal frame work i.e. the penal and procedural laws and the adjudicatory system are found to be rather inadequate to curb or control the menace of organized crime. Government has, therefore, decided to enact a special law with stringent and deterrent provisions including in certain circumstances power to intercept wire, electronic or oral communication to control the menace of the organized crime.

3.

14. Section 2(d), (e) and (f) of the Act define the terms "continuing unlawful activity", "organized crime" and "organized crime syndicate" as under:

2. Definitions. - (1) In this Act, unless the context otherwise requires,-

(a)

(b)

(c)

(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 member of an organized crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence;

(e) "organized crime" means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organized crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary

benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency;

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

15. Section 3 of the MCOCA which deals with punishment for organized crime is as follows:

3. Punishment for organized crime.-(1) Whoever commits an offence of organized 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 organized crime or any act preparatory to organized 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 fine of rupees five lacs.

(3) Whoever harbours or conceals or attempts to harbour or conceal, any member of an organized 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 organized 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 or obtained from commission of an organized crime or which has been acquired through the organized 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.

16. Mr. Aman Lekhi on behalf of the appellant has mounted an assault on the order framing charge principally on the ground that the alleged offences under Sections 4 and 5 of the ITP Act read with Section 420/120B IPC were not intended by the legislature to be covered within the ambit of the MCOCA, 1999 as extended to Delhi. According to Mr. Lekhi, the ingredients of Section 3 of the MCOCA are not made out, inasmuch as the appellant has never been a member of any "organized syndicate" within the meaning of Section 2(f) of the MCOCA nor has indulged in any "continuing unlawful activity", as envisaged by Section 2(e) of the MCOCA. According to him, it is the case of the prosecution that the appellant and his associates were involved in an "apparently soft crime" and as such the alleged offences by the appellant did not involve the "use of violence on threat of violence or intimidation or coercion" nor is there any allegation to this effect in the charge-sheet filed by the prosecution.

17. The further contention of Mr. Aman Lekhi is that in view of the Statement of Objects and Reasons of MCOCA, the words "other unlawful means" contained in Section 2(e) be read as *ejusdem generis/noscitur a sociis* with the words: (i) violence, (ii) threat of violence, (iii) intimidation or (iv) coercion. It is submitted that none of the offences alleged to have been committed by the appellant are alleged to involve the use of (i) violence, (ii) threat of violence, (iii) intimidation or (iv) coercion and hence the provisions of Sections 3 and 4 of MCOCA are not applicable to the present case.

18. In order to fortify his contention that the words "other unlawful activity" necessarily involve "the use of violence, threat of violence, intimidation or coercion", Mr. Lekhi relied upon the well-established principle of statutory interpretation that:

"To ascertain the meaning of a clause in a statute the court must look at the whole statute, at what precedes and at what succeeds and not merely at the clause itself." (Principles of Statutory Interpretation by G.P. Singh, 9th Edn. 2004 417, page 32).

Reliance was also placed by him upon the observations made in *Canada Sugar Refining Co. v. R* (1898) AC 735 p. 742 wherein Lord Davey said:

Every clause of statute should be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject matter.

19. Reference was also made by Mr. Lekhi to the judgment of the Supreme Court in *Dr. Devender M. Surti v. The State of Gujarat*: 1969 CriLJ 285, wherein the following observations were made by the Supreme Court at page 66 of the Report:

5. ...It is true that Section 2(4) of the Act has used words of very wide import and grammatically it may include even a Consulting room where a doctor examines his patients with the help of a

solitary nurse or attendant. But, in our opinion, in the matter of construing the language of Section 2(4) of the Act we must adopt the principle of *noscitur a sociis*. This rule means that, when two or more words which are susceptible of analogous meaning are coupled together they are understood to be used in their cognate sense. The words take as it were their colour from each other that is, the more general is restricted to a sense analogous to a less general. "Associated words take their meaning from one another under the doctrine of *noscitur a sociis* the philosophy of which is that the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it; such doctrine is broader than the maxim *Ejusdem Generis*....

20. Next, strong reliance was placed by Mr. Lekhi on a recent three-Judge judgment of the Supreme Court in *Ranjitsing Brahmajeet Sing Sharma v. State of Maharashtra*: 2005 CriLJ 2533, wherein it was observed as follows: (SCC, page 312)

23. Interpretation clauses contained in Sections 2(d), 2(e) and 2(f) are interrelated. An "organized crime syndicate" refers to an "organized crime" which in turn refers to "continuing unlawful activity". As at present advised, it may not be necessary for us to consider as to whether the words "or other unlawful means" contained in Section 2(e) should be read "*ejusdem generis*"/"*noscitur a sociis*" with the words (i) violence, (ii) threat of violence, (iii) intimidation, or (iv) coercion. We may, however, notice that the word "violence" has been used only in Sections 146 and 153A of the Indian Penal Code. The word "intimidation" alone has not been used therein but only Section 506 occurring in Chapter XXII thereof refers to "criminal intimidation". The word "coercion" finds place only in the Contract Act. If the words "unlawful means" are to be widely construed as including any or other unlawful means, having regard to the provisions contained in Sections 400, 401 and 413 IPC relating to commission of offences of cheating or criminal breach of trust, the provisions of the said Act can be applied, which *prima facie*, does not appear to have been intended by Parliament.

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

21. For the proposition that a statute being penal in its application, a strict interpretation is called for, reference was made by the learned Counsel for the appellant to the observations made by Livingston Hall in Friedman, Law in a Changing Society (2nd Edition), p.82, which read as under:

As the boundaries of crime have been extended to include more and more conduct made criminal only because in seeming conflict with some vague ideal of social policy, or to reach some potential evil in an indirect manner, the need for a clear and comprehensive statement of the prohibited acts has become increasingly pressing. A canon of strict construction, limiting the statute to its obvious meaning, and excluding potentialities, perhaps implicit to the Legislature, but uncertain of application to the uninformed reader, does much to prevent injustice.

22. In the same context, Mr. Lekhi relied upon the Constitutional Bench judgment of the Hon'ble Supreme Court in Tolaram and Relumal and Anr. v. State of Bombay: [1955] 1 SCR 158. The relevant observations made by the Constitution Bench read as under:

It may be here observed that the provisions of Section 18(1) are penal in nature and it is a well settled rule of construction of penal statutes that if two possible and reasonable constructions can be put upon a penal provision, the court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty. It is not competent to the court to stretch the meaning of an expression used by the Legislature in order to carry out the intention of the Legislature. As pointed out by Lord Macmillan in L & N.E. Rly. Co. v. Berriman 1946 AC 278:

Where penalties for infringement are imposed it is not legitimate to stretch the language of a rule, however beneficent its intention, beyond the fair and ordinary meaning of its language.

23. Next, Mr. Lekhi urged that the learned Special Judge, MCOCA, New Delhi failed to appreciate that Section 2(f) of the ITP Act as amended defines prostitution as "the sexual exploitation or abuse of persons for commercial purposes". The ITP Act, 1956 was amended in 1986 and prior to the 1986 amendment, the word prostitution was defined to mean "the act of a female offering her body for promiscuous sexual intercourse for hire whether in money or in kind, and whether offered immediately or otherwise, and the expression "prostitute" shall be construed accordingly". The intent of the legislature in substituting the present definition of prostitution in place of the previous definition by the Amending Act No. 45 of 1986 was to prevent the sexual exploitation and abuse of girls and hence the act of a major female offering her body for promiscuous sexual intercourse for hire, whether in money or in kind, on her own volition and without any threat, pressure or coercion was not intended to be covered by the present definition. In the absence of an allegation in the F.I.R. that the girls were abused or

sexually exploited so as to force them to offer their body for promiscuous sexual intercourse, the offences under Sections 4, 5 and 8 of the ITP Act, 1956 as amended till date are not made out against the appellant.

24. Mr. Lekhi further submitted that despite the fact that the prosecution has filed hundred of pages of phone calls records and despite the fact that the police officials have also seized the phone from one of the girls alleged to be a prostitute, the prosecution has not placed on record a single call between the mobile phones allegedly belonging to the appellant and the said girls. In fact, no connection whatsoever has been shown by the prosecution between the appellant and the girls arrested in this case, nor, in fact, there is material on record regarding the procurement or inducing or taking the co-accused girls for the purpose of prostitution or causing or inducing the co-accused girls to carry on prostitution and as such offences under the I.T.P. Act are not made out against the appellant.

25. He contended that the learned Special Judge, MCOCA had failed to appreciate that the confessional statement of co-accused Neeraj Chopra @ Dev Chopra recorded under Section 18 of the Act had not been recorded in terms of the guidelines laid down by the Constitution Bench of the Supreme Court in the case of Kartar Singh v. State of Punjab while dealing with Rule-15 of Terrorist and Disruptive Activities (Prevention) Rules, 1987, which is parametrical to Section 18 of the MCOCA, and, Therefore, the said confessional statement cannot be relied upon. As borne out by the records, Neeraj Chopra had been asked by the police officials to co-operate, otherwise he will get involved in this case. Hence, the said confessional statement was not voluntary in nature as Neeraj Chopra had been forced to make the statement before the CMM, Delhi, while in police custody. Further, the said confessional statement by Neeraj Chopra was not inculpatory in nature and as such ought not be relied upon.

26. The learned Special Judge, he further contended, had paid no heed to the fact that under Section 23(2) of the MCOCA, the previous sanction of a police officer not below the rank of Additional Commissioner of Police is a sine qua non for taking cognizance of any offence under the MCOCA. The sanction for prosecution in the instant case is cryptic in nature and does not show any application of mind. Nowhere the sanctioning authority makes it clear as to what were the materials/records placed before it and what is the opinion on each of these records and how the sanctioning authority has come to this finding that the prosecution of the appellant under the MCOCA is required.

27. Countering the aforesaid submissions made by Mr. Aman Lekhi, the learned senior Counsel for the appellant, Ms. Mukta Gupta, the learned Standing Counsel for the State strongly contended that when the language of the Act is plain and unambiguous, no question of construction of the statute arises for the Act speaks for itself. When a statute is to be interpreted as far as possible an ordinary meaning is to be given to the words contained therein

and only when the words are vague or ambiguous are the principles of statutory interpretation to be resorted to. Ms. Gupta submitted that the words "any unlawful means" are plain and unambiguous and thus they have to be given their natural meaning.

28. Rebutting the contention of Mr. Aman Lekhi, the learned senior Counsel for the appellant that the rule of *noscitur a sociis* should be applied for the interpretation of the words "any unlawful means", Ms. Gupta urged that the said rule is merely a rule of construction and cannot apply in a case where the intention of the Legislature is made clear by the statute itself. Reliance was placed by Ms. Gupta, in this context, upon the observations made in the case of *State of Bombay v. Hospital Mazdoor Sabha*: (1960) ILLJ 251 SC:

Noscitur a Sociis is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. It is only where the intention of the legislature in associating wider words with words of narrower significance is doubtful or otherwise not clear that the rule of construction can be usefully applied. It can also be applied where the meaning of the words of wider import is doubtful; but, where the object of the Legislature in using wider words is clear and free of ambiguity, the rule of construction in question cannot be pressed into service.

29. In the alternative, Ms. Gupta submitted that assuming *arguendo* that the words "other unlawful means" are vague, even then the offences under ITP Act would fall within the ambit of "other unlawful means" as cognate to violence, threat of violence, intimidation and coercion. 'Prostitution' is a form of physical violence where the body of a woman is sexually abused. 'Prostitution' is defined under the ITP Act as "the sexual exploitation or abuse of persons for commercial purposes". The meaning of the words threat, violence, intimidation and coercion as defined in the CHAMBERS DICTIONARY (1983 Edition) are as under:

- (a) Threat: A declaration or indication of an intention to inflict, punish or hurt.
- (b) Violence: The state or quality of being violent: excessive, unrestrained or unjustifiable force: outrage: profanation: injury: rape.
- (c) Intimidation: The use of violence or threats to influence the conduct or compel the consent of another.
- (d) Coercion: To restrain by force: to compel.

Thus from the above definitions it is clear that "Prostitution" would also fall within the ambit of "other unlawful means" as cognate to violence, threat of violence, intimidation or coercion.

30. It was further submitted by Ms. Gupta that the preamble of a statute like the long title is a part of the Act and is an admissible aid to construction. Although not an enacting part, the preamble is expected to express the scope, object and purpose of the Act more comprehensively than the long title. It may recite the ground and cause of making the statute, the evils sought to be remedied or the doubts which may be intended to be settled. Ms. Gupta relied upon the following:

(i) The words of Sir John Nicholl: "It is to the preamble more specially that we are to look for the reason or spirit of every statute, rehearsing this, as it ordinarily does, the evils sought to be remedied, or the doubts purported to be removed by the statute, and so evidencing, in the best and most satisfactory manner, the object or intention of the Legislature in making or passing the statute itself.

(ii) The enunciation by Tindal, C.J., in delivering the opinion of the judges who advised the House of Lords in the *Sussex Peerage* case, "If any doubt arise from the terms employed by the Legislature, it has always been held a safe means of collecting the intention to call in aid the ground and cause of making the statute, and to have recourse to the preamble, which according to Chief Justice Dyer is a 'key to open the minds of the makers of the Act, and the mischiefs which they intended to redress'.

(iii) The principle enunciated by the Supreme Court, where Mudholkar, J., speaking for the court in *Burakar Coal Co. Ltd. v. UOI* reported as: [1962] 1 SCR 44 observed:

It is one of the cardinal principles of construction that where the language of an Act is clear, the preamble must be disregarded though, where the object or meaning of an enactment is not clear, the preamble may be resorted to explain it. Again, where very general language is used in an enactment which, it is clear must be intended to have a limited application, the preamble may be used to indicate to what particular instances, the enactment is intended to apply. We cannot, therefore, start with the preamble for construing the provisions of an Act, though we would be justified in resorting to it, nay, we will be required to do so, if we find that the language used by Parliament is ambiguous or is too general though in point of fact Parliament intended that it should have a limited application. The courts cannot, therefore, start with the preamble for construing the provisions of an Act, though they would be justified in resorting to it, nay they will be required to do so, if they find that the language used by parliament is ambiguous or is too general though in point of fact Parliament intended that it should have a limited application.

(iv) The observations made by the Supreme Court in the case of *State of Rajasthan v. Mrs. Leela Jain and Ors.* reported as: [1965] 1 SCR 276:

Unless the words are unmeaning or absurd, it would not be in accord with any sound principle of construction to refuse to give effect to the provisions of a statute on the very elusive ground that to give them their ordinary meaning leads to consequences which are not in accord with the notions of propriety or justice entertained by the Court. No doubt, if there are other provisions in the statute which conflict with them, the court may prefer the one and reject the other on the ground of repugnance. When the words in the statute are reasonably capable of more than one interpretation, the object and purpose of the statute, a general conspectus of its provisions and the context in which they occur might induce a court to adopt a more liberal or a more strict view of the provisions, as the case may be, as being more consonant with the underlying purpose. But it is not possible to reject words used in an enactment merely for the reason that they do not accord with the context in which they occur, or with the purpose of the legislation as gathered from the preamble or long title. The preamble may, no doubt, be used to solve any ambiguity or to fix the meaning of words which may have more than one meaning, but it can, however, not be used to eliminate as redundant or unintended, the operative provisions of a statute.

(v) The principle laid down in the judgment of *Rashtriya Mill Mazdoor Sangh v. National Textile Corporation Ltd. and Ors.* reported as : (1996) ILLJ 787 SC:

It is one of the cardinal principles of the statutory construction that where the language of an Act is clear, the Preamble cannot be invoked to curtail or restrict the scope of the enactment and only where the object or meaning of an enactment is not clear the Preamble may be resorted to explain it.

31. Referring to the preamble of the Act, Ms. Gupta laid particular emphasis on the following:

It knows no national boundaries and is fueled by illegal wealth generated by contract killing, extortion, smuggling in contrabands, illegal trade in narcotics, kidnapping for ransom, collection of protection money and money laundering, etc. The illegal wealth and black money generated by the 'organized crime' is very huge, and has serious adverse effect on our economy. It is seen that the organized criminal syndicates make a common cause with terrorist gangs and foster narco terrorism which extend beyond the national boundaries....

32. A reference to the provisions of the Prevention of Money Laundering Act, 2002, Ms. Gupta contended, shows that Sections 5/6/8/9 of the Immoral Traffic (Prevention) Act are offences under Schedule 'A' of the said Act and as per the said Act, the proceeds of the crime i.e. the property derived directly or indirectly by a person as a result of criminal activity relating to a scheduled offence is an offence of money laundering, which is specifically

referred to in the Aims and Objectives of MCOCA as "organized crime". Thus, looked at it from any angle, the provisions of the MCOCA are clearly attracted to the present case.

33. Next, assailing the contention of the learned Counsel for the appellant that the definition of 'Prostitution' defined in the Immoral Traffic (Prevention) Act is an artificial definition as wholly misconceived and erroneous, Ms. Gupta submitted that though the MCOCA does not define the word "offence", a conjoint reading of Section 2(2) of the MCOCA and Section 2(4) of the Code of Criminal Procedure makes it abundantly clear that the offence of 'Prostitution' as defined in the ITP Act falls within the scope and ambit of offences under the MCOCA.

34. Section 2(2) of the MCOCA reads as under:

2(1).

2(2). Words and expressions used but not defined in this Act and defined in the Code shall have the meanings respectively assigned to them in the Code.

The term "offence" as defined in Section 2(n) of the Code of Criminal Procedure reads as follows:

"2(n). 'Offence' means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under Section 20 of the Cattle-trespass Act, 1871 (1 of 1871).

35. Thus, the offence of 'Prostitution', it was urged, which is clearly an offence under the Code of Criminal Procedure, by virtue of Section 2(2) of the MCOCA, by necessary implication, is an offence under the MCOCA as well.

36. With regard to the contention of the learned Counsel for the appellant that though hundred of pages of phone call records have been filed, there is no material on record regarding the procurement or inducement or taking the co-accused girls for the purpose of prostitution, Ms. Gupta pointed out that the charge sheet filed by the prosecution clearly mentioned that during investigation it was found that the two numbers used by Arvinder Pal Singh, who was arrested along with the two prostitutes by the police team, were in the name of the appellant Kamaljeet Singh. Further, there were 594 calls within two months on the phone being used by the appellant from the mobiles of the girls, which were also in the name of the appellant. These calls were made at late hours from Five Star Hotels. Further, money was transferred by the co-accused on the basis of bank account numbers sent by the appellant through SMS into the accounts of the prostitutes and their men, and a staggering amount i.e. Rs. 9.05 lakhs was spent by the organized crime syndicate on mobile bills in only 3 years. These facts, Ms. Gupta

urged, clearly revealed the nexus between the appellant and his associates including the prostitutes, who were thriving on the prostitution racket. It also emerged in the course of investigation that the appellant who had no other known source of income was leading a lavish life style.

37. Before embarking upon the merits of the respective contentions of the parties, it is deemed expedient to notice a few decisions rendered by the Hon'ble Supreme Court in the context of the menace of prostitution and the general development of the law pertaining to organized crime including trafficking of women.

38. In *Shanker @ Gauri Shanker v. State of Tamil Nadu*: 1994 Cri LJ 3071, while dealing with "organized crime" and expressing anxiety over the fact that "organized crime" including prostitution had taken deep roots, the Hon'ble Supreme Court made the following pertinent observations [SCC at p. 519 para 61]:

In large urban areas this kind of organized crime has taken deep roots. It has become the way of life of these organized criminal groups particularly indulging in underground unlawful activities. Eventually the underground economy has entered on the vitals of the society gradually rendering it malignant. The organized crime has profit as its primary goal to be achieved at any cost. The potential for criminal violence in such crimes is inherently present in an organized crime group. The activities such crime groups indulge in may vary numerously. Prostitution is an activity bad in social sense as witnessed and is prohibited legally. Yet for many potential buyers the services of prostitutes are goods in the strict economic sense of the term "goods". The buyers are willing to pay for these goods in the market transaction. It is these monetary values, though illegal, underlying that eventually lead to growth of these organized crimes and further criminal specialization whose only common aim is attainment of wealth primarily, of course and then if possible power and influence by illegal means. It has thus become an enterprise not infrequently aiming at purchase of respectability. After all money is money and that which is illegally gained can seemingly be legally spent to achieve social status....

39. In *Vishal Jeet v. UOI*: 1990 Cri LJ 1469, there was a PIL against forced prostitution of girls, devdasis and jogins, and for their rehabilitation. In the said PIL, the Hon'ble Supreme Court took judicial notice of the fact that despite stringent and rehabilitative provisions under the various Acts, the results were not as desired and called for severe and speedy legal action against exploiters, such pimps, brokers and brothel owners.

40. In *Gaurav Jain v. UOI*: AIR 1997 SC 3021, the Court again took judicial notice of the fact that the minimal number of 'prostitutes' get into flesh trade either voluntarily or by organized gangsters, who force women and girls by offering rosy future to innocent fallen women and

trap them often with the connivance of the police. In para-19 of its judgment, the Supreme Court held as follows:

19. Therefore, prostitution is not confined, as in the ITP Act, to offering of the body to a person for promiscuous sexual intercourse. Normally, the word "prostitution" means an act of promiscuous sexual intercourse for hire or offer or agreement to perform an act of sexual intercourse or any unlawful sexual act for hire as was the connotation of the Act. By amendment the act of a female and exploitation of her person by an act or process of exploitation for commercial purpose making use of or working up for exploitation of the person of the women taking unjust and unlawful advantage of trapped women for one's benefit or sexual intercourse has been brought within its frame. The word "abuse" has a very wide meaning - everything which is contrary to good order established by usage amounts to abuse. Physical or mental maltreatment also is an abuse. An injury to genital organs in an attempt of sexual intercourse also amounts to sexual abuse. Any injury to private parts of a girl constitutes abuse under the JJ Act....

41. The Supreme Court in the Gaurav Jain's case accordingly passed an order directing, inter alia, for the constitution of a Committee to make an in-depth study of the problem. In 1998, the Central Govt., pursuant to the directions issued by the Supreme Court constituted "Committee on Prostitution, Children Prostitutes and Children of Prostitutes and Plan of Action to Combat Trafficking and Commercial Sexual Exploitation of Women and Children".

42. In the same year, i.e., in the year 1998 itself in a Report containing an Action Plan prepared by the Deptt. of Woman and Child Development, Ministry of Human Resource Development, Government of India, detailed recommendations were made with a view to arrest the systematic problem, including issues relating to law enforcement and legal reforms. However, it was found subsequently that Govt. of India's Action Plan of 1998 to combat trafficking and commercial sexual exploitation of women and children had not delivered the desired results and more stringent measures were the crying need of the day. It was noticed that the penal statutes of other countries dealt with 'organized crime' in supplying goods and services, including gambling, prostitution, loan sharking, narcotics, racketing and other unlawful activities.

43. In December, 2002 India became a signatory to "UN Convention Against Trans-National organized Crime", which includes the Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children. By becoming the participant in the Convention, a global instrument which advocates international and national action against organized crime, the Government of India has given a clear mandate to confront evils of trafficking of women and children.

44. In the meantime, Interpol defined organized crime as "any enterprise or group of enterprises engaged in continuing illegal activity which has its primary activities that bring together a client-public relationship which demands a range of goods and services which are illegal."

45. In *Usha Badri Poonawala v. K. Kuriam Babu*: AIR 2002 Bom 292, a Single Judge of the Bombay High Court (Hon'ble Mr. Justice D.Y. Chandrachud, J.) while upholding the claim by women litigants on the basis of act of alleged defamation, held that the same would constitute a case relating to violence and that the expression "violence" must be construed liberally so as to include violence of a kind which will damage the reputation of women. In para-5 of the said judgment, the definition of "violence" was given as follows:

5. ...Violence against women takes several forms: rape, child sexual abuse, trafficking in women, domestic violence, pornography, selective abortion of female fetuses and dowry deaths are all forms of violence which denigrate the dignity of women. (For a comprehensive analysis, see 'Domestic Violence And Law: Report of Colloquium on Justice for Women-Empowerment Through Law', Butterworths India, 2000 Edition page xliii). The Declaration on the Elimination of All Forms of Violence Against Women was adopted by the General Assembly of United Nations on 20th December, 1993. Article 1 defines violence against women as meaning any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. According to Article 2, violence against women encompasses: (a) physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation, (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution, (c) Physical, sexual and psychological violence perpetrated or condoned by the State wherever it occurs.

46. In a recent Report by Sumita Sarkar and Arvind Tiwari on "Combating Organized Crime : A Case Study of Mumbai City", it was noticed that a majority of countries are now confronted by the challenge of transnational organized crime and the major patterns of organized crime variously documented in recent years include:

Illicit Drug Smuggling;
Alien Smuggling;
Money Laundering;
Financial Fraud;

Counterfeiting;
Illegal Arms Trafficking;
International Car Theft Rings; and
Prostitution.

47. It is in this backdrop that the provisions of the Maharashtra Control of Organized Crime Act, 1999 must be viewed and their scope and ambit examined in the context of the present case.

48. Before doing so, however, it is proposed to extract the relevant portion of the order of a learned Single Judge of this Court in Bail Appln. No. 2033/2006 decided on 20.08.2007 entitled Kamal Jeet Singh v. State before whom bail was sought by the appellant on the same grounds as urged in the present appeal. While rejecting the bail plea of the appellant, the learned Judge held as follows:

10. Even de hors the charge under MACOCA, there are serious allegations against the petitioner for which charges under ITP Act are also framed. Learned Counsel for the respondent had taken me through the record and also the allegations, note whereof has already been taken above. He also pointed out that as many as 15 cases were registered against the petitioner out of which 12 are under ITP Act. He also referred to the various calls made from one mobile phone to other between the co-accused inter se as well as between the accused persons and the girls involved in sex trade, who were recovered. He pointed out that these girls were also provided with mobile phones, who were residing in other cities and there were calls made by co-accused persons to those girls on those phones. He also referred to the statements of the accused persons recorded during investigation throwing light on the manner in which air ticket bookings for these girls used to be made and the modus of making payments to these girls adopted by the petitioner and other co-accused. It is, however, not necessary to go into these allegations in detail. Suffice it to state that the charges against the petitioner are of serious nature and I am, therefore, not inclined to grant bail to the petitioner. This petition is accordingly dismissed at this stage.

49. Now a look at the judicial pronouncements on the subject. In Bharat Shanti Lal Shah v. State of Maharashtra reported in: (2002) 1 BOMLR 527, a Division Bench of the Bombay High Court, while upholding the constitutional validity of Sections 2(d), (e) and (f) and Sections 3 and 4 of the MCOCA, with reference to the provisions of Section 2(1)(d) which defines "continuing unlawful activities" observed as follows:

...is intended to prevent and control 'organized crime' is something which is continued unlawful activity and that 'continuing unlawful activity' as repeatedly indulging or facing charge of indulgence in a crime punishable with three years or more. The definition,

therefore, thus defines with clarity what is meant by 'continuing unlawful activity' for the purpose of achieving the object of the Act. There is, therefore, no vagueness nor any violation of Article 14 of the Constitution.

50. The aforesaid judgment of the Bombay High Court assumes importance for the reason that the Bombay High Court after minutely examining the provisions of Section 2(1)(d) has clearly laid down that what has been defined as 'continuing unlawful activity' by a member of an 'organized crime syndicate' is an activity prohibited by law and done repeatedly, i.e., more than once for which the charge-sheet has been filed in the Court of competent jurisdiction in the past ten years.

51. In a recent judgment in *State of Maharashtra v. Lalit Somdutta Nagpal* reported in: 2007 Cri LJ 1678, the Hon'ble Supreme Court examined the question of applicability of MCOCA to offences under the Essential Commodities Act. It was held that the authorities were not precluded from applying the provisions of MCOCA to offences under Sections 3 and 7 of the Essential Commodities Act, 1955 as well as under the 1981 Act. The Hon'ble Supreme Court, however, granted bail to the accused persons on the ground that the sanction under Section 23(1)(a) granted by the authorities for the invocation of MCOCA revealed complete non-application of mind as the same had been given upon consideration of an enactment which was non est (Petroleum Storage and Distribution Act, which enactment did not exist on the relevant date). The Supreme Court further held that the 'organized crime' referred to in the sanction order, with regard to the alleged violation of sales tax and excise laws, in the view of their Lordships, was not intended to be the basis for application of the provisions of the MCOCA, for, to apply the provisions of MCOCA something more in the nature of coercive acts and violence is required to be spelt out so as to bring the 'unlawful activity' complained of within the definition of 'organized crime' under Section 2(a) of the MCOCA.

52. The present case not being a case for violation of any tax or excise laws, but clearly being a case involving provisions of the ITP Act and the IPC, it is not possible to hold that the invocation of MCOCA to the present case was unjustified.

53. The reliance of the learned Counsel for the Appellant on the decision of *Ranjit Singh Brahmjit Singh Sharma* (supra) is also, in my view, wholly unjustified in view of the fact that the Supreme Court in the said case was dealing with the bail applications of persons charged for offences under Sections 120B/255/249/472/474/260/263(a) & (b) 478 read with Section 34 IPC and it was in this context that the Supreme Court expressed a prima facie opinion that if the words 'any unlawful means' are widely construed having regard to commission of the offences of cheating or criminal breach of trust, the provisions of MCOCA can be applied, which prima facie, does not appear to have been intended by the Parliament.

54. Insofar as the present case is concerned, the support sought to be drawn by the learned Counsel for the appellant from the aforesaid judgment in Ranjit Singh's case clearly cannot be drawn. On the contrary, paragraph-24 of the judgment clarifies the position of law as follows:

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

55. The charges in the present case not being for cheating implicate or for violation of any tax or excise laws, and the present being a case of 'continuing unlawful activity' by an 'organized crime syndicate' with a wide network for illegal trafficking and prostitution, in my considered opinion, it is not possible to hold that the invocation of MCOCA in the present case was unjustified. It is also not possible to hold that the words "other unlawful means" contained in Section 2(e) are to be read as ejusdem generis/noscitur a sociis with the words violence, threat of violence, intimidation or coercion. However, even assuming the words "other unlawful means" are to be so construed, illegal trafficking of persons can safely be said to involve the use of violence, threat of violence, intimidation or coercion.

56. Adverting next to the contentions of the learned Counsel for the appellant that the confessional statement of Neeraj Chopra @ Dev Chopra under Section 18 of the MCOCA was not voluntary in nature and that sanction for prosecution in the instant case was given without application of mind and even otherwise was cryptic in nature, it is deemed expedient to reproduce Section 18 and 23 of the MCOCA, which read as under:

18. Certain confessions made to police officer to be taken into consideration. - (1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (1 of 1872), but subject to the provisions of this section, a confession made by a person before a police officer not below the rank of the Superintendent of Police and recorded by such police officer either in writing or on any mechanical devices like cassettes, tapes or sound tracks from which sounds or images can be reproduced, shall be admissible in the trial of such person or co-accused, abettor or conspirator:

Provided that, the co-accused, abettor or conspirator is charged and tried in the same case together with the accused.

(2) The confession shall be recorded in a free atmosphere in the same language in which the person is examined and as narrated by him.

(3) The police officer shall, before recording any confession under Sub-section (1), explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him and such police officer shall not record any such confession unless upon questioning the person making it, he is satisfied that it is being made voluntarily. The concerned police officer shall, after recording such voluntary confession, certify in writing below the confession, putting the date and time of the same.

(4) Every confession recorded under Sub-section (1) shall be sent forthwith to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate having jurisdiction over the area in which such confession has been recorded and such Magistrate shall forward the recorded confession so received to the Special Court which may take cognizance of the offence.

(5) The person from whom a confession has been recorded under Sub-section (1) shall also be produced before the Chief Metropolitan Magistrate or the Chief Judicial Magistrate to whom the confession is required to be sent under Sub-section (4) along with the original statement of confession, written or recorded on mechanical device without unreasonable delay.

(6) The Chief Metropolitan Magistrate or the Chief Judicial Magistrate shall scrupulously record the statement, if any, made by the accused so produced and get his signature and in case of any complaint of torture, the person shall be directed to be produced for medical examination before a Medical Officer not lower in rank than of an Assistant Civil Surgeon.

Section 23(2) of MCOCA reads as follows:

23(2). No Special Court shall take cognizance of any offence under this Act without the previous sanction of the police officer not below the rank of Additional Director General of Police.

57. A bare glance at the provisions of Section 18 of the MCOCA reproduced above, makes it abundantly clear that confession made by a person before the police officer not below the rank

of Superintendent of Police and recorded by such officer in the manner provided in the said section, shall be admissible in the trial of such person or his co-accused, abettor or conspirator.

58. It is not in dispute that the confession of Neeraj Chopra @ Dev Chopra in the instant case was recorded by a police officer not below the rank of Superintendent of Police, i.e., the Dy. Commissioner of Police, Shri A. S. Cheema in the manner provided in Section 18 of the MCOCA. Thus, there is no warrant for the assumption that the said confession was not properly recorded or was not recorded in accordance with the guidelines laid down by the Supreme Court in the Kartar Singh case, as alleged by the counsel for the appellant, for, it is well settled that once a statutory provision has been complied with, the confession recorded by the authorized officer must be deemed to be recorded in a proper manner. So far as the reliability of the confession is concerned, it is trite law that the same cannot be adjudged at the stage of framing of charge and must be decided during trial when the witnesses are examined.

59. Dealing next with the contention of the learned Counsel for the appellant that the confession was not a voluntary one, the said contention does not appear to be borne out from the record. A perusal of the record shows that Neeraj Chopra @ Dev Chopra was arrested on 26.9.2005 and produced before the Addl. Sessions Judge on 27.9.2005, when two days of police custody remand was granted. As per his own admission, he was not beaten up or subjected to any sort of custodial torture and on 28.9.2005 he was taken to the DCP, A. S. Cheema where he gave a statement of his own free will. On the following day, i.e., 29.9.2005, he was produced before the Ld.CMM, Delhi, Ms. Reena Singh Nag, where he made the following statement which was certified by the learned CMM:

In The Court of Ms. Reena Singh Nag, CMM, Delhi
FIR No. 96/05
P.S. Chanakya Puri
Under Section 4/5/8 ITP Act And Section 3 Of MCOC Act.

State Versus Neeraj Chopra

29.9.05

Present: Shri Kumar Gyanesh IO ACP AATS.

Accused Neeraj Chopra @ Dev Chopra @ sunny s/o Gurmeet Singh produced in police custody in case FIR No. 96/05 under Section 4/5/8 ITP Act and 3 of MCOC Act, Sections 420/120B IPC, P.S. Chanakyapuri. An application has been moved intimating regarding the confessional statement of the aforesaid accused recorded under the provisions of Section 18 of MCOC Act. A sealed envelope intact with the seal of DCP, CP Delhi has also been produced which

consists of confessional statement of the accused for further necessary action. I have sent the ACP and the constable in whose custody accused has been produced outside the chamber. It is 10:30 a.m. It may be pointed out that this accused was produced on 28.9.05 also at 4:20 p.m. Accused was produced in police custody for the aforesaid purpose. Since I was to go to computer class at Karkardooma Judicial Academy, the case was fixed for today in the morning. There is no one in the chamber and the proceedings are being recorded on dictation being given to Mrs. Sunita Seth. I have also verbally interrogated the accused as to what he wants to state today to which he stated that he has nothing to say. I have gone through his confessional statement produced before me today in sealed envelope on the basis of the same I have enquired from the accused whether he was produced before DCP on 28.9.05 to which he has replied in affirmative. It would be apt if his statement is recorded. Statement of accused Neeraj Chopra @ Dev Chopra @ Sunny s/o Gurmeet Singh, age 32 years R/o A-117, Sharda Puri Ramesh Nagar studied up to a Fine Arts (Under Graduate) can read Hindi, English and Gurmukhi, helping his father in his interior decoration business.

Without oath.

The same is recorded by me in vernacular on a separate sheet as its Annexure A.

sd/-
CMM

29.9.05

Annexure A

In The Court of Ms. Reena Singh Nag, CMM, Delhi

In The Matter of:

State Versus Neeraj Chopra

Fir No. 96/05, P.S. Chanakya Puri

I was arrested by the police on 26.9.05. I was not beaten in any manner but it was definitely said that if I do not cooperate then I will be implicated. On 26.9.05 I was produced before Judge Sahib (Garg Sahib), he gave one day PC remand. On 27.9.05, I was again produced before Judge Sahib (Bhayana sahib) and two days of PC remand

was granted from there. On 28.9.2005 I was taken to DCP A.S. Cheema, there I gave statement out of my own will.

Accused read over entire statement recorded by DCP, Shri A.S. Cheema. He admits that he had made the statement as recorded except that he did not use the words glamorous.

I do not want to get myself medically examined. I believe that I shall be given one opportunity for reformation and leniency will be shown.

Sd/-

29.9.05

sd/-

Neeraj Chopra
(Neeraj Chopra)

Since from the above, it can be informed that accused has not alleged any torture, so there is no need for sending him for medical examination.

I have signed the two pages of statement recorded by the DCP Shri Cheema.

The proceedings in closed envelope duly taped and sealed (RK) be sent to Spl. Judge Shri A.K.Garg, ASJ, Patiala House immediately. The confessional statement of accused as recorded by DCP Shri Cheema has been kept back in the sealed envelope and the same be sent along with proceedings to the Ld. Spl. Judge.

Sd/-

CMM

29.9.05

60. The further contention of the learned Counsel for the appellant that the sanction under Section 23(2) of the MCOCA is cryptic and shows non-application of mind, is also wholly misconceived as the sanction order clearly sets out that all the papers were perused by the sanctioning authority and thus it cannot be said that there was non-application of mind by the sanctioning authority as alleged. Apart from this, learned Counsel for the appellant has also not been able to point out any cogent reason to buttress his contention that the sanction has been wrongly accorded by the sanctioning authority. There is, therefore, no merit in his contention that Section 23(2) of the MCOCA, reproduced above, comes to the aid of the appellant.

61. In the result, it is not difficult to concur with the findings of the learned Special Judge that there is sufficient material for framing of charges against the accused persons under the various provisions of law and a prima facie case is made out against the appellant under Sections 4 & 5 of the ITP Act, Section 3(i)(ii), 3(4), 3(5) and Section 4 MCOCA and Sections 420/120B IPC. Before parting with the case, however, it is directed that since in the meantime the bail plea of the appellant has been rejected by this Court, the learned Special Judge shall proceed with the trial of the case as expeditiously as possible.

62. The appeal is accordingly dismissed. Crl. M.A. Nos.336 and 338/2007 also stand dismissed. There will be no order as to costs.

A copy of this order be sent to the learned Special Judge, New Delhi for information and record.