

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.818-820 OF 2021

IN

S.L.P. (CRL.) NOS.6044-6046 OF 2021
(Arising out of Diary No(s).43190 of 2019)

DUMYA ALIAS LAKHAN ALIAS INAMDAR,ETC ..Appellant(s)

VERSUS

STATE OF MAHARASHTRA ..Respondent(s)

O R D E R

Delay condoned.

Leave granted

These appeals arise out of the judgment and order dated 23.02.2016 passed by the High Court of Judicature at Bombay, Bench at Aurangabad in CRLA Nos.583, 584 and 592 of 2014. The appeals are preferred by original Accused Nos.1, 4 and 7, who along with others were tried in the Court of the Additional Sessions Judge, Aurangabad in Special Case No.10 of 2009 for having committed offences punishable under Sections 395, 397, 457, 379, 380, 120-B of IPC and 3(1)(ii), 3(2) and 3(4) of the MCOC Act.

By judgment and order dated 31.07.2014, Trial Court found that the case of prosecution was proved against the accused. Accused No.3 having been declared to be absconding, the other six persons were convicted and sentenced by the Trial Court in respect of the offences alleged to have been committed by them. Accepting

the case of the prosecution, the Trial Court passed the following order:

"1. Accused No.1) Kiran s/o Shrimant Bhosale.
Accused No.2) Suresh s/o Sanjay alias Degha Bhosale,

Accused No.4) Dumya alias Lakhan alias Inamdar s/o Shrimant Bhosale,

Accused No.5) Sanotsh s/o Sanjay Bhosale,
Accused No.6) Kishor s/o Devidas alias Degha Bhosale and

Accused No.7) Appa s/o Shrimant Bhosale are convicted for the offence punishable under for the offence punishable u/s 395 r/w 120-B of the IPC and sentenced to suffer Rigorous Imprisonment for the period of 10 years each.

2. Accused Nos.1,2,4 and 5 are convicted for the offence punishable u/s 3(1) (ii) of the MCOC Act r/w 120-B of the IPC and sentenced to suffer Rigorous Imprisonment for the period of 10 years each and to pay fine of Rs.5,00,000/- (Rs. Five Lacs) each, in default to suffer further Rigorous Imprisonment for 3 years each.

3. Accused Nos.6 and 7 are convicted for the offence punishable u/s 3(II) of the MCOC Act, r/w 120-B of the IPC and sentenced to suffer Rigorous Imprisonment for the period of 7 years each and pay fine of Rs. 5,00,000/- (Rs. Five lacs) each, in default to suffer further Rigorous Imprisonment for 3 years each.

4. Accused Nos.1,2,4 and 5 are convicted for the offence punishable u/s 3(2) of the MCOC Act r/w 120-B of the IPC and sentenced to suffer Rigorous Imprisonment for the period of 10 years each and to pay fine of Rs.5,00,000/- (Rs. Five lacs) each, in default to suffer further Rigorous Imprisonment for 3 years each.

5. Accused Nos.6 and 7 are convicted for the offence punishable u/s 3(2) of the MCOC Act r/w 120-B of the IPC and sentenced to suffer Rigorous Imprisonment for the period of 7 years each and pay fine of Rs.5,00,000/- (Rupees Five lacs) each, in default to suffer further Rigorous Imprisonment for 3 years each.

6. Accused Nos.1,2,4 and 5 are convicted for

the offence punishable u/s 3(4) of the MCOC Act, r/w 120-B of the IPC and sentenced to suffer Rigorous Imprisonment for the period of 10 years each and to pay fine of Rs.5,00,000/- (Rupees Five lacs) each, in default to suffer further Rigorous Imprisonment for 3 years each.

7. Accused Nos.6 and 7 are convicted for the offence punishable u/s 3(4) of the MCOC Act, r/w 120-B of the IPC and sentenced to suffer Rigorous Imprisonment for the period of 7 years each and pay fine of Rs.5,00,000/- (Rupees Five lacs) each, in default to suffer further Rigorous Imprisonment for 3 years each.

8. All the sentences shall run concurrently.

9. The accused Nos.1,2,4,5,6 and 7 are entitled to get set off u/s 428 of Cr.PC for the period of detention under gone by them.

10. Accused Nos.1,2,4,5,6 and 7 are acquitted u/s 397, 457, 379 and 380 of IPC.

11. Accused No.3 is absconding. The Investigating Officer is directed that, after arrest of absconding accused No.3 Umesh Shivlal Shinde, separate supplementary Charge Sheet be filed against him.

12. Muddemal property be preserved till conclusion of trial against accused No.3."

Being aggrieved, the appellants approached the High Court by filing aforementioned Criminal Appeals which were found to be without substance and were dismissed vide judgment and order presently under challenge.

We have heard Mr. Pravin Satale, learned Advocate for the appellants and Mr. Rahul Chitnis, learned Counsel for the State.

Mr. Satale invites our attention to the decision in *Sharad Hiru Kilambe vs. State of Maharashtra & Ors.* [(2018) 18 SCC 718]

("Sharad Hiru Kilambe" for short). He submits that the default sentences awarded to the appellants were on the excessive side and considering the economic conditions of the appellants, relief in terms of the aforesaid decision be granted to the appellants.

With the assistance of the learned counsel, we have gone through the record and do not find any reason to take a different view in the matter insofar as conviction was recorded against the appellants. The substantive sentences awarded to them as well as imposition of fine also do not call for interference.

However, default sentences awarded to the appellants show that for the offences punishable under Sections;

- (a) 3(1)(ii) of the MCOC Act read with Section 120-B of IPC;
- (b) 3(2) of the MCOC Act read with Section 120-B of IPC.;
- and
- (c) 3(4) of the MCOC Act read with Section 120-B of IPC;

the appellants have been awarded sentence for three years each on the aforesaid three counts.

In terms of the decision taken by this Court in *Sharad Hiru Kilambe*, the default sentence cannot be directed to run concurrently. The discussion in that behalf is to be found in paragraphs 17 and 18 of said decision which for facility are quoted hereunder:

"17. In the circumstances, we reject the submission regarding concurrent running of default sentences, as in our considered view default sentences, inter se, cannot be directed

to run concurrently. However, considering the financial condition of the appellant, a case is certainly made out to have a sympathetic consideration about the quantum of default sentence.

18. The quantum of fine imposed in the present case in respect of offences punishable under Sections 364-A, 395, 397 and 387 IPC is not excessive and is quite moderate. However, in our view, the default sentence for non-payment of such fine, ought to be reduced to the level of one month on each of those four counts in respect of the appellant. We now come to the imposition of fine and default sentences for the offences punishable under Sections 3(1)(ii), 3(2) and 3(4) of the MCOC Act. The text of these sections shows that these provisions contemplate, upon conviction, mandatory minimum fine of Rs. 5 lakhs on each count. We do not therefore find anything wrong with the imposition of fine of Rs. 5 lakhs in respect of each of those three counts under the MCOC Act. We however find that the imposition of default sentences of three years is slightly on a higher scale. We therefore reduce the default sentence to a period of one year each in respect of these three counts of the offences under the MCOC Act."

However, the default sentence given to the concerned accused of three years each on three counts was found to be excessive.

Similar situation obtains in the present matter and financial conditions of the appellants are also on the same lines.

We therefore, proceed to grant similar relief to the present appellants and direct that the default sentences awarded to each of the appellants on aforesaid three counts shall be one year each in respect of such counts. Except for the modification indicated hereinabove, the rest of the conclusions including conviction and

substantive sentences as well as imposition of fine remain unaltered.

The appeals are allowed to the aforesaid extent.

.....J.
(UDAY UMESH LALIT)

.....J.
(AJAY RASTOGI)

NEW DELHI;
AUGUST 13, 2021.

ITEM NO.25 Court 2 (Video Conferencing) SECTION II-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CRIMINAL) Diary No(s). 43190/2019

(Arising out of impugned final judgment and order dated 23-02-2016 in CRLA No. 583/2014 23-02-2016 in CRLA No. 584/2014 23-02-2016 in CRLA No. 592/2014 passed by the High Court of Judicature at Bombay at Aurangabad)

DUMYA ALIAS LAKHAN ALIAS INAMDAR,ETC. Petitioner(s)

VERSUS

STATE OF MAHARASHTRA Respondent(s)

(IA No.5950/2020-CONDONATION OF DELAY IN FILING and IA No.5954/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.5952/2020-CONDONATION OF DELAY IN REFILEING / CURING THE DEFECTS)

Date : 13-08-2021 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT

HON'BLE MR. JUSTICE AJAY RASTOGI

For Petitioner(s) Mr. Rajiv Shankar Dvivedi, AOR
Mr. Pravin Satale, Adv.
Mr. Rishabh Jain, Adv.
Mr. Sushant Kr. Sarkar, Adv.
Ms. Arti Dvivedi, Adv.

For Respondent(s) Mr. Rahul Chitnis, Adv.
Mr. Sachin Patil, AOR.
Mr. Aaditya A. Pande, Adv.
Mr. Geo Joseph, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

Leave granted.

The appeals are allowed in terms of the signed order.

Pending applications, if any, shall stand disposed of.

(INDU MARWAH)
COURT MASTER (SH)

(BEENA JOLLY)
COURT MASTER (NSH)

(SIGNED ORDER IS PLACED ON THE FILE)

LL 2021 SC 396