
(2011) 12 AHC CK 0178
In the Allahabad High Court
Case No : Misc. Bench No. - 3819 of 2011

Ashtabhuja Mishra

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 12-12-2011

Acts Referred:

Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 — Section 14, 14(1), 15, 15(1), 15(2)

Citation : (2011) 12 AHC CK 0178

Hon'ble Judges : Surendra Vikram Singh Rathore, J; Narayan Shukla, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Hon"ble Surendra Vikram Singh Rathore, J.—Since a common question of law is involved in both the aforementioned writ petitions, therefore, a common order is being passed.

2. Both the above mentioned writ petitions, the order of attachment of the property passed by the District Magistrate, Gonda, u/s 14 of U.P. Gangsters & Anti Social Activities (Prevention) Act, 1986 (hereinafter referred to as "Gangsters Act") has been challenged on two grounds.

3. Firstly, the vires of Section 14 of the Gangsters Act has been challenged and secondly on the ground that there was no material before the District Magistrate to form any reasonable belief in consonance with the condition specified u/s 14 of the Gangsters Act nor the District Magistrate did apply his own mind before passing the said order and in fact he reproduced the police report verbatim in his order.

4. Learned Counsel for the petitioners has placed reliance of pronouncement of this Court in Writ Petition No. 7095(M/B) of 2010 Prem Naraian pandey vs. State of U.P. and others, delivered on 28.2.2011.

5. On the point of vires in that case it was held that the Full Bench of this Court

in the case of Ashok Dixit vs. State of U.P. and others, (Full Bench), reported in Ashok Kumar Dixit Vs. State of U.P. and Another, has held the validity of the aforesaid Act, therefore exists no more open for the petitioners to challenge the vires of Section 14 of the Gangsters Act on any ground whatsoever.

6. Now the next point raised on behalf of the petitioner is concerned, this Court expresses its full respect towards the pronouncement of this Court in the case of Prem Narain Pandey (supra) relied upon by the Learned Counsel for the petitioners but in that case the other provisions of the Gangsters Act were not considered. Necessary sections which relate to above controversy are as under:

14. Attachment of property.-(1) If the District Magistrate has reason to believe that any property, whether moveable or immovable, in possession of any person has been acquired by a gangster as a result of the commission of an offence triable under this Act, he may order attachment of such property whether or not cognizance of such offence has been taken by any Court.

(2) The provisions of the Code shall mutatis mutandis apply to every such attachment.

3. Notwithstanding the provisions of the Code the District Magistrate may appoint an Administrator of any property attached under sub-section (1) and the Administrator shall have all the powers to administer such property in the best interest thereof.

4. The District Magistrate may provide police help to the Administrator for proper and effective administration of such property.

15. Release of property.-(1) Where any property is attached u/s 14, the claimant thereof may, within three months from the date of knowledge of such attachment, make a representation to the District Magistrate showing the circumstances in and the sources by which such property was acquired by him.

(2) If the District Magistrate is satisfied about the genuineness of the claim made under sub-section (1) he shall forthwith release the property from attachment and thereupon such property shall be made over to the claimant.

16. Inquiry into the character of acquisition of property by court.-(1) Where no representation is made within the period specified in sub-section (1) of Section 15 or the District Magistrate does not release the property under sub-section (2) of Section 15 he shall refer the matter with his report to the Court having jurisdiction to try an offence under this Act.

(2) Where the District Magistrate has refused to attach any property under sub-section (1) of Section 14 or has ordered for release of any property under sub-section (2) of Section 15, the State Government or any person aggrieved by such refusal or release may make an application to the Court referred to in sub-section (1) for inquiry as to whether the property was acquired by or as a result of the commission of an offence triable under this Act. Such court may, if it

considers necessary or expedient in the interest of justice so to do, order attachment of such property.

(3) (a) On receipt of the reference under sub-section (1) or an application under sub-section (2), the Court shall fix a date for inquiry and give notices thereof to the person making the application under sub-section (2) or, as the case may be, to the person making the representation u/s 15 and to the State Government, and also to any other person whose interest appears to be involved in the case.

(b) On the date so fixed or on any subsequent date to which the inquiry may be adjourned, the Court shall hear the parties, receive evidence produced by them, take such further evidence as it considers necessary, decide whether the property was acquired by a gangster as a result of the commission of an offence triable under this Act and shall pass such order u/s 17 as may be just and necessary in the circumstances of the case.

(4) For the purpose of inquiry under sub-section (3), the Court shall have the power of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Act No. V of 1908), in respect of the following matters, namely:

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commission for examination of witnesses or documents;

(f) dismissing a reference for default or deciding it ex parte;

(g) setting aside an order of dismissal for default or ex parte decision.

(5) In any proceedings under this section, the burden of proving that the property in question or any part thereof was not acquired by a gangster as a result of the commission of any offence triable under this Act, shall be on the person claiming the property, anything to the contrary contained in the Indian Evidence Act, 1872 (Act No. 1 of 1872), notwithstanding.

17. Order after inquiry.-If upon such inquiry the Court finds that the property was not acquired by a gangster as a result of the commission of any offence triable under this Act it shall order for release of the property of the person from whose possession it was attached. In any other case the Court may make such order as it thinks fit for the disposal of the property by attachment, confiscation or delivery to any person entitled to the possession thereof, or otherwise.

18. Appeal -The provisions of Chapter XXIX of the Code shall, mutatis mutandis, apply to an appeal against any judgment or order of a Court passed under the provisions of this Act.

7. The aforesaid provisions clearly specify that a person aggrieved by the attachment made by the District Magistrate u/s 14 of the Gangsters Act may apply for the release of the property and if the District Magistrate is satisfied about the genuineness of the claim then he shall forthwith release the property from attachment. Such a claim has to be made within the period of three months when no such representation is made within the period of three months and the District Magistrate does not release the property in view of the provision of Section 15(2) of the Gangsters Act then he shall refer the matter with his report to the Court having jurisdiction to try an offence under this Act.

8. Section 17 of the Gangsters Act provides that if on enquiry the Court finds that the property was not acquired by a gangsters as a result of commission of any offence, triable under this Act, the Court shall order for release of the property, so attached.

9. Section 18 of the Gangsters Act, provides that an appeal may be filed by the aggrieved person against the judgment and order of the Court passed under the provisions of this Act.

10. this Court in Kailash Sahkari Awas Samiti vs. State of U.P. and others, passed in Criminal Appeal No. 3000 of 2003 decided on 2.2.2010 has held that an appeal u/s 18 of the Gangsters Act is maintainable against the order of Special Court, therefore a complete procedure has been provided for the relief claimed in their petitions. But in both the above mentioned writ petitions this procedure has been adopted and straightaway writ petition has been filed. Since this case was heard finally and judgment was reserved, therefore, in the considered opinion of the Court it would be just to re-hear the matter on the point discussed above.

11. Registry is directed to list this matter in the week commencing 19th December, 2011.