
(2001) 10 AHC CK 0033

In the Allahabad High Court

Case No : Criminal Mis. W.P. No's. 499 and 578 of 2001

Badan Singh alias Baddo

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 16-10-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 110, 117, 121, 372, 373

Evidence Act, 1872 — Section 16

Penal Code, 1860 (IPC) — Section 26, 302, 307, 379, 392

Citation : (2002) CriLJ 1392

Hon'ble Judges : R.K. Dash, J

Bench : Single Bench

Advocate : K.K. Dwivedi and R.P. Dwivedi, for the Appellant; A.G.A., for the Respondent

Final Decision : Allowed

Judgement

R.K. Dash, J.—Since these two writ petitions arise out of the judgment and order dated 8-12-2000 passed by the learned Special Judge, Merrut in Special Case No. 14/11 of 2001, they were heard analogously and are disposed of by this common judgment. The grievance of the petitioner is that the U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 (hereinafter referred to as "the Act") is a draconian law with the aid of which and on the basis of a false and concocted report of the Senior Superintendent of Police, Meerut that the petitioner Badan Singh being a gangster acquired properties as a result of commission of several offences triable under the Act, the District Magistrate, Meerut attached the residential house as well as movable properties belonging to all the petitioners. Thereupon, on a reference being made, the learned Special Judge modified the order of the District Magistrate and released part of residential house and cash amounting to Rs.78,573/- from attachment. Being aggrieved by the orders of the District Magistrate as well as the Special Judge, the petitioners have approached this Court by filing these two writ petitions under Article 226 of the Constitution

for quashing of the said two orders and for release rest of the properties from attachment.

2. For better appreciation of the questions of law involved in these proceedings, a few emerging from the impugned order of attachment, annexure-1 may briefly be stated thus :

The Senior Superintendent of Police, Meerut by letter dated 9-6-2000 moved the District Magistrate, Meerut for attachment of movable and immovable properties in possession of Badan Singh, one of the writ petitioners alleging that he is a gangster and has been involved in large number of cases of murder, theft and extortion etc. since 1986. He has an organised gang whose main activity is to acquire wealth by putting the general public in fear of death or hurt. Being a gangster and by his criminal activities, he acquired vast wealth with the help of which he constructed a palatial building bearing house No.8 (new No.9) at Beripura under Transport Nagar P.S. in the city of Meerut and purchased luxury goods. As borne out from the attachment order Annexure-1, the District Magistrate on the basis of the aforesaid report of the Senior Superintendent of Police, Meerut and also the information received from other sources was satisfied that Badan Singh being a gangster amassed wealth as a result of commission of offences under the Act and having held thus attached the properties. The petitioners made a representation to the District Magistrate for release of the properties from attachment. The specific case of petitioner Badan Singh was that no materials were placed before the District Magistrate that the properties said to be in his possession had been acquired by him as a gangster as a result of commission of any offence under the Act. The impugned order though indicates that the District Magistrate attached the properties basing upon the report of the S.S.P., Meerut as well as the information received from other sources, however, the details of any such information received from other sources are conspicuously absent in the said order. His further case was that most of the criminal cases registered against him have ended in acquittal and others have been stayed pursuant to the order of this Court. He refuted the allegation that he is a gangster and acquired any property as a result of commission of any offence. His positive assertion was that the land over which the house in question is situated was purchased by his father Charan Singh in 1966 and by that time he was not born. His father died leaving behind his three sons and four daughters and all the sons have their independent source of income with the aid of which they are maintaining their family. It was specifically urged that some of the attached movables belong to ladies and children. The District Magistrate upon hearing affirmed the order of attachment in part and then made reference to the Special Judge as provided u/s 16 of the Act. The petitioners in support of their case filed affidavits and certain documents and learned Special Judge upon hearing the parties passed a lengthy order, copy whereof at annexure-5 releasing part of the building and cash of Rs. 78,573/-.

3. The list of properties under attachment in not filed by either party. Since there

is no dispute about the properties so attached, it was not felt necessary to direct the State to file the list thereof.

4. Learned counsel appearing for the petitioners has strenuously contended that the District Magistrate, Meerut in illegal and arbitrary exercise of power under the Act attached all the properties, both movable and immovable, belonging to the petitioners without there being any reason to believe that petitioner Badan Singh is a gangster and as a result of commission of any offence under the Act has acquired those properties. The Special Judge also fell in error and affirmed the order of the District Magistrate. Elaborating the argument, he contended that before asking the petitioners to discharge the burden which lay on them as provided in Sub-section (5) of Section 16 to prove that the properties in question were not acquired as a result of commission of any offence triable under the Act, it is obligatory of the State to prove that Badan Singh is a gangster and that the attached properties belonged to him. Since the State failed discharge the initial burden, the learned Special Judge ought not to have affirmed the order of attachment of the District Magistrate with the observation that petitioners could not prove their legal source of income to acquire the properties.

5. Per contra, learned counsel appearing for the State urged that scope and ambit of power of this Court under Article 226 of the Constitution being limited, orders of the District Magistrate and the Special Judge which are based on appreciation of facts call for no interference. He further submitted that the impugned orders cannot be interfered with in exercise of extra-ordinary writ jurisdiction when alternative remedy by way of appeal is provided u/s 18 of the Act was available to the petitioners.

6. I shall first deal with the legality, propriety and correctness of the order of attachment passed by the District Magistrate u/s 14 of the Act. If it is ultimately held that the said order smacks of arbitrariness and has been passed in absence of any material to believe that Badan Singh is a gangster and as a result of commission of any offence under the Act has acquired the properties, then the order of attachment per-se being illegal has to be set at naught. In the event such a conclusion is arrived at, then the discussion on the question of correctness or otherwise of the order of the Special Judge will be academic.

7. For better appreciation, Section 14(1) of the Act is reproduced hereunder :

14. Attachment of property - (1) If the District Magistrate has reason to believe that any property, whether movable 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.

8. The aforesaid provision clearly envisages that the order of the District Magistrate attaching one's property should be based on reasons and not arbitrary. The expression "reason to believe" appearing therein has some intent and purpose. It puts fetter in the arbitrary exercise of power of attachment to

deny a person of his right to any property. What law requires is that there must be reason to believe that the property sought to be attached has been acquired by a "gangster" as a result of commission of any offence under the Act. The expression "reason to believe" contemplates an objective determination based on intelligent care and deliberation involving judicial review, as distinguished from purely subjective consideration. There must be rational and intelligible nexus between "reason" and "belief. The word "believe" is a very much stronger word than "suspect" and it involves the necessity showing that the circumstances were such that a reasonable man must have felt convinced in his mind that what has been alleged is true. The expression "reason to believe" is also defined in Section 26 of the Indian Penal Code. According to the said definition a person is said to have "reason to believe" a thing, if he has sufficient cause to believe that thing but not otherwise. "Reason to believe" is not the same thing as "suspicion" or "doubt" and mere seeing also cannot be equated to believing "Reason to believe" is a higher level of State of mind. Similar words "reason to believe" as appearing in the Act are also there in the Income Tax Act. Interpreting the said expression the Supreme Court in the case of Ganga Saran and Sons P. Ltd. Vs. Income Tax Officer and Others, observed that words "has reason to believe" is stronger than the words "is satisfied". The belief entertained by the authority must not be arbitrary or irrational. It must be reasonable or in other words, it must be based on reasons which are relevant and material. The Court, of course, cannot investigate into the adequacy or sufficiency of the reasons which weighed with the authority in coming to the belief, but the Court can certainly examine whether the reasons are relevant and have a bearing in the matter in regard to which it is required to entertain the belief.

9. So keeping in mind the meaning of the words "reason to believe" in Section 14 of the Act coupled with the effect of order of attachment which makes one homeless and pauper, it is to be seen whether in the present case there were sufficient materials before the District Magistrate, Meerut for his belief that petitioner Badan Singh is a gangster and that he has acquired the properties as a result of commission of any offence triable under the Act.

10. For answering the questions posed, reference may be made to the definition of words "Gang" and "Gangster" as defined in Section 2(b) and 2(c) of the Act :

2(b) "Gang" means a group of persons, who are acting either singly or collectively, by violence, or threat or show of violence, or intimidation, or coercion or otherwise with the object of disturbing public order or of gaining any undue temporal, pecuniary material or other advantage for himself or any other person indulged in anti-social activities, namely : (i) to (xv) (omitted as not necessary to reproduce).

2(c) "Gangster" means a member or leader or organizer of a gang and includes any person who abets or assists in the activities or a gang enumerated in Clause (b), whether before or after the commission of such activities or harbours any person who has indulged in such activities.

11. A conjoint reading of the aforesaid two definitions what appears is that for taking action u/s 14 against a person, there must be materials for objective determination of the District Magistrate that he either as a member, leader or organizer of a gang acquired any property as a result of commission of any offence under the Act. There must be nexus between his criminal act and the property acquired by him. His mere involvement in any offence is not sufficient to attach his property. In other words, what is necessary to find is whether his acquisition of property was as a result of commission of any offence enumerated in the Act being a member, leader or organizer of a gang. One might have committed several offences, but if the property acquired by him was with the aid of his earning from legal source, no action u/s 14 of the Act can be taken against him.

12. In the present case, it transpires from the impugned orders, Annexures-1 and 2 that petitioner Badan Singh is involved in several cases since 1986 and there are in total 15 criminal cases against him. Of those cases, two are u/s 392 and 379, IPC, two u/s 302, IPC, three u/s 307, IPC and others are either under the Arms Act, U.P. Control of Goondas Act or u/s 110, Cr. P.C. It also appears that two cases (case No. 277 of 1992 and 290 of 1997) are registered u/s 2/3 of the Act and referring to those two cases, the District Magistrate came to hold that petitioner Badan Singh is a gangster whose main object is to commit murder, extortion and other heinous crimes with the object to have pecuniary gain. The impugned orders however, do not reveal as to the nature of allegations made against him in the aforementioned two cases and the result thereof, in as much as, whether they ended in conviction or acquittal. His order is also silent as to when the house No. 8 situated at Beripura P.S. Transport Nagar was constructed and the time of acquisition of the movables, since as observed earlier, there must be nexus between the commission of any offence and acquisition of the property. The impugned orders, Annexures-1 & 2 do not show that the District Magistrate, Meerut decided the issue in the manner as law demands. Rather it appears that he being influenced by the report of the S.S.P., Meerut about involvement of petitioner Badan Singh in large number of cases, hastened to exercise power under the Act and attached the properties in absence of any material to show that those properties were acquired as a result of commission of any offence.

13. Section 14 of the Act is a harsh provision that affects one's right to property which is a fundamental right under the Constitution. Therefore, initial burden was upon the State to satisfy the District Magistrate with necessary materials that petitioner Badan Singh being a gangster acquired the properties as a result of commission of any offence. That was however, not done. So, complaining the attachment order to be illegal, a move was made by the petitioners by filing a representation for release of the properties. The said prayer was rejected with the observation that the petitioners could not establish the source of income to build the house and acquire the movables. This approach of the District Magistrate, in my opinion, has no sanction under law. The Act does not provide

that aggrieved person seeking release of the properties from attachment must prove the source of income for acquisition thereof. So, on a conspectus of the relevant provisions of the Act, I am of the considered opinion that the order of attachment passed by the District Magistrate, Meerut is illegal, arbitrary and against the weight of the materials on record.

14. In view of the findings in the preceding paragraph that the order of attachment is illegal, the question of legality and correctness of the order, Annexure-5 passed by the learned Special Judge on a reference being made by the District Magistrate becomes academic. Admittedly, the land on which the residential house is situated was purchased by Charan Singh, predecessor of the petitioners. The case of the petitioners is that Charan Singh was a transporter and had constructed the house with the aid of his own income. Upon his death, it devolved upon his sons who are residing therein and have been earning their livelihood by having independent and separate business. In support of their case, they filed affidavits and other relevant documents. S.H.O., P.S. Transport Nagar also filed certain reports and challenged the claim of the petitioners. Learned Special Judge dealt with the issues as if he was exercising power under the Prevention of Corruption Act and concluded that the petitioners failed to prove by leading evidence regarding the savings with and aid of which the house in question was built. He assessed the income, expenditure and savings and valued the house and upon such assessment came to hold that only three rooms, kitchen and bathroom could have been constructed with the income of the entire family of the petitioners and having so held released that part of the house from attachment. He rejected the claim of the petitioners observing that they failed to discharge the burden that lay on them to prove that the attached properties had not been acquired by Badan Singh as a gangster as result of commission of any offence under the Act.

15. Sub-Section (3) and (5) of Section 16 which have relevance for deciding the issue are extracted as under :

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 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.

(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.

16. The authority to hold enquiry as provided u/s 16 is the Court which has jurisdiction to try the offences under the Act. In the case in hand, Special Judge, Meerut is the competent Court to try the offences under the Act and accordingly, on a reference being made by the District Magistrate he passed the impugned order, Annexure-5. Clause (b) of Sub-section (3) prescribes the procedure for holding enquiry by the Court. As provided therein, on the date of hearing, the Court shall receive evidence produced by the parties and take further evidence which it may consider necessary and then decide whether properties were acquired by a gangster as a result of commission of any offence under Act. The Act is a special Statute which was been enacted for the prevention of and for coping with gangsters and anti-social activities and for matters connected therewith or incidental thereto. These being the objects and reasons for having the Act, the Legislature in its wisdom thought it expedient to place burden upon the claimant to prove in the negative as provided in Sub-section (5) that properties were not acquired by a gangster as a result of commission of any offence under the Act. But before asking the claimant to discharge the burden, it is incumbent upon the State to initially prove that one is a "gangster" as defined in the Act who alleged to have acquired the attached properties. For example, A and B, the two brothers are residing under one roof and certain properties in possession of B have been attached on the allegation that those were acquired by "A" being a "gangster" as a result of commission of an offence. "B" makes a representation claiming those properties to be of his own. During enquiry u/s 16 of the Act, the State is required to prove that "A" is a gangster. If this is established, then the burden shifts to "B" as provided in sub Section (5) to prove that the attached properties were not acquired by A as a result of commission of any offence. In the case in hand, the initial burden as aforesaid had not been discharged by the State, yet the learned Special Judge with the aid of sub Section (5) came to hold that the petitioners could not prove that Badan Singh had not acquired the properties as a "gangster" as a result of commission of any offence under the Act and consequently, affirmed the order of the District Magistrate. In that view of the matter, I would hold that the impugned order, annexure-5 is contrary to law and thus unsustainable.

17. I shall now advert to the argument advanced by the learned A.G.A. as to the maintainability of the writ petitions on the ground of availability of alternative remedy u/s 18 of the Act. To answer the question, it is necessary to allude to Section 18 which reads as under :

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.

18. Chapter XXIX of the Code of Criminal Procedure 1973 under caption "Appeal"

contains twenty three sections running from. 372 to 394. Section 372 provides that no appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force. Section 373 makes provision for appeal against order passed u/s 117 and 121, Cr. P.C. u/s 374 appeal lies to the Supreme Court and the High Court against the order of conviction. Section 375 bars appeal against the order of conviction on the accused admitting his guilt. Section 376 provides that no appeal shall lie in petty cases. u/s 377 right has been conferred on the State Government to move in appeal against inadequacy of sentence. Section 378 provides for filing appeal against the order of acquittal. Section 379 makes provision for appeal to the Supreme Court against the order of the High Court reversing acquittal to conviction. Special right to appeal in certain cases is provided u/s 380. Sections 381 and 382 prescribe the procedure for filing of appeal in the Court of Sessions and the manner of hearing. The Act is a penal Statute and Section 3 thereof prescribes punishment to be awarded to a gangster as well as public servant rendering illegal help or support to a gangster. No separate procedure is prescribed to challenge the order of conviction or acquittal passed by the Special Judge in exercise of power conferred by the Act. So, on a conspectus of Chapter XXIX, Cr. P.C. and Sections 3 and 18 of the Act what appears is that appeal would lie against the order of conviction or acquittal under the Act and not against the order of attachment of the District Magistrate or the order of the Special Court on the reference made by the District Magistrate. Even assuming that Section 18 has the application and orders of the District Magistrate and the Special Court can be challenged by way of appeal yet I would hold that the writ petition under Article 226 of the Constitution is maintainable when the very order of attachment passed by the District Magistrate is illegal, arbitrary and without jurisdiction. For arriving at such conclusion, I derive support from the decision of the Apex Court in Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, where it is laid down that availability of effective and efficacious remedy will not operate as bar to approach the High Court under Article 226 of the Constitution in at least three contingencies, namely where writ petition has been filed for enforcement of fundamental rights, or where there has been violation of principle of natural justice or where the order or proceedings are without jurisdiction or vires of an Act is challenged.

19. In view of discussions made above, both the writ petitions are allowed and impugned orders of the District Magistrate, Meerut as well as the Special Judge, Meerut are quashed. The properties shall be released from attachment forthwith.

There will be no order as to costs.