

(1993) 12 AHC CK 0028
In the Allahabad High Court
Case No : Criminal Revision No. 1748 of 1993

Haji Bashir Gog and Ors.

APPELLANT

Vs

State of U.P.& Anr.

RESPONDENT

Date of Decision : 23-12-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397
Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 — Section 2, 3

Citation : (1993) 12 AHC CK 0028

Hon'ble Judges : A.S.Tripathi, J

Final Decision : Dismissed

Judgement

A.S Tripathi J.

1. This revision is filed against an order dated 18101993 nassed by "special Judge (Gangesters Act), Agra summoning the revisionists to face trial under Section 2/3 of U. P. Gangesters Act.

2 The grounds taken in this revision are that the learned special Judge had passed summoning order mechanically without applying his mind the dispute between the parties was of civil nature and the provisions of U. P. Gangesters Act were not attracted.

3 A counteraffidavit was filed on behalf of opposite party No. 2 but the same was in withdrawn, as stated by the learned Counsel for the opposite nartv No 2 on the ground that the revisionists were adopting delaying tacties and were delaying hearing by praying further time to file rejoinder affidavit. Accordingly as assistance can be taken from the counteraffidavit and the same is ignored.

4 I have heard learned Counsel for the revisionists at great length, learned A. G. A. appearing for the State and learned Counsel for the opposite party No. 2 and perused the record.

5 In this case a complaint was filed by opposite party No. 2 which is Annexure

No. 1 to the affidavit filed in support of the revision. In this complaint it was alleged that the revisionists have formed a gang and are adopting tactics to grab the land of opposite party No. 2 on the pretext that it was a aravevard It was further alleged that the revisionists were disturbing communal harmony in the area on account of their land grabmg activities It was further alleged that the revisionists are criminal and have formed a gang and are indulging in antisocial activities. The revisionists have also set up several claims in different civil suits over the land for blackmailing the opposite party No. 2 and others.

6 On this complaint the learned Special Judge recorded statement under Section 200, Cr. P. C. of the complainant. Thereupon he called tor a report from the police in this matter. The Inspector or the concerned police station submitted his report. Annexure No. 3 to the affidavit on record that the revisionists had not produced any evidence that they have claim over the disputed land. They have their criminal history. They were also disturbing communal harmony in the area, setting up their plea that the land was a graveyard. It was further reported that the revisionists were setting up false claim over the land with a view to grab the same. It was submitted that in view of their antisocial activities and land grabbing moves they may be detained under the provisions of Gangesters Act.

7. After perusal of the police report and the statement recorded under Section 200,. Cr. P. C. the learned Special Judge (Gangesters Act) summoned the revisionist by the impugned order to face the trial.

8. The order passed by the learned Special Judge is quoted below: "Perused the complaint and report of Inspector, police station Kotwail

Mathura, it appears that the accused indulged in antisocial activities in order to gain undue pecuniary benefits or other advantage for themselves. Hence they appear to have formed a gang for the above purpose, they are, therefore, gangesters and liable to bummon the accused under Section 2/3 of the Gangesters Act."

9. It was emphatically argued by the learned Counsel for the revisionists that there was no lots of evidence on the basis of which special Judge could take cognizance of the matter. There was no evidence to constitute an offence under the provisions of U. P. Gangesters Act against the revisionists and, therefore, the summoning order was not justified.

10. Learned counsel forthe revisionists also referred to the case of Ashok Dixit v. State of U. P. and another, 1987 All Cr R 230 (FB). In that case the validity of U. P. Gangesters Act itself was challenged. After considering all the aspects of the case a full Bench of this court held that the Act was valid and it was not ultra vires of the Constitution.

11. The learned counsel for the revisionists laid emphasis on paragraph Nos. 13, 14, 23, 68 and 76 of this Full Bench case. But the main emphasis was laid on the facts that the provisions of the Act could not be misused for harrassing innocent

persons and to make civil litigations of criminal matters. It is ture that purpose of this Act is to puhish the declared criminals for deliberately chosing the life of criminal. The aims and objects of the Act have already been defined under Section 2 read with Section 3 of the aforesaid Act. Certain activities have been declared unlawful and punishable under the said Act. This includes forming of a gang, indulging in antisocial activities and disturbing communal harmonies and land grabbing gestures, the phrases gang and gangesters have been defined in the Act itself, ultimately in this Full Bench case the High Court had held that it was for the Magistrate or the special Judge to consider whether there was evidence justifying the framing of charge and this court could not sit over the matter and assess the evidence to find out as to whether any prima fade case is made out or not.

12. After examining the facts of the case I find that it was for the trial court to assess the facts and circumstances and the evidence produced before him by way of statement under Section 200, Cr. P. C., report of the police that prima facie case for framing charge is made out or not. The Special Judge was satisfied from these papers that a prima facie case was there and, therefore, that revisionists were summoned to face the trial. There appears nothing illegal in the order of summoning passed by the special Judge.

13. It will be open to the revisionists against the time of framing of charge to improve upon the trial court about the sufficiency or insufficiency of evidence. However, at this stage without expressing any opinion about the evidence on record I (sic) find that no interference is called for in the summoning order passed by the learned Special Judge. The revision has, therefore, no force and should be dismissed.

14. The revision is accordingly dismissed.

Revision dismissed.