
(2009) 03 AHC CK 0025
In the Allahabad High Court

Jhon Mohammad

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 27-03-2009

Acts Referred:

Constitution of India, 1950 — Article 20
Criminal Procedure Code, 1973 (CrPC) — Section 220
Penal Code, 1860 (IPC) — Section 30, 504, 71
Prevention of Corruption Act, 1988 — Section 13, 7

Citation : (2009) CriLJ 3496 : (2011) 7 RCR(Criminal) 1301

Hon'ble Judges : R.N. Misra, J; Amar Saran, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. We have heard learned Counsel for the petitioner and learned AGA.
2. This petition has been filed for quashing a notice dated 9-2-2009 u/s 3(3) of the U.P. Control of Goondas Act, 1970 (hereafter the "Goondas Act") issued by the ADM (F & R), J.P. Nagar. The impugned notice mentions two items. The first is a case at case crime No. 704 of 2008 under Sections 30 and 504 IPC, PS Mandi Dhanora, District J.P. Nagar. In this case, the petitioner along with his companions are, said to have murdered Nafees, brother of the informant (Anis Ahmad) with country-made pistols. A charge-sheet has been filed in this case on 28-5-2009. The second case is at case crime No. 727 of 2008 u/s 3(1) of the U.P. Gangsters and Anti- Social Activities (Prevention). Act, 1986, (hereafter referred to as the "Gangsters Act"), P.S. Dhanora, District J.P. Nagar.
3. It is argued by the learned Counsel for the petitioner that as the petitioner was arrayed as an accused in the case under the Gangsters Act, only on the basis of a single cage and he was enlarged on bail, which liberty he did not misuse, hence initiating proceedings against the petitioner under the Goondas Act amounts to putting him in double jeopardy which is in violation of Article 20(2) of the Constitution of India.

4. We think that the Article 20(2) of the Constitution has no application to the present matter as what the said article prohibits is the punishment and prosecution for the same offence more than once. An offence under the Gangsters Act which is punishable u/s 3 with a minimum sentence of 2 years upto 10 years R.I. is completely distinct from a proceeding under the Goondas Act which is essentially a preventive proceedings enabling externment of a goonda for a maximum period of 6 months, to be passed by the District Magistrate with a view to maintenance of public order in the district. It is also nobody's case that the petitioner has been prosecuted and punished for the offence under the Gangsters Act so far.

5. The case of State v. Parthban AIR 2006 SCW 5267 cited by the petitioner's counsel also renders no assistance to the case of the petitioner. The said case speaks of two offences under different provisions, viz. Section 7 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereafter the "PC Act"). Every acceptance of illegal gratification whether preceded by a demand or not, is covered by Section 7, whereas the act of a public servant demanding and receiving illegal gratification is covered u/s 13(2) read with Section 13(1)(d) of the PC Act. The Supreme Court observed that the stand of the accused respondent that he could not be punished under both the provision was "clearly unacceptable" (vide para 6). The only limitation was that u/s 220 of the Code of Criminal Procedure (hereafter "Cr. P.C"), and Section 71 IPC where an act constitutes an offence under two different provisions the accused could not be punished with a more severe punishment than what it could have awarded for any one of the two offences. The Supreme Court then proceeded to award a sentence of 1 year R.I. u/s 13(2) and 6 months R.I. u/s 7 of the PC Act, both the sentences to run concurrently. Here as already pointed out above the petitioner is being tried for no offence under the Goondas Act, although he is facing trial for an offence under the Gangsters Act. Hence there is no question of the application of any principal of double jeopardy.

6. The other contention that the District Magistrate should have satisfied himself after application of mind that the petitioner was a "dangerous person" within the meaning of Section 2(b)(ii) of the U.P. Control of Goondas Act, and in the absence any such reasoned satisfaction the proceedings could not be initiated under the Goondas Act.

7. As in the present case it cannot be stated that the show-cause notice u/s 3(3) of the Goondas Act fails to mention the general nature of material allegations, we think that any points and objections that the petitioner wishes to raise in his defence, it would be open to him to raise the same in his reply to the show-cause notice. This is also the view taken by two division benches in Jainendra alias Chottu Singh v. State of U.P. 2007(1) JIC 668 and Ballabh Caubey v. ADM (F), Mathura 1997 All. LJ 1630.

For all these reasons we see no illegality in the aforesaid show-cause notice. The writ petition has no force and it is dismissed.