

(2016) 06 AHC CK 0058
In the Allahabad High Court
Case No : Criminal Appeal No. 497 of 2016

Munna Beg Alias Mohammad Beg

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 14-06-2016

Acts Referred:

Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 — Section 14, 17, 18, 2, 3

Citation : (2016) 96 ACrC 71

Hon'ble Judges : Pratyush Kumar, J.

Bench : Single Bench

Advocate : Ghanendra Singh Chauhan, Advocate, for the Appellant; G.A, for the Respondent

Final Decision : Dismissed

Judgement

Pratyush Kumar, J.—The instant appeal filed on behalf of objectors/appellants under Section 18 of the U.P. Gangsters & Anti-Social Activities (Prevention) Act, 1986 (hereinafter referred as the U.P. Gangsters Act), is directed against the judgment and order dated 1.12.2015 passed by Shri Lokesh Rai, Additional Sessions Judge/Special Judge, Gangsters Act, Lalitpur in G.S.T. No. G-S-E-01 of 2013, whereby the learned Judge has partly approved the order dated 31.8.2013 passed by the District Magistrate, Lalitpur and partly set aside it, thereby out of the three, one property of the alleged gangster Irfan S/o Munna Beg alias Mohammad Beg, appellant no.1 was released in favour of the appellants.

2. Heard Shri G.S. Chauhan, learned counsel for the appellants and Shri Abdul Majid, learned AGA for the State-Respondent and perused the record.

3. Learned counsel for the appellants very briefly has argued that the learned Special Judge has erred in appreciating the evidence adduced by the appellants, he has wrongly placed reliance on the police report and held that out of three attached properties, two were rightly attached by the District Magistrate and only

released one property in favour of the appellants. According to him, impugned judgment is illegal and against the provisions of the Gangsters Act and deserves to be set aside.

4. On behalf of State-Respondent, these arguments have been repelled and it has been submitted that findings recorded by the learned Special Judge are well substantiated from the record, no legal error has been committed by him and appeal deserves to be dismissed.

5. Facts giving rise to the present appeal may be summarised as under:-

That on 17.11.2012 at 6.20 a.m. S.H.O., P.S. Talbehat had lodged an FIR stating therein that seven persons including Irfan Beg alias Munna Beg had informed and organised a gang, which leader was Shiv Narayan @ Raju Soni @ Pappat Soni. Those members of the gang were desperate criminals. During patrolling he was informed by the public that gang had made its profession committing dacoity in the banks for getting material and financial gains. None dared to report against them. Against them number of cases of heinous offences were registered, thereafter, he gave details of those cases and enclosed gang chart. In the gang chart at serial no.2 name of Irfan Beg finds place against whom two criminal cases were shown to be pending involving theft in building, committing house breaking by night in order to commit an offence and dishonestly receiving and retaining stolen properties and hatching criminal conspiracies.

6. At that Case Crime No.1094 of 2012, under Section 2/3 of the U.P. Gangsters Act was registered at P.S. Talbehat. On 17.6.2013 the then S.H.O. Talbehat had submitted a report to the District Magistrate, Lalitpur duly forwarded and recommended by the Superintendent of Police, Lalitpur that Irfan Beg was a known gangster, he had committed various heinous offences and acquired properties in the name of his parents from the proceeds of the crime. At the foot of the report details of such properties were given. First, is a plot at Ravatyanapura, Lalitpur purchased on 20.7.2011, second is one plot at Mauza-Digara, Jhansi where a house had been constructed, and third is TVS Motorcycle No.UP-94H/8133 purchased in the name of the appellants. According to S.H.O., money paid for both the properties was more than 100 times of the income of the appellants. He had requested for attachment of all those properties. The District Magistrate, Lalitpur vide order dated 29.6.2013 after recording his satisfaction attached the said properties. Thereafter, appellants had filed their objections before the District Magistrate, Lalitpur for release of the attached properties on the ground that those properties were acquired by them. Consideration was paid by them from their income. About property no.2 they had made specific averment that this property was purchased on 22.4.2003 and money was paid by the father of the appellant no.1. At that time Irfan Beg was aged about only 11 years. They have disclosed their source of income from the shop of tailoring and selling goats milk and bio-fertilizer.

7. The District Magistrate having received the objections under Section 16 of the

U.P. Gangsters Act, had made reference to the Special Judge for deciding the objection. On that objection G.S.T. No.1/2013 was registered. Notices were issued, on behalf of the appellants two witnesses were produced and after having provided opportunity of hearing to both the parties vide impugned judgment learned Special Judge released one property and affirmed attachment of two properties. In his opinion, in the year 2003 property no.2 was purchased and according to the police, alleged gangster Irfan Beg started committing crime from the year 2009. For this reason, he came to the conclusion that the District Magistrate, Lalitpur had wrongly attached property no.2 as property acquired by a gangster, with the illegal proceeds. In reference to property nos.1 & 3, he observed that these properties were purchased after the year 2009. The appellants could not prove their source of income. For this reason, their claim that those properties were purchased by them, could not be accepted.

8. Learned counsel for the appellants questioned the appreciation of evidence by the Special Judge not on the ground of any factual mistake, but on the ground that he had wrongly placed burden of proof on the appellants to show that those properties were purchased by the appellants with the help of their income. According to him, it was not for the appellants but for the State to prove that those properties were acquired by Irfan Beg in the name of his parents from the proceeds of the crime.

9. On behalf of the State, learned AGA has drawn attention of the Court to the provisions contained in Section 4(b) of the U.P. Gangsters Act and submitted that in such cases burden of proof is on the person, who has made the statement that the properties were not acquired with the help of pecuniary resources derived by his activities as gangster. The said provision may be reproduced her, which reads as under:

"4.(b) where it is proved that a gangster or any person on his behalf is or has at any time been, in possession of movable or immovable property which he cannot satisfactorily account for, or where his pecuniary resources are disproportionate to his known sources of income, the Court shall, unless contrary is proved, presume that such property or pecuniary resources have been acquired or derived by his activities as a gangster."

10. From the plain reading of the afore-quoted provision, the following may be concluded:-

(I) Where it is proved that a person is a gangster;

(II) That person or any person on his behalf has in his possession movable or immovable property; and

(III) which acquisition he could not satisfactorily explain; or

Where his pecuniary resources are disproportionate to his known sources of income,

11. On proof of these above conditions, the Court shall, unless contrary is proved, presume that such property was acquired as a result of his activities as a gangster. In view of above, State is required to show only that Irfan Beg is a gangster and properties in question were possessed by the appellants on his behalf.

12. From these it is crystal clear that the appellants acquired the properties in question from their own income, it was for them to prove. Even if this special rule of evidence is not applied here, even then under Section 106 of the Evidence Act these facts are required to be proved by the appellants that they purchased the properties in question from their own money earned by them. On this score, I do not find any illegality committed by the Special Judge.

13. Learned counsel for the appellants has submitted that criminal cases and special cases pending against Irfan Beg are yet to be decided. At this juncture, no finality can be attached that Irfan Beg is a gangster. According to him, learned District Magistrate merely acted upon the report of the police station whereas under Section 14 of the U.P. Gangsters Act he was required to record his reasons to believe that the properties in question were acquired by Irfan Beg as a result of commission of an offence.

14. Learned AGA has objected that before this Court legality of the order dated 31.8.2013 passed by the District Magistrate cannot be questioned. For two reasons, I am unable to accept this argument. First is in the prayer clause on behalf of appellants quashing of order dated 31.8.2013 has been prayed for though in the grounds of appeal no exception was taken to the legality of the order dated 31.8.2013, but even then with the permission of the Court the ground can be raised by the learned counsel for the appellants, accordingly, for securing the ends of justice, I grant the permission.

15. Perusal of order dated 31.8.2013 reveals that this order was passed after providing of appellants opportunity of hearing. On behalf of the appellants, evidence by way of affidavit was filed. Response of S.H.O. Talbehath was also obtained wherein the S.H.O. had reported that appellants had no income. Property No.2 was estimated to be of Rs.6,00,000/-. Property No.1 was estimated to be of Rs.9,00,000/-. Father of appellant no.1 have no property. Appellant no.1 never worked as tailor. Appellant no.2 never raised goats. After noticing the evidence on record like certified copy of the sale deed dated 20.7.2011, copies of the first information reports lodged against the son of the appellants wherein two incidents of theft committed in the Branch of Central Bank of India, Chirgaon Branch and Punjab National Bank, Talbehath Branch were reported. After perusal of copy of the sale deed dated 27.4.2003 the learned District Magistrate had observed that by that sale deed only land was purchased and from the illegal proceeds from crime a house was constructed. Financial resources to acquire those properties could not be explained by the appellants. For this reason, he declined to release the properties and referred the matter to the Special Judge for inquiry.

16. Perusal of this order reveals that both the parties were provided opportunity of hearing. They led their evidence, thereafter, the District Magistrate, Lalitpur passed a reasoned order. I do not find any illegality in the order dated 31.8.2013.

17. Now, the only question remains whether at this stage Irfan Beg can be said to be a gangster for the purpose of Section 14 and 17 of the U.P. Gangsters Act. Section 14 of the U.P. Gangsters Act speaks about only attachment whereas Section 17 of the U.P. Gangsters Act contains disposal of property by attachment, confiscation or delivery of property to any person entitled to the possession thereof. Attachment appears to be an interim measure and only by attachment though pending adjudication a person in possession may be deprived of the use of the property, but, his/her rights are not extinguished. For this reason, I am of the opinion that the order under Section 14 of the U.P. Gangsters Act can be passed before the alleged gangster is held to be a gangster under the provisions of the U.P. Gangsters Act by the Special Judge, but under Section 17 of the U.P. Gangsters Act the Special Judge has been conferred to pass orders for disposal of property in two ways. First is by attachment and second is by confiscation or delivery to any person other than the objector. Second kind of orders appear to be final orders about disposal of the property acquired by a gangster. Before a person can be said to be a gangster, he must be so held by the Special Judge, Gangster after conclusion of the trial. The order of attachment is only by way of interim arrangement. It appears to be for the safety and preservation of the property only depriving the person from its use. When the District Magistrate can make interim orders about custody of the property being Appellate Authority, Special Judge, Gangster also enjoys that power and no objection can be taken about it.

18. When in the light of the aforesaid legal position impugned order is examined, it transpires that learned Special Judge only confirmed order of attachment of property nos.1 & 3, thereby, he approved interim measures taken by the District Magistrate. To this extent, the Special Judge has exercised his power in terms of Sections 16 and 17 of the U.P. Gangsters Act and he very wisely refrained from passing a final order to dispose of property nos.1 & 3.

19. On behalf of the appellants downloaded copies of two judgments delivered by the Single Judge of this Court have been referred. Their details are as under:-

1. Criminal Appeal No.1690 of 2009, Smt. Maina Devi v. State of U.P., dated 27.9.2013;

20. In this case order of attachment was found illegal on the ground that the said order was bereft of reasons whereas District Magistrate had to record his reasons to believe.

21. In the present case, it has been already held that the District Magistrate, Lalitpur had considered the evidence on record, gave reasons for his belief. For this reason, the case referred by the learned counsel for the appellants is of no help to the appellants.

2. Criminal Appeal No.4542 of 2010, Shashi Kant Chaurasiya and another v. State of U.P., dated 15.10.2014

22. In this case non-recording of reasons by the District Magistrate concerned led this Court to hold that matter was not considered properly by the District Magistrate.

23. For the reason stated above, this case is also of no help to the appellants.

24. The appeal has no substance and it deserves to be dismissed. However, expeditious disposal of the gangster case pending against the alleged gangster Irfan Beg is also desirable in view of the peculiar circumstances of the case.

25. Accordingly, appeal is dismissed and the Special Judge, Gangster, Lalitpur as also the Magistrates before whom cases registered on the basis of Case Crime No.1109 of 2009, P.S. Chirgaon, Jhansi and Case Crime No.817 of 2012, under Sections 457, 380, 411, IPC, P.S. Talbehath, District Lalitpur are pending, are directed to conclude the trial of cases expeditiously.