

(2011) 05 AHC CK 0061
In the Allahabad High Court
Case No : Case No. 4473 of 2008

Nafees and Another

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 17-05-2011

Acts Referred:

Arms Act, 1959 — Section 25, 3
Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 482
Penal Code, 1860 (IPC) — Section 307, 323, 427, 504, 506
Uttar Pradesh Control of Goondas Act, 1970 — Section 3

Citation : (2012) 1 ACR 228 : (2011) 5 ADJ 557 : (2012) 1 AWC 224

Hon'ble Judges : Uma Nath Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Uma Nath Singh, J.—Affidavit filed by State is taken on record.

2. Heard learned Counsel for parties and perused the materials on record.

3. Learned Counsel for the Petitioners, at the outset, made a limited prayer that the impugned order taking cognizance under the U.P. Gangsters and Anti-Social activities (Prevention) Act, 1986 (for short, "the Gangsters Act") only on the basis of case crime No. 144 of 2007 registered u/s 307, 323, 506 and 427 IPC against the Petitioners would not be sustainable in Law. It is contended that the FIR in question was lodged in respect of an incident which occurred when the complainant side came to take forcible possession of a disputed land. The Settlement Officer, Consolidation, in an appeal by one Maqbool Ahmad, father-in-law of Petitioner No. 1 Nafees, relating to the land in question had remanded the matter for afresh consideration which was pending before the Consolidation Officer at the time of incident. According to the learned Counsel, the occurrence in question cannot be said to be an act of disturbing the public order or indulging in anti-social activities. Moreover, the land was purchased by Maqbool Ahmad, brother of Petitioner No. 2 mehmood and father-in-law of Petitioner No. 1 Nafees.

Thus, both the Petitioners are in no manner connected with that land and the order taking cognizance under the provisions of the Gangsters Act in the instant case suffers from the non application of mind. If such proceedings are allowed to continue, that will amount to abuse of the process of law and court.

4. On the other hand, learned State counsel referred to the nature of offences registered vide the case Crime No. 144 of 2007 and supported the order taking cognizance under the Gangsters Act.

5. On due consideration of the rival submissions and perusal of the records, it is noticeable that the impugned order dated 02.2.2008 was passed by the learned Special Judge, Gangsters Act, Faizabad, in case No. 51 of 2008 relating to case crime No. 144 of 2007 registered u/s 307, 323, 506 and 427 IPC. Thereafter, the learned Judge took cognizance also under the Gangsters Act on a charge-sheet being filed. The very genesis of the incident was a pending consolidation proceeding relating to an agricultural land purchased by Maqbool Ahmad, son of Gafoor. Maqbool Ahmad is real brother of the Petitioner No. 2 and father-in-law of Petitioner No. 1. It also appears that during the pendency of that proceedings before the Consolidation Officer, and the land being in possession of Maqbool Ahmad, complainant Mumtaz wanted to take its forcible possession which led to the occurrence as aforesaid. Complainant Mumtaz lodged a first information report on 13.4.2007 against the Petitioners and Maqbool Ahmad, wherein he alleged that he owned an agricultural field in village Atra (Makraha Khurd) in which the Chari crop was sown. Maqbool Ahmad and Mehmood, sons of Gafoor, and also son in law of Maqbool Ahmad namely Nafees ploughed the field by a tractor. Idrees son of Gultam Ali prevented them from ploughing the field, therefore, they attacked him with country made pistol and Lathi. A bullet fired from country made pistol passed over the head of Idrees. Idrees also suffered Lathi injuries at the hands of Nafees, son in law of Maqbool Ahmad and fell down on the ground. Maqbool Ahmad exhorted by shouting that Idrees be not spared. As a result, Mehmood, Maqbool Ahmad and his son in law Nafees jointly caused Lathi injuries to Idrees. Idrees in order to save his life raised alarms which attracted Akram and Latif etc., who arrived at the spot and saw the occurrence. Maqbool Ahmad, his son in law Nafees and Mehmood then ran away from the spot. During the causing of assaults when the mother of complainant came to the spot she was also caused injuries. Thus, the first information report was lodged by the complainant. However, in the first information report on the basis of information received the offences were not found to be covered by the Gangsters Act. But in the charge sheet it was also added. As per the submission of learned Counsel since the evidence and materials to attract the provisions of the Gangsters Act are not available on record, the cognizance taken u/s 3(1) thereof is bad in law. Definitions of "Gang" as given in Section 2(b) and of "Gangster" in Section 2(c) have been discussed in great details in a Full Bench judgment of this High Court reported in 1957 (27) ACC 164 Ashok Kumar Dixit v. State of U.P. and Anr., wherein the validity of the Gangsters Act was challenged. The relevant discussions in the judgment, on reproduction, read as:

13. Section 2(b) defines the term "Gang" to mean a group of persons who by violence, or threat, or show of violence or intimidation or coercion etc. indulge in anti social activities within the object of disturbing public order of gaining any undue temporal or pecuniary material or other advantage for himself. Section 2(b) read as a whole necessarily brings in the concept of violence or intimidation or coercion etc. which is resorted to for gaining material advantage. Then we have Clause (c) of Section 2 which defines the word "Gangster". It means a member or leader or organiser of a group which indulges in the kind of activities set out under the various sub clauses of Clause (b) of Section 2, by use of violence or threat or show of violence or intimidation etc. Section 3(i) lays down the penalty for being the member or leader or organiser of a group which engages or indulges in the kind of unsocial activities enumerated u/s 2(b) by use of violence.

14. Thus Clauses (b) and (c) of Section 2 read with Section 3 clearly and unambiguously creates offence declaring certain activities as unlawful and punishable with a term or imprisonment as well as fine specified in Section 3.

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6. Thus it appears that a group of persons can form a gang in terms of Section 2(b) of the Gangsters Act only when they indulge in antisocial activities by way of violence or threat or show of violence or intimidation or coercion etc. with an object of disturbing public order and of gaining any undue temporal or pecuniary material or other advantage for himself. In the instant case, the alleged occurrence is said to have taken place as a result of a civil litigation between two parties over a property and prima facie it does not appear to be an act of disturbing public order. In para 22 of the judgment, while dealing with the statement of objects and reasons of Gangsters and Anti-social Activities (pre) Act, 1986 (Act No. 7 of 1986), the Court has held that:

Gangsterism and anti-social activities were on the increase in the State posing threat to lives and properties of the citizens. The existing measures were not found effective enough to cope with new menace. With a view to break the gangs by punishing the gangsters and to nip in the bud their conspiratorial designs it was considered necessary to make special provisions for the prevention of, and for coping with gangsters and anti-social activities in the State.

7. As noticed hereinabove, there was no anti-social activities or conspiratorial designs in order to promote any anti-social activity. Thus, the sole purpose of bringing the statute was to deal with antisocial activities which disturb the public peace and pose threats to lives and properties of the citizens. Besides, only some overt acts would constitute offences as provided u/s 2(b) of the U.P. Gangsters and Anti-social Activities (pre) Act, 1986. Even conspiratorial designs to commit such offences were also to be noticed. Thus, the provisions of the Act cannot be applied or are not to apply independent of the objects and reasons for enacting the statute. In paragraphs 24 and 25 of the judgment under reference there is a

detailed discussion about the necessity for bringing this legislation in order to check antisocial activities and for coping with the menace of gangsters. These paragraphs of the judgment read as under:

24. Gangsterism is aimed at creating special organizations and groups to commit murder, use violence and take people for a ransom or other demands, forcible deprivation of freedom often involving torture black-marketing etc. Gangsterism could also mean the destruction of buildings, ransacking and similar acts in a cruel manner to terrorize the people. The Court can take judicial notice of the situation prevailing in the state, which has made the life of citizens difficult if not a veritable hell. Threats are extended to the tenants to leave the houses to make the same available to the land-lords and vice-versa. Curious and novel methods have been evolved by such groups such as holding out the threat to abduct or kidnap the daughters of landlords and tenants and at other times minor sons. An atmosphere of fear and black mail pervades the state. For dealing with gangsterism there was no legislation. "Dadagiri", which is the word ascribed to the activities aforesaid had acquired a definite meaning. Some people called them as God fathers.

25. It was, in these circumstances, that it had become necessary for the legislature to make provision to meet with such a situation. Indulgence in these activities affected only the persons who used to be dealt with roughly and victimized by the gangsters but also the community at large because of the reign of terror which is struck by such incident. About the need to make laws regulating such activities, Lord Patrick Devlin said in his book "Morals and the Criminal Law" at page 76:

The suppression of vice is as much the law's business as the suppression of subversive activities: it is no more possible to define a sphere of private morality than it is to define one of private subversive activity. It is wrong to talk of private morality or of the law not being concerned with immorality as such or to try to set rigid bounds to the part which the law may play in the suppression of vice. There are no theoretical limits to the power of the State to legislate against treason and sedition, and likewise I think there can be no theoretical limits to legislation against immorality.

8. In paragraphs 59 to 62, the Court has dealt with the circumstances wherein only the provisions of U.P. Gangsters and Anti-social Activities (pre) Act, 1986 would apply. For that purpose, the authority should be satisfied that there is a reasonable and proximate connection between the occurrence and the activity of the person sought to be apprehended and that such activities were to achieve undue temporal, physical, economic or other advantages. The provisions of the Act are not to be used as a weapon to wreck vengeance or harass or intimidate innocent citizens or to settle scores on political or other fronts. Moreover, this Act contains the provisions for preferring appeal and the power of judicial review has been preserved. Moreover, if a person is proceeded against, in bad faith out of malice and by way of political vendetta, the authorities do not enjoy any

immunity u/s 22 of the Act. The immunity is confined only to acts done in good faith.

9. Now coming to the materials on record so as to attract the provisions of the Act, it is noticeable that vide Annexure No. 1, there is a sale-deed dated 01.1.1988 on record to show that Maqbool Ahmad had purchased the disputed property. Vide Annexure No. 2, the order dated 23.3.2001, the appeal filed before the Settlement Officer, Consolidation, by Maqbool Ahmad, father in law of accused-Petitioner Nafees, was remanded to Consolidation Officer for afresh consideration on merit, and from the assertions on affidavit it appears that Maqbool Ahmad continued to be in possession of that land. Further, as per the gang chart vide Annexure No. 5 the incident reported in crime No. 144 of 2007 under Sections 307, 323, 506 and 427 IPC and case crime No. 145 of 2007 u/s 3/25 of the Arms Act only related to the property in dispute as above. Case crime No. 30 of 1993 had been registered u/s 3 of the U.P. Control of Goondas Act, 1970, and one NCR No. 88 of 2005 had been registered under Sections 323 and 504 IPC. Thus, the question that requires a careful consideration by this Court is as to whether in the background of the gang chart and the pending civil litigation between the parties in the obtaining facts and circumstances of the case, was it appropriate for the State to apply the provisions of the Gangsters Act, and as to whether in exercise of powers u/s 482 Code of Criminal Procedure should this Court quash the order of the Special judge taking cognizance against the Petitioners under the provisions of the Gangsters Act. Hon'ble the Apex Court in the case of State of Haryana and Ors. v. Bhajan Lal and Ors. reported in 1992 Supp (1) SCC 335, has laid down the guidelines as in what kinds of cases the power u/s 482 Code of Criminal Procedure should be exercised by the High Court. They are set out here in below:

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the controverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the FIR do not constitute a cognizable offence, but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can even reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6)Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

10. The facts and circumstances of the instant case would be covered under the Guidelines (Nos. 1 and 7) as above. The offence in question, if any, is essentially an independent dispute arising out of a civil litigation and, moreover, accused-Petitioners were not directly connected with the property. Even the title of the property was in dispute and the matter had been remanded by the Appellate Forum, namely, the Settlement Officer to Consolidation Officer for a fresh adjudication, when the possession of the property was said to be with Maqbool Ahmad, father-in-law of Petitioner Nafees (and brother of Petitioner No. 2). Thus, in exercise of the inherent powers u/s 482, Code of Criminal Procedure, the order passed by Learned Special judge taking cognizance under the Gangsters Act, as aforesaid, is hereby quashed and the petition is allowed in part and stands disposed of.