
(2005) 02 AHC CK 0089
In the Allahabad High Court
Case No : Criminal Appeal No. 711 of 2005

Ram Kumar Dubey

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 17-02-2005

Acts Referred:

Citation : (2005) 02 AHC CK 0089

Hon'ble Judges : Umeshwar Pandey, J

Bench : Single Bench

Advocate : P.K. Singh, for the Appellant; A.G.A., for the Respondent

Final Decision : Allowed

Judgement

Umeshwar Pandey, J.—Heard learned counsel for the appellants and learned A.G.A.

2. These two appeals have arisen out of one and the same order, therefore, they are being taken up together for disposal.

3. These appeals u/s 18 of the U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 (here in after referred to as "Act") are against the order dated 13.01.2005 passed by the Special Judge, Kanpur Nagar. The appellants have been implicated in the case under the Act and are facing trial before the Special Sessions Judge. The District Magistrate concerned after investigation of the case, had effected attachment of the property belonging to the appellants u/s 14 of the Act; and the representations made by them against the said order had been rejected. The representation made had been referred to the Special Court u/s 16 and an inquiry is going on. Meanwhile, on further representations made through different applications by the appellants to release the property, it has been released by the court below through an interim order, which is the subject matter of challenge in this appeal. While passing the impugned order, the court below had directed that the property under attachment could be given in possession of to the respective appellants on fulfilling certain conditions till final

disposal of the inquiry.

4. The learned counsel contends that u/s 17 of the Act, the court concerned possesses of jurisdiction to finally dispose of the inquiry and to pass only final order. The court has no power to pass the interim order as has been done in the present case. It is further submitted that the Act does not contain any provision as to empower a Special Court designated for the purpose to pass an interim order in such matters. It is also contended that while releasing attached property after holding inquiry a court by said order is not supposed to impose conditions for release of the attached property.

5. In order to appreciate the aforementioned submissions of the learned counsel for the appellant/s, the provisions of Section 17 of the Act may be quoted as below:-

"Order after inquiry.--If upon such inquiry the Court finds that the property was not acquired by a gangster as a result of the commission of any offence triable under this Act it shall order for release of the property of the person from whose possession it was attached. In any other case the Court may make such order as it thinks fit for the disposal of the property by attachment, confiscation or delivery to any person entitled to the possession thereof, or otherwise."

6. A perusal of the aforesaid provision clearly indicates that the court, if finds that the property was not acquired by a gangster as a result of commission of any offence triable under this act, it shall order for release of the property of person from whose possession it was attached or in other case, the court may make such order of disposal of the property through attachment, confiscation or delivery to any other person entitled to its possession. This provision of the Act clearly stipulates for the inquiry court to pass a final order u/s 17 of the Act and does not empower the court to pass an interim order also. There is no such provision in the Act whereby the court can pass an interim order as has been done in the present case.

7. An order in the nature of release of the attached property or its further attachment, confiscation or delivery, is possible only u/s 17 of the Act and that is nothing but a final order. If the court feels that the property was acquired by a gangster as a result of commission of any offence triable under the Act then only its further attachment or confiscation etc. can be directed passed, otherwise it has to be released.

8. The Act is silent about an interim arrangement of the property. It is simply because the court has to hold the trial of the accused from whom property has been attached and find out if he is gangster or not? If he is a gangster, only then his property is liable for attachment and confiscation etc. If he is not found to be a gangster during the trial and is acquitted in the case in that contingency his property has to be released. As such, the disposal of such application, objection and reference u/s 16 of the Act by the Court is possible only after the trial of the case under the Act is over. Such interim arrangement as has been done in this

case by the court below by passing the impugned order is obviously not contemplated under law and the whole order is without jurisdiction.

9. In view of the aforesaid facts and the position of law, I am of the view that the impugned order as it relates to the objections of the appellants preferred before the court below is misconceived and the appeal in respect thereto has to be allowed.

10. The appeal is allowed and the impugned order dated 13.01.2005, as it relates to the objections preferred by the appellants before the court below in respect: of the attached properties, is hereby set aside.

11. The court below shall expedite the disposal of the trial and if the accused persons cooperate shall conclude it within three months.