
(1981) 05 AHC CK 0013
In the Allahabad High Court

Ramji Pandey

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 11-05-1981

Acts Referred:

Constitution of India, 1950 — Article 19, 226
Criminal Procedure Code, 1973 (CrPC) — Section 107, 110, 117
Penal Code, 1860 (IPC) — Section 109, 177, 192, 262, 283

Citation : (1981) AWC 401 : (1981) CriLJ 1083

Hon'ble Judges : Yashoda Nandan, J;S.J. Hyder, J;K.N. Singh, J

Bench : Full Bench

Judgement

K. N. Singh, J.—The District Magistrate, Ballia, issued a notice to the petitioner on 10-10-1979 u/s 3 of the U. P. Control of Goondas Act, 1970 directing; him to appear before him on 12-11-1978 at 10 A.M, and to give his explanation in writing as to why an order should not be passed against him u/s 3 of the Act. The petitioner instead of appearing before the District Magistrate filed this petition under Article 226 of the Constitution in this Court challenging validity of the notice. While issuing notice of the writ petition to the respondents, a Division Bench of this Court observed that the decision of a Division Bench of this Court in Harsh Narain v. District Magistrate 1972 ALJ 762 relied on by the counsel for the petitioner in assailing the validity of the notice required reconsideration in view of . the Supreme Court decision in State of Gujarat and Another etc. Vs. Mehboob Khan Usman Khan etc., . In this view the Bench referred the matter to a larger Bench and that is how this petition has been placed before us.

2. learned Counsel for the petitioner urged that the notice issued to the petitioner u/s 3 of the Control of Goondas Act, 1970, (hereinafter referred to as the Act) is illegal as it does not contain "general nature of material allegations" against the petitioner in respect of the matters set forth in Clauses (a), (b) and (c) of Sections 3(1) of the Act, as a result of which the petitioner is denied a reasonable opportunity of tendering explanation. He further urged that the Act provides slender safeguards to a person against whom notice is issued u/s 3 and

as such it is imperative that the statutory provision is strictly complied with. Since the notice is invalid for non-compliance of statutory provisions, the entire proceedings under the Act are rendered illegal and void. He placed reliance on the decision of a Division Bench of this Court in Harsh Narain's case 1972 ALJ 762 (supra) where an order passed u/s 3 of the Act exonerating the petitioner of that case from the district of Allahabad for a period of six months was quashed on the ground that the notice issued u/s 3(1) did not set out general nature of material allegations. Learned Standing Counsel has, on the other hand, urged that the impugned notice is in accordance with Section 3(1) of the Act as it sets out "general nature of material allegations" against the petitioner. The nature of the proceedings under the Act and the purpose of the order which may ultimately be passed do not contemplate a judicial trial or prosecution and it is not necessary to give details or particulars of the matters set out in Clauses (a), (b) and (c) of Section 3 of the Act. Placing reliance on the Supreme Court decision in State of Gujarat and Another etc. Vs. Mehboob Khan Usman Khan etc., he urged that the view taken by this Court in Harsh Narain's case is not a good law.

3. Before we consider the submissions made by the learned Counsel for the parties, we think it necessary to have a brief appraisal of the scheme of the Act. The Act, as its preamble shows was enacted by the legislature for the control and suppression of Goondas with a view to maintaining of public order. The Act confers power on the District Magistrate or any other person specially authorised in that behalf by the State Government to extern a Goonda outside the district or part thereof for a period not exceeding six months. Goonda as defined by Section 2(b) of the Act, means a person who either by himself or as a member or leader of a gang, habitually commits or attempts to commit, or abets the commission of, offences punishable under Chaps. XVI, XVII or XXII of the Indian Penal Code, or has been convicted under the Suppression of Immoral Traffic in Women and Girls Act, 1956 or has been convicted not less than three times under the U.P. Excise Act, 1910 or is generally reputed to be a person who is desperate and dangerous to the community, If the District Magistrate is satisfied that any person is Goonda, and his movements in the district or any part thereof are causing alarm, danger or harm to persons or there is reasonable ground for believing that he is engaged or is about to engage in the commission of any offence punishable under Chapters XVI, XVII or XXII of the Indian Penal Code or under the Suppression of Immoral Traffic in Women and Girls Act, 1956 or under the U.P. Excise Act, 1910 or in the abetment of any such offence and that witnesses are not coming forward to give evidence by reason of terror on his part or on account of safety of their person or property, he shall by notice in writing inform the person concerned of the general nature of material allegations against him and give him a reasonable opportunity of tendering his explanation. The person against whom an order u/s 3 is proposed to be passed has a right of defence and he is further entitled to examine witnesses.

4. If the District Magistrate is satisfied that the conditions specified in Clauses (a), (b) and (c) of Sub-section (1) of Section 3 are satisfied he may pass orders

directing the person concerned to remove himself outside the district or pass any other order as contemplated by Clauses (a) and (b) of Section 3(3) of the Act. Section 4 confers power on the District Magistrate to permit any person against whom externment order may have been passed to enter or return for a temporary period. Section 5 confers power on the District Magistrate to extend the period specified in the order passed u/s 3(3) of the Act, but the legislature has provided that in no case the period shall exceed 2 years in the aggregate. Section 6 provides appeal against the orders passed under Sections 3, 4 and 5 before the Commissioner. Section 7 confers power on the District Magistrate and the Commissioner to secure attendance of any person against whom an order is proposed to be made and to do all such acts which may be necessary for the purpose of giving effect to the order including the power to issue warrant of arrest. Section 8 lays down that the provisions of the Indian Evidence Act, 1872 shall not apply to the proceedings but District Magistrate and the Commissioner may take into consideration any evidence which they may consider to have probative value for the purpose of satisfying themselves as to whether the conditions for making and confirming the order u/s 3 exist. The Commissioner and the District Magistrate have powers to rescind the order passed u/s 3. Contravention of an order passed under Sections 3, 4 and 5 is punishable u/s 10. Section 11 confers power on the police to arrest a person against whom an order under Sections 3, 4 and 5, may have been passed and if he has failed to move from the district or part thereof or if he re-enters the area in contravention of the order. The District Magistrate is authorised to remove the person outside the area specified in the order with the aid of the police.

5. These provisions unfold the scheme of the Act which provide for a summary procedure for taking action against persons whose activities jeopardise peace and safety of the citizens in a particular locality. The Act is of extraordinary character which seeks to inset those exceptional cases where action against bad characters and undesirable elements of the society is not possible in accordance with ordinary law, as in many cases witnesses for fear of violence to their person or property are not willing to depose publicly against bad characters whose presence in certain areas constitute menace to the safety of the public residing therein. The legislature has made a departure from the ordinary procedure followed in courts of law by providing a summary procedure of externment of a goonda in accordance with the procedure laid down under the Act. The Act does not contemplate any judicial trial and the proceedings before the District Magistrate or the Commissioner are not governed by the Criminal Procedure Code or the Indian Evidence Act except as permitted by the Act. The "provisions of the Act no doubt, make serious inroad on the personal liberty of a citizen but such restraints have to be suffered in the larger interest of the society. The validity of the Act was upheld in *Raja Sukhnandan Vs. State of U.P. and Another*, .

6. Now coming to the provisions of the Act, it would be seen that Section 3 confers power on the District Magistrate to extern any one who is a Goonda

outside the district or to place restrictions on his movement. If the District Magistrate is satisfied that the matters set forth in Clauses (a), (b) and (c) of Sub-section (1) are made out he may issue notice to the Goonda informing him of the "general nature of material allegations" against him in respect of those matters. The District Magistrate is further required to give him reasonable opportunity of tendering his explanation regarding those matters. The notice issued by the District Magistrate must contain the general nature of material allegations on the baggies of which the District Magistrate may have formed his opinion u/s 3(1) of the Act. In the absence of material allegations the person to whom notice is issued will be denied opportunity of explanation. It is therefore, mandatory to set out the general nature of material allegations in the notice issued u/s 3(1) of the Act. If the notice fails to contain the general nature of material allegations it would be vitiated and the proceedings taken in pursuance thereof would be rendered null and void. We are in agreement on this question with the view taken by the Division Bench in Harsh Narain's case 1972 ALJ 762.

7. The question then-arises what does" the expression "general nature of material allegations" denote. The expression "material allegations" has not been defined by the Act. According to the Dictionary meanings, the word "material" means important and essential, of significance. The word allegation means statement or assertion of facts. Thus the notice u/s 3(1) should contain the essential assertions of facts in relation to the matters set out in Clauses (a), (b) and (c) of Sub-section (1) of Section 3 of the Act. It need not refer to any evidence or other particulars or details. The names of witnesses, and persons who may have made complaint against the person against whom action is proposed to be taken or the time, date and place of the offence committed by the person need not be mentioned in the notice. There is a distinction between the "general nature of material allegations" and "particulars of allegations". In the former the notice need not give any details of the allegations, instead the requirement of law would be satisfied if the notice contains a general statement of facts which need not contain any details or particulars.

8. In Harsh Narain's case 1972 ALJ 762 the notice, instead of setting out the general nature of material allegations, it mentioned a list of first information reports filed against the petitioner in the last several years and reference of cases in which he was convicted. The questions arise whether the notice contained "general nature of material allegations". The learned Advocate-General who appeared on behalf of the State conceded before the Bench that the notice in that case did not set out the general nature of material allegations, but he urged that the defect in the notice did not handicap the petitioner in making its representation. The Bench repelled this contention and held that the defect of not setting out the "general nature of material allegations" in the notice was a fatal defect as it resulted in non-compliance of the provisions of Section 3(1). The Bench oh-served thus (at p. 769):

Section 3(1) enjoins upon the District Magistrate to inform the Goonda of the

general nature of material allegations against him in respect of Clauses (a),(b) and (c) and further enjoins upon him to give the goonda a reasonable opportunity of furnishing his explanation regarding them. If the goonda is not informed of the general nature of the material allegations regarding Clauses (a), (b) and (c) he can furnish no explanation in respect of them and would be deprived of the reasonable opportunity to which he is entitled u/s 3(1). Not only this, in the absence of a proper explanation, he would also be deprived of the reasonable opportunity under Sub-section (2) of producing his evidence in support of his explanation. When he is deprived of the reasonable opportunity at both these stages, the action taken must be held to be illegal.

Proceeding further, the Bench held that since notice was not issued in accordance with the provisions of Section 3(1) of the Act, subsequent action taken on the basis of the notice must fail. In coming to that conclusion the Bench observed thus:?

Where a statute permits the executive to pass orders imposing restrictions on the fundamental rights of the citizens guaranteed by Article 19 of the Constitution then, such orders can be passed only after strictly complying with the provisions of the statute. If orders are passed without strictly complying with the provisions of the statute they must be struck down.

9. The correctness of the principles laid down in Harsh Narain's case is assailed in view of the Supreme Court decision in State of Gujarat and Another etc. Vs. Mehboob Khan Usman Khan etc., . In Mehbub Khan's case, the provisions of the Bombay Police Act, 1951 were considered. The Bombay Police Act provides for extenement of a person who makes himself obnoxious as to render his presence in any part of the Bombay State a menace to the public including public peace and safety, Section 56 confers powers on the Commissioner, appointed under the Act or the District Magistrate or the Sub-Divisional Magistrate specially empowered by the State Government to extern a person from an area if it appears to them that the movement or acts of a person are causing or calculated to cause alarm, danger or harm to person or property, or that there is reasonable apprehension that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapters XII, XVI or XVII of the Indian Penal Code, or in the abatement of any such offence, and when in the opinion of such officer witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property. The section further requires the authority concerned to pass an order in writing before excerting the person from any district or area. Section 57 confers power on the authority designated therein to direct a person to remove himself from, the area or not to enter the area or contiguous district or area if he has been convicted for the offences mentioned therein and if the authority has reason to believe that such person is likely again to engage himself in the commission of offences similar to that for which he may have been convicted. Section 58 lays down that the period

for which the order may be passed u/s 57 shall not extend for more than a period of 2 years. Section 59 lays down that before an order u/s 56 or 57 is passed against any person the authority concerned shall inform the person in writing of the "general nature of material allegations" and give him reasonable opportunity of tendering explanation. These provisions are almost similar to those contained in Section 3 of the U.P. Act No. VIII of 1971. Section 56 of the Bombay Act provides for removal of persons who are about to engage in committing offence, while Section 57 provides for removal of persons from an area or contiguous districts or area who may have been convicted of certain offences. An order u/s 3 of the U.P. Act can be passed only against a Goonda as defined by Section 2(b) of the Act. Section 3 of the U. P. Act and Section 59(1) of the Bombay Act both provide for setting out the "general nature of the material allegations" in the notice issued to the person concerned. The essential features of Sections 56, 57 and 59 of the Bombay Police Act are contained in Section 3 of the U.P. Act, as such interpretation of the expression "general nature of material allegations" as occurring in Section 59 of the Bombay Act would apply with full force to the construction of a notice issued u/s 3 of the U.P. Act.

10. In State of Gujarat and Another etc. Vs. Mehboob Khan Usman Khan etc., the externment order was proposed u/s 56 for removing him outside the city of Ahmedabad and contiguous districts for a period of two years. The notice as contemplated by Section 59(1) of the Bombay Act stated as under:?

Take Notice:

Allegations:?

It is alleged against you that you are a dangerous and desperate person and indulge in acts involving force and violence. You terrorise the residents of the localities known as Rentiawasdi, Halin-khadki and round about area under Karanj and Madhavpura police stations. Since the month of November, 1963 till today you are engaged in the commission of the following offence in the above localities:?

(1) You way-lay, rob and extort money" from the persons at the point of knife and under threats of violence;

(2) You demand money from the persons and on their refusal to pay you beat them;

(3) You consume eatables from the place of public entertainment without payment and when legal dues are demanded you beat the person.

You are engaged in several acts as mentioned in paras (1), (2) and (3) above and that the witnesses to the above incidents are not willing to come forward to depose against you in public by reasons of apprehension on their part as regards the safety of their person and property.

It is proposed to extern you for a period of two years. It is also proposed to

extern you out of the contiguous districts of Ahmedabad Rural, Kaira and Mehsana as you are likely to operate and indulge in your violent activities from the contiguous districts also through your associates and agents if not so externed.

Mehbub Khan contested the proceedings, but the Deputy Commissioner passed an order directing him to remove himself outside Ahmedabad city and contiguous districts. Mehbub Khan challenged the validity of the externment order before the Gujarat High Court and one of the grounds raised before the High Court in challenging the validity of the notice was that the notice issued u/s 59(1) did not contain the "general nature of material allegations". The High Court accepted the contention and held that the notice was invalid and it quashed the externment order. On appeal by the State of Gujarat, the Supreme Court set aside the judgment of the High Court and held the notice valid. The Supreme Court rejected the argument that the notice was bad for vagueness. It held that the person proposed to be externed was entitled to be informed of the general nature of material allegations but not all the particulars of the allegations. As to the meaning of the phrase "general nature of material allegations". The Supreme Court observed (at p. 32):?

Without attempting to be exhaustive, we may state that when a person is stated to be a "thief that allegation is vague. Again, when it is said that "A" stole a watch from X on a particular day and at a particular place the allegation can be said to be particular. Again, when it is stated that "X" is seen at crowded bus stands and he picks pocket it is of a general nature of a material allegation. Under the last illustration given above, will come the allegations, which, according to the Gujarat High Court, suffer from being too general or vague. Considering it from the point of view of the party against whom an order of externment is proposed to be passed, it must be emphasised that when he has to tender an explanation to a notice, u/s 59 he can only give an explanation which can be of a general nature. It may be open to him to take a defence, of the action being taken, due to mala fides, malice, or mistaken identity, or he may be able to tender proof of his general good conduct, or alibi, during the period covered by the notice and the like.

11. It is significant to note that the learned Judges of the Gujarat High Court had taken the view that the allegations contained in the notice -(as quoted earlier) did not contain the particulars of places of public entertainment or establishments which may have been visited by Mehbub Khan. The Supreme Court emphasised that the general nature of material allegations is quite different from the particulars of the material allegations. Section 59 of the Bombay Police Act does not require particulars of the allegations, instead it requires the authority concerned to inform the person in writing of the general nature of the material allegations. A perusal of the notice issued against Mehbub Khan would show that it contained the essential allegations against him. Clauses 1, 2 and 3 of the notice gave the general nature of allegations against Mehbub

Khan, The Supreme Court therefore, held that having regard to the nature of the defence open to a person to whom notice is issued u/s 59(1) of the Bombay Police Act, the general nature of allegations as contained in the notice was sufficient.]

12. The scope of the words "general nature of the material allegations" was again considered by the Supreme Court in *Pandhari Nath Rangnekar v. State of Maharashtra* AIR 1973 SC 30. In that case validity of a notice issued u/s 59(1) of the Bombay police Act, 1951, was challenged on the ground that the particulars contained in the notice were so vague that the petitioners possibly could not meet the allegations made against him and thereby he was denied reasonable opportunity of defence, The material portion of the notice as quoted by the Supreme Court was in the following terms.

Notice u/s 59 of the Bombay Police Act, 1951.

Name, Address and Age :? Sri Pandharinath Shridhar Rangnekar, Hindu, 28 years, Res. Hama Niwas, Nariman Road, Vile Parle (East) Bombay 57.

Under Section 59 of the Bombay Police Act, 1951 (Bom. XXII of 1951) you are hereby informed that the following allegations are made against you in proceedings against you u/s 56 of the said Act.

In order to give you opportunity of tendering your explanation regarding the allegations. I have appointed at 9 A.M. on 16-10-1969 to receive your explanation and to hear you and your witnesses, if any, in regard to the said allegations. I, Shri H.S. Joshi, Assistant Commissioner of Police "M" Division, Bombay, therefore require you to appear before me at Vile Parle Police Station on the said date viz., 16-10-1969 at 9 A.M. for the said purpose and to pass a bond for the sum of Rs. 500/- for your attendance during the enquiry of the said proceedings, Should you fail to appear before me and to pass bond as directed above, I shall proceed with the enquiry in your absence.

Take Notice:?

Allegation:?

(1) Since March, 1969 in the localities of Nehru Road, Azad Road, Motjhibai Road, Mahatma Gandhi Road, Ram Man-dir Road and the areas adjoining thereto in the jurisdiction of Vile Parle police station Greater Bombay, your acts and movements are causing harm, alarm and danger to the residents of the aforesaid localities and areas under that.

(2) That you assault the residents of the aforesaid localities and area either suspecting them of giving information to the police about your illegal activities or because they fail to accede to your demand of money which 6ffences are punishable under Chapter VI of the Indian Penal Code.

(3) That you commit robberies, by extorting money and articles from the residents of the aforesaid localities and areas by means of assault and/or under

threats of assault which are offences punishable under Chapter XVII of the Indian Penal Code.

(4) That since March, 1969 you have committed several acts of the matter described in paras (1), (2) and (3) above.

(5) That the witnesses to your above described acts and movements are not willing to come forward and depress against you by reason of apprehension on their part as regards the safety of their persons in that they apprehend danger to the safety of their person or property, if they do so.

Sd. H.S. Joshi Assistant Commissioner of Police "M" Division, Bandra, Bombay.

Dated 9-10-1969

The Supreme Court relying on its earlier decision in *State of Gujarat and Another etc. Vs. Mehboob Khan Usman Khan etc.*, repelled the contention raised on behalf of Pandharinath,

13. Mehboob Khan's case was not placed before the Bench dealing with Harsh Narain's case 1972 ALJ 762 and it had no occasion to consider, the same, although the principle laid down by the Supreme Court in interpreting Section 59(1) of the Bombay Police Act with regard to the necessity of giving "general nature of material allegations" are fully applicable to a notice issued u/s 3(1) of the Act. As discussed above, the Supreme Court has emphasised that the material allegations do not require giving of particulars of allegations such as setting out of the date, time and place is not necessary, nor it is necessary to give the names of persons who may have given information or who may have refused to appear as witnesses. In Harsh Narain's case, the Division Bench held that the notice issued in that case did not set out the general nature of material allegations. The Bench unlike Gujarat High Court in Mehboob Khan's case did not hold that the notice was invalid as it failed to set out particulars of the allegations instead it held that the notice did not contain even the minimum possible material allegations, as the column in the notice which was meant for setting out the general nature of material allegations contained a list of convictions and first information reports lodged against the petitioner of that case. By any standard the notice in Harsh Narain's case failed to set out the general nature of material allegations, while notice in Mehboob Khan's case contained the essential statement of facts giving the general nature of the activities of Mehboob Khan. The view taken by the Bench in Harsh Narain's case is not in conflict with that of the Supreme Court. The question whether Harsh Narain's case is contrary to the law declared by the Supreme Court in Mehboob Khan's case was considered in *Pannu v. Commissioner* 1974 AH WR (HC) 21 and it was held that even though the case of Mehboob Khan was not cited before the Bench dealing with Harsh Narain's case, but that did not affect the position of law. We are also of the view that the decision of the Division Bench in Harsh Narain's case is not inconsistent with the law laid down by the Supreme Court in *Pandharinath Shridhar Rangnekar Vs. Dy. Commr. of Police, The State of Maharashtra*, .

14. We would not advert to the notice issued to the petitioner in the instant case. The notice is as under:

Notice u/s 3 of the U.P. Control of Goondas Act, 1970.

It appears to me on the basis of the information placed before me by the Superintendent of Police, Ballia, that:?

(a) Shri Ramji Pandey, son of Shivpoojan Pandey is a resident of village Damanpura, P. S. Sikandarpur, district Ballia, and is a goonda, i.e. he himself habitually commits crime or attempts to commit or abets the commission of offence punishable under Chapters XVI, XVII and XXII of the Indian Penal Code. He is generally reputed to be a person, who is desperate and dangerous to the community.

(b) That his movements and acts are causing alarm, danger and harm to the lives and property of the persons within the circle of P.S. Sikandarpur district Ballia. There is reasonable ground for believing that he is engaged in the commission and abetment of offences punishable under Chapters XVI, XVII and XXII in the aforesaid region of the district.

(c) The witnesses are not willing to come forward to give evidence against him by reason of apprehension on their parts as regards the safety of their personal property.

(d) In regard to the sub-paragraphs (a), (b) and (c) and material allegations of a general nature against him are as follows ;

(1) He was convicted for two years by the Court of J. M. Ballia on 17-9-1979 in connection with offence No. 31/74 u/s 394, I.P.C.

(2) The case as Crime No. 15/71 u/s 379, I.P.C. is pending.

(3) The case crime No. 83/79 u/s 452/504, I.P.C. is pending.

(4) The case crime No. 162/79 u/s 110, Cr.P.C. is pending.

(5) He was acquitted in the case crime No. 102/72 u/s 394, I.P.C.

(6) He was acquitted in the case crime No. 250/71 u/s 177/452, I.P.C.

(7) M.C.R. No. Section 109/79, Section 504/506, I.P.C.

(8) M.C.R. No. Section 192/79, Sec-Won 323/504, I.P.C.

(9) M.C.R. No. Section 262, Section 352/504, I.P.C.

(10) M. C. R. No. Section 283, Section 504/506, I.P.C.

(11) M.C.R. No. Section 107/117, Cr. P. C

The aforesaid Shri Ramji Pandey is hereby directed to present himself before me in my court on 12-11-1978 at 10 A.M. In regard to the aforesaid material

allegations he may if he so desires, give his explanation in writing giving reasons as to why an order be not passed against him under Sub-section (3) of Section 3 of the U.P. Control of Goondas Act 1970 and he should also inform, if in support of his explanation, he wished himself to be examined or other witnesses if any to be examined and if so their names and addresses should also be furnished.

The aforesaid Ramji Pandey is hereby further informed that if he does not present himself in the aforesaid manner or if within the specified time no explanation or information is received, it shall be presumed that Shri Ramji Pandey does not wish to give any explanation in respect of the aforesaid allegations or does not want to examine any evidence and I shall take proceedings for the compliance of the proposed order. Clause (a) of the notice states that the petitioner is a "Goonda" and he is reputed to be a person who is dangerous and desperate to the community. Clause (b) acts out the area of the petitioner's activities within the police circle of Sikanderpur in district Ballia, where he is alleged to be engaged in commission and abetment of offence punishable under Chapters XVI, XVII and XXII of the Indian Penal Code and finally in Clause (c) of the notice the District Magistrate has stated that the witnesses are not willing to come forward to give evidence against the petitioner by reason of apprehension on their part as regards safety of their person and property. Clause (d) of the notice purports to set out the general nature of material allegations against the petitioner."

15. The above notice is in the form prescribed under Rule 4 of the U. P. Control of Goondas Rules, 1970. In column (d) of the notice meant for setting out material allegations of general nature against the petitioner, no statements of fact relating to the petitioner's conduct has been stated, instead it mentions details of a criminal case where the petitioner was convicted for an offence of robbery and the list of criminal cases pending against him and also a list of first information report lodged with the police, Column (d) does not contain any allegation or material allegation against the petitioner. It was argued that if column (d) is read with Clauses (a), (b) and (c) of the notice, it is possible to discern the material allegations against the petitioner. A notice u/s 3(1) cannot be issued unless the District Magistrate is satisfied about the matters set out in Clauses (a), (b) (c) of Section 3(1). The prescribed form also requires the District Magistrate to state in the notice that on the basis of the information laid before him he is satisfied that the person concerned is Goonda and that his movements and acts and conduct fulfill the conditions as set out in Clauses (a), (b) and (c) of Section 3(1) of the Act. In the impugned notice the District Magistrate has set out matters as required by Clauses (a), (b) and (c) in the prescribed form. The prescribed form as well as the impugned notice both seek to maintain a distinction between material allegations and the matters set out in Clauses (a), (b) and (c) of the notice. The facts stated in column (a), (b) and (c) of the notice refer to the satisfaction of the District Magistrate with regard to the matters set out in Clauses (a), (b) and (c) of Section 3(1) of the Act. Clause (d) of the notice is intended to set out general nature of material allegations against the petitioner

with a view to give him opportunity to submit his explanation and to defend himself. In this view of the matter, it is not possible to accept the contention that columns (a), (b) and (c) of the notice set out the general nature of material allegations against the petitioner.

16. In the instant case, the general nature of material allegations appears to be that the petitioner was waylaying persons and robbing them within the circle of police station Sikanderpur district Ballia and also committing theft. The allegation further appears to be that the petitioner has been assaulting people and causing injuries to that within the circle of police station Sikanderpur district Ballia and that witnesses are not willing to come forward to give evidence against him on account of apprehension to their lives and property. These matters could have been stated in a narrative form as was done in the case of *State of Gujarat and Another etc. Vs. Mehboob Khan Usman Khan etc.*, and *Pandharinath Shridhar Rangnekar Vs. Dy. Commr. of Police, The State of Maharashtra*, but the impugned notice does not contain these allegations, instead it contains a list of first information reports and pending cases. In our opinion, it is difficult to uphold the respondent's contention that the list of first information reports or list of cases in which the petitioner was convicted or the list of cases in which the petitioner was acquitted or the list of pending criminal cases against the petitioner is sufficient to meet the requirement of setting out "the general nature of material allegations". The impugned notice is, therefore, not in accordance with Section 3(1) of the Act as it fails to set out general nature of material allegations against the petitioner.

17. Learned Standing Counsel urged that on a liberal construction of the notice the material allegations on the basis of which action against the petitioner is proposed" to be taken are discernable, and as such the notice is not rendered illegal and the proceedings taken against the petitioner are valid. It is true that validity of a notice is generally upheld if it substantially conforms with the requirement of law but while considering the validity of a notice issued u/s 3 of the Act the same considerations cannot be applied. As noted earlier, the Act is extraordinary in nature. Its provisions permit serious in-; road on the liberty of a citizen as the provisions permit externment of a driven (without a judicial trial. The power conferred on the authorities and the procedure provided by the Act seriously impinge upon the fundamental rights of a citizen and it makes a serious inroad on the personal liberty. The provisions of the Act provide slender safeguards to a citizen in requiring the District Magistrate and other authorities to give notice to the person against whom action is proposed under the Act and to set out the general nature of material allegations in the notice with a view to give opportunity to the person concerned to submit his explanation and to defend himself. The persons against whom action is proposed to be taken under the Act has a meagre opportunity of submitting his explanation to the allegations contained in the notice issued to him and to defend himself by producing evidence before the District Magistrate. These are the only safeguards which the provisions of the Act provide to a citizen against Whom action is proposed to be

taken. In such a situation the question of liberal construction of notice does not arise, The Drovisiento of the Act, in our opinion, should be strictly complied by the extortive while taking action under the Act. This was emphasised by the Supreme Court in Pandharinath Shridhar Rangnekar Vs. Dy. Commr. of Police, The State of Maharashtra, Where it observed (at P. 615):

We will only add that case must be taken to ensure that the terms of Sections 56 and 59 are strictly complied and the slender safeguard which those provisions offer are given, to the proposed] exrternee.

this Court also made similar observations; in Harsh Narainfs case 1972 ALJ 762 in saying that the executive must strictly comply with the provisions of the Act. We are therefore " o\$ the opinion that if notice issued) under, Section 3(1) of the Act is not in accorder lance with the provisions of Section 3(1) of the Act and if it fails to comply, with the mandatory requirements of, setting out the general nature of material allegations further proceedings Initialed, in, pursuance of that notice would, also be rendered Illegal.

18. In view of, the above discussion we do not find any good ground to take" a different view than that taken in Harsh Narain?s case. We further hold that the impugned notice issued to the petitioner has failed to comply with the mandatory provisions of Section 3(1) of the Act.

19. The petition succeeds and is accordingly allowed and the notice dated 10-10-1979 is quashed. The petitioner is entitled to his, costs.