
(2014) 04 AHC CK 0298

In the Allahabad High Court

Case No : Criminal Misc. Writ Petition No. 7534 of 2010

Rashida Bano

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 17-04-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 120-B, 302

Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 — Section 14, 15, 16, 16(1), 16(2)

Citation : (2014) 3 ACR 2963 : (2014) 6 ADJ 575 : (2015) 1 ALJ 78

Hon'ble Judges : Vijay Lakshmi, J

Bench : Single Bench

Advocate : Brijesh Yadav, Advocate for the Appellant; Atul Kumar, Advocate for the Respondent

Final Decision : Allowed

Judgement

Vijay Lakshmi, J.—By means of this writ petition, the petitioner has prayed for quashing the order dated 10.2.2010 passed by Special Judge , Gangster Act, Varanasi and the order dated 6.8.2009 passed by the District Magistrate, Varanasi. The petitioner has also prayed to command the respondents by issuing a writ of mandamus to release his property consisting of House No. C-17/41, situated at Mohalla Lahang, P.S. Sibra, District Varanasi in favour of the petitioner.

Heard Shri Brijesh Yadav, learned counsel for the petitioner, learned AGA appearing for the State and perused the record.

Some background facts in brief are that a criminal case u/s 3(1) U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 (hereinafter referred to as "Gangster Act") was lodged against the husband of the petitioner at Crime No. 729 of 2008 at P.S. Sibra, Varanasi. In Gang chart two separate offences were shown against the applicant i.e. Case Crime No. 11 of 2006 u/s 302, 120-B IPC P.S. Sibra, Varanasi and Case Crime No. 297 of 2008 u/s 302 IPC and Section 7 Criminal Law Amendment Act at P.S. Sibra, District Varanasi.

The S.O. Sogra submitted a report on 28.11.2008 through S.S.P., Varanasi to District Magistrate, Varanasi stating that the property of the accused, (the details of which are mentioned above), was acquired by him as a result of commission of offence triable under the Gangster Act. The District Magistrate, Varanasi issued a notice to the applicant/petitioner and attached the property vide his order dated 15.1.2009.

The applicant-petitioner filed her objections alongwith her affidavit before the District Magistrate, Varanasi, but the District Magistrate Varanasi, refused to release the attached property in favour of the petitioner. As per the provisions of Section 16(1) of Gangster Act, the District Magistrate, on 17.8.2009 referred the matter to Special Court constituted under Gangster Act, Varanasi. Being aggrieved by such order of refusal, the applicant also moved an application u/s 16(2) of the Gangster Act.

2. The learned Special Judge, Gangster Act, Varanasi vide order dated 10.2.2010 rejected her application on the ground that the applicant has failed to produce any document to show from what source of income the said house was purchased in the year 1999 and from what source of income the petitioner and her husband have raised further constructions in the house.

3. Learned counsel for the petitioner has challenged both the aforesaid orders passed by District Magistrate and Special Judge, Varanasi by contending that the property that has been attached was not acquired by the husband of the applicant/petitioner as a Gangster. The said house was purchased by the applicant by their joint income as both of them are in the business of glass for last more than 15 years. They have raised the house further by obtaining a loan of Rs. 8,00,000/- from Kashi Gramin Bank. Learned counsel for the petitioner has argued that in order to prove these averments the petitioner/applicant had filed before the Courts below the income tax returns of herself and her husband. She had also filed the original copy of notice of Kashi Gramin Bank dated 27.11.2009 issued to applicant and her husband with regard to loan. But learned District Magistrate and learned Special Judge without any reason, presumed that the property was acquired by the husband of petitioner by commission of crime.

4. Learned counsel for the petitioner has further argued that two cases shown in the Gang Chart on the basis of which the case under Gangster Act was instituted against the petitioner's husband pertain to year 2006 and 2008 whereas the house was purchased in the year 1999 i.e. about 7 years prior to the institution of the two criminal cases. In these circumstances, it cannot be said that the house was purchased by committing any crime. There was no history of any offence against the husband of the petitioner prior to the two cases registered in the year 2006 and 2008, so the house could not have been attached u/s 14 of Gangster Act. But due to the illegal attachment of the house the family members of the petitioner are on road because they have no other house to live. It has further been alleged that the glasses of window panes were also broken by the police causing huge loss to the petitioner.

5. Learned AGA appearing on behalf of respondent No. 1 has opposed the writ petition. Counter-affidavit has been filed on behalf of respondent No. 3, i.e. S.S.P. Varanasi. After hearing learned counsel from both the sides and after a careful perusal of the legal provisions and the relevant records, this Court is of the view that the writ petition deserves to be allowed for the following reasons:

The relevant provision regarding the attachment and release of property, (sic) in Gangster Act are Section 14 and 15. Section 14 of the Act is reproduced below:

Section 14. Attachment of Property.--(1) If the District Magistrate has reason to believe that any property, whether moveable or immovable, in possession of any person has been acquired by a gangster as a result of the commission of an offence triable under this Act, he may order attachment of such property whether or not cognizance of such offence has been taken by any Court.

(2) The provisions of the Code shall, mutatis mutandis apply to every such attachment."

Thus the Act clearly provides that before passing orders for attachment of property u/s 14 of the Act, the District Magistrate must have reasons to believe that the property has been acquired by a Gangster as a result of the commission of an offence triable under this Act. But the facts of the case in hand depicts otherwise and specially the facts as mentioned in para 10 of the counter-affidavit filed on behalf of SSP, Varanasi, raise doubts and put a big question mark on the legality of the orders passed by the District Magistrate, and Special Judge, Varanasi. In para 10 of the counter-affidavit filed on behalf of S.S.P., Varanasi it has been stated that although the husband of the petitioner was indulged in commission of crime since 1997-98 but the criminal cases were registered against him in the year 2006-2008. This statement of S.S.P. Varanasi appears ridiculous and on the basis of this statement, only two conclusions can be drawn. First either the police become so much lethargic and irresponsible that despite knowing that a gangster was indulging in criminal activity since the year 1997-98, it registered the case against him in the year 2006-2008 i.e. after expiry of about 10 years. The second conclusion is that it was a deliberate act on the part of police in order to provide illegal help to the gangster by abstaining from taking lawful measures against him and if that was so, the concerned police officers may face prosecution u/s 3(2) of Gangster Act.

In a land mark case Smt. Afzal Begum @ Akhatari Vs. State of U.P, it has been held that:

Property--Subject-matter of attachment--"It is now well-settled that the property being made subject-matter of an attachment u/s 14 of the Act must have been acquired by a Gangster and that too by commission of an offence triable under the Act. The District Magistrate has to record his satisfaction on this point. The satisfaction of the District Magistrate is not open to challenge in any appeal. Only a representation is provided for before the District Magistrate himself u/s 15 of the Act and in case he refuses to release the property on such representation, he

is to make a reference to the Court having jurisdiction to try an offence under the Act. The Court, while dealing with the reference made under sub-section (2) of Section 15 of the Act has to see whether the property was acquired by a gangster as a result of commission of an offence triable under the Act and has to enter into the question and record his own finding on the basis of the enquiry held by him u/s 16 of the Act. If the Court came to the conclusion that the property was not acquired by the gangster as a result of commission of an offence triable under the Act, the Court shall order for release of the property in favour of the person from whose possession it was attached. If the conclusion for the Court is otherwise, it may pass 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....."

"The Court is not expected to act as a Post Office or mouth piece of the State or the District Magistrate. If a person has no criminal history during the period the property was acquired by him, how the property can be held to be a property acquired by or as a result of commission of an offence triable under the Act is a pivotal question which has to be answered by the Court. Besides, the aforesaid question, the other important question to be considered by the Court is whether the property which was acquired prior to the registration of the case against the accused under the Act or prior to the registration of the first case of the gang chart can be attached by, the District Magistrate u/s 14 of the Act..."

For the aforesaid reasons and in the wake of legal position cited above, both the impugned orders passed by the District Magistrate Varanasi and Special Judge, Gangster Varanasi are liable to be quashed because both the Courts have failed to assign any reason as to how the property purchased about 7 years prior to the registration of the case under Gangsters Act against the husband of the petitioner was attached by District Magistrate u/s 14 of the Gangster Act.

Accordingly, the writ petition is allowed. The order dated 10.2.2010 passed by Special Judge, Gangster Act, Varanasi and the order dated 6.8.2009 passed by the District Magistrate, Varanasi are hereby quashed.

It is further directed that if the petitioner moves an application/representation before the District Magistrate, Varanasi for release of her house with a certified copy of this order and other relevant documents, the District Magistrate, Varanasi shall dispose of her representation by a reasoned and speaking order in accordance with law within a period of six weeks.