

(2010) 10 AHC CK 0300

In the Allahabad High Court

Case No : Writ Petition No"s. 7096 and 7097 (MB) of 2010

Shekhar Tiwari and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-10-2010

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 6
Constitution of India, 1950 — Article 20(2), 226, 227
Criminal Law (Amendment) Act, 1932 — Section 7
Criminal Procedure Code, 1973 (CrPC) — Section 107, 108, 109, 110, 220
Penal Code, 1860 (IPC) — Section 120B, 147, 148, 149, 171E
Prevention of Corruption Act, 1988 — Section 13(1), 13(2)
Uttar Pradesh Control of Goondas Act, 1970 — Section 4, 5

Citation : (2011) 3 ACR 2632

Hon'ble Judges : S.N.H. Zaidi, J;Rajiv Sharma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Rajiv Sharma and S.N.H. Zaidi, JJ.—Heard Kn. Mridul Rakesh. senior advocate and Shri Dilip Kumar on behalf of the petitioners and Shri I. B. Singh, Special Public Prosecutor for the State and Sri Salil Kumar Srivastava, on behalf of private respondent-Smt. Shashi Gupta wife of late Sri Manoj Kumar Gupta.

2. Writ Petition Nos. 7096 (M/B) of 2010 and 7097 (M/B) of 2010 have been filed by the petitioners under Article 226/227 of the Constitution of India for quashing the impugned order dated 23.12.2009, passed by the Special Judge (Ayodhya Prakaran), Lucknow, in Sessions Trial Nos. 446 and 447 of 2009 (Case Crime No. 299 of 2008) under Sections 147, 148, 149, 302, 323, 364, 457, 201, 120B and 506, Indian Penal Code and Section 7, Criminal Laws Amendment Act, P.S. Dibiyaapur. district Auraiya. whereby the application of the petitioners for keeping the proceedings of the aforesaid Sessions Trials in abeyance till the disposal of the trial under the U. P. Gangsters and Anti-Social Activities (Prevention) Act, in short referred to as the Gangsters Act, has been rejected.

3. It has also been prayed that a writ of mandamus be issued for direction that the trial of the petitioners in Case Crime No. 300 of 2008 u/s 3(1) of the Gangsters Act, Police Station Dibiyaipur, district Auraiya pending in the court of Special Judge (Gangsters Act), Kanpur Nagar, shall have precedence over the trial of S. T. Nos. 446 and 447 of 2009 pending the court of Additional Sessions Judge/Special Judge, Ayodhya Prakaran, Lucknow. It has also been prayed inter alia that the direction be issued that the aforementioned S.T. Nos. 446 and 447 of 2009 be heard by the court of Special Judge, Gangsters Act, Kanpur. Further, it has been prayed that the direction be also issued to stay the proceedings of Sessions Trial Nos. 446 and 447 of 2009 in the spirit of Section 12 of the U. P. Gangsters and Anti-Social Activities (Prevention) Act.

4. It may be pointed out that the afore-captioned writ petitions were initially registered in the category of miscellaneous single and were heard by learned single Judge, who came to the conclusion that looking to the circumstances and the orders passed by the Division Bench as well as single Judge, it would be appropriate that the matter is heard by a Division Bench and directed for placing the record before Hon"ble the Chief Justice/Hon"ble Senior Judge for nomination of the Bench. The relevant part of the order dated 23.7.2010 reads as under :

I have carefully considered the respective submissions made by the parties. As stated above, the main relief sought by the petitioners is that the trial of S.T. Nos. 446 and 447 of 2009 pending in the court of Additional Sessions Judge/Special Judge, Ayodhya Prakaran, Lucknow should remain in abeyance, in order to give precedence to the trial of Special Case No. 300 of 2008 pending in the court of Special Judge/Gangster Act, Kanpur Nagar, in view of the provisions of Section 12 of the U. P. Gangsters and Anti-Social Activities (Prevention) Act.

From the record, it reveals that the Division Bench as well as single Judge of this Court had issued direction for expeditious disposal of the Sessions Trial Nos. 446 and 447 of 2009.

In the facts and circumstances stated above, it will be appropriate if the matter is heard by the Division Bench. Therefore, the matter is referred to the Division Bench. Let the petitions be placed before the appropriate Bench after obtaining nomination from the Hon"ble Chief Justice/Hon"ble Senior Judge.

Pursuant to the aforesaid order, these writ petitions were re-numbered and registered as Writ Petition Nos. 7096 (M/B) of 2010 and 7097 (MB) of 2010. As the jurisdiction assigned to us by the Hon"ble the Chief Justice is Criminal Writs and Criminal Contempt for orders, admission and hearing, therefore, this writ petition has come up for orders before this Bench. As the pleadings have been exchanged between the parties, we with the consent of parties" counsel, proceeded to hear the matter finally.

5. In short the facts of the case, as averred in the writ petition, are that a first information report was lodged by Smt. Shashi Gupta relating to an incident dated 24.12.2008 in which her husband suffered bodily injuries. On the basis of said

F.I.R., a case on Crime No. 299 of 2008 under Sections 323, 342, 452 and 364, Indian Penal Code was registered at P. S. Dibiyaapur, district-Auraiya against accused Bhatia, Tyagi and another. As injured Manoj Kumar Gupta succumbed to the injuries suffered by him, the case has been altered under Sections 147, 148, 149, 302, 323, 342, 364, 457, 201, 120B and 506, Indian Penal Code and Section 7, Criminal Law (Amendment) Act, during the investigation.

6. It is said that on 26.12.2008, the Station Officer of P. S. Dibiyaapur. district Auraiya submitted a Gang Chart of the petitioners for approval to the District Magistrate and after approval having been accorded an F.I.R. against the petitioners at Crime No. 300 of 2008 u/s 3(1) of the Gangsters Act was registered at P.S. Dibiyaapur, district Auraiya. The police after due investigation submitted a charge-sheet dated 9.7.2009 against the petitioners under the Gangsters Act in the Court concerned, i.e. in the Court of Special Judge (Gangsters Act), Kanpur Nagar, which took cognizance on it by an order dated 14.7.2009.

7. In the aforesaid Crime No. 299 of 2008, the charge-sheets were submitted against the accused-petitioners and other persons and after due formalities, the cases were committed to the Court of Sessions Judge, Auraiya where it were registered as Sessions Trial No. 15 of 2009, State v. Shekhar Tewari and Others and Sessions Trial No. 37 of 2009. After the commencement of the aforesaid trial, co-accused Smt. Vibha Tiwari and others preferred a transfer application u/s 407, Cr. P.C. before this Court at Allahabad, which was registered as Transfer Application No. 173 of 2009. This Court at Allahabad vide order dated 11.5.2009 allowed the said transfer application with the following directions :

...In view of what has been discussed above the transfer application is accordingly allowed. The Sessions Trial No. 15 of 2009. State v. Shekhar Tiwari and others, under Sections 147, 148, 149, 323, 342, 457, 364, 302, 201, 120B, 506, Indian Penal Code and Section 7, Criminal Law Amendment Act, P. S. Diviyapur district Auraiya pending in the court of Sessions Judge. Auraiya is transferred to the court of Sessions Judge. Lucknow who may either try the case himself or assign it to any other Additional District and Sessions Judge to decide the case expeditiously more preferably within six months from the date of production of the certified copy or receipt of the copy of this order...

At this juncture, it is relevant to point out that some of the accused persons approached the High Court by filing Criminal Misc. Writ Petition No. 4828 of 2008 for quashing the F.I.R. wherein a direction was issued by this Court on 23.1.2009 for conclusion of investigation and trial within six months.

In compliance of the aforesaid order dated 11.5.2009. the Sessions Judge, Lucknow passed an order dated 30.5.2009 assigning the aforesaid sessions trial to the Special Judge (Ayodhya Prakaran). Ultimately, the trials were re-numbered as Sessions Trial Nos. 446 and 447 of 2009.

It is pointed out by the counsel for the petitioners that as both the trials. i.e., the

trial under the substantive offence and the Gangsters Act, have to be tried together and the court of learned Special Judge (Ayodhya Prakaran), Lucknow, is not a Special Court under the Gangsters Act, therefore, the petitioners and others had filed a Criminal Misc. Writ Petition No. 22878 of 2009 before this Court at Allahabad, inter alia praying for a direction that Sessions Trial Nos. 446 and 447 of 2009 pending at Lucknow, be kept in abeyance till the sessions trial under the Gangsters Act is decided at Kanpur.

8. This writ petition was dismissed vide judgment and order dated 26.11.2009 and the operative portion of the order reads as under :

8. It is not necessary to decide the rival submissions of the parties. The petitioners want that the further proceedings of S.T. Nos. 446/08 and 447/09 before Special Judge at Lucknow be kept in abeyance till finalization of the case under U. P. Gangster and Anti-Social Activities (Prevention) Act. 1986 at Kanpur. In our opinion, this objection should be first raised before the Court holding the trials at Lucknow. In case any objection is raised, it may be decided without being influenced by any of the observations made in this order. With these observations, the writ petition is dismissed at this stage.

9. After the aforesaid order dated 26.11.2009, applicants, namely, Shekhar Tiwari, Vinay Tiwari, Manoj Awasthi and Ram Babu alias Putti, moved an application for stay u/s 7(3) of the Gangster Act before the Additional District and Sessions Judge/Special Judge (Ayodhya Prakaran), Lucknow inter alia stating therein that as per provisions of Section 12 of the Gangsters Act, the trial under the said Act of any offence by a Special Court shall have precedence over the trial of any other case against the accused in any other Court and shall be concluded in preference to the trial of such other cases and accordingly, it was prayed that the proceedings of S.T. Nos. 446 and 447 of 2009 may be transferred to the appropriate Court for trial as per Scheme of the Gangsters Act. This application was seriously contested by the Special Public Prosecutor, who filed objections and stated that as the High Court has transferred the trial to Lucknow and has directed for expeditious disposal and as such, the proceedings of the present trial cannot be stayed and the question of jurisdiction to try the case by the Additional District and Sessions Judge/Special Judge (Ayodhya Prakaran) is wholly misconceived. Furthermore, the accused persons have not disclosed the nature of matter pending before any Special Judge (Gangsters Act)) and as such, it cannot be assessed as to what part of the present trial is related to any other offence for which the accused persons are being tried by any other Court.

10. After considering the submissions of the parties, the court below rejected the aforesaid application vide order dated 23.12.2009 inter alia on the ground that the proceedings under the Gangsters Act had started much after the present trial, the High Court has directed for disposal of trial at the earliest, and no material has been placed before the Court to show that the trial against the accused persons under the Gangsters Act has commenced or the Special Court

under the Gangsters Act has started recording evidence, whereas in the instant trials, the evidence of P.W. 10 is being recorded.

11. Being dis-satisfied with the aforesaid order dated 23.12.2009. it was assailed in Criminal Misc. Writ Petition No. 2184 of 2010 by the petitioners, namely, Shekhar Tiwari, Manoj Kumar Awasthi and Putti alias Ram Babu. This writ petition was dismissed as not pressed with liberty to file fresh writ petition vide order dated 16.2.2010.

Hence, the present writ petition.

12. Sri Dilip Kumar, advocate appearing for the petitioners has submitted that Case Crime No. 299 of 2008 under Sections 323, 342, 457 and 364, Indian Penal Code was registered on the basis of written report given by Smt. Shashi Gupta at P. S. Dibiyaapur on 24.12.2008 at 6.20 a.m. In the said F.I.R. Bhatia, Tyagi and one unknown person, were named as accused and their names are mentioned in column of accused, in the chik first information report. As injured-Manoj Gupta succumbed to the injuries, the offences of Section 302, Indian Penal Code and certain other sections of Indian Penal Code and Section 7, Criminal Laws (Amendment) Act were also added during the investigation. Since the entire act and conduct of four petitioners, namely, Shekhar Tewari, Vinay Tewari, Manoj Awasthi and Putti was found as an act of gangsters, therefore, the provisions of Section 2(b) of the Gangsters Act have been found attracted. Accordingly, on the instructions of the Investigating Officer, a sanction was sought by the Station House Officer P.S. Dibiyaapur from the District Magistrate, Auraiya for registration of the F.I.R. u/s 3(1) of U. P. Gangsters Act. A memo, seeking sanction alongwith the gang-chart of four accused persons (petitioners) was submitted to the District Magistrate, Auraiya, who had accorded sanction, after considering the incident occurred in the night between 23rd/24th of December, 2008. After the grant of sanction, a Case Crime No. 300 of 2008 u/s 3(1) of the Gangsters Act was registered at P.S. Dibiyaapur on the basis of an F.I.R. lodged by informant-Station Officer Shiv Swaroop. In respect of the substantive offences under the Indian Penal Code the trial is going on before the Additional Sessions Judge/ Special Judge (Ayodhya Prakaran), Lucknow pursuant to the direction of the High Court. In the case registered under the Gangsters Act, after submission of charge-sheet before the Special Judge, Gangsters Act, Kanpur on 14.7.2009, the processes for appearance have also been issued against the petitioners, namely. Shekhar Tewari, Vinay Tewari, Manoj Awasthi and Putti including warrant-B.

13. According to the petitioners, the prosecuting agency had admitted the applicability of the offence of Section 3(1) of the Gangsters Act against them and that is why a separate charge-sheet has been filed before the Court having jurisdiction. In the said charge-sheet dated 9.7.2009, arising out from Case Crime No. 300 of 2008, the complainant Shashi Gupta of Case Crime No. 299 of 2008 is the main witness and her statement has been recorded by the Investigating Officer apart from the statement of Investigating Officer of the substantive offences. The activities of the petitioners have been treated as

indulged in anti-social activities, as contemplated in the definition of "Gang" u/s 2(b) of the Gangsters Act, therefore, any proceeding before the Court other than the Special Judge, Gangsters Act, would be without jurisdiction and the entire exercise would be futile, if the proceeding before the court of Additional Sessions Judge, Lucknow is permitted to go on.

14. Elaborating his arguments, Sri Dilip Kumar submitted that illegality should not be perpetuated and therefore, in view of Section 7(3) read with Section 12 of U. P. Gangsters Act. the proceedings pending before the court of Additional Sessions Judge/Special Judge (Ayodhya Prakaran), Lucknow, are liable to be kept in abeyance and a positive direction is warranted to transmit the entire record of the sessions trial pending in the court of Additional Sessions Judge/Special Judge (Ayodhya Prakaran), Lucknow to the court of Special Judge (Gangster Act), Kanpur to proceed further as per the provision of Section 7(3) of the Gangsters Act. He pointed out that the direction of the Hon"ble High Court for deciding the proceeding of the Sessions Trial cannot be treated as mandatory, it is directory in nature and such a direction cannot over-ride the statutory/mandatory provisions of the Gangsters Act. The contrary view taken by the Additional Sessions Judge/Special Judge (Ayodhya Prakaran), Lucknow, in rejecting the petitioner's application is wholly erroneous and illegal, as such, the impugned order is liable to be quashed/set aside.

15. According to him, transfer of the proceedings of Sessions Trial was directed in view of free and fair trial and to protect the witnesses, so that they may adduce their evidence freely. The apprehension of both the parties have been kept in mind while issuing direction for transfer of the Sessions Trial from Auraiya to Lucknow. Now there is no apprehension to any party for the reason that the proceedings of Trial is almost at its concluding stage, therefore, as per the statutory provisions of the Gangsters Act, further proceeding of the Sessions Trial should be conducted by the court of Special Judge, Gangsters Act, Kanpur and for its expeditious conclusion any further direction may be given. During the course of trial, the accused petitioners (confined in jail) have always co-operated with the proceedings and they further undertake to co-operate with the proceeding of the Sessions Trial, arising out of Case Crime No. 299 of 2008 and Case Crime No. 300 of 2008, Police Station Dibiyapur, district Auraiya.

16. Sri Dilip Kumar, counsel for the petitioners pointed out that the Constitutional validity of the provisions of Gangsters Act Have been thoroughly examined by a Full Bench of this Hon"ble Court in Ashok Kumar Dixit v. State of U.P. 1987 ACC 164 : 1987 ACR 236 (FB). and the decision so rendered has been affirmed by the Apex Court. Beside this, the Division Bench of this Court in Subhash v. State of Uttar Pradesh. 1998 UP CrR 300 : 1998 (2) ACR 1362, had also examined the issue of attracting the provision of Section 2(b) and the principle of Double Jeopardy. It is the settled proposition of law that the proceedings of different cases arising out of same incident should be tried together by one and same Court. This principle has been laid down to avoid the conflicting view of different

Court on a particular issue and also to follow the constitutional right of the citizen, as contemplated under Article 20(2) of the Constitution of India that no person be prosecuted for the same offence twice.

17. It has been vehemently argued on behalf of the petitioners that in view of sub-section (3) of Section 7 of the Gangsters Act. the proceedings of Sessions Trial pending before the court of the Additional Sessions Judge/Special Judge (Ayodhya Prakaran), Lucknow, are liable to be transferred to the court of Special Judge (Gangsters Act), Kanpur. He also pointed out that in view of Section 8 of the Gangsters Act, the court of Special Judge constituted under the Gangsters Act is also empowered to try the case of other offences under the Indian Penal Code or any other law and the court of Special Judge (Gangsters Act) is competent to punish the offender of said offences as per the provisions of that particular law.

18. Placing reliance on State of M.P. Vs. Mishrilal (Dead) and Others, Sudhir and Others v. State of U. P., 2001 (42) ACC 479, and Natthi Lal v. State of U.P., 1990 (Suppl) SCC 145, learned counsel for the petitioners submitted that it is a well-settled proposition of law that all the cases emerging out of same incident should be tried by the same Court, irrespective of the offence, to avoid conflicting judgment. Applying the said principle of law in the present case the proceedings of session trial of substantive offences and offence covered under the Gangsters Act (arising out of same incident) are liable to be tried by one and same court, i.e., the court of Special Judge Gangster Act, Kanpur. who is fully competent to try the cases of substantive offence together with the offence under, the Gangsters Act.

19. Sri I. B. Singh, Special Public Prosecutor while defending the order dated 23.12.2009, passed by the court below strenuously submitted that there is no ambiguity or illegality in the impugned order which has been passed on merit after hearing the submissions of the rival parties. The instant writ petition in fact is an abuse of the process of law, as the petitioners and the accused persons are seriously interested to stall the trial on one pretext or the other. All the earlier attempts made by the petitioners or other accused persons to stall the proceedings have failed.

20. Giving past background of the facts. Special Public Prosecutor submitted that in Session Trial No. 446/2009, nine persons, namely, Shekhar Tewari, Vinay Tyagi, Manoj Awasthi, Yogendra Singh Doharey alias Babloo, Devendra Rajpoot, San tosh Tewari, Pal Singh, Gajraj Singh and Ram Babu alias Putti are the accused persons and in Session Trial No. 447/2009, Smt. Vibha Tiwari is the accused and both the trials have been ordered to be tried together alongwith the S.T. No. 1382/2010, State v. Hoshiyaar Singh and all the trials are being conducted expeditiously before the learned trial Judge pursuant to the direction made by the Division Bench of this Hon"ble Court at Allahabad in Writ Petition No. 428/2009 alongwith other related writ petitions with same incidence to conclude the investigation as well as trial within six months and upon the

transfer application jointly moved by nine accused persons namely Smt. Vibha Tiwari, Shekhar Tiwari, Yogendra Doharey, Manoj Awasthi, Vinay Tiwari, Devendra Rajpoot, Pal Singh, Gajraj Singh and Santosh Tiwari before this Hon"ble Court at Allahabad and after hearing both the parties at length an order dated 11.5.2009 was passed thereby transferring the session trials from Session Division, Auraiya to Session Division, Lucknow with the direction that the same be concluded within six months and keeping in view the direction of this Hon"ble Court at Allahabad, no adjournment by the prosecution has ever been sought while on the contrary various adjournments on one or other pretext were sought by the accused side only to linger the cases. It is further pointed out that in Criminal Revision No. 993/2009, Hon"ble Mr. Justice Amar Saran of this Court, who was also the member of the Division Bench of Writ Petition No. 428/2009, has passed an order that the earlier order of the High Court for concluding the trial within six months be complied with in letter and spirit.

21. It is significant to mention here that the sessions trial is at its fag end having regard to the fact that entire prosecution evidence has been concluded, statements of all the accused persons u/s 313, Cr. P.C. have been recorded and the accused persons have not been acquitted u/s 232, Cr. P.C. and the defence witnesses are being examined and as such, it is evident that the trial pursuant to various orders of this Court to conclude within six months.

22. Therefore, it has been contended that the petitioners are estopped from raising the plea of stay of Session Trials at Lucknow particularly when the transfer petition was moved by the accused persons and keeping in view the convenience of the witnesses and the accused, the transfer order dated 11.5.2009 was passed by this Hon"ble Court at Allahabad with the specific direction to the learned trial court to decide the case within a period of six months and as such, all the trials are being concluded as ordered and any order contrary to the order dated 11.5.2009 cannot be passed in the instant writ petition until and unless the transfer order dated 11.5.2009 is set aside by Superior Court in appellate jurisdiction and it is also pointed that during the course of trial the prosecution has never sought any adjournment in the trial so that the direction of six months for conclusion of trial may be given effect to.

23. Inviting our attention towards the provisions of the Gangsters Act. Sri I. B. Singh, senior advocate submitted that in order to attract the provisions of Section 2/3 of the Gangsters Act, the essential requirements are being enumerated below :

(I) There should be a group of persons, who acting singly or collectively;

(II) by violence, or threat or show of violence or intimidation or coercion or otherwise;

(III) with object of disturbing public order or of gaining any undue temporal pecuniary material or other advantage for himself or any other person :

(IV) indulge in anti-social activities categorized, in fifteen categories of Section 2(b).

24. In order to attract the substantive offence of Section 3 of the Gangsters Act, the ingredients of the definition of the word "Gang" u/s 2(b) and the definition of word "Gangster" u/s 2(c) are to be fulfilled. The extract of the definitions of the word "Gang" and the word "Gangster" is being reproduced below :

2 (b) "Gang" means a group of persons, who acting either singly or collectively, by violence, or threat or show of violence, or intimidation, or coercion, or otherwise with the object of disturbing public order or of gaining any undue temporal, pecuniary, material or other advantage for himself or any other person, indulge in anti-social activities, namely (i) to (xv).

2 (c) "gangster" means a member or leader or organiser of a gang and includes any person who abets or assists in the activities of a gang enumerated in Clause (b), whether before or after the commission of such activities or harbours any person who has indulged in such activities;

25. From the bare perusal of both the terms together, it is evident that the persons forming group may be said to be a gang if they by use of violence, threat, show of violence intimidation, coercion or otherwise with the object of disturbing public order or if unlawfully gaining temporal, pecuniary, material or other advantages either for himself or for any other person indulged in any of the anti-social activity enumerated under Clauses (i) to (xv) and those persons indulging in aforesaid activities as member, leader, organizer of the gang may be treated as gangster and may be liable for punishment u/s 3 of the Act.

26. It has been contended by the Special Public Prosecutor that Section 3 of the Gangsters Act constitutes an independent and substantive offence, if committed for accomplishment of the object as enumerated from Clauses (i) to (xv) of Section 3(b) of the Act, it is necessary and desirable to have a glance upon special rule of evidence for trial under the aforesaid Act as contemplated u/s 4 thereof and protection of witnesses including the camera trial has been specifically contemplated u/s 11 of the Act and attachment of property acquired by the Gangster as a result of commission of gangster offences has been contemplated u/s 14 of the Act and the special provision for maximum period of judicial remand during investigation even upto one year in place of 90 days has been contemplated u/s 19 of the Act and applicability of the Code of Criminal Procedure to certain extent in making inquiry by the District Magistrate pertaining to the property acquired by gangster has been contemplated u/s 16 of the Act and the special provision for grant of bail to a gangster and special provision for taking of cognizance by Special Judge even without committal proceeding has been contemplated u/s 10(1) of the Act and all these factors are relevant to rebut the arguments advanced by the petitioners and all the accused, though not charged under the Gangsters Act, cannot be tried together alongwith the accused petitioners who have been charge-sheeted under the Gangster Act

at Kanpur, as prayed in the writ petition.

27. It is also submitted that the term "indulge in" coupled with the word "anti-social activities" detailed in 15 clauses of Section 2(h) of the Act and the doing of which may come within the meaning of term "commits" for independent significance so as to attract the substantive offence punishable u/s 3 of the Act and as such Section 12 of the Act will only take field in respect of those offences which are also covered under the Gangsters Act alongwith the offences under the general law, (Indian Penal Code) only then the Special Court will acquire jurisdiction of trial pending in other Courts, particularly when the crime has been committed in the course of some transaction for which all the accused could be jointly charged and tried together as provided u/s 8(1) of the Act read with Section 223, Cr. P.C. dealing with the principle of joint trial while in the case in hand all the accused persons have been charged and tried jointly by the learned trial court under the time bound order of High Court.

28. It is further pointed out that Section 12 of the Act contemplates trial of any other case against the accused in other Court and such phraseology has its own significance meaning thereby that if the accused is a gangster and has committed such offence covered within any of the clauses from (i) to (xv) of Section 2(b) of the Act for accomplishment of the object enumerated therein, only in such a situation those offences may be triable by Special Court but not otherwise. Thus, in the instant case Section 12 of the Act has no application at all so far as the facts and circumstances of the present case is concerned.

29. It is pointed out by the Special Public Prosecutor that Section 4 of the Act deals with the position in respect of rule of evidence that for the purposes of trial and punishment of the offences under the aforesaid Act or connected offences, the Court may also take into consideration that the accused has already executed bond under the provisions of Sections 107, 108, 109 and 110, Cr. P.C. and also the accused has been under detention under the preventive detention laws and the executive authorities have also declared him "goonda" under the provisions of U. P. Control of Goondas Act, 1970. Moreover, Section 4(b) also deals with the position that presumption may be drawn by the Special Court in respect of possession of movable or immovable properties treating it to be disproportionate to his known sources of income and the Court shall presume that the same has been acquired or derived by his activities as gangster and other presumptive clause has also been enumerated u/s 4 of the aforesaid Act and thus in the instant case those accused persons who have neither been charge-sheeted under the Gangsters Act nor their activities are such as are enumerated under the aforesaid Act and are being tried jointly will also be prejudicially affected particularly when they have not been impleaded as opposite parties in the instant writ petition. In view of the aforesaid factual and legal position, the writ petition preferred by the petitioners deserves to be dismissed with exemplary costs.

30. Shri Saleel Kumar Srivastava, advocate appearing on behalf of opposite party No. 3-Shashi Gupta (complainant) submitted that he adopts the arguments

advanced by the Special Public Prosecutor and does not want to add anything.

31. It is further pointed out that all the three session trials, i.e., S.T. No. 446 of 2009, S.T. No. 447 of 2009 and S.T. No. 1382 of 2009 have arisen out of one Case Crime No. 229 of 2008 in respect of the same transaction and all the session trials, as mentioned above, have been transferred from Auraiya Sessions Division to Lucknow Sessions Division under the specific orders passed by this Hon"ble Court by co-ordinate Benches and those orders have attained finality left, unchallenged and un-appealed. All the 11 accused persons are being jointly tried together and the trials have been ordered to be expedited and to be concluded within the period of 6 months.

32. The first argument advanced by the learned Special Public Prosecutor is that in the reference order passed by the learned single Judge, the question has not been formulated though it is necessary for the Bench to formulate the question before referring the matter in view of the provisions of Rule 6 of Chapter V of the Allahabad High Court Rules, 1952. This Bench is required to answer the question but in the absence of question, there is no valid reference. Furthermore, this Court is not competent to decide the controversy involved in the writ petition.

33. We have carefully read the provisions of Rule 6 of Chapter V of the Allahabad High Court Rules, 1952, which deals with the reference to a larger Bench. Rule 6 reads as under :

6. Reference to a larger Bench.--The Chief Justice may constitute a Bench of two or more Judges to decide a case or any question of law formulated by a Bench hearing a case. In the latter event the decision of such Bench on the question so formulated shall be returned to the Bench hearing the case and that Bench shall follow that decision on such question and dispose of the case after deciding the remaining questions, if any, arising therein.

34. From a perusal of the aforesaid Rule, it is clear that Hon"ble the Chief Justice is vested with the powers to constitute a Bench of two or more Judges to decide a case or any question of law formulated by a Bench hearing the case. In the instant case, the learned single Judge after considering the gravity of the matter and the orders passed by the Division Bench and single Judge, came to the conclusion that it would be in the fitness of things that the matter is heard by a Division Bench. In our view, this order was passed taking into consideration the judicial propriety and discipline. Therefore, without commenting on any orders passed either by the Division Bench or by the learned single Judge, passed the order dated 23.7.2010 for hearing of the writ petition by a Division Bench and also directed the Registry to place the record before Hon"ble the Chief Justice/ Hon"ble the Senior Judge for nomination of Bench to hear the writ petition. Thereafter, the matter has been assigned to a Division Bench and consequently, it was re-numbered. Therefore, the assertion of the Special Public Prosecutor is wholly misconceived and is wrong to say that this Court is only required to give answer to the reference. Perhaps, the Special Public Prosecutor missed the word

"or" occurring before the sentence-"the Chief Justice may constitute a Bench of two or more Judges to decide a case". It may be clarified that a reference is answered and the case is returned back to the Bench hearing the case only when a question of law is formulated and two or more Judge are required to answer the question and remit the matter to the Referring Bench to decide the question in the light of the answer given by the Division Bench or larger Bench. Here, the writ petition itself has been assigned to a Division Bench, which is free to adjudicate the matter on merits and decide the writ petition finally.

35. Before proceeding to deal with the arguments advanced by the learned counsel for the parties, it would be apt to refer to various sections of the Gangsters Act, which deals with the definition of gang, penalty, jurisdiction of Special Courts, power of Special Courts with respect to other offences and precedence of Special Courts over trial.

36. Section 2 of the Gangsters Act is the definition Clause and it defines. Gang, gangster, public servant etc.

In this Act-

(a) "Code" means the Code of Criminal Procedure, 1973 (Act No. 2 of 1974);

(b) "Gang" means a group of persons, who acting either singly or collectively, by violence, or threat or show of violence, or intimidation, or coercion, or otherwise with the object of disturbing public order or of gaining any undue temporal, pecuniary, material or other advantage for himself or any other person, indulge in anti-social activities, namely :

(i) offences punishable under Chapter XVI, or Chapter XVII, or Chapter XXII of the Indian Penal Code (Act No. 45 of 1860), or

(ii) distilling or manufacturing or storing or transporting or importing or exporting or selling or distributing any liquor, or intoxicating or dangerous drugs, or other intoxicants or narcotics or cultivating any plant, in contravention of any of the provisions of the U. P. Excise Act. 1910 (U. P. Act No. 4 of 1910), or the Narcotic Drugs and Psychotropic Substances Act, 1985 (Act No. 61 of 1985), or any other law for the time being in force, or

(iii) occupying or taking possession of immovable property otherwise than in accordance with law, or setting-up false claims for title or possession of immovable property whether in himself or any other person, or

(iv) preventing or attempting to prevent any public servant or any witness from discharging his lawful duties, or

(v) offences punishable under the Suppression of Immoral Traffic in Women and Girls Act, 1956 (Act No. 104 of 1956). or

(vi) offences punishable u/s 3 of the Public Gambling Act, 1867 (Act No. 3 of 1867). or

(vii) preventing any person from offering bids in auction lawfully conducted, or tender, lawfully invited, by or on behalf of any Government department, local body or public or private undertaking, for any lease or rights or supply of goods or work to be done, or

(viii) preventing or disturbing the smooth running by any person of his lawful business, profession, trade or employment or any other lawful activity connected therewith, or

(ix) offences punishable u/s 171E of the Indian Penal Code (Act No. 45 of 1860), or in preventing or obstructing any public election being lawfully held, by physically preventing the voter from exercising his electoral rights, or

(x) inciting others to resort to violence to disturb communal harmony, or

(xi) creating panic, alarm or terror in public, or

(xii) terrorising or assaulting employees or owners" or occupiers of public or private undertakings or factories and causing mischief in respect of their properties.

(xiii) inducing or attempting to induce any person to go to foreign countries on false representation that any employment, trade or profession shall be provided to him in such foreign country, or

(xiv) kidnapping or abducting any person with intent to extort ransom, or

(xv) diverting or otherwise preventing any aircraft or public transport vehicle from following its scheduled course;

(c) "gangster" means a member or leader or organiser of a gang and includes any person who abets or assists in the activities of a gang enumerated in Clause (b), whether before or after the commission of such activities or harbours any person who has indulged in such activities;

(f) words and phrases used but not defined in this Act and defined in the Code of Criminal Procedure, 1973, or the Indian Penal Code shall have the meanings respectively assigned to them in such Codes.

Section 3 of the Act deals with the penalty which can be inflicted upon a gangster and it provides as under :

3. Penalty.--(1) A gangster shall be punished with imprisonment of either description for a term which shall not be less than two years and which may extend to ten years and also with fine which shall not be less than five thousand rupees :

Provided that a gangster who commits an offence against the person of a public servant or the person of a member of the family of a public servant shall be punished with imprisonment of either description for a term which shall not be less than three years and also with fine which shall not be less than five

thousand rupees.

(2) Whoever being a public servant renders any illegal help or support in any manner to a gangster, whether before or after the commission of any offence by the gangster (whether by himself or through others) or abstains from taking lawful measures or intentionally avoids to carry out the directions of any Court or of his superior officers, in this respect, shall be punished with imprisonment of either description for a term which may extend to ten years but shall not be less than three years and also with fine.

Section 4 of the Act deals with regard to special rule relating to evidence and provides as under :

4. Special Rules of Evidence. --Notwithstanding anything to the contrary contained in the Code or the Indian Evidence Act, 1872, for the purposes of trial and punishment for offences under this Act or connected offences :

(a) the Court may take into consideration the fact that the accused was-

(i) on any previous occasion bound down u/s 107 or Section 108 or Section 109 or Section 110 of the Code, or

(ii) detained under any law relating to preventive detention, or

(iii) externed under the Uttar Pradesh Control of Goondas Act. 1970 (Act No. 8 of 1971) or any other such law :

(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;

(c) where it is proved that the accused has kidnapped or abducted any person, the Court shall, presume that it was for ransom;

(d) where it is proved that a gangster has wrongfully concealed or confined a kidnapped or abducted person, the Court shall presume that the gangster knew that such person was kidnapped or abducted, as the case may be;

(e) the Court may, if for reasons to be recorded it thinks fit so to do proceed with the trial in the absence of the accused and record the evidence of any witness, provided that the witness may be recalled for cross-examination if the accused so desires but recording his examination-in-chief afresh in presence of the accused shall not be necessary.

Section 5 of the Act relates to constitution of Special Court for speedy trial of offences under this Act and reads as under :

5. Special Courts.--(1) Notwithstanding anything contained in the Code, where a

Special Court has been constituted for any local area, every offence punishable under any provision of this Act or any rule made thereunder shall be triable only by the Special Court within whose local jurisdiction it was committed whether before or after the constitution of such Special Court.

(2) All cases triable by a Special Court, which immediately before the constitution of such Special Court were pending before any Court, shall on creation of such Special Court having jurisdiction over such cases, stand transferred to it.

(3) Where it appears to any Court in the course of any inquiry or trial in respect of any offence that the case is one which should be tried by a Special Court constituted under this Act for the area in which such case has arisen, it shall transfer such case to such Special Court and thereupon such case shall be tried and disposed of by the Special Court in accordance with the provisions of this Act :

Provided that it shall be lawful for the Special Court to act on the evidence, if any, recorded by the Court in the case in the presence of the accused before the transfer of the case under this section :

Provided further that if the Special Court is of opinion that further examination of any of the witnesses whose evidence is already recorded in the case is necessary in the interest of justice, it may resubmit any such witness and after such further examination, cross-examination and reexamination, if any, as it may permit, the witness shall be discharged.

(4) The State Government may, if satisfied that it is necessary or expedient in the public interest so to do, transfer any case pending before a Special Court to another Special Court.

Section 7 of the Act provides jurisdiction of Special Courts which reads as under :

7. Jurisdiction of Special Courts.--(1) Notwithstanding anything contained in the Code, where a Special Court has been constituted for any local area, every offence punishable under any provision of this Act or any rule made thereunder shall be triable only by the Special Court within whose local jurisdiction it was committed whether before or after the constitution of such Special Court.

(2) All cases triable by a Special Court, which immediately before the constitution of such Special Court were pending before any Court, shall on creation of such Special Court having jurisdiction over such cases, stand transferred to it.

(3) Where it appears to any Court in the course of any inquiry or trial in respect of any offence that the case is one which should be tried by a Special Court constituted under this Act for the area in which such case has arisen, it shall transfer such case to such Special Court, and thereupon such case shall be tried and disposed of by the Special Court in accordance with the provisions of this Act :

Provided that it shall be lawful for the Special Court to act on the evidence, if

any, recorded by the Court in the case in the presence of the accused before the transfer of the case under this section :

Provided further that if the Special Court is of opinion that further examination of any of the witnesses whose evidence is already recorded in the case is necessary in the interest of justice, it may resummon any such witnesses and after such further examination, cross-examination and reexamination, if any, as it may permit, the witness shall be discharged.

(4) The State Government may, if satisfied that it is necessary or expedient in the public interest so to do, transfer any case pending before a Special Court to another Special Court.

Section 8 gives powers to the Special Court to try any other offence with which the accused may, under any other law for the time being in force, be charged at the same trial. It reads as under :

8. Power of Special Courts with respect to other offences.--(1) When trying any offence punishable under this Act a Special Court may also try any other offence with which the accused may under any other law for the time being in force, be charged at the same trial.

(2) If in the course of any trial under this Act of any offence, it is found that the accused has committed any other offence under this Act or any rule thereunder or under any other law, the Special Court may convict such person of such other offence and pass any sentence authorized by this Act or such rule or, as the case may be, such other law, for the punishment thereof.

Section 10 of the Act deals with the procedure and power of the Special Courts constituted under the Gangsters Act--Procedure and powers of Special Courts and it reads as under :

10. Procedures and powers of the Special Courts.--(1) A Special Court may take cognizance of any offence triable by it, without the accused being committed to it for trial upon receiving a complaint of facts which constitute such offence or upon a police report of such facts.

(2) Where an offence triable by a Special Court is punishable with imprisonment for a term not exceeding three years or with fine or with both, the Special Court may, notwithstanding anything contained in sub-section (1) of Section 260 or Section 262 of the Code, try the offence in a summary way in accordance with the procedure prescribed in the Code and the provisions of Sections 263 to 265 of the Code, shall, so far as may be, apply to such trial :

Provided that when in the course of a summary trial under this sub-section, it appears to the Special Court that the nature of the case is such that it is undesirable to try in a summary way, the Special Court shall recall any witnesses who may have been examined and proceed to rehear the case in the manner provided by the provisions of the Code for the trial of such offence and the said

provisions shall apply to and in relation to a Special Court as they apply to and in relation to a Magistrate :

Provided further that in the case of any conviction in a summary trial under this subsection, it shall be lawful for a Special Court to pass sentence of imprisonment for a term not exceeding two years.

(3) A Special Court may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to an offence, tender a pardon to such person, on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned whether as principal or abettor in the commission, thereof, and any pardon so tendered shall, for the purposes of Section 308 of the Code, be deemed to have been tendered u/s 307 thereof.

(4) Subject to the other provisions of this Act a Special Court for the purpose of trial of any offence, have all the powers of a Court of Session and shall follow the procedure prescribed in the Code for the trial of warrant cases by the Magistrate.

(5) Subject to the other provisions of this Act every case transferred to a Special Court under sub-section (3) of Section 7 shall be dealt with as if such case had been transferred u/s 406 of the Code to such Special Court.

Section 12 provides that the trial under the Gangsters Act by Special Court shall have precedence over the trial of any other case against the accused in any other Court and reads as under :

12. Trial by Special Court to have precedence.--The trial under this Act of any offence by Special Court shall have precedence over the trial of any other case against the accused in any other Court (not being a Special Court) and shall be concluded in preference to the trial of such other case and accordingly the trial of such other case shall remain in abeyance.

(Emphasis supplied)

37. In this case, as averred above in detail, the F.I.R. at Case Crime No. 299 of 2009 under the provisions of Indian Penal Code was registered at P. S. Dibiyapur, district Auraiya on 24.12.2008. Thereafter, on the basis of a Gang Chart, the Station Officer, P. S. Dibiyapur, district Auraiya lodged an F.I.R. as Case Crime No. 300 of 2008 u/s 3(1) of the Gangsters Act. Thereafter, the police after investigation submitted the charge-sheet against the accused persons in both the case crime numbers. On account of certain difficulties and apprehending that the fair and impartial trial would not be possible at Auraiya, the petitioners and certain other accused persons, namely, Smt. Vibha Tiwari, Yogendra Dhoray, Vinay Tiwari, Devendra Rajput, Pal Singh, Gajraj Singh and Santosh Tiwari moved an application for transfer of the trial to some adjoining district. The transfer application being No. 173 of 2009 for transfer of the Trial No. 15 of 2009, State v. Shekhar Tiwari and others, was disposed of by the judgment and order dated 11.5.2009, whereby the aforesaid trial was transferred from the

court of Sessions Judge, Auraiya to Sessions Judge, Lucknow.

38. It is significant to point out that during the course of arguments, Sri I.B. Singh, Special Public Prosecutor argued that the case under the Gangsters Act has wrongly been registered against the petitioners as their activities cannot be said to have attracted the provisions of Section 2(b) of the Gangsters Act though there is no such pleading in the counter-affidavit. E contra while reiterating his earlier submissions with regard to imposition of Gangsters Act he submitted that entire act and conduct of four petitioners was found as an act of gangster and as such the provisions of Section 2(b) have been found attracted. Under these circumstances, the District Magistrate accorded approval for registration of F.I.R. under the Gangsters Act. The police after due investigation has submitted charge-sheet and even cognizance has been taken by the competent court. Therefore, the assertion of the Special Public Prosecutor is wholly misleading and misconceived. We are amazed by such an argument advanced by the Special Public Prosecutor as there is no application/petition of the State, which he is arguing. As a matter of fact he is defending the order passed by the court below refusing the transfer of the trial under the substantive offences to the court of Special Judge (Gangsters Act). While sitting under Article 226 of the Constitution, this Court is not competent to comment whether or not the Gangsters Act has been rightly imposed and that too when the charge-sheet has been submitted and the cognizance thereon has been taken by the Competent Court.

39. The question in the writ petition is whether the Sessions trial, which the petitioners are facing, in substantive offences can be transferred to the court of Special Judge, Gangsters Act in view of Section 7(3) read with Section 12 of the Gangsters Act and whether the impugned order is correct or not.

40. One of the assertions of the Special Public Prosecutor is that when an order of transfer of trial is passed in exercise of powers conferred u/s 407, Indian Penal Code by the High Court, it cannot be recalled or reviewed in view of prohibitory provision u/s 362, Cr. P.C. While refuting the assertion raised by the State, it has been submitted by Shri Dilip Kumar that the transfer of the trial was done by the High Court looking to the general convenience of the witnesses, which is one of the eventualities prescribed u/s 407, Indian Penal Code At a latter stage, the Court can pass fresh order when there is legal difficulty or any fresh cause of action has arisen. At this juncture, it would be useful to reproduce Section 407 of the Code, which reads as under :

Section 407. Power of High Court to transfer cases and appeals.--(1) Whenever it is made to appear to the High Court :

(a) that a fair and impartial inquiry or trial cannot be had in any criminal court subordinate thereto, or

(b) that some question of law of unusual difficulty is likely to arise; or

(c) that an order under this section is required by any provision of this Code, or

will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice, it may order-

(i) that any offence be inquired into or tried by any Court not qualified under Sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence :

(ii) that any particular case, or appeal, or class of cases or appeals, be transferred from a criminal court subordinate to its authority to any other such criminal Court of equal or superior jurisdiction;

(iii) that any particular case be committed for trial of to a Court of Session; or

(iv) that any particular case or appeal be transferred to and tried before itself.

41. A perusal of Section 407, Cr. P.C., referred to above, reveals that there are certain eventualities under which, the High Court is empowered to transfer cases and appeals, i.e. when there is doubt of fair and impartial inquiry or trial : some question of law of unusual difficulty is like to arise; or taking into consideration the general convenience of the parties. From the reading of the order dated 11.5.2009 transferring the Sessions trial arising out of Case Crime No. 299 of 2008 to the court of Sessions Judge, Lucknow, it is evident that the trial was transferred, looking to the convenience of the public witnesses and to some extent to remove doubts of there being no fair trial at Auraiya. In other words, the apprehension of both the parties was kept in mind while issuing the direction of transfer of the Sessions trial from Sessions Division, Auraiya to Sessions Division, Lucknow. The present transfer has been sought in view of legal proposition as contemplated u/s 7(3) read with Section 12 of the Gangsters Act. This is a fresh cause of action and in our definite opinion, it will not amount to review or recall or the earlier transfer order. Section 362 of the Code puts an embargo in altering the judgment and provides that no Court when it has signed its judgment or final order disposing of a case shall alter or review the same except to correct a clerical or arithmetical error. Thus, the assertion of the Special Public Prosecutor is misconceived and cannot be accepted.

42. In *Vivek Gupta v. Central Bureau of Investigation*. 2004 SCC (Cr) 41 : 2004 (1) ACR 243 (SC). on which reliance has been placed by the counsel for the petitioners, the question before the Supreme Court which arose for consideration was whether the appellant could be charged and tried together with the other two accused by the Special Judge under the provisions of the Prevention of Corruption Act, 1988, in view of the fact that the appellant was charged only u/s 420, Indian Penal Code while the other two accused were charged u/s 120B read with Section 420, Indian Penal Code while the other two accused were additionally charged for the offence of Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. The Apex Court while affirming judgment of the High Court came to the conclusion that the Special Judge while

trying the accused persons under the Corruption Act had the jurisdiction to try the appellant also for offences punishable u/s 120B read with Section 420, Indian Penal Code in view of Section 223 of Cr. P.C. Paragraphs 14 and 15 reads as under :

14. The only narrow question which remains to be answered is whether any other person who is also charged of the same offence with which the co-accused is charged, but which is not an offence specified in Section 3 of the Act can be tried with the co-accused at the same trial by the Special-Judge. We are of the view that since sub-section (3) of Section 4 of the Act authorizes a Special Judge to try any offence other than an offence specified in Section 3 of the Act to which the provisions of Section 220 apply, there is no reason why the provisions of Section 223 of the Code should not apply to such a case. Section 223 in clear terms provide that persons accused of the same offence committed in the course of the same transaction, or persons accused of different offence committed in the course of the same transaction may be charged and tried together. Applying the provisions of Sections 3 and 4 of the Act and Sections 220 and 223 of the Code of Criminal Procedure it must be held that the appellant and his co-accused may be tried by the Special Judge in the same trial.

15. This is because the co-accused or the appellant who have been also charged of offences specified in Section 3 of the Act must be tried by the Special Judge, who in view of the provisions of sub-section (3) of Section 4 and Section 220 of the Code may also try them of the charge u/s 120B read with Section 420, Indian Penal Code All the three accused, including the appellant, have been charged of the offence u/s 120B read with Section 420, Indian Penal Code If the Special Judge has jurisdiction to try the co-accused for the offence u/s 120B read with Section 420, I.P.C, the provisions of Section 223 are attracted. Therefore, it follows that the appellant who is also charged of having committed the same offence in the course of the same transaction may also be tried with them. Otherwise it appears rather incongruous that some of the conspirators charged of having committed the same offence may be tried by the Special Judge while the remaining conspirators who are also charged of the same offence will be tried by another Court, because they are not charged of any offence specified in Section 3 of the Act.

43. We have reproduced various sections of the Gangsters Act hereinabove. Section 8 of the Gangsters Act provides that when a Special Court tries any offence punishable under the Gangsters Act, it can also try any other offence with which the accused may, under any other law for the time being in force, be charged at the same trial. This suggests that if by a single act or omission the offender commits an offence under the general law as also one under this Act, both the offences may be tried together before the Special Court.

44. The commencement of the proceeding of trial before the Special Judge (Gangsters Act) for the purposes of applicability of Section 7(3) and Section 12 of the Gangsters Act is not the requirement of the law. Therefore, the finding

recorded by the trial court to the effect that the trial proceedings before the Gangster Court has yet not commenced is wholly erroneous. It is not disputed that the police has submitted the charge-sheet under the Gangsters Act before the Special Judge on 9.7.2009 and the learned Judge on 14.7.2009 had taken cognizance in the matter and passed an order directing for preparation of copies. On 12.8.2009, the accused persons were produced in Special Court (Gangsters Act) Kanpur and they were remanded to custody as per provisions of Section 309, Cr. P.C. On 5.9.2009, the dates were fixed at both place, i.e., before the Additional Sessions Judge, Lucknow as well as Special Judge, Gangsters Act, Kanpur. On account of peculiar circumstances, the accused were not produced in the court of Special Judge (Gangsters Act), Kanpur despite the orders to the effect. Therefore, no proceeding took place in the Special Court at Kanpur.

45. From the above discussions, it clearly emerges that settled position of law is that all the cases emerging out of same incident should be tried by the same Court, irrespective of the offence, to avoid conflicting judgments. The trials pending in the court of Special Judge (Gangsters Act), Kanpur cannot be transferred to Lucknow in view of the legal impediment as the court of Additional Sessions Judge/Special Judge (Ayodhya Prakaran), Lucknow, is not competent/conferred with the power to try and decide the case u/s 3(1) of the Gangsters Act and the arguments contrary to it advanced by the Special Public Prosecutor cannot be accepted.

46. Therefore, in view of Sections 7(3), 8 read with Section 12 of the Gangsters Act, the proceedings of sessions trials arising out of Case Crime No. 299 of 2008 are liable to be transferred to the court of Special Judge, (Gangsters Act) Kanpur. It may be clarified that in view of Section 8 of the Gangsters Act, the court of Special Judge is also empowered to try the case of the offences under the Indian Penal Code or any other law and the Special Judge is also competent to punish the offender of the said offences under the substantive law.

47. For the reasons aforesaid, the impugned order dated 23.12.2009, passed by the Additional Sessions Judge/Special Judge (Ayodhya Prakaran), Lucknow, is bad in law and cannot be sustained. Accordingly, the writ petition is allowed and the impugned order dated 23.12.2009 is hereby quashed. The court below shall transmit the record of sessions trials within a week arising out of Case Crime No. 299 of 2008 registered at Police Station Dibiyaipur, Auraiya alongwith entire evidence recorded upto date for trial to Special Judge, (Gangsters Act), Kanpur, who will proceed further with the trial. It is further provided that the learned Special Judge (Gangsters Act), Kanpur shall make earnest endeavour to conclude the aforesaid trials expeditiously, preferably within a period of six months.

Before parting, it is made clear that the Special Judge, (Gangsters Act), Kanpur will not be guided by any of the observations made hereinabove, and will be free to form its own independent opinion.