
(2013) 09 AHC CK 0229
In the Allahabad High Court
Case No : Criminal Appeal No. 1690 of 2009

Smt. Maina Devi	Vs	APPELLANT
State of U.P.		RESPONDENT

Date of Decision : 27-09-2013

Acts Referred:

Citation : (2014) 1 ACR 581 : (2013) 9 ADJ 542 : (2014) 2 ALJ 703 : (2013) 83 ALLCC 902

Hon'ble Judges : Ravindra Singh, J

Bench : Single Bench

Advocate : O.P. Singh, Kamal Kishor Mishra and A.N. Singh, for the Appellant;

Final Decision : Allowed

Judgement

Ravindra Singh, J.—Heard Sri O.P. Singh, Senior Advocate, assisted by Sri Kamal Kishor Mishra, Sri A.N. Singh, learned counsel for the appellant, learned A.G.A. for the State of U.P. and perused the lower Court record.

This appeal u/s 18 of the U.P. Gangster and Anti Social Activities (Prevention) Act, 1986 has been preferred by the appellant Smt. Maina Devi against the order dated 17.3.2009 passed by learned Special Judge (Gangster Act)/Additional Sessions Judge, Azamgarh in Criminal Misc. Case No. 2 of 2009 whereby the learned Special Judge (Gangster Act) affirmed the order dated 14.7.2008 passed by District Magistrate, Mau by which the application u/s 15(1)(2) of U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986 (hereinafter referred to as "the Gangster Act") moved by the appellant for releasing the house Nos. 204-D/8 and 205-D/9 situated in Mohalla Chandmari Imiliyan, Police Station Sarai Lakhansi, District Mau, has been rejected, with the prayer that the same may be quashed. The present appeal has been filed on the following grounds:

1. That the impugned order dated 17.3.2009 passed by the learned Sessions Judge is illegal and is liable to be quashed by this Hon'ble Court.
2. That the learned Sessions Judge has wrongly and illegally failed to consider

the evidence adduced by the appellant before the District Magistrate as well as the Sessions Judge and illegally held that the attached property was acquired by Raj Bahadur as a Gangster as result of the commission of an offence.

3. That the learned District Magistrate has wrongly and illegally relied upon the report of the concern police station and held that the property of the appellant belongs to Raj Bahadur who has acquired the same as a Gangster as result of commission of an offence.

4. That the learned Sessions Judge has wrongly and illegally failed to consider the order passed by the learned District Magistrate as well as failed to consider the report of concern police station upon which the order was passed.

5. That the Sessions Judge has wrongly and illegally approved the order of District Magistrate by which who has given the finding upon the report and held that the house was constructed by the money acquired by Raj Bahadur as a Gangster within 5 to 6 years.

6. That the learned Sessions Judge wrongly and illegally have approved the order passed by District Magistrate without considering the facts that the husband of the appellant was a Government employee and he was posted as a Constable and he was promoted as a Head Constable in P.A.C. in 1977 and in the year 1988 he was promoted as Platoon Commander, was getting the handsome salary.

7. That the learned District Magistrate and the learned Sessions Judge have not considered the material facts that the husband of the appellant have 11 Acres fertile land and have obtained the properties from the agricultural sources.

8. That the learned District Magistrate and the learned Sessions Judge has not considered the material facts that building which is subject-matter of present controversy was purchased by the appellant on 10.3.1999 in Araj No. 438 and 18.6.2001 in Araj No. 438 in sum of Rs. 28,000/- and one lac (Rs. 1,00,000/-) respectively from Smt. Vishwakarma Devi, W/o. Murat and Satyadeo son of Ram Raj.

9. That the learned District Magistrate and the learned Sessions Judge has failed to consider that in year 1999 and 2001 the rate of the land was very low.

10. That the learned Sessions Judge as well as learned District Magistrate have failed to consider the facts that the husband of the appellant have withdraw Rs. 25,000/-, 40,000/-, 40,000/- and 50,000 on 5.6.1997, 26.5.200, 6.6.2002 and 21.7.2003 respectively from his G.P.F. Fund and house was constructed during the period of 7 to 8 years since 1999.

11. That the learned District Magistrate and the learned Sessions Judge has failed to consider the facts, Kamala Singh father in law of the appellant have sold the landed property Araj No. 84 Raqaba 34 decimal in the year 1992 in favour of Ram Kishun, the Raqaba No. 80, 97 decimal in favour of Banshi in the year 1993, Araj No. 138 Raqaba 22 decimal in favour of Suresh on 24.5.1989 and Araj No.

81 Raqaba 25 decimal in favour of Muneshwar on 14.3.1990 and sum of the total amount about Rs. 3 lacs was obtained by the appellant from her father in law.

12. That the learned Sessions Judge as well as District Magistrate failed to consider that Suman Devi the daughter in law of the appellant, her marriage was solemnised in the year 2002 has obtained the property from her parents who have no male issue, and that the money was also invested in construction of the Building.

13. That the learned District Magistrate as well as learned Sessions Judge has not considered the material facts that Raj Bahadur against who F.I.R. under the Gangster Act was registered was also a Government Employee was recruited as a Constable in U.P. Police in year 1994 and since then his performing his duty with utmost satisfaction till his termination of the services in year 2007.

14. That the learned Sessions Judge as well as District Magistrate has not given any finding that any property was acquired by the husband of appellant during his entire service period.

15. That the learned District Magistrate has given the own finding after taking into consideration of the evidence adduced by the concern police station that both the houses were constructed within the period of 5 to 6 years which itself falsify with effect that the house was constructed by Raj Bahadur from money acquired as a Gangster.

16. That the learned Sessions Judge as well as District Magistrate who has passed the impugned order relying upon the F.I.R. relating to case Crime No. 884 of 2007 u/s 3(1) U.P. Gangster and Anti Social Activities (Prevention) Act in which the 4 cases were shown against the appellant in which 2 cases are related to incident in year 2006 and rest of 2 cases are related to the incident in the year 2007.

17. That the learned Sessions Judge as well as District Magistrate has not considered the facts that the houses were constructed prior to the year 2006 and no any Criminal case showing indulgence of Raj Bahadur, in any Criminal Activities was lodged against him prior to year, 2006

18. That the impugned order is not sustainable in the eye of law and is liable to be quashed by this Hon"ble Court.

2. It is contended by learned counsel for the appellant that appellant is owner of the attached house Nos. 204-D/8 and 205-D/9, both the houses have been constructed on the land purchased. Both the houses have been attached by the District Magistrate, Mau in exercise of powers conferred u/s 14(1) of the Gangster Act only because Raj Bahadur Singh, S/o. the appellant was implicated in Case Crime No. 884 of 2007 u/s 3(1) of the Gangster Act by alleging that the above mentioned property has been acquired by gangster Raj Bahadur Singh as a result of commission of an offence triable under this Act. The appellant moved an application u/s 15(1)(2) of the Gangster Act before the District Magistrate,

Mau for releasing the attached property but the same has been rejected by learned District Magistrate Mau on 29.12.2008. Against the order dated 29.12.2008 the appellant moved an application u/s under Section 17 of the Gangster Act in the Court of learned Special Judge (Gangsters Act), Azamgarh with the prayer to release the attached property in her favour by quashing the order of attachment and the order dated 29.12.2008 passed by District Magistrate, Mau but the Special Judge (Gangster Act) rejected the application of the appellant on 17.3.2009.

3. The houses of the appellant have been attached by the District Magistrate in exercise of the powers conferred u/s 14 of the Gangster Act, the appellant is not involved in any case of the U.P. Gangster and Anti Social Activities (Prevention) Act, 1986. It is admitted case that the appellant is not a gangster, the houses have been attached only because the son of the appellant namely Raj Bahadur Singh has been implicated in case crime No. 884 of 2007 u/s 3(1) of the Gangster Act P.S. Sarai Lakhansi district Mau. The learned District Magistrate has relied upon the report of the Officer-in-Charge of the Police Station Sarai Lakhansi. The Officer-In-Charge of the Police Station has not supplied any material to establish that the attached houses were acquired by the son of the appellant as a result of commission of an offence triable under this Act. The attached property was not belonging to Raj Bahadur Singh. The District Magistrate has not set up any inquiry to have the reason to believe that the above mentioned attached houses were acquired by Raj Bahadur Singh as a result of the commission of an offence triable under the U.P. Gangster and Anti Social Activities (Prevention) Act, 1986. The learned District Magistrate, Mau passed the order of attachment of the houses of the appellant without applying his judicial mind. The application moved u/s 15 of the Gangster Act with the prayer to release the attached houses of the appellant has not been properly considered whereas it was containing all the details giving proper explanation as to how both the attached houses were acquired by the appellant. The explanation given by the appellant that the husband of the appellant namely Ram Shanker Singh was serving in P.A.C., he was selected and appointed as constable in the year 1977, thereafter, he was promoted to the post of Head Constable and Platoon Commander. He provided money of his salary to the appellant, he withdrew the GPF fund in different years for the purpose of construction of the house in dispute. The landed property in village was sold by the father-in-law of the appellant, in lieu of that money received, was spent in the construction of the house in dispute. The appellant was having the source of income from the ancestral agricultural land measuring about 11 acre, the cost of its production was used in the construction of the houses. The father-in-law and mother-in-law of the elder son of the appellant were having no son, their moveable and immoveable property was owned by daughter, daughter-in-law of the appellant. The father-in-law of the elder son had sold the some land in lieu of Rs. 50,000/-, prior to that his mother-in-law had sold some land in lieu of Rs. 75,000/-, this money was given by them to her and it was used in the

construction of the above mentioned attached houses. The son of the appellant namely Raj Bahadur Singh was selected as Constable in U.P. Police in the year 1994, but he was made the victim of the departmental politics and cases were registered against him including the case of Excise Act. The District Magistrate was having no material to show that any money acquired by Raj Bahadur Singh as gangster was used in the construction of the attached houses. The order of attachment has been passed only on the basis of presumption whereas the language of Section 14 of the Gangster Act shows that for passing such order there must be reason to believe to the District Magistrate, it is stronger than the word "is satisfied". The learned Special Judge(Gangster) Act Azamgarh has also not applied his judicial mind in passing the impugned order by which the application u/s 17 of the Gangster Act has been rejected. In such circumstances the order of attachment, the order dated 29.12.2008 passed by the District Magistrate, Mau and the order dated 17.3.2009 passed by the learned Special Judge(Gangster) Act are illegal, the same may be set aside and the attached houses may be released in favour of the appellant.

4. In reply to the above contention it is submitted by the learned A.G.A. that the learned District Magistrate, Mau has not committed any error in attaching the houses, which were acquired by the gangster Raj Bahadur Singh son of the appellant, the learned District Magistrate, Mau did not commit any error in rejecting the application u/s 15 of the Gangster Act moved by the appellant, the learned Special Judge(Gangster Act) Azamgarh has also not committed any error in rejecting the application u/s 17 of the Gangster Act moved by the appellant, because the son of the appellant was involved in many cases of Excise Act, cheating and forgery. He acquired the money by adopting illegal means on the basis of his involvement in such cases, FIR u/s 3(1) of the Gangster Act has been registered at the Police Station Sarai Lakhansi district Azamgarh, both the attached houses though were not in the name of the Gangster Raj Bahadur Singh but acquired by him by using money earned by way of illegal bemoans. The present appeal is devoid of merits, the same may be dismissed.

5. Considering the facts, circumstances of the case, submissions made by the learned counsel for the appellant and the learned A.G.A. and from the perusal of the record it appears that the issue involved in the present case may be resolved with the help of the consideration of the provisions of Section 14, 15 and 17 of the Gangsters Act, which read as under: 15. Release of property.--(1) Where any property is attached u/s 14, the claimant thereof may within three months from the date of knowledge of such attachment make a representation to the District Magistrate showing the circumstances in and the sources by which such property was acquired by him.

(2) If the District Magistrate is satisfied about the genuineness of the claim made under sub-section (1) he shall forthwith release the property from attachment and thereupon such property shall be made over to the claimant.

17. Order after inquiry.--If upon such inquiry the Court finds that the property

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

In light of above mentioned provisions of the Gangster Act the District Magistrate is empowered to attach movable or immovable properties in possession of any person acquired by a gangster as a result of the commission of an offence triable under this Act. But for exercising such powers there must be the reason to believe to the District Magistrate that such property was acquired by a gangster as a result of the commission of an offence triable under this Act. The words reason to believe "are stronger than the word satisfied", it must be passed on reasons which are relevant and material. In the present case, from the perusal of the lower Court record it appears that only on the basis of the police report submitted by the officer incharge of P.S. Sarai Lakhansi, District Mau, the District Magistrate, Mau has attached two houses of the appellant, no material was supplied to the District Magistrate to have a reason to believe that the property in question was acquired by the gangster Raj Bahadur Singh as a result of commission of an offence triable under this Act. It vitiates the subjective satisfaction of the District Magistrate also. The learned District Magistrate was having no material in support of the police report that both the houses of the appellant were acquired by his son Raj Bahadur Singh. The learned District Magistrate rejected the application u/s 15 of the Gangsters Act moved by the appellant for releasing the attached houses. The application was moved well within the time, the application was a representation to the District Magistrate, Mau, it was having all the details disclosing the sources by which both the houses were acquired by the appellant. But learned District Magistrate did not consider the sources disclosed by the appellant and rejected the application vide order dated 29.12.2008. The explanation of all the sources by which the appellant acquired the houses has not been properly considered. Therefore, impugned order dated 29.12.2008 has become illegal. The learned Special Judge (Gangsters Act), Azamgarh rejected the application moved by the appellant u/s 17 of the Gangsters Act without considering the provisions of the Section 14 of the Gangsters Act and the "relevancy of the reasons" recorded by the District Magistrate to believe that both the attached houses were acquired by a gangster Raj Bahadur Singh son of the appellant as a result of commission of an offence triable under this Act. The order dated 17.3.2009 passed by learned Special Judge (Gangsters Act)/Additional Sessions Judge, Azamgarh in Criminal Misc. Application No. 2 of 2009 is also illegal.

In view of the above discussion, the order passed by District Magistrate, Mau u/s 14(1) of the Gangsters Act attaching two houses of the appellant the order dated 29.12.2008 passed by District Magistrate, Mau by which the application u/s 15(1) (2) of the Gangster Act has been rejected and the order dated 17.3.2009 passed by learned Special Judge (Gangster Act),/Additional Sessions Judge, Azamgarh in

Criminal Misc. Application No. 2 of 2009 are illegal, the same are hereby set aside and the District Magistrate, Mau is hereby directed to release both the houses No. 204-D/8 and 205-D/9 situated in Mohalla Chandmari, Imiliyan, P.S. Sarai Lakhansi, District Mau in favour of the appellant forthwith.

Accordingly this appeal is allowed.