(2007) 01 AHC CK 0120

In the Allahabad High Court

Smt. Shanti Devi APPELLANT

Vs

State of U.P. RESPONDENT

Date of Decision : 22-01-2007

Acts Referred:
Arms Act, 1959 — Section 25
Penal Code, 1860 (IPC) — Section 302, 307, 323, 324, 34

Citation : (2007) 01 AHC CK 0120

Hon'ble Judges : M.K. Mittal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.K. Mittal, J.—This appeal has been filed by Smt. Shanti Devi, wife of Sri Ram Deen, u/s 18 of U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986(hereinafter referred as Act) challenging the order dated 20.1.2006 passed by Special Judge, Gangsters Act, Kanpur Nagar, in Misc. Case No. 40/05 State v. Lala Mehtar @ Naresh, u/s 17 of the Act, P.S. Bithoor, District Kanpur Nagar, whereby her prayer for the release of the attached property has been refused.

2. The brief facts of the case are that a report dated 19.10.2004 was submitted by the Station Officer, Bithoor to Senior Superintendent of Police, Kanpur Nagar who forwarded the same to the District Magistrate, Kanpur Nagar. It was alleged in the report that Lala Mehtar @ Naresh, was a gangster and by committing dacoity, murders and other heinous crimes had amassed property and out of that purchased land and constructed house in the name of his mother Smt. Shanti Devi (appellant) in Kasba Bithoor, Lavkush Nagar, valued at about Rs. 5,60,000/. The District Magistrate on the basis of the police report passed an order u/s 14 of the Act on 30.10.2004, whereby he attached the house in question and also directed for issuing notice same day u/s 15 of the Act for submission of explanation, if any, regarding the attachment of the house. In reply to the notice Smt. Shanti Devi, presented her representation and alleged that she was Safai Karmchari (Sweeper) in Central Bank of India, Bithoor, branch and that a wrong

report was submitted in respect of her house, which was wrongly attached. She claimed that her salary was Rs. 7,126/- per month and her husband was also having a monthly income of Rs. 5,000/- from Riwaji work. She had purchased the plot measuring 99 squar yards on 31.10.2001 for Rs. 20,000/. Her name was also mutated in the Nagar Panchyat, Bithoor records, on the basis of the sale-deed on 20.2.2002 and she was paying the tax. She applied for loan of Rs. 3,00,000/- for construction of the house and it was given to her on 21st June 2002 by her employer i.e. the Central Bank. She constructed the house out of that amount and is also paying the tax to Nagar Palika. The house is her own earned property and his son was unemployed and had no source of income. Her another son was earning Rs. 3,000/- per month from Riwaji work and Lala Mehtar @ Naresh, was living in Akbarpur, District Kanpur Dehat, with his family and had no concern with her. He did not given any money to her neither she ever demanded from him.

3. The District Magistrate, accepted the fact that the appellant had taken a loan of Rs. 3,00,000/- but held that an amount of Rs. five and half lacs was spent in the construction of the house and a further amount of Rs. 50,000/- was spent for interior decoration on the basis of the valuation report as submitted along with the police report. He held that the appellant did not give any evidence regarding the balance amount and therefore, did not accept her explanation and rejected the same. The District Magistrate also referred the matter to Special Judge Gangsters Act by order dated 7th March 2005.

4. The appellant filed her application in the Court of the Special Judge and took the same pleas. The learned Judge framed the following issues.

(i) Whether, the land was purchased for lesser cost due to terror of the alleged gangster?

(ii) Whether, disputed construction was made out of the illegal money of the gangster?

(iii). Whether, Lala Mehtar @ Naresh, the gangster lived with the applicant?

5. In support of her case the applicant examined herself and her son Lala Mehtar @ Naresh. The opposite party also examined Amar Singh and Shyam Sundar Das. The parties also filed their documentary evidence. On the basis of the evidence, the learned Judge concluded that the land was purchased at a lesser price due to terror of the gangster and out of the illegal earnings of Lala Mehtar @ Naresh. He further, held that the house was constructed from the loan money taken by her. It was also held that the gangster lived with the applicant. Consequently, the application 8C filed by Smt. Shanti Devi was rejected and the property in question was directed to be confiscated in favour of the State Government. Feeling aggrieved she hasxome up in this appeal.

6. I have heard Sri Vinod Kumar Kushwaha, the learned Counsel for the appellant, learned. .G.A. and have perused the material as available on appeal

file.

7. Learned Counsel for the appellant has contended that the letter was submitted by the Station Officer, Bithoor, without there being any legal basis as Lala Mehtar @ Naresh, is not a gangster. It has been further contended that the learned District Magistrate erred in attaching the house in question and also rejecting the representation of the appellant and the learned Special Judge has also erred in rejecting her application. According to him the appellant is not a gangster and that it was for the District Magistrate and also for the Special Judge to have given a specific finding that the son of the appellant was a gangster and further that he had acquired the property by commission of the offences triable under this Act. He has further contended that the valuation of the house as made by the prosecution was excessive and the valuation report was submitted on the basis of the current prevailing prices on 5th December 2005. Even the valuation report shows that the value of the property was Rs. 4,31,000. He has also contended that when it was admitted that the house was constructed out of the loan amount taken by the appellant from her employer, the District Magistrate as well as the Special Judge erred in not accepting her case and in rejecting her representation and application.

8. The learned A.G.A. has contended that the appellant is a gangster and it is for the claimant to show that the property was not acquired out of the property of the gangster. He has further contended that the authorities have rightly rejected the applications and the appeal is devoid of merits and is liable to be dismissed.

9. Before proceeding to consider the arguments as advanced it will be useful to consider certain relevant provisions of the Act, which makes special provisions for the prevention of, and for coping with, gangsters and anti-social activities and for matters connected therewith or incidental thereto.

Section 2(b)

"Gang" means a group or 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.

Section 2c

"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.

Section 4(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.

Section 14

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.

Section 16(3)(b)

On the date so fixed or on any subsequent date to which the inquiry may be adjourned, the Court shall hear the parties, receive evidence produced by them, take such further evidence as it considers necessary, decide whether the properly was acquired by a gangster as a result of the commission of an offence triable under this Act and shall pass such order u/s 17 as may be just and necessary in the circumstances of the case.

Section 16(5)

In any proceedings under this section, the burden of proving that the property in question or any part thereof was not acquired by a gangster as a result of the commission of any offence triable under this Act, shall be on the person claiming the property, anything to the contrary contained in the Indian Evidence Act, 1872(Act No. 1 of 1872), notwithstanding.

Section 17

If upon such inquiry the Court finds that the property was not acquidred 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 disposal of the property by attachment, confiscation or delivery to any person entitled to the possession thereof, or otherwise.

10. The conjoint reading of these sections shows that first it has to be proved that gangster or any person on his behalf is or has been in possession of the property, and such property has been acquired of the commission of any offence triable under this Act, only then the District Magistrate acquires jurisdiction to proceed in the matter and to attach the property. Only when the initial burden is discharged, the onus shifts to the gangster or such person, to account for the same satisfactorily. But if it is found that the concerned person was not a gangster and did not acquire the property in commission of any offence triable under this Act, it has to be released as provided in Section 17. In other words the initial burden is on the prosecution to show that the concerned person is a

gangster and has acquired property on account of his criminal activity as triable under the Act.

11. Therefore, in order to proceed u/s 14 there must be materials for objective determination of the District Magistrate that the person is either a member, leader or organiser of a gang and has acquired any property in commission of any offence under the Act. There must be a nexus between his criminal acts as enumerated therein and the property acquired by him. His mere involvement in any offence is not sufficient to attach his property. In other words what is necessary to find is whether, his acquisition of property was a result of commission of any offence enumerated in the Act being a member, leader or organiser of a gang. One might have committed several offences but if the property acquired by him was with the aid of his earning from legal resources no action u/s 14 of the Act can be taken against him.

12. In the case of Badan Singh alias Baddo Vs. State of U.P. and Others, it has been held by this Court that Section 14 of the Act is a harsh provision that affects one''s right to property, which is a fundamental right under the Constitution. Therefore, initial burden was upon the State to satisfy the District Magistrate with necessary materials that a gangster acquired the properties as a result of commission of any offence. It has also been held in this case that the Act does not provide that the aggrieved person seeking release of the properties from attachment must prove the source of income for acquisition thereof.

13. In this case the learned District Magistrate in his order dated 24th December 2004 has not given any finding that Lala Mehtar @ Naresh, is a gangster. It appears that a gang chart was prepared against Lala Mehtar @ Naresh, wherein 4 cases were shown with (1) Crime No. Nil/03, u/s 302 I.P.C., P.S. Alipur, Unnav, (2) Crime No. 157/03, u/s 307 I.P.C., P.S. Bithoor, (3) Crime No. 158/03 u/s 25 Arms Act P.S. Bithoor and (4) Crime No. 222/98 under Sections 323, 324, 307 and 506 I.P.C. P.S. Bithoor. This chart is dated 18th April 2003. The appellant had taken a case that his son was not convicted in any case. The record shows that Lala Mehtar @ Naresh, was acquitted of the charges under Sections 307/34, I.P.C. and 25 Arms Act in Sessions Trial No. 1384/03, 1384A/03 by judgment and order dated 5th August 2004 passed by Additional Sessions Judge, Kanpur Nagar. He was also acquitted of the charge under Sections 307, 323, 324 I.P.C. in Sessions Trial No. 1538/99 by judgment and order dated 20.5.2005 passed by Additional Sessions Judge Court No. 1 Kanpur Nagar. These judgments show that Lala Mehtar @ Naresh, was acquitted in Crime No. 157/03, 159/03 and 222/98 prior to the passing of the impugned order. The Case Crime No. , Nil/03 u/s 302 I.P.C. is alleged to be still pending. Therefore, the contention of the learned Counsel for the appellant that her son is not a gangster has force. It is also material that no finding that her son is gangster has been recorded by the learned District Magistrate or even by the learned Special Judge. Therefore, if a person is not a gangster no action was called for regarding his property if any. It appears that both the authorities proceeded on the presumption that Lala Mehtar

@ Naresh, was a gangster which was not correct.

14. Similarly neither there is any material on record to show nor any finding has been recorded by the District Magistrate or the Special Judge, that Lala Mehtar @ Naresh had acquired any property as a result of commission of any offence triable under the Act. In absence of any findings, the District Magistrate had no jurisdiction to proceed u/s 14 of the Act and to pass the order of attachment and the subsequent orders were without jurisdiction. See 16(3)(b) also requires the Court to record a finding to that affect. In absence of that, the impugned order can not be said to be legal order.

15. Learned trial Court has proceeded on the presumption that the appellant foiled to show that the property in question was not acquired out of the property of gangster. Learned Trial Court has misconstrued Section 4b and has reached at a wrong conclusion. This section clearly provides that first it has to be proved that the 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 and only then the presumption can be raised if the other party fails to prove the contrary. In the instant case there was no evidence to show that the land was purchased by the appellant out of the illegal earnings of her son or that he spent any amount in the construction and interior decoration of the house. The appellant has given specific evidence that she purchased the land for Rs. 20,000/- in the year 2001 and also produced the copy of the sale deed. It shows that the land was sold for Rs. 20,000/- although the circle rate was Rs. 57,935/. The finding of the learned Trial Court that the appellant should have produced the executors of the sale deed is not correct. It is a matter of common knowledge that the circle rate is usually higher than the actual price of a particular property. Moreover, it has come in evidence that this plot is situate in Kasba, Bithoor at a distance of about 200 yards from the main road. No document was filed by the prosecution to suggest the market rate of the nearby land at the relevant time. Again the valuer had made the valuation on the current rate as prevailing in 2005 and not of the year 2001 and he also did not allow any depreciation. This fact was not disputed that the appellant had taken loan from the bank but the learned Special Judge has held that the appellant did not adduce any cogent evidence regarding her service or salary in the bank. This approach was not correct. The appellant had filed the copy of statement of account of Central Bank of India and it shows that she was in the staff of the bank.

16. Thus, I come to the conclusion that the appellant had sufficiently shown that she had purchased land and had constructed house thereon out of her own resources. There is nothing on the record to show that any amount was spent in the purchase of the land or construction of the house out of the illegal earnings of her son Lala Mehtar @ Naresh amassed from commission of offences, triable under the Act. He has also not been held to be a gangster by the authorities

concerned. Therefore, the impugned order dated 20.1.2006 passed by the Special Judge as well as the order dated 24th December 2004 passed by the District Magistrate are liable to be set aside and the appeal is liable to be allowed.

17. The appeal is hereby allowed the orders dated 20.1.2006 and 24.12.2004 are hereby set aside. The disputed house be released in favour of the appellant forthwith.