

Court No. - 80

Case :- CRIMINAL MISC. WRIT PETITION No. - 8223 of 2023

Petitioner :- Mukesh Kumar Tiwari

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Rajendra Tiwari

Counsel for Respondent :- G.A.

Hon'ble Subhash Chandra Sharma,J.

1. Heard learned counsel for the petitioner as well as learned A.G.A. for the State and perused the record.

2. The present writ petition has been moved with prayer to quash the impugned order dated 29.4.2023 passed by respondent No.2- Commissioner Varanasi Division Varanasi and order dated 13.1.2023 passed by respondent No.3- District Magistrate, Chandauli in Case No.171 of 2022, as well as computer case No. D 202214180000171 under Section 3(1) of U.P. Control of Goondas Act-1970 arising out of order dated 13.01.2023 passed by District Magistrate Chandauli.

3. It is submitted by learned counsel for the petitioner that in this case the proceeding under the provision of U.P. Control of Goondas Act-1970 was initiated by the District Magistrate on the basis of two criminal cases, i.e., Case Crime Nos.77 of 2020, under Sections 332, 504, 452, 506 I.P.C. and the other Case Crime No.16 of 2019 under Sections 386, 420, 504, 506 IPC and also Beat Reports No.42, 34 dated 22.1.2022 and 23.1.2022. It is further submitted that the cases were related to the year 2019-20, but proceedings were started after a lapse of two years in the year 2022 on the report of Superintendent of Police, Chandauli. No any explanation was mentioned in the order either by the District Magistrate or by the Commissioner while passing the order regarding time gap. No any such activity was reported against him that can be said likely to be desperate and dangerous to the community and no any other repeated offence was committed by him to show that he was habitual offender but this fact was not considered by both the authorities while passing the orders in question. It is also submitted that there is no any criminal antecedent against the petitioner. In this way, the order passed by both the authorities cannot be said to be in conformity with law as provided under the Act. Learned counsel for the petitioner relied

his argument on the judgment passed by this Court in ***Pavan @ Pavan Singhal Vs. State of U.P. 2021 0 Supreme(All)345.***

4. Learned A.G.A. opposed the prayer as aforesaid and urged that order passed by the learned courts below are based on the material on record and also in conformity with provisions of law. After considering the facts of the case and material on record, the orders in question were passed by the District Magistrate, Chandauli as well as by the Commissioner Varanasi Mandal Varanasi, therefore, the petition being devoid of merit is liable to be dismissed.

5. Section 2 (b) of Uttar Pradesh Control of Goondas Act, 1970 defines the word 'Goonda' which is as under: Section 2(b) of the Act-

'Goonda' means a person who-

(i) either by himself or as a member or leader of a gang, habitually commits or attempts to commit, or abets the commission of an offence punishable under Section 153 or section 153B or Section 294 of the Indian Penal Code or Chapter XV, or Chapter XVI, Chapter XVII or Chapter XXII of the said Code;

(ii) has been convicted for an offence punishable under the Suppression of Immoral Traffic in Women and Girls Act, 1956 or

(iii) has been convicted not less than thrice for an offence punishable under the U.P. Excise Act, 1910 or the Public Gambling Act, 1867 or Section 25, Section 27 or Section 29 of the Arms Act, 1959; or

(iv) is generally reputed to be a person who is desperate and dangerous to the Community; or

(v) has been habitually passing indecent remarks or teasing women or girls; or

(vi) is a tout; or

(vii) is a house grabber.

6. It is to note that for the act of the accused to come under the definition of Goonda there must be material to show that the accused was a habitual offender and committed the offence as aforesaid repeatedly and his general reputation is desperate and dangerous to the community or he habitually passes indecent remarks on women or girls. It is also to note that there must be reasonable nexus between the act of the accused and its impact on the society. There must not be time gap between the proceedings under this Act and the acts said to be committed by the accused must show relation between the two. The material on record must

also show that the accused-person was a habitual offender and he committed the offences under Chapter 16, 17 and 22 of the Indian Penal Code.

7. In the case of ***Shankar Ji Shukla vs Ayukt, Allahabad Mandal, Allahabad 2005 (52) ACC 638*** this Court observed that:

The emphasis is on the word habitual and a single or two acts after a long gap does not amount to the term 'Habitually'. The expression 'habitually' means 'repeatedly' or 'persistently'. It implies a thread of continuity stringing together similar repetitive acts. Repeated, persistent and similar, but not isolated, individual and dissimilar acts are necessary to justify an inference of habit. It connotes frequent commission of acts or omissions of the same kind. Because, the idea of 'habit' involves an element of persistence and a tendency to, repeat the acts or omissions of the same class or kind, if the acts or omissions in question are not of the same kind or even if they are of the same kind when they are committed with a long interval of time between them, they cannot be treated as habitual ones. Learned counsel for the petitioner further; relied on the case of *Imran@Abdul Qaddus Khan v. State of U.P. and Ors.* 2001(1) JIC 431 (All). In Imran's case (Supra), the Court relied on the judgment of Hon'ble Supreme Court in the case of *Vijay Narain Singh v. State of Bihar and Ors.* (1984) 3 SCC 14 for defining the term 'Goonda'. It was further held in Imran's case (supra) that even the minority view which was taken in *Vijay Narain's case* (Supra) was that the word 'habitually' means 'by force of habit'. From the facts found above I find that the petitioner is not a habitual offender and he cannot be brought under the term 'Goonda' as defined under the Act.

8. The decision of the Division Bench in Imran shows that powers under the Act of 1970 are not required to be exercised, because someone has been reported to the Police in connection with a serious crime. It is also not to be exercised because that man has been admitted to bail. It has to be exercised against a person who, on the basis of tangible material on record before the Authorities under the Act of 1970, can be classified as a goonda, under one or the other clauses of Section 2(b) of that Act. It must also be borne in mind that the Act of 1970, being one that seriously abridges liberty, no clause of the Statute can be liberally construed. It has to be strictly construed in favour of the citizen.

9. Similar View was taken by this Court in the Case of ***Pavan @ Pavan Singhal (Supra)***.

10. Considering the submissions made by learned counsel for the petitioner as well as learned A.G.A. for the State and from the perusal of record, it appears that the cases against the petitioner were registered in the year 2019 & 2020 and prior to that there was no any case against him. No repetition of similar act has been alleged against the petitioner by the police and no any such evidence was led before the District Magistrate, Chandauli. Even he has not been convicted in any of the case till now as per submission made by learned counsel for the petitioner. There is nothing on record to show that the activities of the petitioner are in the nature of threatening to the people or his reputation is such as can be said to be dangerous to the community. There appears no any co-relation between the said acts of the petitioner, the time gap and the proceedings initiated against him by the District Magistrate, Chandauli. All these facts have not been taken into consideration either by the District Magistrate, Chandauli while passing the order of externment dated 13.01.2023 and by the Commissioner Varanasi Mandal Varanasi in the order dated 29.4.2023.

11. In my considered opinion, the order passed by District Magistrate, Chandauli as well as Commissioner Varanasi Division Varanasi are not based on the sufficient material to bring the aforesaid offences under the purview of definition under Section 3(1) of the U.P. Control of Goondas Act, therefore, the orders passed by both the authorities cannot sustain in the eyes of law, as a result this petition has force and is allowed and the orders passed by District Magistrate, Chandauli as well as Commissioner Varanasi Division Varanasi dated 13.01.2023 and 29.04.2023 are hereby set aside.

Order Date :- 30.10.2023

LN Tripathi