

Court No. - 43

Case :- CRIMINAL MISC. WRIT PETITION No. - 14276 of 2023

Petitioner :- Vishal Alias Vikrant Kumar Saurabh

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Pavan Kumar Srivastava

Counsel for Respondent :- G.A.

Hon'ble Anjani Kumar Mishra,J.

Hon'ble Vivek Kumar Singh,J.

1. Heard learned counsel for the petitioner and learned AGA for the State.
2. The instant writ petition has been filed with a prayer to quash the impugned notice dated 31.07.2023 issued by respondent no.2 (District Magistrate, Mau), under Section 3(1) of the U.P. Control of Goondas Act' 1970.
3. The contention of the learned counsel for the petitioner is that the said notice is based on a solitary case wherein incorrect case number has been mentioned as is manifest on the notice itself.
4. On the previous occasion learned AGA has been directed to obtain instruction. He admitted that the solitary case number mentioned in the notice is incorrect and that a fresh notice has been issued to the petitioner mentioning the correct case number.
5. Learned counsel for the petitioner drew our attention to two Full Bench decisions in ***Ramji Pandey Vs. State of U.P. and others; 1981 Cri LJ 1083 and Bhim Sen Tyagi v. State of U.P. through D.M. Mahamaya Nagar, 1999 (2) JIG 192 (All) (FB).***
6. In Ramji Pandey's case (*supra*), it has specifically been observed in paragraph 7 of the judgment that although the expression "material allegations" has not been defined by that Act, according to the dictionary meanings, the word "material" means "important and essential", "of significance". The word "allegation" means statement or assertion of facts. Thus, the notice under Section 3(1) should contain the essential assertions of facts in relation to the matters set out in clauses (a), (b) and (c) of sub-section (1) of Section 3 of the Act. It needs not refer to any evidence or other particulars or details. The names of witnesses,

and persons who may have made the complaint against the person against whom action is proposed to be taken or the time, date and place of the offence committed by the person needs not be mentioned in the notice. There is a distinction between the "general nature of material allegations" and "particulars of allegations". In accordance with the former expression, the notice needs not give any details of the allegations, instead the requirement of law would be satisfied if the notice contains a general statement of facts which need not contain any details or particulars. In Ram Pandey's case, where there were allegations that, (a) the petitioner was a goonda, (b) his movements were causing alarm, danger and harm to the lives and properties of the persons within the circle of P.S.-Sikandarpur and there was reasonable ground for believing that he was engaged in the commission and abetment of offences punishable under Chapters XI, XII and XXII of the Indian Penal Code, and (c) the witnesses were not willing to give evidence against him by reason of apprehension on their part as regards their safety and danger to their persons and personal property. Regarding the aforesaid subparagraphs (a), (b) and (c), the material allegations of general nature were that there were various cases pending against the petitioner and the crime numbers and sections of those cases had been given in the notice and it was mentioned therein whether the petitioner had been convicted or acquitted in the cases or they were pending. In spite of mention of the crime numbers and sections and status of those cases, the notice in Ramji Pandey's case (*supra*) was held not to contain the general nature of material allegations and it was struck down.

7. In the present case also, nothing more than mention of the crime number and sections is all that we find, instead of the general nature of material allegations. A list of case crimes/first information reports/beat report registered against the petitioner does not satisfy the test of a valid notice under Section 3(1) carrying the "general nature of material allegations". Truly, the notice, on the foundation of which the order impugned has been made, is strictly in the teeth of the law laid down consistently by this Court; particularly, the Full Bench decision in Ramji Pandey (*supra*) and reiterated in Bhim Sain Tyagi (*supra*). A notice under Section 3(1) of the kind that is the foundation of proceedings here has been held in Bhim Sain Tyagi (*supra*) and in earlier decisions also, to violate the minimum guarantee of the opportunity that the Statute envisages for a person proceeded with/against under the Act of 1970. Thus, in this case, the impugned order, founded as it is, on a notice under Section 3(1) of the Act, stands vitiated by

defects that go to the root of the matter.

8. In view of the admitted position that the notice issued to the petitioner on 31.07.2023 (Annexure No.1) is defective, the writ petition is allowed.

9. The impugned notice dated 31.07.2023 is hereby quashed/set-aside as it is bereft of the general nature of material against the petitioner as is mandatorily required under Section 3(1) of the Act. However, the District Magistrate, Mau shall be at liberty to issue a fresh notice in accordance with law.

10. No order as to costs.

Order Date :- 18.10.2023

Himanshu