

Court No. - 45

Case :- CRIMINAL MISC. WRIT PETITION No. - 14935 of 2023

Petitioner :- Vidyut Yadav

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Anil Kumar Singh

Counsel for Respondent :- G.A.

Hon'ble Vivek Kumar Birla,J.

Hon'ble Vinod Diwakar,J.

1. Heard Sri Anil Kumar Singh, learned counsel for the petitioner as well as Sri G.P. Singh, learned AGA for the State respondents and perused the record.

2. Present petition has been filed with the following prayers:

"(a) To issue a writ, order or direction in the nature of certiorari quashing the entire proceeding of the Case No. 278 of 2011-12 (Computerized No. D2012155100275), State versus Vidyut Yadav, under Section 3/4 of U.P. Control of Goondas Act, 1970 as well as to quash the notice dated 10.01.2011 issued by the respondent no. 2/District Magistrate, District Mau, under Section 3(1) of U.P. Control of Goondas Act, 1970 against the petitioner.

(b) To issue a writ, order or direction in the nature of mandamus directing the respondents not to take any coercive measure against the petitioner pursuant to the notice dated 10.01.2011 issued by the respondent no. 2/District Magistrate, District Mau, under Section 3 (1) of U.P. Control of Goondas Act, 1970."

3. On perusal of the record, we find that present petition has been reported beyond time by 4524 days by the Stamp Reporter.

4. Submission of the learned counsel for the petitioner is that the notice impugned herein is liable to be quashed as for such a long period after issuance of the impugned order dated 10.1.2011 nothing was done and ultimately externment order dated 25.4.2023 was passed. In the meantime, another notice dated 24.10.2017 was also issued to the petitioner and both the cases arising out of the aforesaid cases were consolidated and were heard together and externment order dated 25.4.2023 was passed. It is submitted that the proceedings against the petitioner are absolutely mala fide and in the present case time is the essence of the law and as such, same has to be seen in the present case when the proceedings are still pending pursuant to the above-noted two old notices.

5. Per contra, learned AGA submits that externment order

dated 25.4.2023 was quashed by this Court and the matter was remanded to the authority concerned to be decided within two months and the aforesaid proceedings are still pending and as such, the prayer so made herein cannot be granted as the notice stood exhausted after passing of the externment order.

6. We have considered the rival submissions and perused the record.

7. The order dated 17.5.2023 passed in Criminal Misc. Writ Petition No. 7232 of 2023 (Vidyut Yadav vs. State of U.P. and 2 others) is quoted as under:

"Heard learned Counsel for the petitioner and learned A.G.A. for the State.

Contention of learned counsel for the petitioner is that on 10.01.2011, a show cause notice was served upon the petitioner by the District Magistrate, Mau under the U.P. Control of Goondas Act, 1970. In pursuance of the aforesaid notice, petitioner appeared on that date, but allegation of the petitioner is that only general dates were fixed in the case and till 18.04.2023, nothing was done, even though the Counsel for the petitioner and petitioner had appeared on every date.

From perusal of the record, it appears that, in between, on 24.10.2017, another notice was served to the petitioner. Both these cases were consolidated and were being heard together. The leading case was bearing Case No.278 of 2011-12 (Computerized Case No.D2012155100275). On 17.04.2023, date was fixed for 05.06.2023, which is evident from the order-sheet at page 24. Thereafter, on 18.4.2023, the case was again taken up and date was fixed for 25.04.2023. On 25.4.2023, the petitioner filed an application seeking adjournment, wherein, he had specifically stated that he was having knowledge regarding the date fixed as 5.6.2023, therefore, petitioner and his Counsel had not come prepared with the matter, however, the case was taken up and decided on 25.4.2023.

Learned Counsel for the petitioner has relied upon the judgment of the Apex Court in the case of Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai & Ors. reported in (1998) 8 SCC 1, wherein it has been held that power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. The High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by the Supreme Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

Sri S.N. Mishra, learned A.G.A. for the State has opposed the aforesaid contention and has stated that as petitioner has an alternative remedy for filing an appeal under Section 6 of the U.P. Control of Goondas Act, 1970, as such, the writ petition is not liable to be entertained.

Having heard learned Counsel for the petitioner and Sri S.N. Mishra, learned A.G.A. for the State, this Court is of the view that definitely the petitioner was not afforded the opportunity of hearing, though, the notices have already been served upon the petitioner in the years 2010 and 2017 respectively. The petitioner has continuously attended the Court and, in fact, on 17.4.2023, we have noted that a general date has been fixed for 05.06.2023. On 25.4.2023 he had appeared before the court below and prayed for adjournment, but the same was not extended and impugned order was passed in a very arbitrary manner.

Under such circumstances, we are of the view that impugned order dated 25.4.2023 cannot be sustained in the eyes of law and the same is therefore quashed and set aside. The matter is remitted back to the learned Addl. District Magistrate, Mau, who shall decide the case within a period of two months from the date of production of certified copy of this order, afresh.

With these observations and directions, the writ petition is partly allowed."

8. Admittedly, the impugned notice dated 10.1.2011 stood exhausted after passing of the externment order dated 25.4.2023, which was set aside and the matter has been remanded.

9. On perusal of the copy of the aforesaid petition (Criminal Writ Petition No. 7232 of 2023) produced by the learned counsel for the petitioner, we find that the said petition was filed only challenging the externment order dated 25.4.2023. The prayer so made in the said petition is quoted as under:

" i. Issue a writ, order or direction in the nature of Certiorari to quash the impugned order dated 25.04.2023 passed by Additional District Magistrate, Mau in Case No. 278 of 2011-2012 (Computerized Case No. D2012155100275) State vs. Vidyut Yadav under 3/4 U.P. Control of Goondas Act 1970."

10. Clearly, while filing the earlier petition, notice dated 24.10.2017 was never put to challenge and externment order was to put to challenge. In the present litigation, the petitioner has taken u-turn and has come forward to challenge the impugned order dated 10.1.2011 with a prayer to quash the entire proceedings of Criminal Misc. Writ Petition No. 7232 of 2023. The aforesaid petition against externment order has already been allowed and the matter is pending before the authority concerned after the matter having been remanded by the Court vide judgement dated 17.5.2023 passed in Criminal Misc. Writ Petition No. 7232 of 2023.

11. We have also noticed that grounds (E) and (F) of Criminal Writ Petition No. 7232 of 2023 are identical to ground (xi) and (xii) of the present petition, reliance whereon is being placed on by the learned counsel for the petitioner. In ground (D) of the earlier petition, ground taken is that the cases are very old.

12. In such view of the matter, the grounds that were available to the petitioner at the time of filing of earlier petition stood exhausted and cannot be raised in the present petition.

13. This attempt is patently misconceived. We are not inclined to entertain the present petition, which may be having a differently worded prayer clause.

14. Present petition is misconceived and is accordingly dismissed.

Order Date :- 17.10.2023

Abhishek