Court No. - 45

Case :- CRIMINAL MISC. WRIT PETITION No. - 16260 of 2023

Petitioner :- Sheetal Prasad Jaiswal
Respondent :- State Of U.P. And 4 Others
Counsel for Petitioner :- Anil Kumar Srivastava,Poonam Srivastava
Counsel for Respondent :- G.A.

Hon'ble Vivek Kumar Birla,J.
Hon'ble Vinod Diwakar,J.

1. Heard Sri Anil Kumar Srivastava, learned counsel for the petitioner and learned A.G.A. for the State-respondents and perused the record.

2. The present writ petition has been preferred with the prayer to quash the show cause notice dated NIL of 2023 issued by the respondent no. 3-Additional District Magistrate Chitrakoot in case no. D202307190000245 of 2023, under Section 3(1) of U.P. Control of Gundas Act, 1970, P.S. Rajapur, District Chitrakoot.

3. Submission of the learned counsel for the petitioner is that the impugned notice is bad in law. It does not contain the general nature of material allegations and on the identical circumstances co-ordinate Bench of this Court has already allowed **Criminal Misc. Writ Petition No. 2895 of 2023 (Idu Ali vs. State of U.P. and another)** vide order dated 20.02.2023 by setting aside the impugned notice and setting the District Magistrate at liberty to issue fresh notice in accordance with law. The said order is quoted as under:

"Heard learned counsel for the petitioner and learned AGA.

The instant writ petition has been filed with a prayer to quash the impugned notice dated 11.01.2023 issued by respondent no.2 (District Magistrate, Firozabad), under Section 3 of the U.P. Control of Goondas Act.

The basic contention of the learned counsel for the petitioner is that the said notice is bad in law as it does not contain the general nature of material allegations.This is particularly so, for the reason that if the notice dated 11.01.2023, issued under Section 3 of the Act of 1970, does not conform to the mandatory requirements of the Statute, all proceedings, including the order

impugned, have to fall.

On the other hand, learned AGA has frankly and fairly accepted that the notice in the present case does not set out the general nature of the material allegations against the petitioner. He fairly submitted that this defect in the notice does not handicap the petitioner in making his representation. He further submitted that it is evident from the notice itself that petitioner would resort to abuse and encourage the people for committing the anti-social activities. Petitioner has criminal history of one case and one beat report and the crime number and sections have also been mentioned in the notice.

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).

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 sub-paragraphs (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.

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.

In above terms, the writ petition is allowed.

The impugned notice dated 11.01.2023 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, Firozabad shall be at liberty to issue a fresh notice in accordance with law.

No order as to costs."

4. Learned A.G.A. could not dispute the same.

5. In such view of the matter, the present petition is allowed in terms of the above quoted judgment.

6. The show cause notice dated NIL of 2023 issued by the respondent no. 3-Additional District Magistrate Chitrakoot in case no. D202307190000245 of 2023, under Section 3(1) of U.P. Control of Gundas Act, 1970, P.S. Rajapur, District Chitrakoot is hereby quashed. However, the authority concerned shall be at liberty to issue a fresh notice in accordance with law.

Order Date :- 2.11.2023
Ujjawal

Digitally signed by :-
UJJAWAL PARJAPATI
High Court of Judicature at Allahabad