

Court No. - 67

Case :- CRIMINAL MISC. WRIT PETITION No. - 16633 of 2023

Petitioner :- Hemant Pratap Srivastava

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

Counsel for Petitioner :- Surendra Mohan Mishra, Vishveshwar Mani Tripathi

Counsel for Respondent :- G.A.

Hon'ble Rahul Chaturvedi, J.

Hon'ble Mohd. Azhar Husain Idrisi, J.

Heard learned counsel appearing for the petitioner and the learned A.G.A. for the State and also perused the record.

By means of the present petition under Article 226 of the Constitution of India, the petitioner is assailing the legality and validity of the impugned show cause notice dated 07.02.2022 passed by learned Additional District Magistrate, Deoria, passed in Case No.226 of 2023, Computer Case No.D202205200000225 (State Vs. Hemant Pratap Srivastava), under Section 3/4 Uttar Pradesh Goonda Control Act, 1970, Police Station-Lar, District Deoria mentioning only one case to the credit of the petitioner.

Learned counsel for the petitioner has submitted that the petitioner has been bailed out in Case Crime No. 232 of 2020, under Sections 323, 147, 325, 504 IPC and Section 3(1)da, dha & 3(2)5a of S.C./S.T. Act by the Special Judge (S.C./S.T. Act), Deoria vide order dated 11.8.2022. It is further submitted that on the basis of solitary case, the impugned notice has been issued against the petitioner. He has next submitted that the matter in issue is squarely covered by judgement passed by this Court in **Criminal Misc. Writ Petition No. 12619 of 2023 in re: Govardhan Vs. State of U.P. decided on 10.8.2023**, in which the Court has deprecated the practice of slapping the notice under Section 3(1) of U.P. Control of Goondas Act, 1970 on the basis of one case.

The paragraph nos. 10, 13 to 16 of the judgment are reproduced hereinunder:

"10. The public perception regarding the individuals' image carries weight. If the individual is enjoying a bad reputation and

name in the area and coupled with the fact that he has got a chequered past then executive authorities are well within their right to issue notice to that individual or to pass an externment order for that individual. Trivial and insignificant offences having one or two in number would not make the person branded as a "Goonda". This adjective "Goonda" itself carries bundle load of bad name, and the executive authorities casually and irresponsibly brand a person as a Goonda, goes without saying, that his entire future and reputation would go to dogs and cause irreparable damage to his name and reputation of his family.

13. In the impugned notice, there is a description of only one criminal case and one beat report against the petitioner while as per the definition and law settled by the Hon'ble Apex Court as well as by this Court "one" cannot be treated to be a 'habitual offender' unless and until there is a tendency of recurrence of the offence. In the instant case there is a solitary case to the credit of the petitioner, in which he has been granted anticipatory bail till the conclusion of trial, we find that this notice is nothing, but a sheer abuse of power vested in the executive authorities of the district.

14. In addition to above, there is mandatory requirement of the law, that if the executive authority is satisfied that the proceedings under Goonda Act spells out offences under clause (a), (b) and (c) of sub-Section 1 of the Act, he may issue notices to the particular "Goonda" informing him general nature of material allegations against him in clause (d) of the Act, his image among the masses, his nuisance value by which he is a potential threat to the peace and public order of the society at large.

15. But in the instant case, in the notice under challenge spells out the cases required against the petitioner which is allegedly issued on a "prescribed printed proforma" without application of mind by the executive authorities. Not only this, except enumeration of pending solitary case and a beat report, there is total lack of any judicial mind spelling out the general nature of material allegations against the petitioner, making entire impugned notice per se defective and cannot be acted upon any further.

16. We record our strong displeasure in such type of routine pasting of such provisions of the Uttar Pradesh Control of Goondas Act, 1970 and Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 in a most capricious and casual way."

Thus, in the light of the aforesaid judgement and ratio laid down in **Gowardhan's case (supra)**, we have no hesitation to quash the impugned notice dated notice dated 07.02.2022 passed by learned Additional District Magistrate, Deoria, passed in Case No.226 of 2023, Computer Case No.D202205200000225 (State Vs. Hemant Pratap Srivastava), under Section 3/4 Uttar Pradesh Goonda Control Act, 1970, Police Station-Lar, District Deoria.

Accordingly, the writ petition stands **allowed**. The impugned notice dated 07.02.2022 passed by learned Additional District Magistrate, Deoria, passed in Case No.226 of 2023, Computer Case No.D202205200000225 (State Vs. Hemant Pratap Srivastava), under Section 3/4 Uttar Pradesh Goonda Control Act, 1970, Police Station-Lar, District Deoria is hereby quashed.

Order Date :- 31.10.2023

M. Tarik