

Court No. - 92

Case :- APPLICATION U/S 482 No. - 44395 of 2023

Applicant :- Ashok Kumar

Opposite Party :- State Of U.P. And 5 Others

Counsel for Applicant :- Devendra Tiwari Deva

Counsel for Opposite Party :- G.A.

Hon'ble Anish Kumar Gupta,J.

1. Heard Sri Devendra Tiwari Deva, learned counsel for the applicant and Sri Arvind Kumar, learned A.G.A. for the State.

2. The instant application under Section 482 Cr.P.C. has been filed seeking quashing of the charge-sheet dated 09.07.2021 as well as impugned cognizance order dated 28.07.2021 in Case No. 82 of 2021 (State of U.P. vs. Ashok Kumar and Others), arising out of Case Crime No. 0643 of 2020 u/S 2/3 Gangster Act, P.S.- Bithri Chainpur, District- Bareilly, pending in the court of learned Additional District Judge, Court No. 5, Bareilly.

3. The primary argument raised by learned counsel for the applicant is that the applicant is an Advocate by profession and only because the single case u/S 147, 148, 149, 302, 504, 506 I.P.C., lodged against the applicant herein on 06.06.2020, due to the political rivalry in the village, the Gangster Act has been invoked and another F.I.R., being Case Crime No. 0643 of 2020 dated 08.11.2020, u/S 2/3 of the U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986, has been lodged against the applicant herein, without proper approval of the Gang Chart, without any meeting of all the officers of the district concerned as has been provided under the U.P. Gangster and Anti-Social Activities (Prevention) Act, 2021. Learned counsel for the applicant submits that the Gangster Act can be invoked only when it is established that the applicant is a habitual offender. However, only one case was registered that too due to political rivalry in the village and since the applicant was an Advocate by profession and this Gangster Act has been invoked without any whisper of any previous or subsequent act, on the part of the applicant, therefore, learned counsel for the applicant has prayed for quashing of the entire proceedings against the applicant in the instant case under the Gangster Act.

4. Per Contra, learned A.G.A. for the State submits that it is a settled position of law that Gangster Act can be applied only on

the basis of a single case against an accused person, if the authorities have found that the applicant is involved in some organized activities.

5. With regard to the applicability of the Gangster Rules, 2021, learned counsel for the applicant submits that it will not apply in the instant case as in the instant case, Gang Chart was approved on 31.10.2020 and the Gangster Rules, 2021 came into effect w.e.f. 27.12.2021. Prior to that the Government notification dated 06.05.2018 was in force, according to which the Gangster Chart was to be prepared by the concerned S.H.O, then, it was to be recommended by the concerned Circle Officer and the Additional Superintendent of Police and thereafter, the Senior Superintendent of Police or the Superintendent of Police, after perusal of the Gang Chart, shall send it to the concerned District Magistrate for approval. In the instant case, the Gang Chart was prepared by the concerned S.H.O., on 02.10.2020, on which the concerned Circle Officer and the Sub-divisional Magistrate and the Superintendent of police, Nagar, have recommended the same on 14.10.2020, upon which the Senior Superintendent of Police had send the said Gang Chart after careful perusal on 28.10.2020 to the District Magistrate for approval, upon which on 31.10.2020, the District Magistrate has approved the Gang Chart as per the procedure prescribed under the notification dated 06.05.2018. Therefore, the Gang Chart was prepared in accordance with law. Therefore, there is no illegality in the invocation of the Gangster Act as well as the approval of the Gang Chart by the concerned authorities.

6. Learned counsel for the State further submits that the applicant herein has been found to be the gang leader and the other members of the gang were involved in various other cases, who were acting under the directions of the applicant herein. In view thereof, he has prayed for dismissal of the instant application.

7. Having heard the submissions made by learned counsels for the parties, this Court has carefully gone through the record of the case. From the allegations as made in the first F.I.R., registered against the applicant, the accused person herein including the applicant herein had allegedly assaulted one Vijesh for the reason that despite they restrain, the said Vijesh has deposed in some case and in connection with the said case the applicant herein was arrested on 06.06.2020 and is in jail till date. Subsequently, the F.I.R. under the Gangster Act has been lodged on 08.11.2020.

8. Learned counsel for the applicant also do not dispute the settled position of law that only on the basis of a single case, the

Gangster Act can be invoked against an accused. In view of the settled position of law, there is no infirmity in the instant case in invoking the Gangster Act, only on the basis of single case. However, learned counsel for the applicant has submitted that since there is no material on record to establish that the applicant herein was running any organized gang or was a habitual offender. From the case diary, it is apparent that the concerned S.H.O., during investigation of the earlier case, has come into knowledge about the gang led by the applicant herein and the *prima facie* material has been found by the concerned Police Authorities that the applicant herein was running a gang on which a Gang Chart was prepared. The said Gang Chart was properly approved by all the concerned authorities in terms of the government notification dated 06.05.2018, therefore, there is no illegality in the approval of the Gang Chart and the proceedings adopted for the approval of the Gang Chart.

9. Therefore, in the considered view of this Court, no case for interference has been made out by learned counsel for the applicant, therefore, the instant application is devoid of merits and is hereby by ***dismissed***.

Order Date :- 12.12.2023

Shubham Arya