

Court No. - 43

Case :- CRIMINAL MISC. WRIT PETITION No. - 18213 of 2023

Petitioner :- Shubham @ Shubhan

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

Counsel for Petitioner :- Krishna Kant Dubey, Santosh Kumar Dubey

Counsel for Respondent :- G.A.

Hon'ble Anjani Kumar Mishra, J.

Hon'ble Mohd. Azhar Husain Idrisi, J.

1. Heard learned counsel for the petitioner, learned A.G.A. for the State and perused the record.
2. The writ petition seeks a writ of certiorari to quash the notice dated 27.09.2023 in Case No. 423 of 2023 under Section 2/3 U.P. Goondas Act, 1970 (State Vs. Subham), P.S. Kaushambi, District-Ghaziabad.
3. The contention of learned counsel for the petitioner is that the notice is invalid as it has been issued on the basis of a single case against the petitioner.
4. This issue came up for consideration in Sallu @ Salman Vs. State of U.P. and others, ***Crl. Misc. Writ Petition No. 17402 of 2023***, wherein, challenge to a notice under Section 3(1) of the U.P. Control of Goondas Act was on the ground that it had been issued on the basis of a single criminal case.
4. The petition was dismissed vide order dated 07.11.2023 relying upon earlier order passed by Division Bench of this Court in ***Kareem vs. State of U.P. through Principal Secretary, Misc. Bench No. 24256 of 2020***, decided on 04.11.2021. The Division Bench in Kareem (supra) in paragraph 30 of the judgement has observed as follows:-

"..... The power under Article 226 and 32 are wide, and are untrammelled by any external restrictions and can reach any executive order resulting in civil or criminal consequences. However, the courts have over the years evolved certain self-restraint for exercising these powers. They have done so in the interests of the administration of justice and for better and more efficient and informed exercise of the said powers. These self-imposed

restraints are not confined to the review of the orders passed under detention law only. They extend to the orders passed and decisions made under all laws. It is in pursuance of this self-evolved judicial policy and in conformity with the self-imposed internal restrictions that the courts insist that the aggrieved person first allow the due operation and implementation of the concerned law and exhaust the remedies provided by it before approaching the High Court and this Court to evoke their discretionary extraordinary and equitable jurisdiction under Articles 226 and 32 respectively. That jurisdiction by its very nature is to be used sparingly and in circumstances where no other efficacious remedy is available"

*This decision has been subsequently followed in **N. K. Bapan v. Union of India**, JT 1992 (4) 49; **State of Tamil Nadu v. P. K. Shamsuddin**, JT 1992 (4) 179 and **Subhash Mujimal Gandhi v. L. Miningliana**, 1994 (6) SCC 14. The provisions of detention laws are far more stringent than the Control of Goondas Act as here order is passed after notice and trial and the person against whom order is passed does not lose his liberty. He is merely deprived of his right to live in a particular area from where he is externed but is free to reside any where else in the country. There is no reason why the same principle should not apply in the present case as well. The law being well-settled that where a Statute provides a machinery of its own, the aggrieved person should first exhaust the remedies provided under the Statutes before approaching the High Court under Article 226 of the Constitution and the High Court would not normally entertain a petition straightway, the present petition challenging the notice is liable to be rejected on the ground of alternative remedy."*

8. In view of the ratio in the case of Sallu @ Salman (supra), which in turn was based upon the judgment in Kareem (supra), this petition is liable to be dismissed.

9. Even otherwise, as pointed out by learned AGA, the notice impugned in the writ petition is a second notice. The first notice has not been challenged earlier or in this petition. Therefore, also no relief is liable to be granted to the petitioner.

10. In view of the above, the writ petition fails and is dismissed.

Order Date :- 7.12.2023

Aditya Tripathi