

Court No. - 43

Case :- CRIMINAL MISC. WRIT PETITION No. - 18729 of 2023

Petitioner :- Asim @ Hassim

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Irshad Ahmad

Counsel for Respondent :- G.A.

Hon'ble Anjani Kumar Mishra,J.

Hon'ble Arun Kumar Singh Deshwal,J.

1. Heard learned counsel for the petitioner and learned A.G.A. for the State.
2. The instant writ petition seeks quashing of the FIR dated 31.10.2023 giving rise to Case Crime No. 307 of 2023, under Section 3(1) U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986 (hereinafter referred to as "Gangsters Act"), P.S. Moonda Pnaday, District Moradabad.
3. Contention of learned counsel for the petitioner is that in the impugned F.I.R., only Section 3(1) of Gangsters Act was mentioned which is the provision for imposing penalty upon gangsters. However, no other provision is mentioned showing the anti social activities in which the petitioner is alleged to have indulged on account of which the petitioner is being prosecuted as gangster.
4. After hearing learned counsel for the parties and on perusal of the record, this Court finds that the impugned F.I.R. has been registered u/s 3(1) Gangsters Act. This Section provides punishment for gangsters. However, Section 2 of Gangsters Act provides anti social activities which form the basis for classifying a person as a gangster. Section 2(b) defines "gang" and Section 2(c) defines "gangster". The definition of "gangster", mentioned in Section 2(c) clearly mentions that the person to be named as gangster must be involved in activities enumerated in Clause (b) of Section 2 of Gangsters Act. Section 2(b), 2(c) and 3 of Gangsters Act are being reproduced as under:-

"2(b). "Gang" means a group of persons, who acting either singly or collectively, by violence, or threat or show of violence, or intimidation, or coercion or otherwise with the object of disturbing public order or of gaining any undue temporal, pecuniary, material or other advantage for himself or any other person, indulge in anti-social activities, namely-

(i) offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code (Act No. 45 of 1860), or

(ii) distilling or manufacturing or storing or transporting or importing or exporting

or selling or distributing any liquor, or intoxicating or dangerous drugs, or other intoxicants or narcotics or cultivating any plant, in contravention of any of the provisions of the U.P. Excise Act, 1910 (U.P. Act No. 4 of 1910), or the Narcotic Drugs and Psychotropic Substances Act, 1985 (Act No. 61 of 1985), or any other law for the time being in force, or

(iii) occupying or taking possession of immovable property otherwise than in accordance with law, or setting-up false claims for title or possession of immovable property whether in himself or any other person, or

(iv) preventing or attempting to prevent any public servant or any witness from discharging his lawful duties, or

(v) offences punishable under the Suppression of Immoral Traffic in Women and Girls Act, 1956 (Act No. 104 of 1956), or

(vi) offences punishable under Section 3 of the Public Gambling Act, 1867 (Act No. 3 of 1867), or

(vii) preventing any person from offering bids in auction lawfully conducted, or tender, lawfully invited, by or on behalf of any Government department, local body or public or private undertaking, for any lease or rights or supply of goods or work to be done, or

(viii) preventing or disturbing the smooth running by any person of his lawful business, profession, trade or employment or any other lawful activity connected therewith, or

(ix) offences punishable under Section 171-E of the Indian Penal Code (Act No. 45 of 1860), or in preventing or obstructing any public election being lawfully held, by physically preventing the voter from exercising his electoral rights, or

(x) inciting others to resort to violence to disturb communal harmony, or

(xi) creating panic, alarm or terror in public, or

(xii) terrorising or assaulting employees or owners or occupiers of public or private undertakings or factories and causing mischief in respect of their properties, or

(xiii) inducing or attempting to induce any person to go to foreign countries on false representation that any employment, trade or profession shall be provided to him in such foreign country, or

(xiv) kidnapping or abducting any person with intent to extort ransom, or

(xv) diverting or otherwise preventing any aircraft or public transport vehicle from following its scheduled course;

[(xvi) offences punishable under the Regulation of Money Lending Act, 1976;

(xvii) illegally transporting and/or smuggling of cattle and indulging in acts in contravention of the provisions in the Prevention of Cow Slaughter Act, 1955 and the

Prevention of Cruelty to Animals Act, 1960;

(xviii) human trafficking for purposes of commercial exploitation, bonded labour, child labour, sexual exploitation, organ removing and trafficking, beggary and the like activities.

(xix) offences punishable under the Unlawful Activities (Prevention) Act, 1966:

(xx) printing, transporting and circulating of fake Indian currency notes;

(xxi) involving in production, sale and distribution of spurious drugs;

(xxii) involving in manufacture, sale and transportation of arms and ammunition in contravention of Sections 5, 7 and 12 of the Arms Act, 1959;

(xxiii) felling or killing for economic gains, smuggling of products in contravention of the Indian Forest Act, 1927 and Wildlife Protection Act, 1972;

(xxiv) offences punishable under the Entertainment and Betting Tax Act, 1979;

(xv) indulging in crimes that impact security of State, public order and even tempo of life.]

2(c). *"gangster" means a member or leader or organiser of a gang and includes any person who abets or assists in the activities of a gang enumerated in clause (b), whether before or after the commission of such activities or harbours any person who has indulged in such activities;*

3. Penalty. - *(1) A gangster, shall be punished with imprisonment of either description for a term which shall not be less than two years and which may extend to ten years and also with fine which shall not be less than five thousand rupees:*

Provided that a gangster who commits an offence against the person of a public servant or the person of a member of the family of a public servant shall be punished with imprisonment of either description for a term which shall not be less than three years and also with fine which shall not be less than five thousand rupees.

(2) Whoever being a public servant renders any illegal help or support in any manner to a gangster, whether before or after the commission of any offence by the gangster (whether by himself or through others) or abstains from taking lawful measures or intentionally avoids to carry out the directions of any Court or of his superior officers, in this respect, shall be punished with imprisonment of either description for a term which may extend to ten years but shall not be less than three years and also with fine."

5. From the provisions, quoted as above as well as from the perusal of other provisions of Gangsters Act, it is clear that a person can be prosecuted under Section 3 of Gangsters Act only after he falls under the definition of "gangster" being part of the gang which is involved in anti social activities as mentioned in Section 2(b)(i) to (xxv) of the Act. The purpose of making special provisions of Gangsters Act for dealing with gangsters and for preventing their anti social

activities. The provision of this Act are stringent and are therefore required to be interpreted strictly so as to prevent their misuse on the part of State authorities.

6. Hon'ble Supreme Court, in the case of ***Gulam Mustafa vs. State of Karnataka; 2023 SCC OnLine SC 603***, observed in paragraph-38 as under:-

"38. This Court would indicate that the officers, who institute an FIR, based on any complaint, are duty-bound to be vigilant before invoking any provision of a very stringent statute, like the SC/ST Act, which imposes serious penal consequences on the concerned accused. The officer has to be satisfied that the provisions he seeks to invoke prima facie apply to the case at hand. We clarify that our remarks, in no manner, are to dilute the applicability of special/stringent statutes, but only to remind the police not to mechanically apply the law, de hors reference to the factual position."

7. With regard to enactments which have a stringent provisions of law, which effecting personal liberty under Article-21 of the Constitution of India, Hon'ble Apex Court in the case of ***Ichu Devi Choraria vs. Union of India and others; (1980) 4 SCC 531*** has observed about personal liberty as under:-

"Article 21 of the Constitution provides in clear and explicit terms that no one shall be deprived of his life or personal liberty except in accordance with procedure established by law. This constitutional right of life and personal liberty is placed on such a high pedestal by this Court that it has always insisted that whenever there is any deprivation of life or personal liberty, the authority responsible for such deprivation must satisfy the court that it has acted in accordance with the law."

8. The aforecited observation in ***Ichu Devi (supra)*** was again considered by Hon'ble Apex Court in the case of ***Ameena Begum vs. State of Telangana & others; (2023) 9 SCC 587***.

9. In the present case, the impugned F.I.R. was registered u/s 3(1) Gangsters Act, without mentioning the corresponding provision, mentioning the anti social activities in which the accused is involved and on the basis of which he was named as gangster. A person cannot be punished without specifying the offence committed by him which would justify his classification as a Gangster.

10. Considering the aforesaid facts and circumstances, this Court is of the view that the impugned F.I.R. is illegal being contrary to the provision of Gangsters Act by failing to mention the relevant section of the Act. Therefore, the impugned F.I.R. is hereby quashed.

11. However, the respondent authorities are free to register a F.I.R. against accused, in accordance with law.

12. Accordingly, the petition is **allowed**.

Order Date :- 2.12.2023

Vandana