

Court No. - 13

Case :- CRIMINAL APPEAL No. - 879 of 2022

Appellant :- Gulam Askari

Respondent :- State Of U.P. Thru. Prin. Secy. Home Lko.

Counsel for Appellant :- Siddhartha Sinha, Arun

Sinha, Mohammad Zeeshan Lari, Umang Agarwal

Counsel for Respondent :- G.A.

Hon'ble Karunesh Singh Pawar, J.

1. Heard Shri Siddhartha Sinha, learned counsel for the appellant as well as Shri Rajeev Verma, learned AGA for the State.

2. Learned counsel for the appellant submits that criminal proceedings under Section 14 of Gangsters Act was initiated against the appellant on account of criminal history of following two cases:-

"(i) Crime No.305/2020, u/s 302, 307, 323, 504, 506 IPC & 7 C.L. Act, PS-Kurwar, District- Sultanpur.

(ii) Crime No.315/2018, u/s 323, 504, 506 IPC, PS - Kurwar, District- Sultanpur."

He further submits that apart from those two cases, there were nine other cases and in most of the cases, he has been acquitted.

During proceedings under Gangsters Act, a truck belonging to the appellant bearing registration No. UP44 AT 3704 (model-2018) was seized by the authorities. The truck was purchased on 01.07.2018 by taking a loan from the bank which is not disputed by the prosecution.

It has been further submitted that the District Magistrate Sultanpur as well as Sessions Judge, Gangsters Act refused to release the truck of the appellant on the allegation that the appellant could not explain the margin money of Rs. 6,25,000/- paid by the appellant. As a matter of fact, the appellant has filed a copy of the account statement for the period between 30.03.2012 to 04.09.2023 showing that Rs. 6,28,000/- was paid to the bank by the appellant on 28.06.2018 and this money was kept in the account of the appellant since 2012 when there were no criminal cases against the appellant.

3. Learned AGA has opposed the contention of learned counsel for the appellant submitting that the appellant has not filed these bank statements, which he has filed in this Court, before the learned court below. He also submits that in case the statements could have been filed by the appellant before the court below, the same would have been inquired by the court below under Section 16 of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986.

4. Learned counsel for the appellant concedes the fact that these relevant document which have now been filed by way of supplementary affidavit were not filed before the court below and therefore, learned court below could not inquire the statement under Section 16 of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986.

5. At this stage, learned counsel for the appellant prays that he may be permitted to file these documents as evidence before the court below and the court below may be directed to adjudicate his application for release afresh on the basis of the additional evidence. In support of his contention, he has relied on the judgment of this Court reported in "**(2012) 2 All LJ 78, Smt. Afzal Begum @ Akhatari Vs. State of U.P.**". He has further relied another judgment of this Court reported in "**(2001) SCC Online All 973, Badan Singh @ Baddo Vs. State of U.P. and others**". Emphasis is on para 15, 16 and 17.

Learned counsel for the appellant further submits that initial burden is on the State to prove that the properties acquired by the accused have been acquired by committing such crime. The act does not provide that the aggrieved person seeking release of the property from attachment must prove the source of income for acquisition thereof.

6. Perused the record.

7. On due consideration to the statements as well as perusal of the record, this Court finds that although detailed inquiry appears to have been conducted by the learned court below, however, it appears that the State has not discharged its initial burden as held by this Court in the case of **Badan Singh @ Baddo (supra)** to show that whether the seized truck was in fact acquired by a gangster as a result of commission of any offence

under the Act. Once, this initial burden is discharged, the Court can ask the claimant to discharge its burden as provided under Section 16(5) of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986.

Since, the initial burden as stated above has not been discharged by the State, the learned Special Judge with the aid of Section 16(5) of Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986, could not have held that the appellant could not prove that he acquired the truck as a gangster as a result of commission of any offence under the Act and consequently could not have upheld the order of the District Magistrate.

9. Hence, in view of the aforesaid reasons, the appeal is ***allowed***. The impugned order dated 24.09.2021 passed by the Special Judge, Gangster Act, Court No. 5, Sultanpur is set aside. The matter is remanded back to the Special Judge, Gangster Act, Court No. 5, Sultanpur for reconsideration of the matter in the light of the observations made herein above and also in view of the law laid down by this Court in the cases of ***Smt. Afzal Begum @ Akhatari (supra) and Badan Singh @ Baddo (supra)***.

10. The learned Special Judge shall decide the matter afresh in accordance with law after following the due procedure as prescribed under the Act and shall also provide opportunity to

the appellant to adduce additional evidence within a period of three months from the date of production of certified copy of this order.

Order Date :- 28.11.2023

R.C.