

Court No. - 13

Case :- CRIMINAL MISC. WRIT PETITION No. - 6991 of 2023

Petitioner :- Sateesh Kumar

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Home Lko. And 4 Others

Counsel for Petitioner :- Rajesh Kumar Verma, Desh Raj Singh Yadav

Counsel for Respondent :- G.A.

Hon'ble Karunesh Singh Pawar, J.

1. Heard learned counsel for the petitioner, learned A.G.A. for the State-respondents and perused the record.

2. Learned counsel for the petitioner submits that earlier an externment order was passed by the District Magistrate on 19.12.2022 under Section 3(1) of the Uttar Pradesh Control of Goondas Act, 1970 (hereinafter referred to as, "the Act"). Against that order, an appeal was filed by him before the court of Commissioner, Lucknow Mandal, Lucknow whereby the order passed by the District Magistrate was set aside by the appellate court with certain directions/modifications. Allegedly, those conditions have not been fulfilled by the petitioner and thus second externment order has been passed by the District Magistrate which could not have been passed as for contravention of the orders passed under Section 3 to 6, the punishment is provided under Section 10 of the Act.

3. Learned A.G.A. has opposed the contention however, he could not dispute the provisions of law that for contravention of the orders passed under Section 3 to 6, the punishment is provided under Section 10 of the Act.

4. Perused the record.

5. Perusal of the record shows that earlier vide order dated 19.12.2022, an externment order was passed by the District Magistrate, Hardoi expelling the petitioner under Section 3(1) of the Act for a period of six months. The appellate court vide its order dated 16.01.2023 has set aside the order dated 19.12.2022 passed by the District Magistrate and has passed the following order:-

"6- उपरोक्त विवेचना के प्रकाश में अपर जिला मजिस्ट्रेट, हरदोई द्वारा पारित आदेश दिनांक 19-12-2022 इस शर्त के साथ समाप्त किया जाता है कि अपीलकर्ता 15 दिवसों के अन्दर मु० 25,000/- का निजी बन्ध पत्र 06 माह की अवधि के लिये अपर जिला मजिस्ट्रेट, हरदोई के समक्ष प्रस्तुत करेगा। इसके अतिरिक्त अपीलकर्ता 06 माह तक माह में एक बार स्थानीय थाने पर अपनी उपस्थिति दर्ज कराकर अपने सदाचरण की सूचना प्रस्तुत करेगा। अपीलकर्ता यदि निर्धारित अवधि में मु० 25,000/- का बन्ध पत्र प्रस्तुत नहीं करता है तो यह आदेश स्वतः निष्प्रभावी माना जायेगा। अपर जिला मजिस्ट्रेट हरदोई अपीलकर्ता के आचरण एवं उसके व्यवहार पर सतर्क दृष्टि बनाये रखेंगे। उक्त अवधि में अपीलकर्ता का आचरण एवं व्यवहार आम

नागरिक के प्रति अच्छा रहता है तो अपीलकर्ता निष्कासन की अवधि समाप्त होने के पश्चात जमा बन्ध पत्र वापिस प्राप्त कर सकता है और यदि अपीलकर्ता के विरुद्ध कोई नया मामला प्रकाश में आता है तो मु० 25,000/- की धनराशि का बन्ध पत्र राज्य सरकार के पक्ष में जब्त करते हुये अपर जिला मजिस्ट्रेट, हरदोई उसके विरुद्ध कार्यवाही हेतु स्वतंत्र है। अपील तदनुसार निस्तारित की जाती है।

7. आदेश की एक प्रति अवर न्यायालय को प्रेषित की जाये। बाद आवश्यक कार्यवाही इस न्यायालय की पत्रावली दाखिल दफ्तर हो ।”

6. Thereafter, the concerned police station has submitted a report dated 30.06.2023/01.07.2023 to the effect that the petitioner was directed to report on the concerned police station once every month for a period of six months and will inform about his good conduct. This condition has been violated by the petitioner and he never came on the police station. On the contrary a Case Crime No.267/2023, under Section 420, 406, 504, 506 IPC was registered against the petitioner. Thus, the petitioner was found to have contravened conditions laid down by the Commissioner in the appellate order dated 16.01.2023 and therefore, on the basis of such report, the impugned externment order appears to have been passed.

7. Submission of learned counsel for the petitioner appears to have force.

8. A perusal of the Act shows that externment order can be passed by the District Magistrate upon his subjective satisfaction under Section 3 of the Act and against that order, an appeal lies before the Commissioner which was filed in this case. The Commissioner has set aside the order passed by the District Magistrate and has also imposed some conditions under sub-section (3) of Section 6 of the Act. According to the police report, the condition imposed by the Commissioner were not complied by the petitioner and therefore, show cause notice was issued and impugned externment order has been passed which could not have been passed in view of the fact that Section 7 sub-section (1)(b) empowers the District Magistrate for securing any direction passed under Sections 3 to 6 of the Act. Section 7 (2) (b) and (c) of the Act further provides the procedure for executing the bonds as directed by the Commissioner in its order dated 16.01.2023.

9. The aforesaid Section 7 is extracted below:-

"7. Recognizance for certain purposes. -(1) The District Magistrate or the Commissioner may for the purpose of:-

(a) securing the attendance of any person against whom an order is proposed to be made under Section 3, or has been made but its operation has been stayed under Section 6; or

(b) securing the due observance of any direction, requirement, prohibition, restriction or condition specified in an order made in respect of any person under Section 3, Section 4, Section 5 or Section 6,-

require such person to enter into a bond, with or without sureties, and the provisions of the [Code of Criminal Procedure, 1973], shall mutatis mutandis apply in relation to such bond as they apply in relation to bonds executed or required to be executed under the said Code.

(2) *In particular and without prejudice to the generality of the foregoing provisions-*

- (a) *the District Magistrate while issuing notice to any person under sub-section (1) of Section 3 may issue a warrant for his arrest with endorsement thereon of a direction in terms of the provisions of [Section 71] of the said Code and the provisions of [Sections 70 to 85 and 87 to 89] of the said Code shall, so far as may be, apply in relation to such warrant as if the District Magistrate were a Court;*
- (b) *if any person who is required to execute a bond for the observance of any direction, requirement, prohibition, restriction or condition fails to do so, he shall be committed to prison, or if he is already in prison, be detained in prison until the period for which the direction, requirement, prohibition, restriction or condition is to operate or until within such period he executes the bond with or without sureties, as the case may be, in terms of the order, and the provisions of [Sections 119 to 121, 123 and 124] of the said Code shall, mutatis mutandis apply as if the District Magistrate or the Commissioner were a Court;*
- (c) *[Section 445 to 447] of the said Code shall mutatis mutandis apply in relation to all bonds executed under this section as if the District Magistrate or the Commissioner were a Court."*

10. Apart from the above provisions of Section 7, Section 10 provides for the punishment for contravention of the orders passed under Sections 3 to 6. The said Section 10 is also extracted below:-

"10. Punishment for contravention of orders under Sections 3 to 6. -Whoever contravenes any order made under Sections 3, 4 and 5 or 6 shall be punishable with rigorous imprisonment for a term which may extend to three years but shall not be less than six months, and shall also be liable to fine."

11. Before passing any order under Section 10, the cognizance is required to be taken under Section 12 of the Act. The said Section 12 is also extracted below:-

"12. Cognizance of offence. - No Magistrate shall take cognizance of an offence punishable under Section 10, except-

- (a) upon a report in writing of the facts constituting such offence made by a police officer; or***
- (b) upon information received from any person other than a police officer, or upon his own knowledge or suspicion, that such offence has been committed."***

12. Thus, in this case the District Magistrate ought to have taken appropriate action under Section 7 read with Section 10 of the Act first and then should have proceeded to punish the petitioner under Section 10 of the Act. There is no occasion for the District Magistrate to have passed the second externment order against the petitioner for the alleged non-compliance of the conditions fixed by the appellate court/Commissioner.

13. Accordingly, in view of the discussions made hereinabove, the petition succeeds and is allowed. The impugned order dated 07.08.2023 passed by the opposite party no.2 i.e. Commissioner, Lucknow Division, Lucknow in case no. 2207/2023 (Computerized Case No. C202310000002207) under section 6 of U.P. Control of Goondas Act, 1970 as well as order dated 22.07.2023 passed by the opposite party no. 3 i.e. Additional District Magistrate, Hardoi in Case No. RST/1942/2022 Computerized Vase No. D202210330001942 under section 3 (1) of

U.P. Control of Goondas Act, 1970 are set aside. The matter is remanded afresh to the District Magistrate to pass appropriate orders.

Order Date :- 8.11.2023

Saurabh Yadav/-