

Neutral Citation No. - 2024:AHC-LKO:24298

Reserved on 08.02.2024

Delivered on 20.03.2024

A.F.R.

Court No. - 16

Case :- CRIMINAL APPEAL No. - 46 of 2009

Appellant :- Pappu @ Dhani Ram

Respondent :- State of U.P.

Counsel for Appellant :- Rajendra Kumar

Counsel for Respondent :- Govt. Advocate

Hon'ble Shamim Ahmed,J.

1. This Appeal under Section 374(2) Cr.P.C. has been filed by convict appellant- Pappu @ Dhani Ram against judgment of conviction dated 08.12.2008 passed by learned Special Judge, Gangster Act, Lucknow in Case No.90 of 1998, State Vs. Birju and Others, Case Crime No.78 of 1997, Police Station Fatehpur Chaurasi, District Unnao, convicting and sentencing the appellant under Section 3(1) of The Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 for two years and six months rigorous imprisonment alongwith fine of Rs.5,000/- with default stipulations.

2. Learned counsel for convict appellant argued that the appellant had been convicted and sentenced with two years' rigorous imprisonment and fine of Rs.5,000/- and in default with further imprisonment of one month, which was a severe sentence, against the evidence on record. Trial Court failed to appreciate facts and evidence placed before it, resulting this perversity. He further argued that six criminal cases were shown as criminal history against appellant in gang chart. There was no independent witness of public to prove prosecution case, except police and official witnesses, who were examined before trial Court. The convict appellant is neither member of any gang nor he had worked as gangster. There was no anti-social activities of him. No credible evidence was there. Hence, offence punishable under Section 3(1) of the Act was not made out. Even then, charge sheet was submitted and

judgment of conviction with sentence, as above, was passed. Hence, this appeal with above prayer.

3. Learned A.G.A. has vehemently opposed the contentions raised by learned counsel for the appellant and submitted that the trial court has rightly appreciated facts and law, placed before it in correct perspective of law. After approval of District Magistrate, Unnao, gang chart, having six cases lodged against appellant including Case Crime No.177/1993, under Section 395/397 I.P.C., Case Crime No.377/1997, under Section 307 I.P.C., Case Crime No.422/1993, under Sections 147/148/307 I.P.C., Case Crime No.167/1995, under Sections 147/148/302 I.P.C., Case Crime No.269/1996, under Section 302 I.P.C. and Case Crime No.56/1997, under Section 307 I.P.C., was in gang chart and on the basis of above gang chart this Case Crime No. 78 of 1997, under Section 3 of the Act got registered and investigated, resulting submission of charge sheet. Accused person pleaded not guilty and claimed for trial for the charges leveled against him. Prosecution had examined its witnesses, who had proved prosecution case beyond doubt and on the basis of those cogent evidence, judgment of conviction with sentence, as above, was passed. Hence, this appeal is baseless.

4. Heard learned counsel for the parties as well as perused the impugned judgment and trial court record.

5. Before entering into merits of the case, it would be relevant to discuss Sections 2 and 3 of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act (hereinafter referred to as "the Act").

6. Section 2(b) of the Act provides definition of Gang:-

"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

....."

7. Who is gangster. This was decided by Full Bench of this Court in ***Ashok Kumar Dixit v. State of U.P., 1987 (24) ACC 164 (FB)*** that Clause (c) of Section 2 defines the word "Gangster". It means a member or leader or organizer of a group which indulges in the kind of activities set out under the various sub-clauses of clause (b) of Section 2, by use of violence or threat or show of violence or intimidation etc.

8. The term "gangster" has been defined in Section 2(c) and it means a member or leader or organizer of a gang, and includes any person who in the activities of the gang enumerated in clauses (b) whether before or after the commission of such activities or harbours any person who indulges in such activity.

9. Gangsterism is aimed at creating special organizations and groups to commit murder, use violence and take people for a ransom or other demands, forcible deprivation of freedom often involving torture, black-marketing, etc. Gangsterism could also mean the destruction of buildings, ransacking and similar acts in a cruel manner to terrorize the people.

10. Section 3 of the Act provides penalty.

"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 superiors 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."

11. This Act provides special rules of evidence under Section 4. Hence the object of legislation for enactment of Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 (U.P. Act No. 7 of 1986 (as passed by the U.P. Legislature) was an Act to make special provisions for the prevention of, and for coping with, gangsters and anti-social activities and for matters connected therewith or incidental thereto.

12. Further, Hon'ble Apex Court in ***Saju v. State of Kerala, AIR 2001 SC 175*** has propounded at para 8 that in a criminal case the onus lies on the prosecution to prove affirmatively that the accused was directly and presently connected with the acts or omissions attributable to the crime committed by him. It is a settled position of law that act or action of one of the accused cannot be used as evidence against another. However, an exception has been carved out under Section 10 of the Evidence Act, the Court must have reasonable ground to believe that two or more persons had conspired together for committing an offence. It is only that the evidence of action or statement made by one of the accused could be used as evidence against the other.

13. In order to attract the provisions of Section 2/3 of the Act, the essential requirements are being enumerated below:-

- (i) There should be a group of persons, who acting singly or collectively;*
- (ii) By violence or threat or show of violence or intimidation or coercion or otherwise;*

(iii) With object of disturbing public order or of gaining any undue temporal pecuniary material or other advantage for himself or for any other person;

(iv) Indulge in anti-social activities categorized in fifteen categories of Section 2(b).

14. Meaning thereby, persons forming group may be said to be a gang if they by use of violence, threat show of violence intimidation, coercion or otherwise with the object of disturbing public order or if unlawfully gaining temporal, pecuniary material or other advantages either for himself or for any other person indulged in any of the anti-social activity enumerated under clause (1) to (XV) and those persons indulging in aforesaid activities as member, leader, organizer of the gang may be treated as gangster and may be liable for punishment under Section 3 of the Act.

15. This Court in ***Ram Raheesh v. State of U.P. and others, 2011 (73) ACC 559*** has propounded that in order to attract the substantive offence of Section 3 of the Gangsters Act, the ingredients as provided in the definition of the word "Gang" under Section 2(b) and that of word "Gangster" under Section 2(c) are to be fulfilled.

16. Full Bench of this Court in the case of ***Ashok Kumar Dixit (supra)*** at paragraph 75 and 76 of judgment has held as under:-

75. While laying down so, we should not be oblivious of the avowed object of the Act. Under the ordinary criminal law, it is sometimes difficult to bring to book the overlords of crime and underworld because they seldom operate in person or in the public gaze. They indulge in clandestine operations which threaten to tear apart the very fabric of society. It is this purpose which the Act seeks to achieve.

76. But nevertheless we must sound a note of caution. Provisions of the Act cannot be used as a weapon to wreak vengeance or harass or intimidate innocent citizens or to settle scores on political or other fronts. The prosecution has to bear in mind that it has to bring home the guilt. Then, there is a further provision for appeal.

Thus, the power of judicial review of this Court has been preserved. If it is ultimately found that a person was proceeded with in sheer bad faith out of malice and by way of political vendetta the authorities do not enjoy any immunity under Section 22 of the Act. This immunity is confined only to acts done in good faith.

77. In Clause (b) of Section 2 the word used is 'indulged in anti-social activities'. We may note here that the offences for which Sections 2 and 3 of the Act can be attracted must be those which have been committed after the enforcement of the Ordinance or the Act. It is not possible to convict a person for the activities, which could be and were of the nature defined in Section 2, indulged into by him before the Ordinance or the Act. Article 20 recites two limitations upon the law making power of every legislative authority as regards retrospective criminal legislation. It prohibits.....(i) the making of ex post facto criminal law. i.e. making an act a crime for the first time and then making that law retrospective, (ii) infliction of penalty greater than which might have been inflicted under the law which was in force when the act was committed. From the language also, we find that Section 2 of the Act is prospective in nature and does not take within it the activities which were indulged into before.

17. Further, Hon'ble Apex Court in ***Kali Ram Vs. State of Himachal Pradesh; AIR 1973 SC 2773*** has propounded that in a criminal trial, the onus is upon prosecution to prove the different ingredients of offence and unless it discharges that onus, it cannot succeed.

18. Further, Hon'ble Apex Court in ***State of Punjab Vs. Bhajan Singh; AIR 1975 SC 258*** has propounded that suspicion howsoever strong cannot take place of proof.

19. Hon'ble the Apex Court in ***Shankarlal Gyarsilal Dixit Vs. State of Maharashtra; AIR 1981 SC 765*** has propounded that falsity of defence does not establish prosecution case.

20. Further in *Pratap Vs. State of U.P.; AIR 1976 SC 966* Hon'ble Apex Court has propounded that prosecution is to prove his case beyond all reasonable doubt whereas accused is to prove only till establishing preponderance of probabilities in.

21. In *Narbada Prasad v. Chhaganlal & Ors.; AIR 1969 SC 395*, Hon'ble Apex Court has held that in an appeal the burden is on appellant to prove how the judgment under appeal is wrong? He must show where the assessment has gone wrong?

22. Under above perspective of law the impugned judgment and the evidence placed on record is to be appreciated.

23. Charges leveled against accused was that he was a member of an organized gang and being a member of above gang by violence, threat of violence and show of violence, he used to commit crime, thereby disturb public peace and public order and with a view of gaining undue temporal, pecuniary, material and other advantages used to commit offence punishable under Chapter XVI, XVII or XXII of the Indian Penal Code given in gang chart. As six cases were against him, hence he committed offence punishable under Section 3 of the Act. Accused pleaded not guilty and prosecution was to prove those essential ingredients.

24. The witnesses of this case, in their statement on oath in examination-in-chief have stated that the accused is history sheeter and he is having a long criminal history. Public abstains from giving any evidence against him. This was gone through from record of police station and found to be a true information. Hence, there was no other option than to take action under this Act. Gang chart was prepared, which was approved by the then District Magistrate, Unnao. Meaning thereby, none of accused was doing any crime or was of public terror or involved in any offence provided under Chapter XVI, XVII or XXII of the I.P.C. nor they were involved in anti-social activities within the knowledge of this S.O. Rather an information by informer was given and on the basis of above information police record of police station was searched and on the basis of cases written in it gang chart was prepared

and thereafter approved from the then District Magistrate, Unnao and was lodged at police station concerned i.e. no offence under knowledge of prosecution witnesses was there except on the basis of information and going through record of police station. Neither any recovered goods were produced before trial Court nor they were placed on record. Meaning thereby, all the prosecution witnesses and their testimony is not of this nature to prove the existence of essential ingredients of offence for which charges were leveled against convict appellant.

25. Hence, testimony of all the witnesses is of no assistance to prosecution for proving that there was any violence, or show of violence or use of violence for commission of any offence under Chapter XVI or Chapter XVII or Chapter XXII of the I.P.C. or doing any act for earning property or money, as above, required for offence of gangster under this Act.

26. The criminal jurisprudence has developed that the victim is being accorded proper opportunity of being heard not only at the various stages of trial and even at the stage of disposal of bail. But the story herein is a bit different. The matter in question is under Section 3(1) of U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986, and not under the IPC or any other Special Act and the complainant of the said case is the S.O. of the police station-Fatehpur Chaurasi, District-Unnao. So the counsel for the victim of the predicate offence i.e. Case No.90 of 1998 does not come within the category of "victim" pertaining to the present case, thus, the present prosecution has been initiated against the appellant only on the basis of gang chart, which records the criminal history of the appellant of various nature.

27. All the evidences were produced before the trial Court, but trial Court failed to appreciate essential ingredients for offence punishable under this Act and alleged proof of prosecution beyond reasonable doubt. Even rule of evidence in this said Act regarding above offence could not be taken into consideration because no property or valuable things were recovered from the possession of convict appellant nor it was proved to be earned or procured out of above anti-social activities. Rather there was no evidence at all except a

formal registration of case on the basis of formal approval given by District Magistrate concerned over gang chart which was prepared on the basis of information of hidden informer and record of police station, in which all cases ended under acquittal. Moreso, sanction given by District Magistrate is also with no application of mind by District Magistrate nor with any mention of gang chart having specific offence given under Chapter XVI or Chapter XVII or Chapter XXII of the I.P.C. or offence by way of earning property or likelihood of creating any terror in public thereby abusing public order.

28. It is further observed here that a person may be involved in more than one cases but all those cases may be of such nature which may arise out of some trivial personal dispute over some drainage problem or over some connected boundary wall dispute or over some rival competing civil claim on some piece of land and the relationship of the two parties may deteriorate to the extent that they may get involved in some squabble, quarrels or sometimes even in making criminal assaults upon each other. Such kind of crimes are somewhat of a regular kind and nature. They do not make a good ground to impose Gangster Act.

29. The definition as has been provided in the Gangster Act is very exhaustive and has very wide contours. While dealing with the issues involved in the case of Gangster Act, the court has to be cautious and should not stretch it too much or to the extent where any kind of crime committed by anybody or all kinds of offences committed by anybody would make him a “gangster”. In fact it is a question of fact and the court will have to see it as per the allegations made in each individual case whether the nature of crime committed was such on the basis of which an accused can be brought under the bracket of the definition of the gangster or not. There cannot be a over generalized formula on this point and the Court has to satisfy itself on a subjective basis as well as on the objective basis as per the allegations and the circumstances as they may appear from the nature of crime said to have been committed by a particular accused and see for itself whether he can be brought within the mischief of the Act or not.

30. This judgment of trial Court was not substantiated with evidence on record and prosecution was not successful to prove the fact against convict appellant. Hence, this appeal merits its allowance.

31. Accordingly, this appeal succeeds and is **allowed**. The impugned judgment and order of conviction dated 08.12.2008, passed by the trial court, is hereby **set aside** and the appellant, Pappu @ Dhani Ram, is **acquitted** of all the charges. The appellant was on bail during the pendency of this appeal, thus, his personal bond and surety bonds are canceled and sureties are discharged.

32. Let a copy of this judgment along with trial court's record be sent back to the court concerned for immediate compliance.

(Shamim Ahmed, J.)

Order Date :- 20.03.2024
(Piyush/-)/ (Saurabh)