

Court No. - 16

Case :- CRIMINAL MISC. WRIT PETITION No. - 3164 of 2024

Petitioner :- Riyaz Ahmad

Respondent :- State Of U.P. Thru. Prin. Secy., Home Deptt., Lucknow And Others

Counsel for Petitioner :- Suresh Kumar Yadav

Counsel for Respondent :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri Suresh Kumar Yadav, learned counsel for the petitioner as well as learned A.G.A. for the State and perused the record.

2. The instant writ petition has been filed by the petitioner namely Riyaz Ahmad with the following prayer:

"Issue a Writ, order or direction in the nature of Certiorari thereby quashing the impugned order dated 10.04.2024 (Annexure no. 1) passed by Commissioner, Ayodhya Division, Ayodhya i.e. Opposite Party no. 2, in Appeal No. 328 of 2024, Computerized Case No-C202404000000328, titled Riyaz Ahmad vs. State of U.P., under section 6 of U.P. Control of Goonda Act and impugned order dated 18.01.2024 (Annexure no. 2) passed by the District Magistrate, Barabanki, i.e. Opposite Party No - 3 Under Section 3 (1) of U.P. Control of Goonda Act, in Case No - 3657 of 2022, having Computerized Case No- D202204120003657, titled Sate of U.P. Vs. Raiyaz Ahmad, contained as Annexure No. - 1 & 2 respectively to the instant writ petition."

3. Learned counsel for the petitioner submits that the trial court as well as appellate court have committed manifest illegality in passing the impugned order as at first the trial court has not considered this aspect of the matter that the first offence, which has been taken into cognizance for the purpose, has been allegedly committed in the year 2018 and the second offence has admittedly been committed in the year 2021 and thereafter in the year 2022 a beat information is shown to have been recorded by Beat Constable and the impugned order has been passed on 18.01.2024, thus the sting of the beat information has been diluted and it was the duty of the Additional District Magistrate concerned to have called a fresh report from the police station concerned.

4. It is further submitted that it also appears to be a admitted factual position that the petitioner has not been convicted by any competent criminal court with regard to two criminal cases taken into cognizance for the purpose of invoking the relevant provisions of the U.P. Control of Goondas Act, 1970. It is vehemently submitted that to attract the provisions of U.P. Control of Goondas Act, 1970, the accused person must come in the definition of 'goonda' as defined under Section 2(b) of the U.P. Control of Goondas Act, 1970 and simply the pendency of two or more criminal cases may not designate any person as 'goonda' more so when the dispute is purely of private in nature, thus the impugned orders passed by the courts below are liable to be set aside.

5. Learned counsel for the petitioner in supported of his submissions has relied on ***Pavan @ Pavan Singhal vs. State of U.P and others***, [2021 (115) ACC 823], ***Parvindra vs. State of U.P. and two others***, judgement dated 23.01.2020 passed in Criminal Misc. Writ Petition No. 25689 of 2019 and the law laid down by the Hon'ble Supreme Court in ***Vijay Narain Singh vs. State of Bihar and Others***, (1984) 3 SCC 14.

6. Learned A.G.A., on the other hand, submits that neither any illegality or to say any irregularity has been committed by the courts below. The petitioner is having two criminal cases shown against him and thereafter a beat information was also recorded by a Beat Constable with regard to the alleged conduct of the petitioner, thus material, which was available before the Additional District Magistrate (Judicial) concerned, who has passed the externment order, was sufficient enough to pass the impugned order in order to keep the peace and tranquility in the area and likewise no illegality has been committed by the trial court.

7. Having heard learned counsel for the parties and having perused the record, it is evident from the impugned order dated 18.01.2024 passed by the Additional District Magistrate (Judicial), Barabanki as well as by the Commissioner, Ayodhya Division, Ayodhya of date 10.04.2024 that the externment order has been passed by the courts below taking into consideration two criminal cases alleged against the petitioner of the years 2018 and 2021, respectively, apart from a beat information, which has been recorded on 22.10.2022.

8. The first submission, which has been advanced by learned counsel for the petitioner, is pertaining to the timing of passing of the externment order as it is highlighted that first F.I.R. against the petitioner was lodged in the year 2018 and it was three years later another F.I.R. bearing Case Crime No.391 of

2021 was lodged in minor penal sections i.e. 34, 323, 403, 506 I.P.C. and thereafter one beat information of date 22.10.2022 has been recorded. Admittedly the beat information may only act as a corroborative evidence and the same could never be treated as a substantive evidence. Thus, the last criminal act committed by the petitioner was in the year 2021 and the externment order has been passed on 18.01.2024. Prima facie, I find substance in the submissions made by learned counsel for the petitioner that if, in the opinion of the trial court, the conduct of the petitioner was attracting relevant provisions of the U.P. Control of Goondas Act, 1970, he should have called fresh report with regard to the conduct of the petitioner from the police station concerned and only on account of pendency of two criminal cases and one beat information, a person may not be deemed to be a 'goonda' as defined under Section 2(b) of the U.P. Control of Goondas Act, 1970. In this regard, the definition of 'goonda' as contained under Section 2(b) of the U.P. Control of Goondas Act, 1970 assumes significance and for convenience is reproduced as under:

"2(b) 'Goonda' means a person who-

(i) either by himself or as a member or leader of a gang, habitually commits or attempts to commit, or abets the commission of an offence punishable under Section 153 or Section 153-B or Section 294 of the Indian Penal Code or Chapter XV, Chapter XVI, Chapter XVII or Chapter XXII of the said Code; or

(ii) has been convicted for an offence punishable under the Suppression of Immoral Traffic in Women and Girls Act, 1956; or

(iii) has been convicted not less than thrice for an offence punishable under the U.P. Excise Act, 1910 or the Public Gambling Act, 1867 or Section 25, Section 27 or Section 29 of the Arms Act, 1959; or

(iv) is generally reputed to be a person who is desperate and dangerous to the community; or

(v) has been habitually passing indecent remarks or teasing women or girls; or

(vi) is a tout;

Explanation. - 'Tout' means a person who-

(a) accepts or obtains, or agrees to accept or attempts to obtain

from any person for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means any public servant or member of Government, Parliament or of State Legislature, to do or forbear to do anything or to show favour or, disfavour to any person or to render or attempt to render any service or disservice to any person, with the Central or State Government, Parliament or State Legislature, any local authority, Corporation, Government Company or public servant; or

(b) procures, in consideration of any remuneration moving from any legal practitioner interested in any legal business, or proposes to any legal practitioner or to any person interested in legal business to procure, in consideration of any remuneration moving from either of them, the employment of legal practitioner in such business; or

(c) for the purposes mentioned in explanation (a) or (b), frequents the precincts of civil, criminal or revenue Courts, revenue or other offices, residential colonies or residences or vicinity of the aforesaid or railway or bus stations, landing stages, lodging places or other places of public resort; or

(vii) is a house-grabber.

Explanation. - 'House-grabber' means a person who takes or attempts to take or aids or abets in taking unauthorised possession or having lawfully entered unlawfully remains in possession, of a building including land, garden, garages or out-houses appurtenant to a building."

9. A Division Bench of this Court in **Imran @ Abdul Quddus Khan vs. State of U.P. and others**; 2000 CrLJ. 1328 had opined as under:-

"11. Ex facie, a person is termed as a 'goonda' if he is a habitual criminal. The provisions of Section 2(b) of the Act are al-most akin to the expression 'anti social ele-ment' occurring in Section 2(d) of Bihar Pre-vention of Crimes Act, 1981. In the context of the expression 'anti social element' the connotation 'habitually commits' came to be interpreted by the apex Court in the case of *Vijay Narain Singh v. State of Bihar*, (1984) 3 SCC 14 : (AIR 1984 SC 1334). The meaning put to the aforesaid expression by the apex Court would squarely apply to the ex-pression used in the Act, in question. The majority view was that the word 'habitually' means 'repeatedly' or 'persistently'. It implies a thread of continuity stringing together similar repetitive acts. Repeated, persistent and similar but not isolated, individual and dissimilar acts are

necessary to justify an inference of habit. It connotes frequent commission of acts or omissions of the same kind referred to in each of the said sub-clauses or an aggregate of similar acts or omissions. Even the minority view which was taken in Vijay Narain's case (supra) was that the word 'habitually' means 'by force of habit'. It is the force of habit inherent or latent in an individual with a criminal instinct with a criminal disposition of mind, that makes a person accustomed to lead a life of crime posing danger to the society in general. If a person with criminal tendencies consistently or persistently or repeatedly commits or attempts to commit or abets the commission of offences punishable under the specified chapters of the Code, he should be considered to be a 'anti social element'. There are thus two views with regard to the expression 'habitually' flowing from the decision of Vijay Narain's case (supra). The majority was inclined to give a restricted meaning to the word 'habitually' as denoting 'repetitive' and that on the basis of a single act cannot be said to be forming the habit of the person. That is to say, the act complained of must be repeated more than once and be inherent in his nature. The minority view is that a person in habitual criminal who by force of habit or inward disposition inherent or latent in him has grown accustomed to lead a life of crime. In simple language, the minority view was expressed that the word 'habitually' means 'by force of habit'. The minority view is based on the meaning given in Stroud's Judicial Dictionary, Fourth Ed. Vol. 11-1204--habitually requires a continuance and permanence of some tendency, something that has developed into a propensity, that is, present from day to day. Thus, the word 'habitual' connotes some degree of frequency and continuity.

14. Expressions like 'by habit' 'habitual' 'desperate' 'dangerous' and 'hazardous' cannot be flung in the face of a man with laxity or semantics. The Court must insist on specificity of facts and a consistent course of conduct convincingly enough to draw the rigorous inference that by confirmed habit, the petitioner is sure to commit the offence if not extorted or say directed to take himself out of the district. It is not a case where the petitioner has ever involved himself in committing the crime or has adopted crime as his profession. There is not even faint or feeble material against the petitioner that he is a person of a criminal propensity. The case of the petitioner does not come in either of the clauses of Section 2(b) of the Act, which defines the expression 'Goonda'. Therefore, to outright label a bona fide student as 'goonda' was not only arbitrary capricious and unjustified but also counter productive. A bona fide student who is pursuing his studies in the Post Graduate course and has never seen the world of the criminals is now being forced to

enter the arena. The intention of the Act is to afford protection to the public against hardened or habitual criminals or bullies or dangerous or desperate class who menace the security of a person or of property. The order of externment under the Act is required to be passed against persons who cannot readily be brought under the ordinary penal law and who for personal reasons cannot be convicted for the offences said to have been committed by them. The legislation is preventive and not punitive. Its sole purpose is to protect the citizens from the habitual criminals and to secure future good behaviour and not to punish the innocent students. The Act is a powerful tool for the control and suppression of the 'Goondas'; it should be used very sparingly in very clear cases of 'public disorder' or for the maintenance of 'public order'. If the provisions of the Act are recklessly used without adopting caution and discretion, it may easily become an engine of oppression. Its provisions are not intended to secure Indirectly a conviction in case where a prosecution for a substantial offence is likely to fail. Similarly the Act should not obviously be used against mere innocent people or to march over the opponents who are taking recourse to democratic process to get their certain demands fulfilled or to wreck the private vengeance."

10. The aforesaid judgement passed by the Division Bench of this Court would clearly demonstrate that the powers under the U.P. Control of Goondas Act, 1970 are not required to be exercised as a matter of routine e.g. because some first information reports have been lodged against the person in the police station with regard to the commission of the crime and this power could only be exercised when a person is coming within the purview or ambit of the definition of 'goonda' as provided under Section 2(b) of the U.P. Control of Goondas Act, 1970.

11. If the aforesaid definition is applied to the facts of the instant case as stated earlier, it appears to be a admitted position that after lodging of the F.I.R. in the year 2018, second F.I.R. against the petitioner, that too in minor penal sections e.g. 34, 323, 403, 506 I.P.C., was registered in the year 2021 apart from beat information recorded in October, 2022 and thus if this material is weighed vis-a-vis the definition of 'goonda' as contained under Section 2(b) of the U.P. Control of Goondas Act, 1970 and in the background of the principles enunciated by the Division Bench in **Imran @ Abdul Quddus Khan** (supra), it would emerge that the courts below have acted on the basis of insufficient material.

12. In the considered opinion of this Court, the material, which has been lodged against the petitioner, may not be termed as

sufficient for designating a person as 'goonda' or a person in the habit of committing offences as a matter of habit more so when there is no evidence that he has been convicted by the competent criminal court for committing these offences and also when he has been granted bail in these offences by competent criminal court.

13. It is to be recalled that the externment order would only remain alive for next six months, however, even after passage of six months, for which an accused person has been directed to remain outside the district, the same will also cause a dent in the reputation of a person and thus the material, which has been placed against an accused person for invoking the powers under the U.P. Control of Goondas Act, 1970, must be of the nature where the presence of the person in the society would be dangerous to inmates of the society or locality and also that he is a habitual offender. In the considered opinion of this Court, both the courts below have committed illegality in declaring the petitioner as 'goonda' and also in passing and confirming externment order.

14. In result, the instant petition filed by the petitioner namely Riyaz Ahmad is **allowed** and the impugned order dated 10.04.2024 passed by the Commissioner, Ayodhya Division, Ayodhya in Case No.328 of 2024, Computerized Case No.C202404000000328 (Riyaz Ahmad vs. State of U.P.), under Section 6 of the U.P. Control of Goondas Act, 1970 and impugned order dated 18.01.2024 passed by the Additional District Magistrate (Judicial), Barabanki, under Section 3/4 of the U.P. Control of Goondas Act, 1970 in Case No.3657 of 2022, Computerized Case No.D202204120003657(State Vs. Riyaz Ahmad) are hereby **set aside**.

15. A copy of this order be immediately sent to the courts below for information.

Order Date :- 27.5.2024

Anupam S/-