

Court No. - 16

Case :- CRIMINAL MISC. WRIT PETITION No. - 5031 of 2024

Petitioner :- Shiv Bahadur

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

Counsel for Petitioner :- Farooq Ayoob,Km. Pooja Tiwari

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed,J.

Heard Km. Pooja Tiwari, learned counsel for the petitioner and Shri Rajiv Kumar Verma, learned A.G.A.-I for the State as well as perused the record.

This writ petition under Article 226 of the Constitution of India has been filed with a prayer to quash the impugned order dated 24.05.2024 passed by opposite party no.2, whereby interim application for stay has been rejected as well as to quash the order dated 21.03.2024 passed by learned District Magistrate, Barabanki, under Section 3/4 of U.P. Control of Goondas Act, 1970.

Learned counsel for the petitioner submits that following cases were registered against the petitioner:-

1. Case Crime No.355/2019, under Sections 147, 504, 506, 354, 341 I.P.C. and Section 11(4)/12 of POCSO Act.
2. Case Crime No.278/2019, under Sections 341, 504, 506 I.P.C.
3. Case Crime No.40/2020, under Sections 323, 504, 506 I.P.C.
4. Beat Information No.40 dated 05.01.2022.

Learned counsel for the petitioner further submits that on the basis of aforesaid cases, the opposite party no.3 had passed an order dated 21.03.2024 under Section 3/4 of U.P. Control of Goondas Act, 1970, wherein the petitioner was directed to remain outside the District for a period of six months. Being aggrieved, the petitioner preferred an appeal bearing Case No.814 of 2024, Computerized No.C202404000000814 under Section 6 of the Uttar Pradesh Control of Goondas Act, 1970, before the opposite party no.2, who vide impugned order dated

24.05.2024 admitted the appeal of the petitioner, however, he has rejected the application for interim stay.

Learned counsel for the petitioner further submits that without considering the material evidence on record as well as objection/ reply of the petitioner, the opposite party No. 2 without application of mind in a mechanical manner has rejected the interim stay application of the petitioner. Even though learned appellate court has not considered the mandate of Hon'ble Supreme Court wherein in catena of judgments the Hon'ble Apex Court on the basis of no material and false case the proceedings of the case were quashed.

Learned counsel for the petitioner further submits that both the impugned orders have been passed without following due procedure of law. Further in absence of information about general material allegations the petitioner was unable to produce evidence in support of his explanation. Thus, the notice issued to the petitioner is defective one and the impugned orders passed in pursuance of the said notice is illegal and have been passed in cursory manner without considering the evidence on record.

It will be beneficial to extract definition of "Goonda" in Section 2(b) and Section 3 of the 1970 Act. Section 2 (b) 1970 Act are 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, Chapter XVI, Chapter XVII or Chapter XXII of the said code: or

(ii) has been convicted not less than thrice for an offence punishable under the Supression 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

(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.]

3. Externment, etc. of Goondas. -Where it appears to the District Magistrate.-

(a) that any person is a Goonda; and

(b) (i) that his movements or acts in the district or any part hereof are causing, or are calculated to cause alarm, danger or harm to persons or property; or

(ii) that there are reasonable grounds for believing that he is engaged or about to engage, in the district or any part thereof, in the commission of an offence referred to in subclauses (i) to

(iii) of clause (b) of Section 2, or in the abetment of any such offence; and]

(c) that witnesses are not willing to come forward to give evidence against him by reason of apprehension on their part as regards the safety of their person or property-

the District Magistrate shall by notice in writing inform him of the general nature of the material allegations against him in respect of clauses (a), (b) and (c) and give him a reasonable opportunity of tendering an explanation regarding them.

(2) The person against whom an order under this section is proposed to be made shall have the right to consult and be defended by a counsel of his choice and shall be given a reasonable opportunity of examining himself, if he so desires, and also of examining any other witnesses that he may wish to produce in support of his explanation, unless for reasons to be recorded in writing the District Magistrate is of opinion that the request is made for the purpose of vexation or delay.

(3) Thereupon the District Magistrate on being satisfied that the conditions specified in clauses (a), (b) and (c) of sub-section (1) exist may by order in writing-

[(a) direct him to remove himself outside the area within the limits of his local jurisdiction or such area and any district or districts or any part thereof, contiguous thereto, by such route, if any, and within such time as may be specified in the order and to desist from entering the said area or the area and such contiguous district or districts or part thereof, as the case may be from which he was directed to remove himself until the expiry of such period not exceeding six months as may be specified in the said order;]

(b)(i) require such person to notify his movements or to report himself, or to do both, in such manner, at such time and to such authority or person as may be specified in the order;

(ii) prohibit or restrict possession or use by him of any such article as may be specified in the order;

(iii) direct him otherwise to conduct himself in such manner as may be specified in the order, until the expiry of such period, not exceeding six months as may be specified in the order."

Learned counsel for the petitioner further submits that the impugned orders were passed totally in violation of the legal provision and nothing has been considered by the respondents

which was explained by the petitioner. The cases filed against the petitioner were due to enmity and political rivalry and the petitioner was falsely implicated in the cases mentioned above. Thus, he submits that the impugned orders are arbitrary, illegal and against the provision of law. Thus, he prays for interim relief.

Learned A.G.A.-I submits that the impugned orders have rightly been passed by the authorities concerned, however, he has not disputed the judgment referred by the learned counsel for the petitioner.

In view of above submissions and considering the arguments advanced by the learned counsel for the parties and considering the mandate of judgments of Hon'ble Apex Court as well as of this Court, this Court is of the view that the opposite party no.2 has erred in passing the impugned order 24.05.2024 whereby application for interim stay has been rejected.

Accordingly, the instant petition is **disposed of** with direction to the opposite party no.2 to decide the aforesaid appeal filed by the petitioner expeditiously i.e. within two months, without granting any unnecessary adjournment to either of the parties from the date of filing of the certified copy of this order, unless there is some legal impediment or unless there is any order passed by the higher court staying the proceedings of the case.

Till the period of two months or till disposal of the aforesaid appeal, whichever is earlier, the effect and operation of the impugned order dated 21.03.2024 passed under Section 3/4 of U.P. Control of Goondas Act, 1970 by the learned District Magistrate, Barabanki shall remain stayed in respect of the petitioner.

Order Date :- 16.7.2024

Saurabh