

Neutral Citation No. - 2025:AHC:111335

Reserved on: 03.07.2025

Delivered on: 09.07.2025

Court No. - 80

Case :- CRIMINAL REVISION No. - 4528 of 2023

Revisionist :- Jauhar Ali And 6 Others

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Sayyed Kashif Abbas Rizvi

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. This criminal revision has been filed challenging the order dated 04.08.2023 passed by Special Judge (Gangster Act)/Additional District and Sessions Judge, Sambhal at Chandausi in Special Sessions Trial No. 254 of 2021 (State Vs. Sadiq and Others), arising out of Case Crime No. 46 of 2021, under Section 3(1) of The U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986, Police Station-Nakhasa, District-Sambhal, whereby the discharge application filed by revisionists in terms of Section 227 Cr.P.C. has been rejected by Court below.

2. I have heard Mr. Sayyed Kashif Abbas Rizvi, the learned counsel for revisionists and the learned A.G.A. for State-opposite party-1.

3. Perused the record.

4. Record shows that an FIR dated 01.02.2021 was lodged by first informant-opposite party-2 Dharampal Singh, Incharge Inspector, Police Station-Nakhasa, District-Sambhal, which was registered as Case Crime No. 46 of 2021, under Section 3(1) of The U.P. Gangsters and Anti Social

Activities (Prevention) Act, 1986, Police Station-Nakhasa, District-Sambhal. In the aforesaid FIR, 7 persons namely - (1) Gang Leader Jauhar Ali, (2) Sadiq, (3) Rahbar, (4) Mehendi, (5) Gauhar Abbas, (6) Shamshul Hasan and (7) Mohd. Navi were nominated as named accused.

5. As per the gang chart, a solitary case i.e. Case Crime No. 391 of 2019, under Sections 147, 148, 149, 452, 307, 302, 504, 506, 325 IPC was shown to be registered against named accused, in which, charge sheet dated 16.11.2019 had already been submitted.

6. After aforementioned FIR was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter-XII Cr.P.C. On the basis of material collected by him, during course of investigation, he came to the conclusion that named accused are liable to be prosecuted under Section 3(1) of The U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986. He, therefore, opined to submit a charge sheet. Accordingly, Investigating Officer, submitted the charge sheet/police report dated 05.06.2021 in terms of Section 173(2) Cr.P.C., whereby named accused i.e. the revisionists herein were charge sheeted under Section 3(1) of The U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986.

7. Upon submission of above-mentioned charge sheet/police report, cognizance was taken upon same by Court concerned in exercise of jurisdiction under Section 190(1)(b) Cr.P.C. Resultantly, Special Sessions Trial No. 254 of 2021 (State Vs. Sadiq and Others) arising out of Case Crime No. 46 of 2021, under Section 3(1) of The U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986, Police Station-Nakhasa, District-Sambhal came to be registered in the Court of Special Judge (Gangster Act)/Additional District and Sessions Judge, Sambhal at Chandausi.

8. At this juncture, the accused/revisionists filed a discharge application before Court below seeking their discharge in terms of Section 227 Cr.P.C. in aforementioned Special Sessions Trial. The basis of discharge

claimed by accused/revisionist was that the accused/revisionists have already been acquitted in Case Crime No. 391 of 2019, under Sections 147, 148, 149, 452, 307, 302, 504, 506, 325 IPC resulting in Sessions Trial No. 31 of 2020 (State Vs. Sadiq and Others), vide judgment and order dated 17.08.2022 passed by Additional Sessions Judge, Sambhal at Chandausi. The aforesaid plea was raised on the ground that once the basis of imposition of The U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986 has itself vanished, therefore, no good ground exists to prolong the criminal prosecution of revisionists under the U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986.

9. The discharge claimed by revisionists was opposed by the prosecution. However, no written objections were filed by the prosecution in opposition to the same.

10. Ultimately, Court below examined the prayer made by the accused/revisionists by means of the discharge application in the light of material on record. Upon evaluation of the same, Court below came to the conclusion that since the discharge is being pleaded on the basis of material, which is not part of the case diary, therefore, the Court has no jurisdiction to look into the said material. It, accordingly, negated the prayer for discharge made by the accused, vide order dated 04.08.2023.

11. Thus, feeling aggrieved by the above order dated 04.08.2023 passed by Special Judge (Gangster Act)/Additional District and Sessions Judge, Sambhal at Chandausi, accused/revisionists have now approached this Court by means of present criminal revision.

12. Mr. Sayyed Kashif Abbas Rizvi, the learned counsel for revisionists submits that the order impugned in present criminal revision is manifestly illegal and in excess of jurisdiction. Consequently, the same is liable to be set aside by this Court. According to the learned counsel for revisionists, the proceedings under The U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986 were initiated against accused/revisionists under

Section 3(1) of The U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986 on account of pendency of Case Crime No. 46 of 2021. However, revisionists were acquitted in aforementioned case crime number, vide judgment and order dated 04.08.2023 passed in Special Sessions Trial No. 254 of 2021 (State Vs. Sadiq and Others) arising out of Case Crime No. 46 of 2021, under Section 3(1) of The U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986, Police Station-Nakhasa, District-Sambhal. It was thus urged by the learned counsel for revisionists that once the basis for imposing The U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986 itself has vanished, no good or sufficient ground exists to prolong the criminal prosecution of revisionists under aforementioned Act. In case, the criminal prosecution of revisionists is allowed to continue, nothing substantial shall be achieved and shall result in waste of public time and money. On the above conspectus, it was thus contended by the learned counsel for revisionists that the order impugned is liable to be set aside by this court and the revision be allowed.

13. Per contra, the learned A.G.A. representing State-opposite party-1 vehemently opposed the present criminal revision. He submits that no illegality can be attached to the findings recorded by Court below for negating the prayer for discharge prayed by the revisionists. As such, the order impugned cannot be said to be illegal. However, the learned A.G.A. in spite of his vehement opposition to the present criminal revision could not dispute the fact that the revisionists have already been acquitted by Court below in Case Crime No. 391 of 2019, under Sections 147, 148, 149, 452, 307, 302, 504, 506, 325 IPC.

14. Having heard the learned counsel for revisionists, the learned A.G.A. for State-opposite party-1 and upon perusal of record, this Court finds that proceedings under The U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986 were initiated against revisionists on account of pendency of a solitary criminal case i.e. Case Crime No. 391 of 2019,

under Sections 147, 148, 149, 452, 307, 302, 504, 506, 325 IPC. Subsequently, in aforementioned case crime number, the charge sheet/police report was submitted by the Investigating Officer against accused therein i.e. present revisionists. However, ultimately, the accused/revisionists were acquitted in aforementioned case crime number, vide judgment and order dated 17.08.2022 passed by passed by Additional Sessions Judge, Sambhal at Chandausi in Sessions Trial No. 31 of 2020 (State Vs. Sadiq and Others).

15. It is thus evident that the basis for imposing the proceedings under aforementioned Act has now vanished. The Apex Court in the case of **Pritam Singh and Another Vs. State of Punjab, AIR 1956 SC 415** and this Court in the case of **Sartaj Vs. State of U.P., 2019 SCC OnLine All 4996**. have already held that if the accused is acquitted in the criminal case mentioned in the gang chart, then trial under the Gangster Act is not justified. In view of above, it is thus apparent that in view of aforementioned categorical pronouncement neither the impugned proceedings can be sustained nor any useful purpose shall now be served in continuing/prolonging the criminal prosecution of revisionists under The U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986.

16. The issue as to whether the claim for discharge can be considered by this Court, while exercising jurisdiction under Section 482 Cr.P.C., 397/401 Cr.P.C. is no longer res-integra and stands settled by the judgment of Supreme Court in **Rajiv Thapar and Ors. Vs. Madan Lal Kapoor reported in 2013 (3) SCC 330**, wherein the Court has observed that if the material relied upon by the accused is of impeccable character, the same can be considered. Since the evidence relied upon by the accused is of an impeccable character, therefore, there can be no two views regarding the conclusion/inference that can be drawn on the basis of the said material. As such, the order impugned cannot be sustained and is therefore, liable to be set aside.

17. As a result, the present criminal revision succeeds and is liable to be allowed.

18. It is, accordingly, **allowed**.

19. The entire proceedings of Special Sessions Trial No. 254 of 2021 (State Vs. Sadiq and Others) arising out of Case Crime No. 46 of 2021, under Section 3(1) of The U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986, Police Station-Nakhasa, District-Sambhal now pending in the Court of Special Judge (Gangster Act)/Additional District and Sessions Judge, Sambhal at Chandausi shall stand quashed.

Order Date :- 09.07.2025

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