

Court No. - 70

Case :- CRIMINAL APPEAL No. - 11024 of 2024

Appellant :- Pradeep

Respondent :- State of U.P.

Counsel for Appellant :- Abhinav Gaur, Ankit Shukla, Mohd.

Rashid Siddiqui, Sr. Advocate

Counsel for Respondent :- G.A.

Hon'ble Rajeev Misra, J.

1. Heard Mr. Anoop Trivedi, the learned senior counsel assisted by Mr. Ankit Shukla alongwith Mr. Abhinav Gaur, the learned counsel for appellant and the learned A.G.A. for State-opposite party-1.

2. Perused the record.

3. Vider order dated 17.12.2024, present appeal was admitted and learned A.G.A. was directed to file his objections/counter affidavit to the stay application.

4. In compliance of above order dated 17.12.2024, the learned A.G.A. has duly filed his objections/counter affidavit to the stay application which is on record.

5. Learned counsel for appellant submit that they do not wish to file any rejoinder affidavit to the same.

6. In view of above, the Court has proceeded to hear the counsel for the parties on the merits of the appeal itself. Accordingly, the present appeal is being decided finally.

7. Challenge in this criminal appeal is to the order dated 11.11.2022 passed by the District Magistrate, Baghpat in Case No. 932 of 2021 (State Vs. Pradeep) under Section 14 (1) of the U.P. Gangster and Anti Social Activities (Prevention) Act, 1986 (herein after referred to as the Act of 1986) whereby the representation filed by appellant against the order dated 08.11.2022 (whereby and

where-under the disputed property was attached and the Circle Officer, Baghpat was appointed as the Administrator) was rejected as well as the order dated 18.09.2024 passed by the Additional Sessions Judge/ F.T.C., Court No.1/ Special Judge (Gangster Act), Baghpat in Criminal Misc. Case No. 09 of 2023 (Pradeep Vs. State of U.P.) under Section 16 (1) of the Act of 1986, whereby aforementioned misc. case at the instance of appellant and arising out of the order dated 08.11.2021 passed by District Magistrate, Baghpat has been dismissed.

8. Record shows that an F.I.R. dated 04.09.2023 was lodged by first informant, Inspector In-charge Vijay Pratap Singh and was registered as Case Crime No. 0373 of 2018 under Section 2/3 of the U.P. Gangster and Anti Social Activities (Prevention) Act, 1986, Police Station-Chhaprauli, District-Baghpat. In the aforesaid F.I.R. seven persons namely Pradeep, Ankur, Sachin, Rajeev, Ramveer @ Ramoo Hathi, Sandeep @ Sanni and Smt. Anupma were nominated as named accused. Appellant-Pradeep was shown as the Gang Leader. As per the gang chart appended alongwith aforesaid F.I.R., a solitary case i.e. Case Crime No. 200 of 2018 under Sections 147, 148, 149, 302, 307, 201, 404/34 and 120B I.P.C., P.S. Chhaprauli, District Baghpat was shown to be pending against accused named in the F.I.R.

9. After aforementioned F.I.R. 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 charge-sheeted for trial under Section 2/3 of the Act of 1986. Accordingly, Investigating Officer submitted the charge sheet/police report dated 09.02.2019 in terms of Section 173 (2) Cr.P.C. whereby all

the name accused were charge sheeted under Section 2/3 of the Act of 1986.

10. Subsequent to above and after expiry of a period of more than two years and ten months from the date of the aforementioned charge sheet/police report referred to above, the Superintendent of Police, Baghpat submitted a report dated 01.11.2021 alleging therein that as many as 27 cases are pending against appellant. The details of the same are as under:

- i. Case Crime No. 140 of 93 under Sections 147, 148, 324 I.P.C., P.S. Chhaprauli.
- ii. Case Crime No. 191 of 93 under Section 25 Arms Act, P.S. Chhaprauli.
- iii. Case Crime No. 296 of 93 under Section 25 Arms Act P.S. Baraut.
- iv. Case Crime No. 502 of 94 under Section 25 Arms Act P.S. Baraut.
- v. Case Crime No. 265 of 96 under Sections 323, 324 I.P.C., P.S. Baraut..
- vi. Case Crime No. 186 of 99 under Sections 324, 308, 379 I.P.C., P.S. Chhaprauli.
- vii. Case Crime No. 208 of 99 under Section 25 Arms Act, P.S. Chhaprauli, Baghpat.
- viii. Case Crime No. 217 of 01 under Section 3 U.P. Gunda Act, P.S. Chhaprauli, Baghpat.
- ix. Case Crime No. 337 of 01 under Sections 302, 201 I.P.C., P.S. Baraut, Baghpat.
- x. Case Crime No. 667 of 01 under Sections 2/3 Gangster Act., P.S. Baraut..
- xi. Case Crime No. 27 of 04 under Section 323 I.P.C., P.S. Baraut, Baghpat.

- xii. Case Crime No. 1344 of 05 under Sections 323, 324, 504 I.P.C., P.S. Baraut, Baghpat.
- xiii. Case Crime No. 306 of 07 under Sections 323, 325, 304 I.P.C., P.S. Baraut.
- xiv. Case Crime No. 1347 of 07 under Sections 3 U.P. Gunda Act., P.S. Baraut, Baghpat.
- xv. Case Crime No. 667 of 06 under Sections 302, 201 I.P.C., P.S. Baraut.
- xvi. Case Crime No. 25 of 09 under Sections 379, 427 I.P.C., P.S. Baraut.
- xvii. Case Crime No. 637 of 07 under Sections 302, 201 I.P.C., P.S. Baraut.
- xviii. Case Crime No. 576 of 01 under Section 2/3 Gangster Act., P.S. Baraut.
- xiv. Case Crime No. 166 of 17 under Sections 323, 504, 325 I.P.C., P.S. Chhaprauli, Baghpat.
- xx. Case Crime No. 22 of 18 under Sections 323, 504 I.P.C., P.S. Chhaprauli, Baghpat.
- xxi. Case Crime No. 105 of 18 under Sections 323, 504, 506 I.P.C., P.S. Chhaprauli, Baghpat.
- xxii. Case Crime No. 115 of 18 under Sections 448, 147, 323, 504, 506 I.P.C., P.S. Chhaprauli, Baghpat.
- xxiii. Case Crime No. 200 of 18 under Sections 147, 148, 149, 302, 307, 201, 404, 34, 120B I.P.C., P.S. Chhaprauli.
- xxiv. Case Crime No. 235 of 18 under Sections 25/27 Arms Act., P.S. Chhaprauli, Baghpat.
- xxv. Case Crime No. 373 of 18 under Section 2/3 Gangster Act., P.S. Chhaprauli, Baghpat.
- xxvi. Case Crime No. 223 of 18 under Sections 323, 352, 504, 506 I.P.C., P.S. Chhaprauli, Baghpat.
- xxvii. Case Crime No. 59 of 21 under Sections 115, 120B I.P.C.

readwith Section 302 I.P.C., P.S. Chhaprauli, Baghpat.

11. Aforesaid report further records that Smt. Anupma wife of appellant Pradeep is also a co-accused in Case Crime No. 200 of 2018 under Sections 147, 148, 149, 302, 201, 120B, 404, 307/34, I.P.C., P.S. Chhaprauli, District-Baghpat The wife of appellant is further a co-accused in Case Crime No. 373 of 2018 under Section 2/3 of the Act of 1986, P.S. Chhaprauli, Baghpat and she has following criminal cases to her credit:

i. Case Crime No. 200 of 18 under Sections 147, 148, 149, 302, 307, 201, 404/34, 120B I.P.C., P.S. Chhaprauli, Baghpat.

ii. Case Crime No. 373 of 18 under Section 2/3 Gangster Act., P.S. Chhaprauli, Baghpat

iii. Case Crime No. 155 of 18 under Sections 448, 147, 323, 504, 506 I.P.C., P.S. Chhaprauli, Baghpat.

iv. Case Crime No. 10 of 20 under Sections 147, 427 I.P.C., P.S. Chhaprauli, Baghpat.

v. Case Crime No. 59 of 21 under Sections 115, 120 I.P.C. readwith Section 302 I.P.C., P.S. Chhaprauli, Baghpat.

12. In the opinion of Superintendent of Police, Baghpat, the appellant is alleged to have constructed a single story house in land measuring 25 ft x 60 ft. with an area of 250 yds. The said construction has been raised by laying RCC Slab. The area of ground floor is 166 sq. mtrs. and the said construction is five years old. The cost of construction is approximately 15,77,000/- whereas current price of land is 14,77,000/-. The copy of the valuation report was also appended alongwith aforesaid report. The Superintendent of Police on the basis of above, came to the conclusion that appellant is a man of criminal antecedents against whom Case Crime No. 373 of 2018 under Section 2/3 of the U.P. Gangster and Anti Social Activities (Prevention) Act, 1986, P.S.

Chhaprauli, District-Baghpat has also been registered. Appellant was further alleged to have committed offences punishable under Chapters 16, 17 and 22 of the Code i.e. IPC. On the above conspectus, the Superintendent of Police, Baghpat thus concluded that aforementioned immovable property of appellant i.e. house mentioned above be attached.

13. Suddenly, an order dated 08.11.2021 came to be passed whereby the disputed house belonging to appellant was attached as provided in Section 14 (1) of the Act of 1986. Accordingly, the Sub-Divisional Magistrate, Baghpat was appointed as Administrator of the attached property.

14. Thus feeling aggrieved by the above order dated 08.11.2021/ resulting in the attachment of house in dispute, the appellant filed his representation before the District Magistrate, Baghpat in terms of Section 15 (1) of the Act of 1986, The same was registered as Case No. 932 of 2021 (State Vs. Pradeep) under Section 14 (1) of the Act, 1986. The representation filed by appellant did not find favour with the District, Magistrate, Baghpat. He came to the conclusion that the explanation offered by appellant qua his innocence/ exclusion from the provisions of the Act of 1986 is unworthy of acceptance. Accordingly, the District Magistrate, Baghpat rejected the representation filed by appellant vide order dated 11.11.2021.

15. The District Magistrate, Baghpat in line with the scheme of the Act of 1986, accordingly made a reference to the Court concerned in terms of Section 16 (1) of the Act of 1986. The same was registered as Criminal Misc. Case No. 9 of 2023 (State Vs. Pradeep). The reference court i.e. Additional Sessions Judge/F.T.C.-1/Special Judge (Gangster Act), Baghpat upon

perusal of record and evaluation of the grounds raised on behalf of appellant in the light of material on record, came to the conclusion that no good ground has been made out to set aside the orders dated 11.11.2021 and 08.11.2021. Accordingly, aforementioned misc. case came to be rejected by the reference court i.e. Additional Sessions Judge/F.T.C. Court no.1/Special Judge (Gangster Act), Baghpat vide order dated 18.09.2024.

16. Thus feeling aggrieved by the above orders dated 18.09.2024 and 11.11.2021, appellant has now approached this court by means of present appeal under Section 18 (1) of the Act of 1986.

17. Mr. Anoop Trivedi, the learned senior counsel for appellant in challenge to the orders impugned in present appeal contends that the same are not only illegal and in excess of jurisdiction but also arbitrary. The same have been passed de-hors the provisions of the Act of 1986, as well as in violation of the Principles of Natural Justice. No enquiry was conducted to ascertain the opinion expressed by the Superintendent of Police, Baghpat in his report or the veracity of the facts stated in the said report. In the absence of any fact finding enquiry regarding the allegations made against appellant as manifest in the report of the Superintendent of Police, Baghpat by fixing the day, date and time of enquiry or otherwise and after extending notice and opportunity of hearing to appellant. As such, no attempt was made to verify the truthfulness of the facts stated on the same or the fact that the property in dispute was purchased after the proceedings under the Gangster Act were initiated against appellant or prior to that. As such, no subjective satisfaction was recorded by the District Magistrate, Baghpat while passing the order impugned dated 11.11.2021. He further submits that Similarly the Court while exercising jurisdiction under Section 16 of the Act of 1986 is mandatorily required to

conduct an enquiry as per the mandate of Section 16 (3) of the Act of 1986 but the said procedure was given a complete go-by, which renders the order of the reference court to be illegal and arbitrary. In support of above submissions, he has referred to Section 14 (1) of the Act of 1986 with reference to the phrase "reason to believe" occurring therein and extensively relied upon the judgement of this Court in **Criminal Appeal No. 2179 of 2023 (Mahfooz Akhtar Vs. State of U.P.) decided on 12.02.2024**. On the edifice of aforesaid submissions, the learned senior counsel contends that the present appeal is liable to be allowed.

18. Elaborating his submissions, the learned senior counsel for appellant, first invited the attention of Court to Sections 2 (b) and 2 (c) of the Act of 1986, wherein the words Gang and Gangster have been defined. For ready reference the same are reproduced herein under:

"2(b). "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-

.....

.....

2(c). "gangster" means a member or leader or organiser of a gang and includes any person who abets or assists in the activities of a gang enumerated in clause (b), whether before or after the commission of such activities or harbours any person who has indulged in such activities;"

19. The import of aforesaid sections has been analytically dealt with in paragraph 12 of the judgment in **Mahfooz Akhtar (Supra)** and there being no scope to improve upon the same, therefore the same is relied upon by this Court. Accordingly, the same is extracted herein under:

" 12. On a conjoint reading of Section 2(b) and 2(c) of the Act, it appears that for taking action under Section 14 of the Act against a person, there must be material for objective determination of the District Magistrate that he either, as a member, leader or organiser of a gang acquired any property as a result of commission of any offence under the Act. There must be nexus between his criminal act and the property acquired by him. His mere involvement in any offence is not sufficient to attach his property, as it is necessary to find out whether his acquisition of property was a result of commission of any offence enumerated in the Act being a gangster. Further, one might have committed several offences but if the property is acquired by him with the aid of his earning from legal source, no action under Section 14 of the Act can be taken against him."

20. Learned Senior counsel for appellant has then taken the Court to Section 14 of Act, 1986, which provides for attachment. For ready reference, the same is reproduced herein-below:

"14. Attachment of property.- (1) If the District Magistrate has reason to believe that any property, whether movable or immovable, in possession of any person has been acquired by a gangster as a result of the commission of an offence triable under this Act, he may order attachment of such property whether or not cognizance of such offence has been taken by any Court.

(2) The provisions of the Code shall mutatis mutandis apply to every such attachment.

(3) Notwithstanding the provisions of the Code the District Magistrate may appoint an Administrator of any property attached under sub-section (1) and the Administrator shall have all the powers to administer such property in the best interest thereof.

(4) The District Magistrate may provide police help to the Administrator for proper and effective administration of such property."

21. The ambit, scope and object of Section 14 of the Act, 1986 has been dealt with in paragraphs 14 and 15 of the judgement of this

Court in **Mahfooz Akhatar (Supra)** which also does not require any further elaboration or clarification. The same reads as under:-

" 14. This Court had an opportunity to go through the various judgments of this Court viz. Smt. Rashida Bano vs. State of U.P. and others, 2014 6 ADJ 575, Badan Singh @ Baddo vs. State of U.P. and others, (2001)10 AHC CK 0033, Smt. Maina Devi vs. State of U.P., 2013 9 ADJ 542, Waseem Khan vs. State of U.P., 2023 LawSuit (All)751 and Criminal Appeal No. 2130 of 2021 (Abrar vs. State of U.P. and another), decided on 23.10.2021 propounding legal dictum on the subject and a co-joint reading of the same leads to draw a conclusion that Section 14 clearly provides that the order of the District Magistrate attaching one's property, must be based on reason and not arbitrary. The expression "reason to believe" appearing therein has some intent and purpose. It puts fetter in the arbitrary exercise of power of attachment to deny a person of his right to any property. Law requires that there must be reason to believe that the property sought to be attached, has been acquired by a 'gangster' as a result of commission of any offence under the Act. The expression "reason to believe" contemplates an objective determination based on intelligent care and deliberation involving judicial review, as distinguished from purely subjective consideration. There must be rational and intelligible nexus between 'reason' and 'belief'. The word 'believe' is a much stronger word than 'suspect' and it involves the necessity of showing that the circumstances were such that a prudent man must have felt convinced in his mind that what has been alleged, is true. The expression "reason to believe" is also defined in Section 26 of the Indian Penal Code. According to the said definition, a person is said to have 'reason to believe' a thing, if he has sufficient cause to believe that thing but not otherwise. "Reason to believe" is not the same thing as the 'suspicion' or 'doubt' and mere seeing also cannot be equated to believing. "Reason to believe" is a higher level of state of mind. The Court, of course, cannot investigate into the adequacy or sufficiency of the reasons examined by the authority in coming to the believe, but the Court can certainly examine whether the reasons are relevant and have a bearing in the matter in regard to which it is required to entertain the belief.

15. To add further, it is to be kept in mind that initial burden is always upon the State to satisfy the Joint Police Commissioner with necessary materials

that the appellant being a gangster acquired the vehicles as a result of commission of any offence mentioned in Section 2 of the Act. So far as the present case is concerned, the State has utterly failed to do so. It is also to be kept in mind that the appellant / aggrieved is not liable to establish the source of income to acquire the properties in question. It is no requirement of law that the aggrieved person seeking release of properties from attachment must prove the source of income for acquisition thereof. There must be a nexus between the commission of any offence and the acquisition of the property. It reflects from the perusal of the impugned order passed by the Joint Police Commissioner concerned that he being influenced by the report of the police, hastened to exercise power under the Act and attached the vehicles in question in absence of any material to show that the said vehicles were acquired as a result of commission of any offence triable under the Act."

22. Learned senior counsel for appellant has further taken the Court to Section 16 of the Act of 1986, which relates to the procedure to be adopted by Court while deciding an application or reference. Accordingly Section 16 of the Act of 1986 is reproduced herein-below:-

" 16. Inquiry into the character of acquisition of property by court

1. Where no representation is made within the period specified in sub-section (1) of Section 15 or the District Magistrate does not release the property under sub-section (2) of Section 15 he shall refer the matter with his report to the Court having jurisdiction to try an offence under this Act.

2.. Where the District Magistrate has refused to attach any property under sub-section (1) of Section 14 or has ordered for release of any property under sub-section (2) of Section 15, the State Government or any person aggrieved by such refusal or release may make an application to the Court referred to in sub-section (1) for inquiry as to whether the property was acquired by or as a result of the commission of an offence triable under this Act. Such court may, if it considers necessary or expedient in the interest of justice so to do, order attachment of such property.

3. (a) On receipt of the reference under sub-section (1) or an application

under sub-section (2), the Court shall fix a date for inquiry and give notices thereof to the person making the application under sub-section (2) or, as the case may be, to the person making the representation under Section 15 and to the State Government, and also to any other person whose interest appears to be involved in the case.

(b) On the date so fixed or on any subsequent date to which the inquiry may be adjourned, the Court shall hear the parties, receive evidence produced by them, take such further evidence as it considers necessary, decide whether the property was acquired by a gangster as a result of the commission of an offence triable under this Act and shall pass such order under Section 17 as may be just and necessary in the circumstances of the case.

4. For the purpose of inquiry under sub-section (3), the Court shall have the power of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Act No. V of 1908), in respect of the following matters, namely:

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commission for examination of witnesses or documents;(f) dismissing a reference for default or deciding it ex parte;

(g)setting aside an order of dismissal for default or ex parte decision.

5. In any proceedings under this section, the burden of proving that the property in question or any part thereof was not acquired by a gangster as a result of the commission of any offence triable under this Act, shall be on the person claiming the property, anything to the contrary contained in the Indian Evidence Act, 1872 (Act No. 1 of 1872), notwithstanding."

23. The ambit, scope and object of Section 16 (3) and (5) of the Act of 1986 have been dealt with by this Court with great industry

and diligence in paragraphs 18 and 19 of the judgement in **Mahfooz Akhatar (Supra)**. The same are accordingly reproduced herein-under:

"18. While dealing with the reference made under sub-section (1) of Section 16 of the Act the Court has to see whether the property was acquired by a gangster as a result of commission of an offence triable under the Act and has to enter into the question and record his own finding on the basis of the inquiry held by him under section 16 of the Act. In the present case the appellant has shown before the Court concerned that the movable properties in question were not an outcome of any of his illegal activities and disclosed the source of money whereby he purchased the aforesaid vehicles. For purchase of vehicle Toyota Fortuner Car No. UP-78-DA-0033 in the year 2016, he arranged money from the income of his business and from the loan of Rs. 7,00,000/- from Kotak Mahindra Prime Limited and repaid the same by way of EMI for Rs. 24,700/-. When the first owner of the said vehicle became defaulter to repay the loan instalment to the Bank, the Kotak Mahindra Prime Limited repossessed the said vehicle as per the terms and conditions of hypothecation agreement and after completing formalities, adopted process for resale of the same and thereafter the appellant purchased the same from the company on 4.1.2016. For purchase of the second vehicle i.e. Maruti Baleno Delta Car No. UP-78-FK-3033 he paid Rs. 3,19,354/- from his Bank account and took loan of Rs. 4,04,500/- from the Kotak Mahindra Prime Limited and repaid the same by way of EMI of Rs. 12,950/-. During pendency of the aforesaid loan in respect of Maruti Baleno Car, the appellant again took additional top-up loan of Rs. 3,20,000/- and EMI of the said loan was Rs. 16,680/-. He had also filed income tax return showing his income in the Assessment Years 2016-17, 2017-18, 2018-19, 2019-20 and 2020-21. The relevant documents i.e. copy of loan account statement, copy of defaulter letter, copy of agreement in regard to Toyota Fortuner Car, a copy of balance sheet of the appellant's firm, a copy of agreement in regard to Maruti Baleno Delta Car and a copy of balance sheet of appellant's firm have been furnished as Annexures SA-1, SA-2, SA-3, SA-4, SA-5 and SA-6 on record. In the impugned order, the Court concerned while dealing with the matter has observed that as per the papers available on record regarding finance of the

said vehicles from Kotak Mahindra Finance Company, it reveals that only partial value of the actual purchase price of the said vehicles is shown to be financed. From the perusal of the record it reveals that the appellant was the proprietor of M/s Crown International, which is a leather firm, since 2005. He had filed income tax return showing his income since the Assessment Years 2016-17 to 2020-21. He also filed loan papers for both the properties and statements of account showing the debit of EMI against the loan amount. Hence, the finding given by the Court concerned that the appellant has shown only partial value of the actual purchase price of the said vehicles is not correct. The appellant managed to purchase the said vehicles from the earning of his Firm and also by loan.

19. Though it is settled that the appellant / aggrieved is not obliged to furnish the source of income to acquire the property in question and there must be a nexus between the commission of any offence and the acquisition of the property but in the case in hand the appellant has shown the source of his income as well for the total value of the vehicles in question. Since in the present matter the vehicles in question were acquired in the years 2016 and 2018 and he was declared gangster in the year 2021 and barring one case the prosecution launched against him failed, there was no cogent evidence before the Court concerned or the Joint Police Commissioner that the properties were acquired by him as a member, leader or organiser of a gang as a result of commission of any offence under the Act. The impugned orders passed by the Court concerned and the Joint Police Commissioner fail to show any nexus between his criminal act and the vehicles acquired by him. "

24. Having outlined the scheme of the Act of 1986 with reference to the relevant provisions as noted above and the meaning as well as purpose assigned to them by judicial pronouncement, the learned senior counsel for appellant contends that the first and foremost question, which arises for determination in present appeal is " Whether the order of the District Magistrate, Baghpat is in consonance with the term" "reason to believe" occurring in Section 14 (1) of the Act of 1986. The second question which also requires for consideration by this Court is "Whether the reference court

before passing the order dated 18.09.2024 conducted an enquiry in accordance with the mandate of Section 16 (3) of the Act of 1986, if not, the effect of the same.

25. The first question is taken first. According to the learned senior counsel for appellant the District Magistrate is empowered to attach the property of an accused by virtue of the provisions contained in Section 14 of the Act of 1986. However the said power is not absolute but subject to restriction contained in the section itself i.e. "reason to believe". The aforesaid description occurring in the section restricts the power of District Magistrate to attach the property of an accused. Consequently, the District Magistrate is required to return a finding that the disputed property was acquired by an accused as a result of the commission of an offence triable under the Act. When the order impugned dated 18.09.2024 passed by the District Magistrate is examined in the light of the observations made by Court in the judgement relating to the case of **Mahfooz Akhtar (Supra)** what is apparent is that the District Magistrate, Baghpat has rejected the representation of appellant not by recording the finding as required under law i.e in line with the description "reason to believe" but on the findings that no such evidence has been adduced on behalf of appellant which is worthy of being read in evidence, no disclosure has been made regarding source of income, neither any evidence in respect of same has been produced nor any argument has been raised, as per the police report and the arguments raised on behalf of the prosecution it is apparent that appellant is having criminal history since the year 1993, the wife of appellant is also having criminal history, appellant alongwith his two sons is undergoing incarceration on account of murder of the brother of appellant by them, the police report is categorical and alongwith the police

report copies of the F.I.R. of criminal cases pending against appellant have also been appended, as per the valuation report submitted by the Executive Engineer, P.W.D., Baghpat, copy of the same has been appended alongwith the police report, the estimated value of the property in dispute is Rs. 14.77 Lakhs.

26. The said findings do not answer the requirement of law that the disputed property was acquired by appellant as a result of an offence triable under this Act inasmuch as there is nothing in the order of the District Magistrate to show that the disputed property stood acquired by appellant on account of an offence triable under this Act. In view of above, the order passed by the District Magistrate, Baghpat cannot be sustained.

27. So far as second question is concerned, the court finds that by reason of the provisions contained in Section 16 (3) of the Act of 1986, the court was required to conduct an enquiry with regard to the explanation offered by the accused/appellant to the effect that the property in dispute was not acquired by accused/appellant as a result of the commission of an offence triable under the Act of 1986.

28. According to the learned senior counsel, the provisions contained in Section 16 (3) of the Act of 1986 are both purposive and mandatory. The purposive intent of the Section manifests the principle of natural justice that an accused/appellant is offered notice and opportunity of hearing to enable him to establish his defence that the disputed property was not acquired by accused on account of commission of an offence triable under the Act of 1986. Since the aforesaid provisions are also mandatory inasmuch as the court is necessarily required to conduct an enquiry before delivering its judgement, therefore, the same could not be by-

passed by court below on any ground whatsoever.

29. Referring to the judgement of the Privy Council in **Nazir Ahmed Vs. King Emperor, 1936 SCC OnLine PC 41**, the learned senior counsel for appellant submits that the Privy Council has observed in aforementioned report that a thing, which is required to be done in a particular manner, can be done in that manner alone or not at all. For ready reference, the relevant portion of the aforementioned judgement is reproduced herein-under:

".....The rule which applies is a different and not less well recognised rule, namely, that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden....."

30. On the above premise, the learned senior counsel submits that court below has failed to exercise the jurisdiction vested in it. Contrary to the mandate of law as expressed in Section 16 (3) of the Act of 1986, court below has decided the reference without conducting an enquiry in the matter. As such, court has passed the impugned order not in diligent exercise of jurisdiction but in a casual and cavalier fashion.

31. On the above conspectus, the learned senior counsel thus concludes that orders impugned in present appeal cannot be sustained and are therefore liable to be set aside by this Court.

32. Per contra, the learned A.G.A.. representing State-opposite party-1 has vehemently opposed the present appeal. He submits that court below as well as the District Magistrate have recorded clear and categorical findings on the basis of which it is apparent that appellant failed to establish the mode of acquisition and the construction of the property in dispute. Learned A.G.A. thus contends that no interference is warranted by this Court in present

appeal. However, the learned A.G.A. could not deny the fact that no finding has been returned by the District Magistrate, Baghpat in the order dated 11.11.2022 to the effect that the property in dispute was acquired by the accused/appellant as a result of the commission of an offence triable under this Act. Learned A.G.A. also could not dispute the fact that no enquiry was conducted by the court below before deciding the reference vide order dated 19.08.2024 inasmuch as no finding to this effect has been recorded in the order dated 18.09.2024.

33. Having heard the learned senior counsel for appellant, the learned A.G.A. for State-opposite party-1, upon perusal of record and the submissions urged by the learned senior counsel for appellant, it is apparent that though various findings have been recorded by the District Magistrate, Baghpat in the order dated 11.11.2022 but for the necessary finding that the property in dispute was acquired/constructed by accused/appellant as a result of commission of an offence triable under this Act. As such, the observations made by Court in paragraph 12 of the report in the case of **Mahfooz Ahamd (Supra)** stand squarely attracted. Similarly there is no finding in the order dated 18.09.2024 passed by court below rejecting the reference to the effect that an enquiry as envisaged under Section 16 (3) of the Act of 1986 was conducted before passing the order dated 18.09.2024. Since the procedure adopted by the court below in passing the order impugned dated 18.09.2024 is itself not in-consonance with the law, therefore, there is no necessity to deal with the merits of the claim of accused/appellant.

34. In view of the discussions made above, the present appeal succeeds and is liable to be allowed.

35. It is accordingly allowed.

36. The impugned order dated 11.11.2022 passed by the District Magistrate, Baghpat in Case No. 932 of 2021 (State Vs. Pradeep) under Section 14 (1) of the of 1986 and the order dated 18.09.2024 passed by Additional Sessions Judge/ F.T.C., Court No.1/ Special Judge (Gangster Act), Baghpat in Criminal Misc. Case No. 09 of 2023 (Pradeep Vs. State of U.P.) under Section 16 (1) of the Act of 1986 are hereby set aside.

37. The matter shall stand remitted to the District Magistrate, Baghpat for deciding the matter afresh in the light of observations made in the body of this judgement as well as in the Case of **Mahfooz Ahmad (Supra)**.

38. It shall be open to the accused/appellant to file a fresh list of documents in respect of his defence before the District Magistrate, Baghpat as well as the reference court.

39. The District Magistrate, Baghpat shall pass the consequential order preferably within a period of one month from the date of production of a certified copy of this order.

40. Considering the facts and circumstances of the case, there shall be no order as to costs.

Order Date :- 27.5.2025

YK