

[1]

RESERVED ON 6.7.2021

DELIVERED ON 7.7.2021

Case :- MISC. SINGLE No. - 5160 of 2021

Petitioner :- Sakeel @ Mohd. Shakeel Khan

Respondent :- Commissioner, Devipatan Mandal, Gonda & Ors.

Counsel for Petitioner :- Pawan Kumar Mishra

Counsel for Respondent :- G.A.

Hon'ble Karunesh Singh Pawar,J.

1. Heard Sri Pawan Kumar Mishra, learned counsel for the petitioner and learned Additional Government Advocate for the respondents State.

2. The instant writ petition has been preferred for quashing of the impugned order dated 11.2.2021 passed by opposite party no.1 i.e. learned Commissioner Devi Patan Mandal, Gonda in Appeal/Case No.00803 of 2020 under Section 6(1) of the U.P. Control of Goondas Act, 1970 (hereinafter referred to as "1970 Act") as well as order dated 3.12.2020 passed by the opposite party no.2 i.e. District Magistrate Shrawasti in Case No.0037 of 2020, Police Station Malipur, District Shrawasti, by which order of district externment for six months has been passed, copies of the same has been annexed as Annexure Nos.1 and 2 to the writ petition respectively.

3. Learned counsel for the petitioner submits that initially on the basis of some report dated 30.6.2020 submitted by the Superintendent of Police, Shrawasti, the District Magistrate, Shrawasti/opposite party no.2 has issued a notice dated 5.9.2020 under Section 3(1) of 1970 Act on the basis of solitary criminal case, as is evident from the notice itself, against the petitioner vide Case Crime No. 297 of 2019 under Sections 354, 341 Indian Penal Code, Police Station Malhipur,

[2]

District Shrawasti. The petitioner has appeared and submitted his reply dated 19.10.2020 to the District Magistrate, Shrawasti.

4. It is submitted that in the solitary criminal case against the petitioner mentioned above, the petitioner is on bail. He further submits that in the aforesaid criminal case, he has falsely been implicated. The petitioner is accused in only one case, therefore, he cannot be said to be habitual offender.

5. Learned counsel for the petitioner has further submitted that under influence of some political enemy of the petitioner on account of some extraneous consideration, the Halka Sipahi has prepared beat dated 26.07.2020.

6. It has been submitted by learned counsel for the petitioner that feeling aggrieved with the order dated 3.12.2020 the petitioner immediately filed an appeal under Section 6 of the 1970 Act on 18.12.2020 before opposite party no.1 i.e. Commissioner Devi Patan Mandal, Gonda. Commissioner Devi Patan Mandal Gonda has rejected the appeal of the petitioner vide impugned order dated 11.2.2021 on the ground that the petitioner is involved in two criminal cases.

7. Learned counsel for the petitioner next contended that the impugned order has been passed without application of mind and without considering the relevant provision of Section 2(b) of the 1970 Act which defines the term 'Goonda'. He submits that the petitioner is neither a Gang Leader nor member of any gang.

8. Learned counsel for the petitioner to support his contention made hereinabove, has relied upon a judgement dated 3.5.2018 passed by Division Bench of this Court in Writ Petition No.11098 of 2018, Atif Adnan vs. D.M.Faizabad and others.

9. Learned Additional Government Advocate though has opposed the prayer however could not dispute the settled legal position.

10. I have considered the submissions made by learned counsel for the parties.

11. 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 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

(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

[4]

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;]

[5]

(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."

12. The Apex Court in the case of **Vijay Narain Singh versus State of Bihar and others : (1984) 3 SCC 14** has been pleased to hold that it is essential to refer to at least two incidents of commission of crime for applicability of Clause (i) of section 2(b) of the 1970 Act. Since there is reference of one incident only in the notice, it falls short of the legal requirement as provided in Clause (i) of section 2(b) of the 1970 Act.

13. As per the definition and the law settled by this Court as well by the Hon'ble Apex Court, one cannot be treated to be a habitual offender unless and until there is recurrence of offences. Since there is a reference of one stray incident only in the notice, the petitioner could not be deemed to be a habitual offender on the basis of that single incident only and so the notice fails to satisfy the legal requirement.

14. In view of the above impugned order lacks merits and is liable to be quashed.

15. Accordingly, the writ petition is **allowed**.

16. The impugned order dated 11.2.2021 passed by opposite party no.1 i.e. learned Commissioner Devi Patan Mandal, Gonda in Appeal/ Case No.00803 of 2020 under Section 6(1) of the U.P. Control of Goondas Act, 1970 (hereinafter referred to as "1970 Act") as well as order dated 3.12.2020 passed by the opposite party no.2 i.e. District

[6]

Magistrate Shrawasti in Case No.0037 of 2020, Police Station Malipur, District Shrawasti, are hereby quashed.

However, it is observed that the quashing of the show cause notice does not preclude the authorities from taking action in accordance with law, if there is sufficient material against the petitioner, in the light of the observations made herein above.

17. No order as to costs.

Order Date :- 7.7.2021

Madhu