

Neutral Citation No. - 2023:AHC-LKO:33213

Reserved on 13.04.2023

Delivered on 10.05.2023

AFR

Court No. - 14

Case :- CRIMINAL APPEAL No. - 203 of 2023

Appellant :- Waseem Khan

**Respondent :- State Of U.P. Thru. Prin. Secy. Nyay Lko. And
Another**

Counsel for Appellant :- Sushil Kumar Misra, Vishal Nigam

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed, J.

1. Pleadings in the case have been exchanged between the parties.
2. Heard Shri Sushil Kumar Misra, learned counsel for the appellant, Mrs. Kiran Singh, learned Additional Government Advocate-1 for the State and perused the material available on record.
3. The present appeal under Section 18 of U.P. Gangster and Anti Social (Prevention of Activities) Act, 1986 (hereinafter referred to as the '**Gangster Act**') has been preferred by the appellant, namely, Waseem Khan with a prayer to quash the judgment and order dated 13.4.2022 passed by the District Magistrate, Lucknow/opposite party no.2 in Case No. 2850 of 2021 Computerized Case No. D202110460002850 (State Vs. Waseem Khan) under section 14(1) of the Gangster Act , whereby the District Magistrate, Lucknow attached the following property of the appellant including a new house situated in village Tirgawan, Tehsil Malihabad, District Lucknow with the finding that the appellant has purchased the house in question and land (immovable property) between 2012 to 2021 from the income earned by involving in anti social activities and the appellant has purchased the following properties

without taking loan whereas the appellant has purchased the Scorpio and Pulsar Motor Cycle by taking loan.

| क्रमांक | राजस्व ग्राम का नाम | खतौनी खाता संख्या | गाटा संख्या | गाटे का कुल रकबा हेक्टेयर में | अन्य | विवरण | विवरण |
|---------|---------------------|-------------------|-------------|-------------------------------|--------------|--------------------------|-------|
| | | | | | गाटे में अंश | अंश का क्षेत्रफल हे० में | |
| 1. | 2. | 3. | 4. | 5. | 6. | 7. | 8. |
| 1. | तिरगवां | 61 | 152 | 0.278 | ½ | 0.139 | |
| 2. | तिरगवां | 105 | 87 | 0.402 | ½ | 0.201 | |
| 3. | अहमदाबाद | 30 | 438 | 1.044 | 1/18 | 0.058 | |
| 4. | अहमदाबाद | 43 | 623 | 0.262 | 1/18 | 0.015 | |
| 5. | अहमदाबाद | 44 | 625 | 0.435 | 1/18 | 0.024 | |
| 6. | अहमदाबाद | 45 | 623 | 0.262 | 1/18 | 0.015 | |
| | योग | 6 खाता | 6 कित्ता | 2.682 | | 0.452 | |

4. The appellant has also prayed for quashing of the impugned judgment and order dated 5.1.2023 passed by the Additional District and Sessions Judge, Court No. 08/Special Judge, Gangster Act, Lucknow in Criminal Appeal No. 84 of 2022, Waseem Khan Vs. State of Uttar Pradesh and another, whereby the appellate court dismissed the appeal and decided the Criminal Misc. Case No. 735 of 2022 finally and confirmed the impugned order dated 13.04.2022 passed by the District Magistrate, Lucknow.

5. In short, the facts of the case are that initially, more than ten years ago, a First Information Report dated 15.08.2012 was lodged by one Shri Suleman Beg son of Sikandar Beg, resident of village Daulatpur Malihabad, District Lucknow, which was registered as case crime no. 342 of 2012 under sections 147,307,325,504,506 IPC against six persons including the appellant alleging therein that a construction work

was being done by the appellant on government land and being Village Pradhan, Suleman Beg restrained the appellant from constructing him the same. Thereafter First Information Reports were lodged against the appellant bearing case crime no. 535 of 2017 under sections 147,148,452,504,506 IPC and case crime no. 81 of 2019, under sections 406,323,506 IPC and case crime no. 551 of 2019 under sections 420,468,471,506,120-B IPC and case crime no. 24 of 2019 under sections 419,420,467,468,471 IPC and case crime no. 173 of 2021 under section 2/3 U.P. Gangster Act.

6. Learned counsel for the appellant submits that the appellant has been implicated in the aforesaid cases due to enmity and the case under the Gangster Act was imposed upon the appellant in the year 2021 whereas the property of the appellant which was attached vide order dated 13.4.2022 passed by the District Magistrate, Lucknow under section 14 (1) of U.P. Gangster Act, was acquired by the appellant much earlier to the imposition of Gangster Act upon him being ancestral property.

7. Elaborating the submissions, learned counsel for the appellant has submitted that the attached property, the reference of which is given above, was in fact ancestral property of the appellant.

8. Learned Counsel of the appellant further submitted that in furtherance of the FIR bearing Case Crime No. 173/2021 under section 2/3 U.P. Gangster Act, the District Magistrate, Lucknow-opposite party no.2 proceeded to exercise its power under Section 14(1) of the Gangster Act and passed an order for attaching the properties of the appellant on 13.4.2022.

9. Being aggrieved by the aforesaid attachment order dated 13.04.2022 passed by District Magistrate, Lucknow-opposite party no.2, representation dated 14.9.2021 was preferred by the appellant before opposite party no.2 under Section 15 (1) of the Gangster Act seeking

release of the appellant's properties from attachment. However, the aforesaid representation was dismissed in a cursory manner by the District Magistrate, Lucknow/opposite party no.2 vide order dated 13.04.2022. While passing the impugned order dated 13.4.2022 the District Magistrate, Lucknow/opposite party no.2 referred the case to the learned Gangsters Court under Section 16 (1) of the Gangster Act in respect of properties which were not released by him; and, the learned Gangsters Court, thereafter, proceeded to pass the impugned order dated 05.01.2023 in exercise of its powers under Section 17 of the Gangster Act.

10. Learned counsel for the appellant further submitted that the District Magistrate, Lucknow/opposite party no. 2 has wrongly and incorrectly attached the immovable property and the house of the appellant on the wrong presumption that the said properties have been acquired from the income earned by the appellant by involving in anti social activities, whereas the appellant is neither Gangster nor he has earned these properties from involving in anti social activities.

11. Clarifying the position, it has been urged by the learned counsel for the appellant that as a matter of fact the appellant was doing business at Mumbai from 1997 to 2008 and used to send the money to his parents and from that money as well as the income of his father, a house was constructed of which electrical energy connection was taken in the year 1998. In the year 2008, he came back from Mumbai and apart from looking after the agriculture and groves farms he started selling building material shop in the name and style "M/s Hira Traders" from where he was selling Morang, Sariya, Sand and Cement and for running this business, he had obtained Tin Number and used to give income tax. It has also been submitted that a tax raid was also conducted at his business establishment. It has also been indicated that land of Khata No. 447, Gata No. 95 area 0.062 acres situated in village Moazzamnagar is recorded in the name of his father which even today is recorded in his

name. The land of other gatas is his ancestral property and are recorded in the name of his father and not in his name. It has also been submitted by the learned counsel for the appellant that the house in question was constructed in village Tirgawan by the appellant in the year 1999 on the abadi land from the income earned by the business run by himself before imposition of Gangster Act upon him. In this regard, the appellant has submitted voter list of the year 1999 before court below and also the copies of receipts of electricity connection of the House taken on 31.7.1999 issued by Uttar Pradesh State Electricity Corporation bearing no. 551075/97/GSPL, Receipt No. 43 of Rs. 600/-, electricity bill of Rs. 10244/- of the house of November, 2002 issued by the Uttar Pradesh Corporation Limited and telephone bills of the house of dated 11.7.2003 of Rs. 442/-, 11.5.2003 of Rs. 115/-, 11.3.2003 of Rs. 153/-, 11.01.2003 of Rs. 115/-, 11.09.2002 of Rs. 290/-, 11.07.2002 of Rs. 230/-, 11.5.2002 of Rs. 155/- and Annual Tax Statement under section 203AA of the Income Tax Act. 1961 of the Assessment Year 2009-10 of his House. The copies of receipts of the same are annexed as Annexure no.3 to this appeal. The aforesaid receipts fortify the fact that the appellant had purchased/constructed his house much earlier even when no criminal case was registered against him and even before imposing the Gangster Act upon him. However, the concerned authorities without considering all these relevant facts and documentary evidence, passed the impugned orders on wrong premise with oblique motive.

12. Learned counsel for the appellant further submitted that the learned trial court while passing the impugned order dated 13.04.2022, without properly perusing the contents of application and documents annexed with the release application has wrongly and incorrectly rejected the same by presuming that the property in question has been acquired by the appellant from the income earned by indulging in anti social activities without going through documentary evidence filed on behalf of appellant and wrongly interpreting that appellant has not filed

any document to prove that the property in question has not been acquired from the income earned by indulging in anti social activities. Thus the trial court erred in law while rejecting the application of appellant for release of property in question. The learned counsel submits that the appellant had given the complete detail of the immovable property including the house which has been attached vide order dated 13.4.2022 by the District Magistrate, Lucknow.

13. Learned counsel for the appellant further submits that the impugned order dated 13.4.2022 passed by the District Magistrate, Lucknow does not reveal that the District Magistrate, Lucknow had “*reason of believe*” that the property in question was acquired by the appellant as a commission of an offence under the Gangster Act rather the aforesaid order is passed on mere suspicion, surmises and conjectures and the appellate court has also passed the order dated 5.1.2023 in cursory manner without analysing the documents of the appellant. Thus both the impugned orders are not sustainable in the eye of law.

14. Per contra, Mrs. Kiran Singh, learned AGA-1, has argued that the learned appellate court has correctly appreciated the material on record before passing the impugned order. The District Magistrate, Lucknow has passed the impugned order dated 13.04.2022 after being fully satisfied that appellant has acquired the property in question by illegal means involving himself in anti social activities as defined under the Gangster Act, as such there is no illegality, infirmity or perversity in the impugned orders. Moreover, the competent authority has passed the order after considering the report of the Superintendent of Police (Rural Area) as also the report of Station House Officer, Mall and as such it is wrong to say that the impugned order of attachment passed by the competent authority suffers from infirmities.

15. Learned AGA-1 has further submitted that the learned trial court pointed out that the appellant was also not able to show the source of

income from which the appellant has acquired the properties attached by the learned District Magistrate, Lucknow. The learned trial court also pointed out that when the vehicle of the appellant i.e., Scorpio Car and Pulsar Motorcycle were purchased by the appellant on loan then from what source of income has the appellant purchased the land without loan, which was seized by the District Magistrate. Thus the learned courts below after considering the entire material including the documentary evidence available on record have passed the impugned orders in correct perspectives and they need no interference.

16. I have heard learned counsel for the appellant, learned AGA-1 for the opposite parties and gone through the impugned orders passed by the courts below.

17. It seems to be just and expedient to refer to the relevant provisions of the Gangster Act which are as under :-

“2. Definitions- *In this Act,- (a) "Code" means the Code of Criminal Procedure, 1973;*

(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-

(i) offences punishable under Chapter XVI, or Chapter XVII, or Chapter XXII of the Indian Penal Code, or (ii) distilling or manufacturing or storing or transporting or importing or exporting or selling or distributing any liquor, or intoxicating or dangerous drugs, or other intoxicants or narcotics or cultivating any plant, in contravention of any of the provisions of the U.P. Excise Act, 1910 or the Narcotic Drugs and Psychotropic Substances Act, 1985 or any other law for the time being in force, or

(iii) occupying or taking possession of immovable property otherwise than in accordance with law, or setting-up false claims, for title or possession of immovable property whether in himself or any other person, or

(iv) preventing or attempting to prevent any public servant or any witness from discharging his lawful duties, or

(v) offences punishable under the Suppression of Immoral Traffic in Women and Girls Act, 1956, or

(vi) offences punishable under Section 3 of the Public Gambling Act, 1867, or

(vii) preventing any person from offering bids in auction lawfully conducted, or tender, lawfully invited, by or on behalf of any Government department, local body or public or private undertaking, for any lease or rights or supply of goods or work to be done, or

(viii) preventing or disturbing the smooth running by any person of his lawful business, profession, trade or employment or any other lawful activity connected therewith, or

(ix) offences punishable under Section 171-E of the Indian Penal Code, or in preventing or obstructing any public election being lawfully held, by physically preventing the voter from exercising his electoral rights, or

(x) inciting others to resort to violence to disturb communal harmony, or

(xi) creating panic, alarm or terror in public, or

(xii) terrorising or assaulting employees or owners or occupiers of public or private undertakings or factories and causing mischief in respect of their properties, or

(xiii) inducing or attempting to induce any person to go to foreign countries on false representation that any employment, trade or profession shall be provided to him in such foreign country, or

(xiv) kidnapping or abducting any person with intent to extort ransom, or (xv) diverting or otherwise preventing any aircraft or public transport vehicle from following its scheduled course;

**(xvi) offences punishable under the Regulation of Money Lending Act, 1976;*

(xvii) illegally transporting and/or smuggling of cattle and indulging in acts in contravention of the provisions in the Prevention of Cow Slaughter Act,

1955 and the Prevention of Cruelty to Animals Act, 1960;

(xviii) human trafficking for purposes of commercial exploitation, bonded labour, child labour, sexual exploitation, organ removing and trafficking, beggary and the like activities; (xix) offences punishable under the Unlawful Activities (Prevention) Act, 1966;

(xx) printing, transporting and circulating of fake Indian currency notes;

(xxi) involving in production, sale and distribution of spurious drugs;

(xxii) involving in manufacture, sale and transportation of arms and ammunition in contravention of Sections 5, 7 and 12 of the Arms Act, 1959;

(xxiii) felling or killing for economic gains, smuggling of products in contravention of the Indian Forest Act, 1927 and The Wildlife Protection Act, 1972;

(xxiv) offences punishable under the Entertainment and Betting Tax Act, 1979;

(xv) indulging in crimes that impact security of State, public order and even tempo of life,"

(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;

(d) "public servant" means a public servant as defined in Section 21 of the Indian Penal Code or any other law for the time being in force, and includes any person who lawfully assists the police or other authorities of the State, in investigation or prosecution or punishment of an offence punishable under this Act, whether by giving information or evidence relating to such offence or offender or in any other manner;

(e) "member of the family of a public servant" means his parents or spouse and brother, sister, son, daughter, grandson, granddaughter or the spouses of any of them, and includes a person dependent on or residing with the public servant and a person in whose welfare the public servant is interested;

(f) words and phrases used but not defined in this Act and defined in the Code of Criminal Procedure, 1973, or the Indian Penal Code shall have the meanings respectively assigned to them in such Codes.

3. Penalty-*(1) A gangster, shall be punished with imprisonment of either description for a term which shall not be less than two years and which may extend to ten years and also with fine which shall not be less than five thousand rupees:*

Provided that a gangster who commits an offence against the person of a public servant or the person of a member of the family of a public servant shall be punished with imprisonment of either description for a term which shall not be less than three years and also with fine which shall not be less than five thousand rupees.

(2) Whoever being a public servant renders any illegal help or support in any manner to a gangster, whether before or after the commission of any offence by the gangster (whether by himself or through others) or abstains from taking lawful measures or intentionally avoids to carry out the directions of any Court or of his superior officers, in this respect, shall be punished with imprisonment of either description for a term which may extend to ten years but shall not be less than three years and also with fine”.

18. The issue involved in the present case may be resolved with the help of the consideration of provisions of sections 14, 15 and 17 of the Gangsters Act, which read as under:

“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.

15. Release of property .- *(1) Where any property is attached under Section 14, the claimant thereof may, within three months from the date of knowledge of such attachment, make a representation to the District Magistrate showing the circumstances in and the sources by which such property was acquired by him.*

(2) If the District Magistrate is satisfied about the genuineness of the claim made under sub-section (1) he shall forthwith release the property from attachment and thereupon such 6 property shall be made over to the claimant.

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.

17. Order after inquiry.- *If upon such inquiry the Court finds that the property was not acquired by a gangster as a result of the commission of any offence triable under this Act it shall order for release of the property of the person from whose possession it was attached. In any other case the Court may make such order as it thinks fit for the disposal of the property by attachment, confiscation or delivery to any person entitled to the possession thereof, or otherwise.”*

19. It is now well settled that property being made subject matter of an attachment under Section 14 of the Act must have been acquired by a gangster and that too by commission of an offence triable under the Act. The District Magistrate has to record its satisfaction on this point. The satisfaction of the District Magistrate is not open to challenge in any appeal. Only a representation is provided for before the District Magistrate himself under Section 15 of the Act and in case he refuses to

release the property on such representation, in that case the person aggrieved has to make a reference to the Court having jurisdiction to try an offence under the Act. The Court, while dealing with the reference made under sub-section (2) of Section 15 of the Act 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. If the Court comes to the conclusion that the property was not acquired by the gangster as a result of commission of an offence triable under the Act, the Court shall order for release of the property in favour of the person from whose possession it was attached.

The object behind providing the power of judicial scrutiny under Section 16 of the Code is to check arbitrary exercise of power by the District Magistrate in depriving a person of his property and to restore the rule of law, therefore a heavy duty lies upon the Court to hold a formal enquiry to find out the truth with regard to the question, whether the property was acquired by or as a result of the commission of an offence triable under the Act. The order to be passed under Section 17 of the Act must disclose reasons and the evidence in support of finding of the Court. The Court is not empowered to act as a post office or mouthpiece of the State or the District Magistrate. If a person has no criminal history during the period the property was acquired by him, how the property can be held to be a property acquired by or as a result of commission of an offence triable under the Act is a pivotal question which has to be answered by the Court. Besides, the aforesaid question, the other important question to be considered by the Court is whether the property which was acquired prior to the registration of the case against the accused under the Act or prior to the registration of the first case of the Gangster chart can be attached by District Magistrate under Section 14 of the Act.

The provisions of Section 14 of the Act, referred to above, empowers the District Magistrate to attach the property acquired by the Gangster as a result of commission of an offence triable under this Act. The District Magistrate may appoint an Administrator of any property attached, **to administer such property in the best interest thereof but there must be reason to believe that any property whether moveable or immovable in possession of any person, has been acquired by a Gangster as a result of commission of an offence, triable under this Act but the District Magistrate in its order has not recorded his satisfaction having reason to believe with regard to the property attached that it was acquired by appellant as a result of commission of an offence triable under Gangster Act, even though while deciding the reference under Section 16 of the Act, the court below does not appreciate the evidence and in a mechanical manner passed the impugned order relying upon the observations made by the District Magistrate which is illegal and an unjustified approach.**

20. A Coordinate Bench of this Court in the case of **Smt. Maina Devi versus State of U.P. 2013(83) ACC 902** in paras-8, 9 and 10 has been pleased to held as under:-

“8. Considering the facts, circumstances of the case, submissions made by the learned Counsel for the appellant and the learned A.G.A. and from the perusal of the record it appears that the issue involved in the present case may be resolved with the help of the consideration of the provisions of section 14, 15 and 17 of the Gangsters Act, which read as under:

15. Release of property.—(1) *Where any property is attached under section 14, the claimant thereof may within three months from the date of knowledge of such attachment make a representation to the District Magistrate showing the circumstances in and the sources by which such property was acquired by him.*

(2) If the District Magistrate is satisfied about the genuineness of the claim made under sub-section (1) he shall forthwith release the property from

attachment and thereupon such property shall be made over to the claimant.

17. Order after inquiry—*If upon such inquiry the Court finds that the property was not acquired by a gangster as a result of the commission of any offence triable under this Act it shall order for release of the property of the person from whose possession it was attached. In any other case the Court may make such order as it thinks fit for the disposal of the property by attachment, confiscation or delivery to any person entitled to the possession thereof, or otherwise.*

9. *In light of above mentioned provisions of the Gangster Act the District Magistrate is empowered to attach movable or immovable properties in possession of any person acquired by a gangster as a result of the commission of an offence triable under this Act. But for exercising such powers there must be the reason to believe to the District Magistrate that such property was acquired by a gangster as a result of the commission of an offence triable under this Act. The words reason to believe are stronger than the word “satisfied”, it must be passed on reasons which are relevant and material. In the present case, from the perusal of the lower Court record it appears that only on the basis of the police report submitted by the officer incharge of P.S. Sarai Lak-hansi, District Mau, the District Magistrate, Mau has attached two houses of the appellant, no material was supplied to the District Magistrate to have a reason to believe that the property in question was acquired by the gangster Raj Bahadur Singh as a result of commission of an offence triable under this Act. It vitiates the subjective satisfaction of the District Magistrate also. The learned District Magistrate was having no material in support of the police report that both the houses of the appellant were acquired by his son Raj Bahadur Singh. The learned District Magistrate rejected the application under section 15 of the Gangsters Act moved by the appellant for releasing the attached houses. The application was moved well within the time, the application was a representation to the District Magistrate, Mau, it was having all the details disclosing the sources by which both the houses were acquired by the appellant. But learned District Magistrate did not consider the sources disclosed by the appellant and rejected the application vide order dated 29.12.2008. The explanation of all the sources by which the appellant acquired the houses has not been properly considered. Therefore, impugned order dated 29.12.2008 has become illegal. The learned Special Judge (Gangsters Act),*

Azamgarh rejected the application moved by the appellant under section 17 of the Gangsters Act without considering the provisions of the section 14 of the Gangsters Act and the 'relevancy of the reasons' recorded by the District Magistrate to believe that both the attached houses were acquired by a gangster Raj Bahadur Singh son of the appellant as a result of commission of an offence triable under this Act. The order dated 17.3.2009 passed by learned Special Judge (Gangsters Act)/Additional Sessions Judge, Azamgarh in Criminal Misc. Application No. 2 of 2009 is also illegal.

10. In view of the above discussion, the order passed by District Magistrate, Mau under section 14(1) of the Gangsters Act attaching two houses of the appellant the order dated 29.12.2008 passed by District Magistrate, Mau by which the application under section 15(1)(2) of the Gangster Act has been rejected and the order dated 17.3.2009 passed by learned Special Judge (Gangster Act), Additional Sessions Judge, Azamgarh in Criminal Misc. Application No. 2 of 2009 are illegal, the same are hereby set aside and the District Magistrate, Mau is hereby directed to release both the houses No. 204-D/8 and 205-D/9 situated in Mohalla Chandmari, Imiliyan, P.S. Sarai Lak-hansi, District Mau in favour of the appellant forthwith."

21. Further, another Coordinate Bench of this Court in the case of **Smt. Shanti Devi wife of Sri Ram versus State of U.P. 2007(2) ALJ 483 (All)** in paras-9, 10 and 11 has been pleased to held as under:-

"9. The conjoint reading of these sections shows that first it has to be proved that gangster or any person on his behalf is or has been in possession of the property, and such property has been acquired by the commission of any offence triable under this Act, only then the District Magistrate acquires jurisdiction to proceed in the matter and to attach the property. Only when the initial burden is discharged, the onus shifts to the gangster or such person, to account for the same satisfactorily. But if it is found that the concerned person was not a gangster and did not acquire the property in commission of any offence triable under this Act, it has to be released as provided in Section 17. In other words the initial burden is on the prosecution to show that the concerned person is a gangster and has acquired property on account of his criminal activity as triable under the Act.

10. Therefore, in order to proceed under section 14 there must be materials for objective determination of the District Magistrate that the person is either a member, leader or

organiser of a gang and has acquired any property in commission of any offence under the Act. There must be a nexus between his criminal acts as enumerated therein and the property acquired by him. His mere involvement in any offence is not sufficient to attach his property. In other words what is necessary to find is whether, his acquisition of property was a result of commission of any offence enumerated in the Act being a member, leader or organiser of a gang. One might have committed several offences but if the property acquired by him was with the aid of his earning from legal resources no action under Section 14 of the Act can be taken against him.

11. In the case of Badan Singh alias Baddo v. State of U.P., 2002 Cri LJ 1392 : 2001 All LJ 2852 it has been held by this Court that Section 14 of the Act is a harsh provision that affects one's right to property, which is a fundamental right under the Constitution. Therefore, initial burden was upon the State to satisfy the District Magistrate with necessary materials that a gangster acquired the properties as a result of commission of any offence. It has also been held in this case that the Act does not provide that the aggrieved person seeking release of the properties from attachment must prove the source of income for acquisition thereof.”

22. Further, another Coordinate Bench of this Court in the case of ***Rajbir Singh Tyagi Vs State of U.P. and Others 2018 SCC Online All 5986*** in paras 16 and 18 has been pleased to held as under:-

“ 16. A conjoint reading of the aforesaid two definitions what appears is that for taking action under [Section 14](#) against a person, there must be materials for objective determination of the District Magistrate that he either as a member, leader or organizer 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. In other words, what is necessary to find is whether his acquisition of property was as a result of commission of any offence enumerated in the Act being a member, leader or organizer of a gang. One might have committed several

offences, but if the property acquired by him was with the aid of his earning from legal source, no action under Section 14 of the Act can be taken against him.

18. *Section 14 of the Act is a harsh provision that affects one's right to property which is a constitutional right under the Constitution. Therefore, initial burden was upon the State to satisfy the District Magistrate with necessary materials that petitioner Rajbir Singh Tyagi being a gangster acquired the properties as a result of commission of any offence. That was however, not done. So, complaining the attachment order to be illegal, a move was made by the petitioners by filing a representation for release of the properties. The said prayer was rejected with the observation that the petitioners could not establish the source of income to build the house and acquire the movables. This approach of the District Magistrate, in my opinion, has no sanction under law. The Act does not provide that-aggrieved person seeking release of the properties from attachment must prove the source of income for acquisition thereof. So, on a conspectus of the relevant provisions of the Act, I am of the considered opinion that the order of attachment passed by the District Magistrate, Muzaffar Nagar is illegal, arbitrary and against the weight of the materials on record.”*

23. Keeping in view the aforesaid settled proposition of law and the judgments rendered by this Court in the case of **Smt. Maina Devi versus State of U.P. 2013(83) ACC 902** and **Smt. Shanti Devi wife of Sri Ram versus State of U.P. 2007(2) ALJ 483 (All)**, and **Rajbir Singh Tyagi Vs State of U.P. and Others 2018 SCC Online All 5986**, this Court is of the view that the properties, which were attached, were acquired by the appellant with the aid of his earning from legal resources and not by commission of any offence triable under the Act as it is

settled law that the properties being made subject matter of attachment under Section 14 of the Act must have been acquired by a gangster and that too by commission of an offence triable under the Act and also the impugned orders were not passed on reasons which are relevant and material. In the present case from the perusal of the impugned order dated 13.4.2022 and record it appears that only on the basis of the police report, the District Magistrate has attached the property in question, no material was supplied to the District Magistrate to have reasons to believe that the property in question was acquired by the gangster the present appellant as a result of commission of any offence triable under this Act. It vitiates the subjective satisfaction of the District Magistrate also from the record. It appears that the District Magistrate has no material in support of the police report that the property in question was acquired by the present appellant being gangster even though the proceedings were not followed as per the provisions of the Act. It appears that the appellant was having enough source of income from his business at Mumbai as well as at his native place, from which the appellant had acquired the properties and even the properties were acquired by the appellant much prior to the registration of criminal cases and imposition of Gangster Act, which was invoked in the year 2021 and the impugned order of attachment was passed in mechanical manner without application of mind and is arbitrary. Thus the impugned order dated 13.04.2022 passed by the District Magistrate, Lucknow and the impugned order dated 5.1.2023 passed by the Additional Session Judge, Court No.8/Special Judge, Gangsters Act, Lucknow are illegal and the same are liable to be quashed.

24. In view of above facts and circumstances of the case, the impugned orders passed by the courts below cannot be said to be passed in correct perspectives as they are not sustainable in the eye of law and require interference by this Court, the prosecution has failed to establish that the provisions of Sections 2 and 3 of the Gangster Act are attracted

in the case of appellant, and further the appellant's property is also not attached in accordance with law, as the prosecution has failed to establish that the property in question acquired and owned by the appellant has been earned from the income indulging in anti social activities. The enquiry under Section 16 was not done in accordance with the Act, the provisions of Sections 14, 15 & 17 were also not followed in accordance with the Act, thus the entire proceeding initiated in pursuance thereof is vitiated.

25. Accordingly, the present appeal is **allowed**. The impugned order dated 13.04.2022 passed by the District Magistrate, Lucknow in Case No. 2850 of 2021 Computerized Case No. D202110460002850 (State Vs. Waseem Khan) under section 14(1) of Gangster Act and the impugned order dated 5.1.2023 passed by the Additional District and Sessions Judge/Special Judge, Court No. 8/Special Judge, Gangster Act, Lucknow in Criminal Appeal No. 84 of 2022 (Waseem Khan Vs. State of Uttar Pradesh and another) and Criminal Misc. Case No. 735 of 2022 (State of U.P. Vs. Waseem Khan) are hereby quashed.

The District Magistrate, Lucknow/opposite party no.2 is directed to release all the properties of the appellant attached vide order dated 13.04.2022 in favour of appellant, forthwith.

No order as to costs.

Order Date :- 10.05.2023

GSY /-