

A.F.R.

Neutral Citation No. - 2024:AHC:154681

Court No. - 86

Case :- CRIMINAL MISC. WRIT PETITION No. - 12979 of 2024

Petitioner :- Wahid @ Abdul Wahid

Respondent :- State Of Up And 3 Others

Counsel for Petitioner :- Mohd. Samiuzzaman Khan

Counsel for Respondent :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. The present writ petition has been filed by the petitioner with the following prayers:

a) to issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 21.6.2024 passed by the Commissioner, Meerut Division, Meerut / respondent no.2 in Case No. 987 of 2024 (Wahid vs. State of U.P.) Computerized Case No. C202411000000987, under Section 6 of the Uttar Pradesh Control of Goondas Act, 1970 as well as the impugned externment order dated 10.4.2024 passed by the Additional Police Commissioner, Commissionerate Ghaziabad in Case No. 114 of 2024 under Section 2/3 of the Uttar Pradesh Control of Goondas Act, 1970, Police Station Wave City, District Ghaziabad in respect of the petitioner.

b) to issue, writ, order or direction in the nature of mandamus commanding the respondents not to harass the petitioner.

2. The prosecution story starts with the judgment dated 10.4.2024 passed by the Additional Police Commissioner, Commissionerate, Ghaziabad and in the said matter a letter dated 29.2.2024 was sent by the Deputy Police

Commissioner (Rural), Commissionerate, Ghaziabad to the Court of Additional Police Commissioner, Commissionerate, Ghaziabad wherein a goonda chart in respect of the petitioner alongwith a report submitted by the Station Officer, police station, Wave City, Ghaziabad dated 27.2.2024 consisted of the copies of F.I.R. and charge sheet in Case Crime no. 445 of 2023 under Sections 323, 352, 504, 506 IPC, P.S. Wave City, District Ghaziabad, Case Crime No. 695 of 2016 under Sections 147, 148, 149, 308, 504, 506 IPC, P.S. Masuri, District Ghaziabad and Case Crime No. 387 of 2016 under Sections 504, 506, 323, 452 IPC, P.S. Masuri, District Ghaziabad alongwith G.D. No. 30 dated 18.2.2024 of the beat information were appended. The Station Officer, P.S. Wave City narrated in his report that the present petitioner is a dreaded criminal who is involved in committing crime as mentioned in Chapter XVI, XVII and XXII of I.P.C. and no member of the public dares to lodge any report or to tender evidence against him and it was not in the public interest to leave him free in the district.

3. A notice was issued to the petitioner under Section 3(1) of the U.P. Control of Goondas Act, 1970 (in short 'the Act') dated 14.3.2024 and responding to the said notice, an objection alongwith affidavit was filed by the petitioner before the Court wherein he denied all the charges levelled against him in the police report. He also claimed that the criminal cases lodged against him were the result of previous animosity and there is no independent public witness to support the case of prosecution in any of the aforesaid criminal matters and as a matter of fact the

petitioner has been released on bail in all the cases mentioned in the said notice.

4. The prosecution before the Court of Additional Police Commissioner, Commissionerate, Ghaziabad came forward with a specific plea that all the cases lodged against the petitioner, which are mentioned in the notice, have been culminated into charge sheet. Apart from the cases mentioned in the notice, the petitioner is facing some other criminal cases and he is a man of criminal antecedents. In order to keep peace and tranquillity in the area it is desirable to direct him to remove himself outside the area of district Ghaziabad for a particular period.

5. The aforesaid matter was contended by the petitioner but the impugned order dated 10.4.2024 passed against him and even his appeal filed against the said order before the Commissioner, Meerut Division, Meerut failed and the appellate court after hearing both the sides and perusal of the record found that the petitioner was a dreaded criminal and was habitual to commit crime under Chapter, XV, XVI, XVII and XXII of the I.P.C. The impugned order dated 10.4.2024 whereby the petitioner was punished to remove himself from the boundaries of district Ghaziabad for a period of six months was affirmed by the impugned order dated 21.6.2024 and the order dated 10.4.2024 was upheld.

6. Heard Shri Mohd. Samiuzzaman Khan, learned counsel for the petitioner and the learned AGA for the State.

7. It is submitted by the learned counsel for the petitioner that both the authorities i.e. Additional Police

Commissioner, Commissionerate, Ghaziabad and the Commissioner, Meerut Division, Meerut have committed gross error in passing the impugned orders of removal of the petitioner from the boundaries of district Ghaziabad. It is further submitted that the three cases, which are shown to the credit of the petitioner, are the result of animosity with some persons of the society. No heinous crime has been committed by the petitioner and the criminal cases lodged against him are of personal nature and no social crime has been committed by the petitioner. It is also submitted that both the Courts failed to consider the glaring fact that after registration of two criminal cases against the petitioner in the year 2016, no further crime was committed by him for a period of about six years and he had been having a clean record during the said period. It is further submitted that the beat information dated 5.10.2008 also does not consist of any specific detail. It is next submitted that the individual freedom and liberty of the petitioner was jeopardized by the authorities in an arbitrary manner through the impugned orders.

8. On the other hand, learned State Counsel, though opposed the present writ petition, but no explanation has been offered by him as to had the petitioner a man of criminal character, several criminal cases would have been lodged against him but admittedly apart from the three criminal cases, mentioned above, lodged during the span of seven years, no other crime was alleged against the petitioner and that is an illustration of his clean image in the society and it is also an connotative of the fact that the petitioner is not a man of criminal character.

9. I have considered the rival submissions made by the learned counsel for the parties and have gone through the entire record carefully.

10. A perusal of the notice dated 30.3.2024 reveals that it is consisted of three criminal cases lodged against the petitioner and that was the cause of passing the order under Section 3(3) of the Act for his externment from the boundaries of district Ghaziabad. It further reveals from the perusal of the said show cause notice that it does mention general nature of material allegations which makes the said notice bad in law in view of the law laid down in **Bhim Sen Tyagi vs. State of U.P., 1999 (39) ACC 321, Shiv Prakash Dubey @ Kattu vs. State of U.P. and another, 2007(2) AcrJ 506 and Rajkumar Dubey vs. State of U.P. and others, 2009(1) AcrJ 314.**

11. The Court takes notice of this fact that three criminal cases and one beat information are assigned to the present petitioner, which are described in paragraph 2 of this judgment. Though any criminal activity of a person may be taken as a challenge to the law and order and a crime against society, but however, the criminal cases assigned to the petitioner are somehow of a personal nature and category and moreover it is also notable that out of the three criminal cases two cases are said to be committed in the year 2016 and thereafter in a span of about seven years no criminal activity on the part of the petitioner was disclosed in the impugned order and this situation raises a genuine question that if for a period of about seven years the petitioner never indulged in any criminal activity and the next criminal case was assigned

to him in the year 2023, how the Additional Police Commissioner, Commissionerate, Ghaziabad was satisfied that the petitioner falls within the category of 'goonda', as defined in Section 2(b) of the Act. In the circumstances of this case, it appears that a very hyper technical approach has been adopted by the Additional Police Commissioner, Commissionerate, Ghaziabad while passing the impugned order dated 10.4.2024.

12. In Shankar Ji Shukla vs. Ayukt, Allahabad Mandal, Allahabad and others, 2005(52) ACC 638 it has been held that a person cannot be held to be 'goonda' only on the basis of one or two acts, he can be held to be goonda only when he is in habit of committing repeated offence. The same view has been expressed in **Lalani Pandey @ Vijay Shanker Pandey vs. State of U.P. and others, 2011 (1) ACrJ 207.**

13. To proceed further in the matter, it is desirable to have a glance of the definition of 'goonda', as provided in Section 2(b) of the Act, which is as under :

"2. **Definitions.-** In this Act, unless the context otherwise requires -

(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 offences punishable under section 153 or section 153-B or section 294 of the Indian Penal Code or Chapter XV, Chapter XVI, Chapter XVII or Chapter XXII of the said Code ; or

(ii) has been convicted 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 ; or

(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 disfavor to any person or to render or attempt to render any service or disservice to any person, with the Central or State Government, Parliament or State Legislature, any local authority, corporation, Government Company or public servant ; or

(b) procures, in consideration of any remuneration moving from any legal practitioner interested in any legal business, or proposes to any legal practitioner or to any person interested in legal business to procure, in consideration of any remuneration moving from either of them, the employment of legal practitioner in such business ; or

(c) for the purposes mentioned in explanation (a) or (b), frequents the precincts of civil, criminal or revenue courts, revenue or other offices, residential colonies or residences or vicinity of the aforesaid or railway or bus stations, landing stages, lodging places or other places of public resort ; or

(vii) is a house grabber.

Explanation - 'House-grabber' means a person who takes or attempts to take or aids or abets in taking unauthorized possession or having lawfully entered unlawfully remains in possession, of a building including land, garden, garages or out-houses appurtenant to a building.

[(viii) is involved in offences punishable under the Regulation of Money Landing Act, 1976 ;

(ix) is involved in offences punishable under the Unlawful Activities (Prevention) Act, 1966 and the Indian Forest Act, 1927 ;

(x) is involved in 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 ;

(xi) is involved in human trafficking for purposes of commercial exploitation, forced labour, bonded labour, child labour, sexual exploitation, organ removing and trafficking, beggary and the like activities.”

14. In a matter like the presentie, notice issued by the District Magistrate has a vital role to play with the individual liberty of a citizen because when a person is categorized like a 'goonda' and he is directed by the empowered authority / District Magistrate to remove himself outside the area within the limits of his local jurisdiction or such area in any district or any part thereof, contiguous thereto by such route, if any, and within such specific time and also to move anywhere within the country is jeopardized, the aforesaid order has an impact in the nature of denial of right to liberty of a citizen. The notice issued in this case to the petitioner is bad in law, as the concerned authority has not satisfied itself that the petitioner is such a person who may be termed as 'goonda' on the basis of his nuisance value or his capability to commit specific offences, as provided under Section 2(b)(i) of the Act. Nowhere in the impugned order dated 10.4.2024 it appears that the Additional Police Commissioner, Commissionerate, Ghaziabad has made any subjective satisfaction before passing the said order. The impugned order is based upon the report of the police only but how the concerned authority was satisfied with the

said report is nowhere mentioned in the impugned order. The authority did not satisfy itself rather ignored this fact that if a person was committing no crime within a span of seven years and has been a peaceful person how suddenly only on the basis of one case lodged in the year 2023 he may be termed as a 'goonda', 'tout' or 'house grabber'.

15. The learned State Counsel has submitted that since the petitioner has a nuisance value in the society and has earned such a general reputation to desperate and dangerous to the community and is a man of such a terror that a common man cannot dare to lodge any report against him, the Additional Police Commissioner, Commissionerate, Ghaziabad was right in passing the impugned order.

16. In **Irfan Khan vs. State of U.P., 2001 Cri LJ 945 (All)** a coordinate Bench of this Court in the similar situation proceeded to hold as extracted below :

“No proceeding under the Act can be initiated against a person simply on the basis of a report by the S.H.O that he is likely to create disturbance in the election. The power under the Act can be exercised on the basis of objective consideration of evidence and material and not on the basis of a report made by S.H.O. which itself is based upon his subjective satisfaction. Therefore, the impugned order is not only illegal but also wholly without jurisdiction and cannot be sustained at all.”

17. Although it is trite law that the impugned notice under Section 3(1) of the Act is not vitiated on the ground

that criminal cases are related to the individual and that the petitioner has been acquitted in some of them but at the same time the Additional Police Commissioner, Commissionerate, Ghaziabad ought to have satisfy himself that in all three criminal cases lodged against the petitioner no witness of fact came forward to give evidence against the petitioner. If in the aforesaid three cases, the witnesses of fact appeared before the Court of law without any fear of the petitioner and gave evidence in favour of the prosecution how it can be said that due to the terror or menace of the petitioner in the society, no person as witness came forward to depose against him and that could be said to be a subjective satisfaction of the Additional Police Commissioner, Commissionerate, Ghaziabad. Both the authorities acted in a routine manner and mechanically in passing the impugned orders which clearly show the lack of application of judicial mind on their part. The right to freedom guaranteed under Article 19(d) of the Constitution of India is a valuable right of all the citizens of India and cannot be taken away only on the basis of vague and insufficient allegations by way of imposition of unreasonable restrictions passed in an arbitrary and casual manner. Hence, the impugned order dated 10.4.2024 passed by the Additional Police Commissioner, Commissionerate Ghaziabad and the order dated 21.6.2024 passed by the Commissioner, Meerut Division, Meerut suffer from infirmity and illegality and are liable to be set aside and the writ petition is liable to be allowed.

18. Accordingly, the writ petition is **allowed** and the impugned orders dated 10.4.2024 and 21.6.2024 are set aside / quashed.

Order Date :- 2.9.2024
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(Nalin Kumar Srivastava J.)