

Neutral Citation No. - 2025:AHC:9085

Reserved on: 25.11.2024

Delivered on: 20.01.2025

Court No. - 71

Case :- CRIMINAL MISC. WRIT PETITION No. - 20586 of 2024

Petitioner :- Waseem

Respondent :- State Of Up And 3 Others

Counsel for Petitioner :- Mohd. Samiuzzaman Khan,Zeeshan Khan

Counsel for Respondent :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Mohd. Samiuzzaman Khan, the learned counsel for petitioner and the learned A.G.A. representing State respondents 1 to 4.

2. Perused the record.

3. Petitioner-Waseem has approached this Court by means of present writ petition under Article 226 of the Constitution of India challenging the order dated 06.08.2024 passed by respondent 3- Additional Commissioner of Police, Commissionerate, Ghaziabad in Case No. 493 of 2024 (State Vs. Waseem), under Sections 2/3 of the U.P. Control of Goondas Act, 1970, whereby petitioner has been exterminated from the territorial limits of District-Ghaziabad for a period of six months as well as the order dated 27.09.2024 passed by respondent 2-Commissioner, Meerut Division, Meerut in Appeal No. 1725 of 2024 (Waseem Vs. State of U.P.), under Section 6 of the U.P. Control of Goondas Act, 1970 (Annexure-1 to the writ petition jointly), whereby aforementioned appeal filed by petitioner against order dated 06.08.2024 has been dismissed.

4. Learned counsel for the parties agreed that present writ petition be

decided finally at the admission stage. Learned A.G.A. has also submitted that he does not wish to file any counter affidavit to the writ petition.

5. In view of above and as provided under the Rules of Court, this writ petition is being disposed of finally at the admission stage, itself without calling for a counter affidavit.

6. Record shows that a report dated 31.03.2024 was submitted by the Incharge Inspector, Police Station-Loni, wherein it was opined by the Incharge Inspector that action under Sections 2/3 of the U.P. Control of Goondas Act, 1970 be taken against petitioner. Upon receipt of aforesaid report, the Deputy Commissioner of Police (Rural), Commissionerate Ghaziabad approved the same and forwarded it to the Additional Police Commissioner, Rural, Commissionerate Ghaziabad, vide his letter dated 02.04.2024 annexing along with the same aforementioned reports and the approved Goonda Chart of the petitioner.

7. In response to aforesaid report dated 31.03.2024 as well as the letter dated 02.04.2024 and the material accompanying aforesaid report/letter, respondent 3- Additional Commissioner of Police, Commissionerate, Ghaziabad decided to initiate proceedings under the U.P. Control of Goondas Act, 1970 against petitioner. As such, Case No. 493 of 2024 (State Vs. Waseem), under Sections 2/3 of U.P. Control of Goondas Act, 1970 came to be registered against petitioner.

8. In the light of above, a show cause notice dated 13.07.2024 was issued by respondent 3- Additional Commissioner of Police, Commissionerate, Ghaziabad to the petitioner asking him to show cause as to why an order of externment be not passed against him. The basis of the show cause notice was the criminal antecedents of the petitioner which are as follows:-

(i). Case Crime No. 1160 of 2019, under Sections 147, 148, 149, 186, 332, 353, 341 IPC and Section 7 CLA Act, Police Station-Loni, District-

Ghaziabad,

(ii). Case Crime No. 914 of 2019, under Sections 143, 145, 147, 149, 186, 332, 353, 341 IPC and Section 7 CLA Act, Police Station-Loni, District-Ghaziabad,

(iii). Case Crime No. 1390 of 2021, under Section 429 IPC and Sections 3/11 The Prevention of Cruelty to Animals Act, Police Station-Loni, District-Ghaziabad,

(iv). Beet Information Report No. 78 dated 20.03.2024,

For ready reference, the show cause notice dated 13.07.2024 is reproduced herein below:-

"उ०प्र० गुण्डा नियंत्रण अधिनियम 1970 की धारा 3(1) के अधीन दिनांक 21.05.2024 के क्रम में संशोधित (कारण बताओ नोटिस) :-

चूँकि मेरे समक्ष पुलिस उपायुक्त ग्रामीण जोन, कमिश्नरेंट गाजियाबाद द्वारा प्रेषित रिपोर्ट के आधार पर मुझे यह प्रतीत होता है कि:-

(क) वसीम पुत्र नसीम निवासी जमालपुरा अशोक विहार थाना लोनी, जनपद गाजियाबाद उम्र 32 वर्ष एक "गुण्डा" है यह स्वयं या किसी गिरोह के सदस्यो या सरगना के रूप में भारतीय दण्ड संहिता के अध्याय 16 के अधीन दण्डनीय अपराध करता है। वसीम पुत्र नसीम की सामान्य ख्याति दुःसाहसिक और समुदाय के लिए खतरनाक व्यक्ति होने की है, और-

(ख) थाना लोनी, लोनी बॉर्डर क्षेत्र में वसीम पुत्र नसीम उपरोक्त की गतिविधियों या कार्य जनसामान्य एवं धन के लिए अत्यन्त कष्टकारी तथा अपहानि करने वाली है। ऐसा विश्वास करने का उचित कारण है कि वह जिले या उसके किसी भाग में भारतीय दण्ड संहिता के अध्याय 16 के अधीन दण्डनीय किसी अपराध को करने में लगा है, और -

(ग) साक्षीगण अपने जान माल के सम्बन्ध में असुरक्षा की आशंका के कारण वसीम पुत्र नसीम उपर्युक्त खण्ड क, ख, ग के सम्बन्ध में विपक्षी के विरुद्ध सारवान आरोप निम्नलिखित सामान्य प्रकृति के है:-

(1) आप एक शातिर किस्म के अपराधी है।

(2) आपके द्वारा अपने साथियों के साथ मिलकर दिनांक 20.12.2019 से अब तक थाना लोनी, लोनी बॉर्डर क्षेत्र में घातक हथियारो से लैस होकर बलवा करना, लोक सेवक को अपने कर्तव्य निर्वहन से भयोपरत करने लिए हमला या आपराधिक बल प्रयोग करना, विधि विरुद्ध जमाव करना, कार्य सरकार में बाधा डालना, पशु क्रूरता व गलत तरीके से प्रतिबन्धित करने जैसे गम्भीर अपराध कारित किये गये है, जिसके सम्बन्ध में-

1. मु०अ०सं० 1160/19 धारा 147,148,149,186,332,353,341 भादवि व 7 सीएलए एक्ट थाना लोनी गाजियाबाद
2. मु०अ०सं० 914/19 धारा 143,145,147,149,151,186,332,353,341,34 भादवि व 7 सीएलए एक्ट थाना लोनी बॉर्डर गाजियाबाद
3. मु०अ०सं० 1390/21 धारा 429 भादवि व 3/11 पशु क्रूरता अधिनियम थाना लोनी, गाजियाबाद पर पंजीकृत है। जिसमें आपके विरुद्ध आरोप पत्र प्रेषित किये जाने के बाद उक्त मामले मा० न्यायालय में विचाराधीन है एवं साक्षीगण, जानमाल के सम्बन्ध में असुरक्षा की आशंका के कारण साक्ष्य देने को तैयार नहीं है। अतः आपकी गतिविधियां जनसामान्य के लिये विक्षोभ व संत्रास का कारण है और सार्वजनिक प्रशान्ति को खतरा है।

अतः वसीम पुत्र नसीम को एतद् द्वारा ये आदेश दिया जाता है कि आप मेरे समक्ष दिनांक 16.07.2024 को समय 14:00 बजे मेरे पुलिस कार्यालय कमिश्नरेट गाजियाबाद स्थित न्यायालय अतिरिक्त पुलिस आयुक्त, कमिश्नरेट गाजियाबाद, में उपस्थित हो और यदि आप चाहे तो उक्त सारवान आरोपों के सम्बन्ध में यह कारण बतलाते हुये लिखित स्पष्टीकरण प्रस्तुत करे कि क्यो न आपके विरुद्ध उ०प्र० गुण्डा नियंत्रण अधिनियम 1970 की धारा 3(3) के अधीन आदेश दिया जाये, तथा साथ ही मुझे यह भी सूचित करे कि क्या आप अपने स्पष्टीकरण के समर्थन में स्वयं अथवा अन्य किसी साक्षी का (यदि ऐसा है तो ऐसे व्यक्ति का नाम व पता लिखे) परीक्षण कराना चाहते हैं।

उपर्युक्त वसीम पुत्र नसीम निवासी जमालपुरा अशोक विहार थाना लोनी, जनपद गाजियाबाद को एतद् द्वारा सूचित किया जाता है कि यदि आप उपर्युक्त प्रकार से उपस्थित नहीं होते हैं अथवा यदि निर्दिष्ट समय के भीतर कोई स्पष्टीकरण या सूचना प्राप्त नहीं होती है तो यह मान लिया जायेगा कि उसे उक्त आरोपों के सम्बन्ध में कोई स्पष्टीकरण अथवा किसी भी साक्ष्य का परीक्षण नहीं कराना चाहता है और प्रस्तावित आदेश पारित करने की कार्यवाही की जायेगी। उक्त नोटिस आज दिनांक 13.07.2024 को मेरे द्वारा हस्ताक्षरित एवं न्यायालय की मुद्रांकित से जारी किया गया।"

Apart from above, respondent 3- Additional Commissioner of Police, Commissionerate, Ghaziabad referred to the report dated 31.03.2024 submitted by the Incharge Inspector, Police Station-Loni, District-Ghaziabad, wherein it was stated that petitioner is a vicious criminal, petitioner has committed offence, under Chapter 16 of IPC, on account of conduct of petitioner, there is anxiety and terror in the public at large, no person of the public is ready to give evidence against petitioner, therefore, it is not conducive for the society to allow the petitioner to remain free.

9. In response to the said show cause notice dated 13.07.2024, petitioner appeared before respondent-3 Additional Commissioner of Police,

Commissionerate, Ghaziabad and submitted his objection/reply dated 06.08.2024 to the show cause notice disputing the contents of the same. Petitioner explained his status in the criminal cases registered against him. It was further pleaded by petitioner that he is a peace loving person and has faith in law as well as respect for law, petitioner does not come within the definition of Goonda as per the U.P. Control of Goondas Act. Petitioner does not carry the image of being a dreaded criminal nor there is fear, threat or anxiety amongst the members of the public at large on account of him, all the criminal cases lodged against petitioner are false, petitioner has been implicated in the criminal cases mentioned above maliciously and falsely. There is no independent witness of the occurrence on the basis of which, aforementioned criminal cases were registered against petitioner. Petitioner has already been enlarged on bail in aforementioned criminal cases, the adverse police report has been furnished by the Incharge Inspector, Police Station-Loni on false grounds. As such, the said report is misleading. On the above premise, it was thus prayed by petitioner that the show cause notice issued against him be withdrawn/cancelled.

10. Respondent 3-Additional Commissioner of Police, Commissionerate, Ghaziabad, thereafter, examined the reply submitted by petitioner and evaluated the same in the light of material disclosed in the report of the Incharge Inspector, Police Station-Loni, District-Ghaziabad concerned as well as the material appended along with the letter of the Deputy Commissioner of Police (Rural), Commissionerate, Ghaziabad. After having undertaken the aforesaid exercise, respondent-3 came to the conclusion that presence of petitioner within the territorial limits of District-Ghaziabad is not conducive for the society itself. He, accordingly, passed an order dated 06.08.2024, under Section 3(1) of the U.P. Control of Goondas Act, 1970, whereby petitioner was exterminated for a period of six months from the territorial limits of District-Ghaziabad.

11. Perusal of order dated 06.08.2024 passed by respondent-3 will go to show that respondent-3 has firstly narrated the reply submitted by petitioner to the show cause notice, the objections raised by State counsel to the reply submitted by petitioner and has thereafter, referred to the criminal antecedents of petitioner and the adverse facts stated against petitioner in the report of Incharge Inspector, Police Station-Loni, District-Ghaziabad. It is only on the basis of above that respondent-3 has recorded an abrupt conclusion that an order under Section-3 of U.P. Control of Goondas Act, 1970 is warranted against petitioner.

12. It is thus apparent that no finding has been returned by respondent-3 in the light of provisions contained in Section-2(b) of the U.P. Control of Goondas Act, 1970. As such, respondent-3 has exterminated the petitioner from the territorial limits of District-Ghaziabad without even recording a prima-facie finding that petitioner is a habitual offender.

13. Against order dated 06.08.2024, passed by respondent-3, petitioner preferred an appeal before the Appellate Authority i.e. respondent-2 Commissioner, Meerut Division, Meerut in terms of Section 6 of the Uttar Pradesh Control of Goondas Act, 1970. The same was registered as Appeal No. 1725 of 2024 (Waseem Vs. State of U.P.). The said appeal filed by petitioner was rejected by Appellate Authority i.e. respondent-2 Commissioner, Meerut Division, Meerut, vide order dated 27.09.2024.

14. Perusal of same will go to show that Appellate Court, upon appraisal and appreciation of the material on record, came to the conclusion that petitioner is a vicious criminal, which fact is also established as per report of the Incharge Inspector, Police Station-Loni, District-Ghaziabad and the presence of the petitioner within the territorial limits of District-Ghaziabad is not conducive for the society, therefore, none of the grounds raised and pressed in support of the appeal filed by petitioner found favour with the appellate authority.

15. Thus feeling aggrieved by the above orders dated 06.08.2024 and

27.09.2024 passed by respondents 3 and 2 respectively, petitioner has now approached this Court by means of present writ petition under Article 226 of the Constitution of India.

16. Mr. Mohd. Samiuzzaman Khan, the learned counsel for petitioner would submit that respondent-3-Additional Commissioner of Police, Commissionerate, Ghaziabad has passed the order impugned dated 06.08.2024 without recording his subjective satisfaction in the matter. He then referred to the above order and with reference to the same, he contended that respondent-3 has not recorded any reason in the impugned order dated 06.08.2024 necessitating an order under Section 3(3) of the U.P. Control of Goondas Act, 1970 against petitioner. He thus urged that respondent-3 has simply recorded a bald conclusion. As such, the order impugned dated 06.08.2024 is not only illegal and arbitrary but also without jurisdiction. Respondent-3 has simply narrated the contents of the show cause notice, the reply submitted by petitioner to the show cause notice and the objections raised by the State counsel to the reply submitted by petitioner. On the basis of above, respondent-3 has drawn an abrupt conclusion that an order under Section 3(3) of U.P. Control of Goondas Act, 1970 is required to be passed against petitioner. Since no reasons have been assigned in the order impugned, therefore, there is nothing in the order to show that respondent-3 has applied his mind to the material on record and thereafter arrive at a derivative conclusion that an order under Section 3(3) of U.P. Control of Goondas Act, 1970 needs to be passed against petitioner in the facts and circumstances of the case. It was thus urged that the order dated 06.08.2024 passed by respondent-3 also impugned in present writ petition cannot be sustained either in law or on facts. To buttress his submission, he relied upon paragraph 8 of the judgement of Supreme Court in **M. P. Singh Gill Vs. Chief Election Commissioner, AIR 1978 SC 851**, which reads as under:-

"The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so

mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji (1) "Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to, do. Public orders made by public authorities are meant to have public effect and are intended to effect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

Orders are not like old wine becoming better as they grow older:"

17. According to the learned counsel for petitioner, all the criminal cases registered against petitioner are of the years 2019 and 2021. As such, they are more than five and three years old. The show cause notice was issued to petitioner on 13.07.2024. However, after the year, 2021 and upto 13.07.2024, no criminal case was registered against petitioner. On the above premise, he thus submitted that petitioner cannot be classified as a Goonda within the meaning of term Goonda as defined in Section 2 (b) of the U.P. Control of Goondas Act, 1970 as he is not a habitual offender. For ready reference, Section 2 (b) of the U.P. Control of Goondas Act, 1970 is reproduced herein-below:

"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 Suppersession 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 Lending 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."

18. On the above edifice, the learned counsel for petitioner urged that respondent-3-Additional Commissioner of Police, Commissionerate, Ghaziabad has adopted a hyper technical approach in passing the impugned order dated 06.08.2024. Respondent-3 has completely ignored the fact that petitioner is not in the habit of committing repeated offence. Furthermore, no criminal case was registered against petitioner after 13.07.2024. He, therefore, concluded by submitting that simply on the basis of criminal cases registered against petitioner upto the year 2022 as detailed above, petitioner cannot be classified as a goonda within the provisions of U.P. Control of Goondas Act, 1970. To lend legal support to his above submission, the learned counsel for petitioner referred to paragraphs 10, 11 and 12 of the judgement rendered by a learned Single Judge of this Court in **Criminal Misc. Writ Petition No. 12979 of 2024 (Wahid @ Abdul Wahid Vs. State of U.P. and 3 others) decided on 27.09.2024**. For ready reference, the same are reproduced herein below:-

*"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."

19. At this juncture, the learned counsel for petitioner invited the attention of Court to the order dated 11.10.2023 passed in **Criminal Misc. Writ Petition No. 15542 of 2023 (Nazim Vs. State of U.P.)**. Since the order is a short one, therefore, the same is reproduced in it's entirety:-

"1. Heard Shri Saumitra Dwivedi, learned counsel for the petitioner, Shri G.P. Singh, learned A.G.A. for the State-respondents, and perused the record.

2. The present writ petition has been preferred with the prayer to quash the impugned Notice under section 3(10) of the U.P Control of Goondas Act, registered as Case No.401 of 2023 dated 31.7.2023 issued by Additional Commissioner of Police, Kotwali Ghaziabad, District Ghaziabad Commissionerate.

3. Submission of the learned counsel for the petitioner is that the impugned notice is bad in law. It does not contain the general nature of material allegations and on the identical circumstances co-ordinate Bench of this Court has already allowed

Criminal Misc. Writ Petition No. 2895 of 2023 (Idu Ali vs. State of U.P. and another) vide order dated 20.02.2023 by setting aside the impugned notice and setting the District Magistrate at liberty to issue fresh notice in accordance with law. The said order is quoted as under:

"Heard learned counsel for the petitioner and learned AGA.

The instant writ petition has been filed with a prayer to quash the impugned notice dated 11.01.2023 issued by respondent no.2 (District Magistrate, Firozabad), under Section 3 of the U.P. Control of Goondas Act.

The basic contention of the learned counsel for the petitioner is that the said notice is bad in law as it does not contain the general nature of material allegations. This is particularly so, for the reason that if the notice dated 11.01.2023, issued under Section 3 of the Act of 1970, does not conform to the mandatory requirements of the Statute, all proceedings, including the order impugned, have to fall.

On the other hand, learned AGA has frankly and fairly accepted that the notice in the present case does not set out the general nature of the material allegations against the petitioner. He fairly submitted that this defect in the notice does not handicap the petitioner in making his representation. He further submitted that it is evident from the notice itself that petitioner would resort to abuse and encourage the people for committing the anti-social activities. Petitioner has criminal history of one case and one beat report and the crime number and sections have also been mentioned in the notice.

Learned counsel for the petitioner drew our attention to two Full Bench decisions in Ramji Pandey Vs. State of U.P. and others; 1981 Cri LJ 1083 and Bhim Sen Tyagi v. State of U.P. through D.M. Mahamaya Nagar, 1999 (2) JIG 192 (All) (FB).

In Ramji Pandey's case (supra), it has specifically been observed in paragraph 7 of the judgment that although the expression "material allegations" has not been defined by that Act, according to the dictionary meanings, the word "material" means "important and essential", "of significance". The word "allegation" means statement or assertion of facts. Thus, the notice under Section 3(1) should contain the essential assertions of facts in relation to the matters set out in clauses (a), (b) and (c) of sub-section (1) of Section 3 of the Act. It needs not refer to any evidence or other particulars or details. The names of witnesses, and persons who may have made the complaint against the person against whom action is proposed to be taken or the time, date and place of the offence committed by the person needs not be mentioned in the notice. There is a distinction between the "general nature of

material allegations" and "particulars of allegations". In accordance with the former expression, the notice needs not give any details of the allegations, instead the requirement of law would be satisfied if the notice contains a general statement of facts which need not contain any details or particulars. In Ram Pandey's case, where there were allegations that, (a) the petitioner was a goonda, (b) his movements were causing alarm, danger and harm to the lives and properties of the persons within the circle of P.S.-Sikandarpur and there was reasonable ground for believing that he was engaged in the commission and abetment of offences punishable under Chapters XI, XII and XXII of the Indian Penal Code, and (c) the witnesses were not willing to give evidence against him by reason of apprehension on their part as regards their safety and danger to their persons and personal property. Regarding the aforesaid sub-paragraphs (a), (b) and (c), the material allegations of general nature were that there were various cases pending against the petitioner and the crime numbers and sections of those cases had been given in the notice and it was mentioned therein whether the petitioner had been convicted or acquitted in the cases or they were pending. In spite of mention of the crime numbers and sections and status of those cases, the notice in Ramji Pandey's case (supra) was held not to contain the general nature of material allegations and it was struck down.

In the present case also, nothing more than mention of the crime number and sections is all that we find, instead of the general nature of material allegations. A list of case crimes/first information reports/beat report registered against the petitioner does not satisfy the test of a valid notice under Section 3(1) carrying the "general nature of material allegations". Truly, the notice, on the foundation of which the order impugned has been made, is strictly in the teeth of the law laid down consistently by this Court; particularly, the Full Bench decision in Ramji Pandey (supra) and reiterated in Bhim Sain Tyagi (supra). A notice under Section 3(1) of the kind that is the foundation of proceedings here has been held in Bhim Sain Tyagi (supra) and in earlier decisions also, to violate the minimum guarantee of the opportunity that the Statute envisages for a person proceeded with/against under the Act of 1970. Thus, in this case, the impugned order, founded as it is, on a notice under Section 3(1) of the Act, stands vitiated by defects that go to the root of the matter.

In above terms, the writ petition is allowed.

The impugned notice dated 11.01.2023 is hereby quashed/set-aside as it is bereft of the general nature of material against the petitioner as is mandatorily required

under Section 3(1) of the Act. However, the District Magistrate, Firozabad shall be at liberty to issue a fresh notice in accordance with law.

No order as to costs."

4. Learned A.G.A. could not dispute the same.

5. In such view of the matter, the present petition is allowed in terms of the above quoted judgment.

6. The impugned Notice under section 3(10) of the U.P Control of Goondas Act, registered as Case No.401 of 2023 dated 31.7.2023 issued by Additional Commissioner of Police, Kotwali Ghaziabad, District Ghaziabad Commissionerate, is hereby quashed. However, the authority concerned shall be at liberty to issue a fresh notice in accordance with law."

With reference to above, the learned counsel for petitioner submits that the observations made by Court in aforementioned judgment/order are squarely attracted in the present case as the show cause notice issued to petitioner does not fulfill the requirement of law. Simply by mentioning the criminal antecedents of petitioner in the show cause notice, he cannot be presumed to be a Goonda. Once the show cause notice issued to petitioner is the basis of proceedings initiated against petitioner and that notice is itself not in accordance with law, no consequential action could be taken against petitioner on the basis of same.

20. It was lastly contended by the learned counsel for petitioner that the appellate authority i.e. respondent-2, Commissioner, Meerut Division, Meerut has dismissed the appeal filed by petitioner by passing an order of affirmance. No attempt was made by the appellate authority to examine and evaluate the grounds raised and pressed on behalf of petitioner in support of the appeal filed before him. The appellate authority has not made any endeavour to consider as to whether in the given set of facts and circumstances, the case of petitioner falls within the ambit and scope of Section 2 (b) of the U.P. Control of Goondas Act, 1970 or not. It was, therefore, urged by the learned counsel for petitioner that the appellate authority has failed to duly exercise the jurisdiction vested in him. The

appellate authority has thus not exercised its jurisdiction diligently but in a casual and cavalier fashion. Consequently, the order of the appellate authority being unsustainable in law and fact, is also liable to be quashed by this Court.

21. Per contra, the learned A.G.A. representing State-respondents-1 to 4 vehemently opposed the present writ petition. According to the learned A.G.A., both the orders impugned in present writ petition passed by respondents-3 and 2 (Annexure 1 to the writ petition jointly) are perfectly just and legal, therefore, the same are not liable to be interfered with by this Court.

22. According to the learned A.G.A., proceedings under the U.P. Control of Goondas Act, 1970 were initiated against petitioner on the ground that petitioner has criminal history of three criminal cases as well as a Beet report dated 20.03.2024. As such, it cannot be said that petitioner is a man of clean antecedents.

23. It was then contended by the learned A.G.A. that admittedly petitioner is not a man of clean antecedents as he has criminal history to his credit. On account of conduct of petitioner, there is eminent despair and anxiety with the members of public at large. Petitioner is a vicious criminal. On account of conduct of petitioner, no member of the public is ready to give evidence against petitioner. Conduct of the petitioner falls within the meaning of the term Goonda as defined in the U.P. Control of Goondas Act, 1970. It is on account of above that respondent-3- Additional Commissioner of Police, Commissionerate, Ghaziabad derived his subjective satisfaction that the presence of petitioner within the territorial limits of District-Ghaziabad is not conducive for the society at large.

24. On the above premise, the learned A.G.A. urged with much vehemence that since an order under Section 3 (3) of U.P. Control of Goondas Act, 1970 is preventive in nature, therefore, no illegality can be attached to the orders impugned in present writ petition. The orders

impugned do not suffer either from jurisdictional error nor the same are the outcome of exercise of jurisdiction by both the authorities below in such a manner so as to vitiate the same and warranting interference by this Court. He thus concluded by submitting that present writ petition is liable to be dismissed.

25. It was lastly pointed out by the learned A.G.A. that the externment order was passed against petitioner on 06.08.2024. The life of the externment order is 6 months. As such, the same will come to an end on 05.02.2025. Therefore, no useful purpose shall be served in deciding the writ petition, as the externment order passed against petitioner has remained operative for almost 4 months.

26. Having heard the learned counsel for petitioner, the learned A.G.A. for State-respondents 1 to 4 and upon perusal of record, this Court finds that it is an undisputed fact that petitioner is a man of criminal antecedents inasmuch as there are three criminal cases registered against him. However, the criminal cases were registered against petitioner in the years 2019 and 2021 respectively. The show cause notice under Section 3 (3) of the U.P. Control of Goondas Act, 1970 was issued against petitioner on 13.07.2024. In view of above, it cannot be conclusively concluded that petitioner is a habitual offender and therefore, liable to be classified as a Goonda within the meaning of Section 2 (b) of the U.P. Control of Goondas Act, 1970. Respondent-3, Additional Commissioner of Police, Commissionerate, Ghaziabad, ignoring the above and without recording any reason necessitating an order of externment against petitioner in terms of Section 3 (3) of the U.P. Control of Goondas Act, 1970 passed the impugned order dated 06.08.2024. In view of the law laid down by the Apex Court in **M.P. Singh Gill (supra)**, the veracity of an order is to be judged in the light of reasons recorded in the order itself. Since respondent-3 while passing the order dated 06.08.2024 has not recorded any reason but simply a bald conclusion, as such, the order dated

06.08.2024 is devoid of any reason and hence, unsustainable in law and fact. Respondent-3 has adopted a hyper technical approach in passing the impugned order dated 06.08.2024. The appellate authority has simply concurred with the view expressed by respondent-3 by passing an order of affirmance. The order impugned dated 27.09.2024 passed by the appellate authority i.e. respondent-2, Commissioner, Meerut Division, Meerut does not reflect that an attempt was made by the appellate authority i.e. respondent-2, to examine and evaluate the grounds raised and pressed by the petitioner in support of the appeal filed by him before the appellate authority. The appellate authority has simply mentioned the facts of the case, the grounds raised on behalf of petitioner in support of appeal and on basis thereof has drawn an abrupt conclusion that since petitioner is a man of criminal antecedents, no illegality can be attached to the order dated 06.08.2024 passed by respondent-3-Additional Commissioner of Police, Commissionerate, Ghaziabad in exercise of jurisdiction under Section 3 (3) of U.P. Control of Goondas Act, 1970. As such, no reason has been assigned by the appellate authority regarding the legality of order dated 06.08.2024. The appellate authority has miserably failed to examine the appeal filed by petitioner in the light of provisions contained in Section 2 (b) of the U.P. Control of Goondas Act, 1970 and further whether the show cause notice issued to the petitioner is itself in conformity with the provisions of Act and the law laid down by the Full Bench of this Court as mentioned above. Though on behalf of the State, various adverse facts were pleaded against petitioner but this Court finds that no attempt was made on behalf of State to evidence the said facts by leading cogent and reliable evidence. There is no recital regarding the same in the orders impugned either.

27. In view of the discussion made above, the inescapable conclusion is that both the authorities, ie. respondent-3-Additional Commissioner of Police, Commissionerate, Ghaziabad and respondent-2, Commissioner, Meerut Division, Meerut have failed to exercise their jurisdiction

diligently. Petitioner has been exterminated from the territorial limits of District-Ghaziabad in exercise of jurisdiction by respondents 3 and 2 not diligently but in a casual and cavalier fashion inasmuch as no attempt was made by respondents 3 and 2 to examine the case of petitioner in the light of the provisions contained in Section 2 (b) of the U.P. Control of Goondas Act, 1970 nor any reason has been recorded by respondent-3 in support of the conclusion drawn that an action under Section 3 (3) of U.P. Control of Goondas Act, 1970 is warranted against petitioner in the facts and circumstances of the case nor the appellate authority has dealt with the grounds raised and pressed in support of the appeal filed by the petitioner with reference to the record as well as Section 2(b) of the U.P. Control of Goondas Act, 1970 and without recording a satisfaction as to whether the show cause notice issued to petitioner is itself in conformity with law or not.

28. As a result, the present writ petition succeeds and is liable to be allowed.

29. It is, accordingly, **allowed**.

30. The order impugned dated 06.08.2024 passed by respondent-3-Additional Commissioner of Police, Commissionerate, Ghaziabad in Case No. 493 of 2024 (State Vs. Waseem), under Sections 2/3 of U.P. Control of Goondas Act, 1970 and the order dated 27.09.2024 passed by respondent-2, Commissioner, Meerut Division, Meerut in Appeal No. 1725 of 2024 (Waseem Vs. State of U.P.), under Section 6 of U.P. Control of Goondas Act, 1970 (Annexure-1 to the writ petition jointly) are, hereby, quashed.

31. In the facts and circumstances of the case, the cost is made easy.

Order Date :- 20.01.2025

Vinay