

**A.F.R.****Court No. - 10****Case :-** GOVERNMENT APPEAL No. - 779 of 2021**Appellant :-** State of U.P.**Respondent :-** Mukhtar Ansari**Counsel for Appellant :-** G.A.**Counsel for Respondent :-** Abhishek Misra, Karunesh Singh, Satendra Kumar (Singh)**Hon'ble Dinesh Kumar Singh, J.**

1. The present appeal under Section 378 CrPC has been filed against the judgment and order dated 23rd December, 2020 passed by the Special Judge, M.P./M.L.A. Additional Sessions Judge, Court No. 19, Lucknow in Criminal Case No.199 of 2000, arising out of Crime No.0428 of 1999, under Section 2/3 of The Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 (hereinafter referred to as “Gangsters Act”) lodged at Police Station Hazratganj, District Lucknow by means of which the accused-respondent has been acquitted of the charge.
2. This Court, vide order dated 27.04.2021, granted leave and admitted the appeal.
3. Charge-sheet was filed against the accused-respondent and 24 other co-accused in Crime No.0428 of 1999, under Section 2/3 Gangsters Act; co-accused, Akbar Husain, Ram Kumar Singh, Guddu Singh, Rajeev Singh alias Raju, Amit Kumar Rawat, Amit Rai, Anil Kumar Tiwari, Sanjeev Dwivedi alias Ramu, Himanshu Negi, Milit Gaud and Surendra Kumar were acquitted by this Court in different applications/petitions filed by them; co-accused Abhay Singh, Rintu Singh alias Vijay Kumar Singh and Manoj Verma were acquitted, whereas co-accused Manish Singh, Arun Kumar Upadhyay alias Babaloo, Chandra Prakash Singh and Chandan Singh Negi had died and, therefore, case against them got abated; Pawan Kumar Upadhyay, Pushpendra Singh and Sandeep Singh Yadav were discharged by the trial Court from offence under Section 2/3 Gangsters Act; trial of co-accused, Shoeb Kidwai, Indra Dev Mishra and K.D. Singh alias Ajay Prakash were separated.

4. On the basis of complaint of Station House Officer, Tejpal Singh Verma, the FIR came to be registered under Section 2/3 Gangsters Act, alleging therein that the accused-respondent and other co-accused, named in the FIR, is a gang, which commits heinous offences, including murder, extortion, kidnapping and abduction etc; one Suresh Kumar, notorious criminal, along with his 3-4 accomplices, was heard saying that Abhay Singh, who was imprisoned, had got Shri R.K. Tiwari, the then Jail Superintendent, killed in busy Hazratganj area of Lucknow; accused, Abhay Singh and the accused-respondent run their empire of crime from jail; eye-witness, Vinod was asked not to depose in the said case, in support of the prosecution; he was given threats for which FIR at Crime No.0413 of 1999 came to be registered under Sections 504 and 506 IPC on 30.04.1999. It was further said that the gang-members are dreaded criminals, who commit crime in organized manner for accumulation of wealth for themselves and members of the gang; they strike terror in hearts and minds of the people and no-one dares to lodge FIR even against members of the gang; general public feels in-secured and lives in fear in Lucknow and adjoining areas; on 04.02.1999, Jail Superintendent, Shri R.K. Tiwari was killed in broad-day-light in Hazratganj busy area for which FIR at Crime No.0106 of 1999, under Sections 302 and 307 IPC came to be registered at Hazratganj Police Station; the following other cases are registered against the gang:-

"1. Crime No.0161 of 1990, under Sections 454 and 380 IPC lodged at Police Station Hasanganj;

2. Crime No.064-A of 1999 , under Sections 141, 148 and 352 IPC lodged at Police Station Hasanganj;

3. Crime No.00494 of 1995, under Sections 148, 149 and 307 IPC read with Section 7 Criminal Law Amend Act;

4. Crime No.0473 of 1995 under Section 2/3 Gangsters Act;

5. Crime No.020 of 1998, under Section 2/3 Gangsters Act, Police Station Hasanganj;

6. Crime No.055A of 1995, under Sections 147, 148, 149 and 307 IPC;

7. *Crime No.0466 of 1995, under Sections 323 and 504 IPC;*
8. *Crime No.0514 of 1995, under Sections 147, 148, 149 and 307 IPC;*
9. *Crime No.09 of 1996, under Sections 147, 148, 149 and 302 IPC read with Section 5 Explosive Act;*
10. *Crime No.0972 of 1998, under Sections 147, 308 and 325 IPC;*
11. *Crime No.0115-A of 1995, under Section 307 IPC;*
12. *080 of 1999, under Sections 448 and 506 IPC;*
13. *Crime No.0167 of 1999, under Section 3/25 Arms Act;*
14. *Crime No.0205 of 1997, under Sections 147, 148, 149 and 307 IPC'*

all the said cases were lodged at Police Station Hazratganj, District Lucknow.

15. *Crime No.0109 of 1999, under Section 394 IPC;*
16. *Crime No.01002 of 1998, under Sections 392 and 411 IPC lodged at Police Station Hasanganj;*
17. *Crime No.049 of 1999, under Section 392 IPC;*
18. *Crime No.0224 of 1998, under Section 392 IPC lodged at Police Station Mahanagar;*
19. *Crime No.0390 of 1998, under Section 392 IPC lodged at Police Station Chowk;*
20. *Crime No.0126 of 1999, under Section 506 IPC lodged at Police Station Krishna Nagar;*
21. *Crime No.0501A of 1995, under Sections 147, 148, 149, 307, 504 and 506 IPC lodged at Police Station Umari Begamganj, District Gonda; and*
- 22 *Crime No.07377 of 1997, under Section 506 IPC lodged at Police Station Baywari, District Varanasi.*

5. After completion of investigation, charge-sheet was submitted and charge was framed under Section 2/3 Gangsters Act. However, the accused-respondent denied the charge and claimed trial.

6. The prosecution, to prove its case, produced documentary evidence i.e. FIR, Exhibit Ka-1, charge-sheet, Exhibit Ka-2, gang-chart, Exhibit Ka-3, complaint, Exhibit Ka-4 and Chik FIR, Exhibit Ka-6.

7. Prosecution examined as many as 20 witnesses to prove its case, who deposed as follows:-

1. PW-1, S. P. Singh Pundir, deposed that in the year 1999 he was posted as Additional Inspector General (Prison); on 26.02.1999 he got search conducted of the prison; some persons got highly enraged and became very angry; Mukhtar Ansari, accused-respondent and Abhay Singh were the prominent persons amongst such persons, who got enraged and angry; he was told that a threat had been given for his killing by these criminals; on 27.02.1999, at around 10.30. p.m., two persons in a suspicious position were seen sitting on a motorcycle under eucalyptus tree near his house no. F-182; these persons were noticed by his son, Manish Pundir; these persons were staring at the house of the witness; son of this witness had gone out for a walk along with his dog; out of two persons, one was quite tall and well built of around 6 feet height and second was fat and small; on 28.02.1999, at around 9.15 p.m., when his son went for walk along with dog, he saw that one person jumped from boundary wall of the witness to an open plot and those two very persons, who were found sitting under eucalyptus three on motorcycle on 27.02.1999, were giving indication to him by cigarette; these two persons and the person, who jumped from boundary-wall of the witness to an open plot, were wearing *Kamij and Pajama*; son of the witness told about it to him and when they came out of the house, these persons were going sitting on a rickshaw; at a little distance from there, 7-8 motorcycles were seen riding by different people; on 01.03.1999, at around 12.15 hours, two persons were seen standing in suspicious condition and as soon as the witness came out of the house, they came on a motorcycle towards his house in a menacing manner; the witness had gone inside the

house by that time; these persons, who came on motorcycle, went inside the colony situated near the house of the witness though the road leading to the colony was not a thoroughfare; an FIR about this incident got registered at Police Station Krishna Nagar against the accused-respondent and co-accused, Abhay Singh; statements of this witness and his son were recorded in the Court during trial.

2. PW-2, Tejpal Singh, in his examination in chief, said that in the year 1999 he was posted as In-charge Station House Officer at Police Station Hazratganj; sensational murder of Jail Superintendent, Shri R.K. Tiwari took place in February, 1999 in Hazratganj; 25 persons were named in the said offence, including the present accused-respondent, and charge-sheet was submitted by him on 04.06.1999; on 02.05.1999, he, along with 4 police men, left for Jiyamau; on inquiry people told him that criminal Surendra Kumar, along with his 3-4 persons, was roaming around in the area and saying that Abhay Singh, gang-leader, with his accomplices, had got killed Shri R.K. Tiwari, Jail Superintendent; some gang-members had been sent to jail; efforts were being made to get them released from jail. He was threatening people to make arrangement of money, and if they would dare to inform to the police, they would get killed; there were several criminals in the gang who were committing serious offences in district Lucknow and other districts for accumulation of wealth for themselves such as robbery, murder, beating, kidnapping and abducting; no-one would dare to lodge FIR because of terror which the gang spreaded in hearts and minds of the people; Abhay Singh and other criminals, lodged in jail, organized criminal activities of the gang from inside the jail using modern information technology; the gang-chart got prepared under his direction by Head Mohrir which was got approved by the District Magistrate and the same was proved by him as Exhibit Ka-3; the complaint was proved as Exhibit Ka-4; Abhay Singh threatened eye-witness, Vinod for not

giving evidence in the murder case of jail superintendent for which FIR No.0413 of 1999, under Sections 504 and 506 IPC was registered on 30.04.1999 at Police Station Hazratganj; several cases got registered against Abhay Singh and his gang-members at Police Station Hazratganj, Mahanagar, Hasanganj, Chowk, Krishna Nagar and district Gonda regarding murder, attempt to murder, robbery, dacoity, riots and extortion etc. Some of such cases are mentioned in the gang-chart. Main profession of members of the gang is to extort money from people and to get them terrorized from their criminal activities.

3. PW-3, Constable Daya Shanker, in his evidence, said that on 01.03.1999, he was appointed as Head Moharir and he wrote the chik FIR of Crime No.0126 of 1999, under Section 506 IPC against Mukhtar Ansari, the present accused-respondent, and Abhay Singh; the said FIR was proved as Exhibit Ka-5.

4. PW-4, Ravindra Singh, in his examination in chief, said that on 02.05.1999 he was posted as constable at Kotwali Hazratganj and on the said date, on the complaint of Station House Officer, Tejpal Singh, In-charge Inspector, FIR at Crime No.0428 of 1999 under Section 2/3 Gangsters Act against the present accused-respondent and other accused was registered. He proved the FIR, which was written in his hand-writing and marked as Exhibit Ka-6.

5. PW-5, Sub-Inspector, Narendra Bahadur Singh, in his evidence said that in the year 1998-99 he was posted as constable Head Moharir. On 04.02.1999, on the written complaint of Jailer, District Jail, Lucknow, Shri Ghanshyam, FIR at Crime No.0106 of 1999, under Sections 307 and 302 IPC was registered at Police Station Hazratganj against two unknown persons. On 06.02.1999, on a complaint of Ram Chandra Gaud, FIR at Crime No.0109 of 1999, under Section 394 IPC was registered at Police Station Hazratganj against unknown person(s) and on 09.10.1998, on a written complaint of Naseem Ahmad Siddiqui, FIR at Crime No.01002 of 1998,

under Section 392 IPC was registered against two unknown persons, who came on a black motorcycle. He proved all the three FIRs.

6. PW-6, Ramesh Chandra Pushkar, Inspector, in his examination in chief, said that in 1998 he was posted as Sub-Inspector at Police Station Hazratganj; investigation of Crime No.01002 of 1998, under Section 392 IPC was conducted by him. In the said offence, names of accused, Ravi Dubey and Shoeb alias Bobby came into light; they were recognized in the parade conducted inside the district jail. Complainant, Naseem recognized both the accused. On pointing out of accused, Shoeb alias Bobby, the bag, which was robbed, could be recovered. After collecting other evidence, the charge-sheet dated 31.05.1999 was filed, which was proved as Exhibit Ka-9.

7. PW-7, constable Sunil Kumar Pandey, in his evidence, said that in the year 1998 he was posted as constable Moharir; on a complaint of Shailesh Kumar Singh on 16.04.1998, FIR at Crime No.0115-A of 1998, under Sections 147, 336, 504, 506 and 323 IPC was registered against accused, Shiv Bhushan Singh, Pawan Upadhyay, Indra Dev Mishra, Hemant Upadhyay and Vinay Singh. He proved certified copy of the chik FIR of the said crime.

8. PW-8, Naseem, in his examination in chief, said that in 1998, at around 12 noon, he was coming out from Bank of Baroda after withdrawing Rs.39,000/-; this amount was kept in a bag and, he was passing by Janpath Market; when he reached at Darulsafa, two persons riding on a motorcycle came there and the person, who was pillion rider, snatched the bag. He was 30-35 years of age, wearing *Kurta* and *Payjama*. This witness gave complaint on which FIR at Crime No.01002 of 1998, under Section 392 IPC was registered. This witness was not cross-examined.

9. PW-9, Habib-Ullah, in his statement, said that on 28.02.1999, he was posted as Constable Moharir at police

Station Mahanagar; on complaint of Ram Chandra Jaiswal, FIR at Crime No.0119 of 1999, under Section 392 IPC was registered; it was alleged that 3 persons came on a motorcycle and they looted Rs.50,000/- of the complainant; no cross examination was conducted from this witness.

10. PW-10, Ashok Sarswat, In-charge Inspector, in his statement said that on 13.06.1999, he was posted as Senior Sub-Inspector at Kotwali Hussainganj; investigation of Crime No.0428 of 1999, under Section 2/3 Gangsters Act lodged at Police Station Hazratganj was conducted by him after In-charge Inspector, Ram Adhar Yadav was transferred. In the said case, there were 25 accused, including Abhay Singh. On 13.06.1999, statement of complainant, Tejpal Sing Verma, In-charge Inspector Hazratganj was taken. On 15.08.1999, statement of constable Daya Shanker and S.P. Singh Pundir and Virendra Nath and Manish Pundir was taken on 22.07.1999. The statement of Narendra Bahadur Singh and Sub-Inspector, Ramesh Chandra Pushkar were taken in respect of Crime No.01002 of 1998. On 13.08.1999, statement of Naseem Ahmad was taken. Further investigation was conducted by Senior Sub-Inspector, M.M. Khan till 28.01.2000.

11. PW-11, Head Constable, Surendra Singh, in his examination in chief, said that on 05.03.1999, at around 4.30, on written complaint of Harendra Bahadur Singh, student of B.A. 3rd year in Lucknow University, chik FIR at Crime No.060 of 1999, under Section 448 IPC at Police Station Hasanganj was registered against unknown person. He proved the said chik FIR, which was in his hand-writing..

12. PW-12, In-charge Inspector, M.M. Khan, in his statement said that on 16.01.2000, he was posted as Senior Sub-Inspector, Hussainganj, and after transfer of the Senior Sub-Inspector, Ashok Sarswat, he took the investigation of the said case. On the basis of evidence collected in the said case, charge-sheet against accused, Abhay Singh and the present accused-

respondent and other accused, named in the charge-sheet, was filed, which was proved and marked as Exhibit Ka-13.

13. PW-13, Ram Chandra Jaiswal, in his evidence, said that on 28.02.1999, he was working in office; Kamal Singh gave him Rs.50,000/- for depositing in the office. He was going on a rickshaw; at that time, 3 persons came on a motorcycle, stopped the rickshaw and on gun-point looted Rs.50,000/- from him for which a written complaint was given at Police Station Mahanagar, which was proved by him.

14. PW-14, Ram Chandra Gaud, in his statement said that on 06.02.1999, he was posted as Clerk in Government High School, Narhi; he went to withdraw salary on the said date at 11.35 a.m. to Allahabad Bank, Hazratganj Branch; he was coming back from the bank after withdrawing Rs.87,786/- and as soon as he reached in front of Press, near Nawab Ajgar Husain Road, the bag, in which he was carrying the salary of the employees of the school, was looted for which FIR at Crime No.0109 of 1999 got registered at Police Station Hazratganj.

15. PW-15, Virendra Nath Singh, in his statement, said that on 17.06.1999, he was posted as In-charge Inspector at Police Station Krishna Nagar and FIR at Crime No.0126 of 1999 was registered in his presence at the police station Krishna Nagar. The said crime was being investigated by Javed Khan and V.P. Singh. After transfer of Inspector, V.P. Singh, he was appointed as In-charge Inspector at Krishna Nagar and he filed charge-sheet after completing investigation against the present accused-respondent and Abhay Singh under Section 506 IPC and he proved charge-sheet filed in the said offence, which was marked as Exhibit Ka-12.

16. PW-16, Vijay Narain Pandey, in his statement, said that on 05.02.1999 he was posted as Sub-Inspector at Police Station Hasanganj. Crime No.060 of 1999 under Section 448 IPC was registered against unknown persons on a complaint of Harendra Bahadur Singh and investigation of the said offence was carried

out by him. In the year 1998-99, he was posted at Police Station Hasanganj and the case was registered against the accused-responent. During the course of investigation of the said offence, his statement was recorded by the investigation officer of the said case, M.M. Khan.

17. PW-17, Shailesh Kumar Singh, in his evidence, said that in the year 1998 he was a student of Lucknow University and he was a candidate for General Secretary for the Student's Union of the University. He got registered the FIR against accused, Piyush Bhushan Singh, Pawan Upadhyay, Indra Dev Mishra, Hemant Upadhyay and Dinesh Singh at Police Station Hasanganj, under Sections 147, 336, 504, 506 and 323 IPC. He proved the FIR.

18. PW-18, Ram Adhara Yadav, in his statement, said that he was entrusted with investigation of Crime No.0428 of 1999 under Section 2/3 Gangsters Act lodged at Police Station Hazratganj as per the order of the Superintendent of Police dated 28.05.1999. He was posted as In-charge Inspector, Hussainganj Police Station.

19. PW-19, Manish Pundir, in his evidence, said that the incident was dated 27.02.1999, at round 10.30 p.m., when he was on walk along with his dog, he saw near House No. F-183, under eucalyptus tree, two persons, one 6 feet height well built and second short and fat, standing there. When he went towards that side, these people went away. On 28.02.1999, when this witness went for a walk along with his dog, he found that one person jumped from his boundary wall to an open plot and those persons thereafter went away on a rickshaw. Two persons, who were seen on previous night, went along with the person who jumped off boundary wall on a rickshaw. He informed his family members about the said incident then the family members came out and they saw several motorcycles with persons present nearby. On 01.03.1999, he saw two persons going in front of his house on a motorcycle towards Hydil

colony, which was not a thoroughfare. Investigating officer took his statement in the said case for which the FIR was registered by his father.

20. PW-20, Satya Dev Singh, Circle Officer, in his examination in chief, said that on order of Jail Superintendent, District Jail, Unnao, he produced accused Mukhtar Ansari in the Court of Special Judge, Gangsters Act, Lucknow on 13.07.2012 .

8. After completing the evidence of the prosecution witnesses, statement of accused, under Section 313 CrPC, was recorded, who denied the incident and said that Shri S.P. Singh Pundir, PW-1 had given false evidence under pressure of the Government and, he lodged the false FIR against him. He further said that PW-2, under pressure of the Government, prepared the charge-sheet by collecting forged and false evidence and the accused had been acquitted in the said case. He further said that PW-4 had given false statement in respect of Case Crime No.0106 of 1999, under pressure of the Government, he lodged the FIR. In respect of PW-5, he said that he was not named in the FIR registered at Crime No.0106 of 1999 at Police Station Hazratganj. Under pressure of the Government, his name was brought in the said offence. He further said that he had no concern regarding Crime No.0109 of 1999, under Section 394 IPC and Crime No.01002 of 1998, under Sections 392 IPC, both lodged at Police Station Hazratganj and, he was not accused in the said cases. In respect of evidence of PW-6, he said that he was not accused in the said case. In respect of evidence of PW-7, he said that he was not accused in the said case. In respect of evidence of other witnesses, he said that they were police personnel and they had given false evidence against him and they had collected manufactured and false evidence to implicate him. He further said that he was falsely implicated under Government influence for political reason in several cases. He had been *Vidhayak* (M.L.A.) for five terms consecutively and, he had defeated the candidates of different parties in different elections. He was very popular in the constituency and he was framed for political reasons.

9. On behalf of defence, copy of judgment dated 06.09.2018 (State Vs. Abhay Singh and others) relating to Crime No.0428 of 1999, certified copy of this Court's order dated 01.05.2017 and other orders of this Court and trial Court were produced and proved.

10. The learned trial Court, after considering the evidence on record and also taking into consideration that in all the cases, mentioned in the gang-chart, either the accused-respondent was acquitted or charge-sheet was not filed or by the orders of the High Court the cases were quashed. It was said that the gang-chart was prepared earlier than the FIR was registered. It was also said that during the course of investigation, no detail of property or wealth, which was allegedly accumulated by committing crime, was given. The learned trial Court acquitted the accused-respondent for the offence under Section 2/3 Gangsters Act as the prosecution could not prove the offence against the accused-respondent beyond reasonable doubt.

11. The Gangsters Act has been enacted as a Special Act for prevention and for coping with gangsters and antisocial activities. The purpose of the Gangsters Act is to prevent organized crimes in the State by enacting the special provisions. The Gangsters Act is deterrent in nature. It provides for deterrent punishment. The gang has been defined under Section 2(b) Gangsters Act, which reads as under:-

"2 (b) "Gang" means a group of persons, who acting either singly or collectively, by violence, or threat or show of violence, or intimidation, or coercion or otherwise with the object of disturbing public order or of gaining any undue temporal, pecuniary, material or other advantage for himself or any other person, indulge in anti-social activities, namely-

(i) offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code (Act No. 45 of 1860), 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 (U.P. Act No. 4 of 1910), or the Narcotic Drugs and Psychotropic Substances Act, 1985 (Act No. 61 of 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 (Act No. 104 of 1956), or

(vi) offences punishable under Section 3 of the Public Gambling Act, 1867 (Act No. 3 of 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 (Act No. 45 of 1860), 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 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."

12. Thus, if a person belongs to a group of persons, who, either acting singly or collectively, indulges in violence or threat or show of violence and coercion etc., with object to disturb public order or to gain any undue temporal and pecuniary material or other advantage to himself or any other person, indulges in anti-social activities and, commits offence, as defined under the said section, as the group of persons, would be a gang.

13. Gangster has been defined under Section 2(c) Gangsters Act, which reads as under:-

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

14. Gang-leader and member of the gang is called gangsters. Even a person, who abets or assists in the activities of gang, as defined under Section 2(b), whether before or after the commission of such activities, or harbours any person, who has indulged in such activities, would be also a gangster. Section 3(1) Gangsters Act provides for punishment of gangster, which would be two years and may extend to ten years with fine and fine should not be less than Rs.5,000/-. If a gangster commits an offence against public servant or any member of

public servant, then the minimum punishment would be of three years and fine.

15. The offence under the Gangsters Act is an independent offence than the substantive offence. If it is proved that a person belongs to a group of persons and commits offence individually or with group of persons, which are defined under Section 2(b) of the Gangsters Act, such a person is a gangster and he would be punished for a term, which may be two or three years and extendable to ten years with minimum fine of rupees five thousand.

16. On behalf of the appellant-State, Mr. Umesh Verma, learned Additional Government Advocate, along with Mr. Rao Narendra Singh, learned Additional Government Advocate, has submitted that the basic ingredients to prosecute an individual under the Gangsters Act for commission of an offence as gangster is him being the member of the gang. Even if no FIR is registered against a person, still he can be prosecuted for the offence under the Gangsters Act. The purpose of the Gangsters Act is to curb organized crime and criminal activities of the gang and gangsters.

17. If it is proved that an accused belongs to a gang and commits offences individually or with other gang members with object of disturbing public order or of gaining any undue temporal and pecuniary material or other advantage for himself or any other member of the gang, he can be prosecuted and punished.

18. When a specific offence has been created in a Special Statute and the offence is covered by the Statute and fulfills the requirement as defined, he may be punished under the Gangsters Act.

19. Mr. Verma has submitted that even if the accused-respondent was acquitted in substantive offences, which are mentioned in the gang-chart, because the witnesses turned hostile out of his fear, manipulation, threats and making the witnesses tired by employing other tactics, that would not absolve the accused-respondent from the offence under Section 2/3 Gangsters Act. If it is proved that the accused-respondent is a member of the gang and he commits offences

to disturb the public order and to gain any undue temporal and pecuniary, material or other advantage to himself or any other person.

20. Mr. Verma submits that the accused-respondent is the most dreaded criminal and gangster, whose reign of crime is not spread only in State of Uttar Pradesh, but in other States, including Delhi, Maharashtra and Punjab etc. The trial Court has erred in acquitting the accused-respondent only on the ground that he was not convicted in any of the offences, which were part of the gang-chart. It is not a correct view. It is further submitted that the learned trial Court was required to consider whether the accused-respondent was a member of the gang and had committed the offences, as defined under Section 2/3 Gangsters Act. The trial Court has ignored this vital aspect while acquitting the accused-respondent and, therefore, the impugned judgment and order, passed by the learned trial Court, is unsustainable and liable to be set-aside. The accused-respondent is to be convicted for the offence under Section 2/3 Gangsters Act.

21. On the other hand, Mr. Jyotindra Mishra, learned Senior Counsel, assisted by Mr. Satendra Kumar Singh, Advocate appearing for the accused-respondent, has submitted that all other members, who were named in the gang-chart, have either been acquitted or the prosecution, against them, was quashed by this Court or they were discharged. It has been further submitted that the prosecution had failed to bring any cogent and credible evidence against any of the alleged gang-members. The trial Court has taken a correct view of acquitting the accused-respondent for the offence under Section 2/3 Gangsters Act. It has been further submitted that it is a case of no evidence against the accused-respondent and the accused-respondent cannot be punished for his perceived image. Mr. Jyotindra Mishra, learned Senior Counsel, has placed reliance upon the judgment of the Supreme Court dated 18.01.2022 passed in ***Criminal Appeal No.78 of 2022 (Geeta Devi Vs. State of U.P. & Ors)*** to submit that in appeal, against acquittal under Section 378 CrPC, High Court is not required to re-appreciate entire evidence and if this Court re-appreciates the evidence even then no offence is said to have been made out against

the accused-respondent, which would attract provisions of Section 2/3 Gangsters Act.

22. The moot question, which arises for consideration in this case, is that if the accused-respondent has been acquitted for offences, which were mentioned in the gang-chart, (substantive offences), can he still be convicted for offence under Section 2/3 Gangsters Act. As stated earlier, the offence under Section 2/3 Gangsters Act is a distinct and separate offence than the substantive offence. If the prosecution proves that the person belongs to a gang and indulges himself in committing offence with object of disturbing public order or of gaining any undue temporal and pecuniary material or other advantage for himself or any other person, he may be punished under the Gangsters Act.

23. A Coordinate Bench of this Court in **2007 (8) ADJ 716 (Vishnu Dayal and others Vs. State of U.P. and another)** held that the object of the Act is to arrest the activities of organized criminals and members in their gangs. The Court also observed that gangsterism in the recent times has taken menacing dimensions and lives and liberty of citizens have been pushed against the walls of organized crimes. Paragraphs-11 and 12 of *Vishnu Dayal and others Vs. State of U.P. and another* case (supra), which are relevant for the purpose of this case, would read as under:-

"11. From the definition clause it is per se clear that a gang is a group of one or more persons who commit the crimes mentioned under the definition clause for the motive of earning undue advantage whether pecuniary, material or otherwise. Even a single crime committed by a gang is sufficient to implant Gangsters Act on such members of gang and repetition of crime is not desired for invoking offences under the said Act. The definition clause, as mentioned above does not engulf plurality of offence before the Gangsters Act is invoked. It is an Act to achieve an avowed object of arresting the activities of organised criminate and members of their gang. Gangsterism in the recent times has taken menacing dimensions and lives and liberty of citizens has been pushed against the walls of organised crimes. This type of offences have to be dealt with sternly and with tenacity. Further the offence under the Gangsters Act can be implanted on a group of persons who act individually or collectively.

12. In the present case the incident was motivated and executed because of grabbing of property of the deceased as the accused persons are very close relatives of deceased and are in fact, his real nephews and wife of his real own brother. These accused persons had an evil eye on the property of the deceased because of which they have committed the murder of their own blood relation. The offence was well chalked out and pre-planned. This certainly is gangsterism. This fact clearly brings out the activity of the applicants within the purview of the Gangsters Act. The contention of Sri Sengar, learned counsel for the applicants, is that this was an individual act and from the F.I.R. it cannot be said that the murder had taken place because of the lust of the property and, therefore, the Gangsters Act is not applicable, does not appeal at all as the said contention is against the facts of the case. I have gone through the judgment of this Court in the case of Ashok Kumar Dixit, (1987 All LJ 806) (supra). The said judgment does not countenance the submissions raised by Sri Sengar, learned counsel for the applicants. From the facts of the case it is perceptibly clear that embedded motive in the minds of the culprits was to grab the property and to gain pecuniary advantage for them. This certainly brings in their case within the purview of the Gangsters Act."

24. In **2008 (2) JIC 227 (All) (Udham Singh & Anr. Vs. State of U.P. & Ors)**, this Court, while dealing with the question whether on the basis of single incident the provisions of Gangsters Act can be invoked against such a person, this Court held that under Section 2/3 Gangsters Act, if the gang-chart affirms part of the FIR and in the gang-chart it is clearly mentioned that there is a gang, which indulges into commission of offence and on the basis of perusal of the gang-chart the authorities are satisfied for sanctioning registration of the FIR, such person can be prosecuted and punished for the offence. It was again reiterated that the purpose of the Gangsters Act is to control activities of organized gangs and gangsters. When specific offence has been created, it is open to punish a person even for a single act if it is covered by the requirement of law.

25. The Supreme Court also in *Geeta Devi Vs. State of U.P. & Ors. (Criminal Appeal No.78 of 2022)*, while delineating the provisions of Gangsters Act, held that even a person, against whom for single offence, charge-sheet has been filed for any activity, mentioned under

Section 2/3 Gangsters Act, he can be prosecuted under the Gangsters Act.

26. Paragraphs 8 and 10 of *Udham Singh & Anr. Vs. State of U.P. & Ors* case (supra), which are relevant for the purpose of decision of the present case, are extracted herein below:-

"8. Coming to the first contention of the learned counsel for the petitioners that on the basis of a single incident, the petitioners cannot be booked under the Act, we need to observe only this much that vide para 14 of the aforesaid judgment of Subhash (supra), the said contention has already been negated by the Division Bench of this Court on which decision, reliance has been placed by the petitioners themselves. It has been held in the aforesaid decision of Subhash (supra) as follows:—

"The words used in Section 2 are no doubt in plural indicating "indulges in anti social activities" but the sentence does not stop with the words "anti social activities". It goes on with the words "viz" followed by 15 clauses of anti social activities enumerated therein. The plural in "anti social activities" referred to the large number of activities to be brought under the umbrella of this single offence and it would never mean that there must be plurality of actions before a person could be prosecuted or convicted for an offence under the Act. When a specific offence has been created, it is open to be punished even for a single act, if it is covered by the requirements of law. We thus, answered point No. 1 framed by us."

10. There is another aspect of the matter which we would like to discuss. Under the definition clause of the Act u/S. 2(b) and (c), it is not required that the FIR must be registered against the gangster before he is booked under the Act. Sine qua non to prosecute an individual under the Act is commission of an offence as a "gangster". Gang means a group of persons, who acting either signally or collectively, by violence, or threat or show 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. It is not the requirement of law that nobody can be prosecuted under the Act if no FIR is registered against him. It is the activity of an individual which is the determinative factor for bringing him under the mischief of the Act and nothing else. If he acts as a member or leader of a gang he can be booked under the Act irrespective of any previous FIR being registered against him or not. The plain reading of different definition clauses clearly indicates that if the person indulges into the commission of offence enumerated under Section 2(b)(I) to (XV) as a member or leader of a gang for gaining any undue temporal, pecuniary,

material or other advantage then he is purviewed within the ambit of the Act and it is not the requirement of law that the FIR for the input offence must be registered before he is booked under the Act. Since the purpose of the Act is to curb the activities of gangster, which are more often than not commit not in any public gaze therefore the provisions of Act have to interpret in a manner which fosters its purpose and the intention of legislature best."

27. It is not in dispute that several FIRs and charge-sheets for offences, which are provided under definition clause of Section 2(b) of the Gangsters Act, were registered against the accused-respondent and the charge-sheets were filed against him, including in the case of murder of Jail Superintendent of District Jail, Lucknow. Acquittal or conviction is immaterial for invoking the provisions of Gangsters Act against a person, who is otherwise a member of the gang and, allegedly commits offences, which are defined under Section 2(b) of the Gangsters Act. If the FIR is registered or the charge-sheet is filed and the person is member of gang, which is defined under Section 2(b) Gangsters Act, it fulfills the ingredients of Section 2 of the Gangsters Act and he can be punished under Section 3 of the Gangsters Act. The trial Court has acquitted the accused-respondent on the ground that the accused-respondent was acquitted in all the offences, which were mentioned in the gang-chart. The gang-chart was approved and the FIR came to be registered against accused-respondent along with others. This Court is of the view, on considering the law laid down by the Supreme Court and this Court, as discussed above, and carefully reading all the provisions of the Gangsters Act, that the accused-respondent was a member of the gang and for his criminal activities several FIRs and charge-sheets came to be registered and submitted against him for offences, which are defined under Section 2/3 Gangsters Act. The acquittal of the accused-respondent for turning the witness hostile or otherwise is not a material aspect. The trial Court has grossly erred in acquitting the accused-respondent vide impugned judgment and order. The gang-chart was proved in the Court as documentary evidence. In view of the foregoing discussion, this Court is of the view that the accused-

respondent is a gangster and he allegedly committed several offences and, therefore, he is found guilty for offence under Section 2/3 Gangsters Act. Therefore, the impugned order dated 23.12.2020 passed by the learned trial Court is hereby **set-aside**. The accused-respondent is sentenced for five years rigorous imprisonment with fine of Rs.50,000/-.

28. In view of aforesaid, the appeal is **allowed**. Since the accused-respondent is already in jail, no order is required to be passed for his surrender.

29. Let the record of the trial Court be remitted back for preparing the conviction warrant against the accused-respondent.

[Dinesh Kumar Singh, J.]

Order Date: 23rd September, 2022

MVS/-