

**Court No. - 46**

**Case :-** CRIMINAL MISC. WRIT PETITION No. - 3277 of 2024

**Petitioner :-** Ravi

**Respondent :-** State Of Up And 2 Others

**Counsel for Petitioner :-** Ashwani Kumar Pathak

**Counsel for Respondent :-** G.A.

**Hon'ble Siddharth,J.**

**Hon'ble Vinod Diwakar,J.**

1. Heard learned counsel for the petitioner, learned counsel for the informant and learned A.G.A. for the State respondents.

2. The present writ petition has been preferred with the prayer to quash the impugned **Notice dated 31.01.2024** issued by Additional District Magistrate- Administration, **District- Gorakhpur, in case no.- D 202305310002546, under Section 3/4 of U.P. Control of Goondas Act,( State Vs. Ravi), Police Station- Khajni, District- Gorakhpur.**

3. The petitioner has been implicated in this case under section 3/4 of U.P. Control of Goondas Act because of his implication in case crime no. 340 of 2022, under sections- 363, 366, 376, 120-B IPC and 3/4 POCSO Act, Police Station- Khajni, District- Gorakhpur.

4. Learned counsel for petitioner has submitted that the above case was registered against the petitioner when he had consenting relationship with the victim. She left her house on her own and married the petitioner at Mumbai. In her statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C., she claimed herself to be major and clearly stated that the petitioner never used any force against her. She has stated that she wanted to live with the petitioner. Petitioner was enlarged on bail by this Court on 20.06.2023 in the aforesaid case.

5. Apart from the above implication, there is no case registered against the petitioner.

6. Learned counsel for petitioner has further submitted that the notice dated 31.01.2024 issued by the respondent no. 2 is bad in

law. It does not contains the general nature of material allegations.

7. Learned AGA has opposed the submissions and has stated that the petitioner has opportunity of making representation before the respondent no. 2 and therefore his writ petition does not deserves to be entertained by this Court. Petitioner has criminal history of one case and one beat report is also against him as mentioned in the notice.

8. There are no disputed facts warranting call of counter-affidavit from the respondents.

9. After hearing the rival contentions a look at the definition of "Goonda" is required to be made as defined under section 2(b) of U.P. Control of Goondas Act, 1970 which is as follows:-

" 2[(b) 'Goonda' means a person who-

(i) either by himself or as a member or leader of a gang, habitually commits or attempts to commit, or abets the commission of an offence punishable under Section 153 or Section 153-B or Section 294 of the Indian Penal Code or Chapter XV, Chapter 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, disfavour to any person or to render or attempt to render any service or disservice to any person, with the Central or State Government, Parliament or State Legislature, any local authority, Corporation, Government Company or public servant; or

(b) procures, in consideration of any remuneration moving from any legal

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

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

(vii) is a house-grabber.

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

(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 of 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 like activities.]

10. This Court finds that the petitioner is not alleged to be leader of or member of any gang or he himself habitually commits or attempts to commit or abets the commission of offences mentioned in the definition clause quoted above.

11. There is a solitary case registered against him and he was not found to be habitual of abduction of women or girls. This Court in the case of **Shankar Ji Shukla Vs. Ayukt Allahabad Mandal and others reported in 2005 (52) ACC 638** and in the case of **Lalani Pandey @ Vijay Shankar Vs. State of U.P. and others, 2011(1) ACrJ 207** has 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 the habit of committing repeated offences.

12. The Division Bench of this Court in the case of **Idu Ali Vs. State of U.P.** (Criminal Misc. Writ Petition No. 2895 of 2023) and others has held that where general nature of material allegations have not been mentioned in the notice issued under section 3 of the

Act, notice will not be considered to be in accordance with mandatory provision of law as follows:-

*"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."*

13. In view of the above consideration, it is clear that the respondent no. 2 has issued the impugned notice without considering the provisions of law only on the basis of implication of the petitioner in a single case and on the basis of a beat report. The implication of the petitioner in the case crime no. 340/2022 was not supported by victim herself in her statement recorded under section 164 Cr.P.C., and she had married the applicant as well. Therefore, the recital in the notice that the petitioner is a goonda and habitually commits the offences under Chapter XVI, XVII and XXII of the Indian Penal Code and witnesses are not willing to give evidence against him by reason of apprehension on their part regarding their safety etc., are absolutely false.

14. There is presumption in favour of performance of official acts under section 114, illustrations (e) of Evidence Act that they have been regularly performed. This Court finds that the presumption in favour of respondent no.2 of performance of his official acts in accordance with law stands rebutted by the undisputed facts of this case and relevant provisions of law.

15. This is a case where the respondent no. 2, Additional District Magistrate-Administration, District- Gorakhpur, has issued the impugned notice in gross violation of law and acting against presumption of fairness in due discharge of his official duties.

16. This Court restrains itself from passing any further remarks against the respondent no. 2 but a direction is being issued to the respondent no.1, Principal Secretary, Department of Home, Government of U.P., Lucknow that he should ensure that the public servants exercising powers of the State should remain within the bounds of law and violation of law may entail disciplinary proceedings against them.

17. The impugned notice is hereby **quashed**.

18. The writ petition is, accordingly, **allowed** with cost of Rs. 20,000/- payable to the petitioner by the State within two months.

19. Registrar(Compliance) is directed to communicate this order to respondent nos. 1 and 2 within a week.

20. Respondent no. 1 will report compliance of this order to the

Registrar(Compliance) of this Court within ten weeks.

**Order Date :- 4.3.2024**

Abhishek.

**Vinod Diwakar,J.**

**Siddharth,J.**