

Reserved on 08.03.2022
Delivered on 16.03.2022

Court No. - 90

Case :- CRIMINAL MISC. WRIT PETITION No. - 10011 of 2017

Petitioner :- Shahanshah

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Ashok Kumar Singh Bais

Counsel for Respondent :- G.A.

Hon'ble Mrs. Sadhna Rani (Thakur),J.

By means of this writ petition the petitioner seeks quashing of the orders dated 11.05.2017 passed by the respondent no. 2 and order dated 06.03.2017 passed by the respondent no. 3 under U.P. Control of Goonda Act (herein after referred to as 'Goonda Act').

By means of the order dated 06.03.2017 the Additional District Magistrate (Finance and Revenue) Saharanpur ordered the district externment of the present petitioner for six months under Section 3 of the Goonda Act. Vide order dated 11.05.2017, the Commissioner, Saharanpur Division, Saharanpur confirmed the order dated 06.03.2017 in appeal under Section 6 of the Goonda Act.

The impugned orders have been assailed on the grounds firstly that the notice dated 03.02.2017 under Section 3 (1) of the Goonda Act was issued but the same was never served upon him, so he could not reply the same and the respondent no. 3 passed the impugned order dated 06.03.2017 ex parte without granting him opportunity of being heard. Secondly, the notice was issued on the basis of only one case registered against him as Case Crime No. 222 of 2016 under Sections 147, 148, 149, 188, 336, 337, 504, 506, 353 I.P.C. and 7 Criminal Law Act. As the members of the locality had gathered at one place, the petitioner was not present on the site but even then his name was

disclosed in the case due to political pressure and village partibandi. He has neither any criminal background nor his face value is known as Goonda in his locality and without collecting any evidence and making enquiry about his character, the notice was issued and consequently, the order was passed against him. Though, the notice was not served upon him even then he tried to submit his explanation but without giving any opportunity of being heard by passing the impugned order dated 06.03.2017 he has been extened from the district for six months. His appeal against the said order has also been dismissed. The beet information dated 20.01.2017 has been submitted with the averment that the petitioner will influence the assembly elections. This information is totally baseless and without any evidence. Hence, the impugned order is baseless and is passed without granting him an opportunity of being heard. The impugned order is totally in violation of Article 14 and 16 of the Constitution of India.

The appeal against this order dated 06.03.2017 has also been dismissed mechanically so both the orders are liable to be set aside.

Heard learned counsel for the petitioner, learned A.G.A. and perused the record.

Before the Court, learned counsel for the petitioner has mainly confined his arguments only to the ground that on the basis of single criminal case the proceeding in the Goonda Act cannot be started, hence, the orders are prayed to be set aside.

Learned A.G.A. after filing the counter affidavit has submitted that it is wrong to say that the notice dated 03.02.2017 was not served upon the petitioner. It was well served upon him. The endorsement of the service made by the Constable Manish Kant has been filed along with the affidavit. It is argued that the petitioner had appeared before the Additional District Magistrate (Finance & Revenue) on 13.02.2017 and on his prayer, time was granted to him to file the objection. He had

filed the vakalatnama on the date fixed. On the next date of hearing i.e. on 25.02.2017 neither any objection was filed by the petitioner nor any adjournment application was moved by him rather an attendance exemption application was moved by him. He had neither been wrongly implicated on the basis of village partibandi nor it can be said that he was not given an opportunity of being heard. In Case Crime No. 222 of 2016 after investigation the charge sheet has been filed and as the petitioner could not prove that he does not have reputation of goonda so he is not entitled for any relief.

From the perusal of the record, it is clear that the notice was served upon the petitioner by Constable Manish Kant. The report regarding service is appended at page-'9' of the counter affidavit. The fact of service has been admitted by the petitioner in the 'grounds of appeal' at page-'30' of the paper book wherein he has admitted that the notice dated 03.12.2017 was served upon him. On the first date fixed i.e. on 13.02.2017, he appeared in the court along with his counsel and on his written application, he was granted time to file objections on 03.03.2017. On 03.03.2017, he could not appear in the court because his father was not feeling well and he had to be hospitalised. Thus, it is clear that the ground of the petitioner that he was not served with the impugned notice becomes wrong on the basis of his own admission.

Admittedly, he could not appear in the trial court on 03.03.2017 but why his counsel did not appear this fact has not been explained by the petitioner and when on 03.03.2017 neither the petitioner nor his counsel appeared in the court, the court passed the impugned order dated 06.03.2017. In the order dated 06.03.2017, it is clearly mentioned that though the petitioner was granted time to file the objections but neither he appeared in the court nor did he file any objections, so the order was passed in the absence of the petitioner and his counsel both.

Thus, the petitioner cannot take benefit of the argument that he

was not provided an opportunity to oppose the notice.

So far as the other argument of the learned counsel for the petitioner is concerned, it is submitted that only on the basis of a single case the proceeding under Goonda Act cannot be initiated.

Admittedly, as per notice dated 03.02.2017 only one criminal case was said to be pending against the petitioner. Notice dated 03.02.2017 discloses that Constable Manish Kant had given beet information that in the coming legislative assembly elections there is apprehension of the present petitioner to affect the elections adversely. This beet information was investigated by the police officer wherein it was found that the petitioner is an extraneous goonda, who is involved in the offences regarding assault and causing injury and on the basis of apprehension of the coming elections being adversely affected by him the notice was issued against him.

On the basis of beet information admittedly no first information report was registered against the petitioner. So far as the allegations against the petitioner being goonda element is concerned, the word 'goonda' is described in Section 2 (b) of the Goonda Act as under:-

"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, Chapter XVI, Chapter XVII or Chapter XXII of the said code: or

(ii) has been convicted not less than thrice for an offence punishable under the Supression 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

(v) has been habitually passing indecent remarks or teasing women or

girls: or

(vi) is a tout.

Regarding externment of goondas, Section 3 of the Goonda Act can be reproduced as under:-

3. Externment, etc. of Goondas. -Where it appears to the District Magistrate.-

(a) that any person is a Goonda; and
(b) (i) that his movements or acts in the district or any part hereof are causing, or are calculated to cause alarm, danger or harm to persons or property; or

(ii) that there are reasonable grounds for believing that he is engaged or about to engage, in the district or any part thereof, in the commission of an offence referred to in subclauses (i) to (iii) of clause (b) of Section 2, or in the abetment of any such offence; and]

(c) that witnesses are not willing to come forward to give evidence against him by reason of apprehension on their part as regards the safety of their person or property-

the District Magistrate shall by notice in writing inform him of the general nature of the material allegations against him in respect of clauses (a), (b) and (c) and give him a reasonable opportunity of tendering an explanation regarding them.

(2) The person against whom an order under this section is proposed to be made shall have the right to consult and be defended by a counsel of his choice and shall be given a reasonable opportunity of examining himself, if he so desires, and also of examining any other witnesses that he may wish to produce in support of his explanation, unless for reasons to be recorded in writing the District Magistrate is of opinion that the request is made for the purpose of vexation or delay.

(3) Thereupon the District Magistrate on being satisfied that the conditions specified in clauses (a), (b) and (c) of sub-section (1) exist may by order in writing-

[(a) direct him to remove himself outside the area within the limits of his local jurisdiction or such area and any district or districts or any part thereof, contiguous thereto, by such route, if any, and within such time as may be specified in the order and to desist from entering the said area or the area and such contiguous district or districts or part thereof, as the case may be from which he was directed to remove himself until the expiry of such period not exceeding six months as may be specified in the said order;] (b)(i) require such person to notify his movements or to report himself, or to do both, in such manner, at such time and to such authority or person as may be specified in the order;

(ii) prohibit or restrict possession or use by him of any such article as may be specified in the order;

(iii) direct him otherwise to conduct himself in such manner as may be specified in the order, until the expiry of such period, not exceeding six months as may be specified in the order."

The Apex Court in the case **Vijay Narain Singh versus State of Bihar and others, (1984) 3 SCC 14** observed that it is essential to refer to at least two incidents of commission of crime for applicability of Clause (i) of section 2(b) of the 1970 Act.

Since there is reference of one incident only in the notice in hand, it falls short of the legal requirement as provided in Clause (i) of section 2(b) of the 1970 Act.

Again, a Division Bench of this Court in **Suresh Tewari Vs. State of U.P. and others** decided on 23.5.2018, after considering the Apex Court judgement in **Vijay Narain Singh Vs. State of Bihar, 1984 (3) SCC 14** and Full Bench judgement of this Court in **Bhim Sain Tyagi Tyagi Vs. State of U.P. 1999 (39) ACC 321**, while considering the issue relating to slapping of the penal provisions of the Act against an individual on basis of a solitary case, has observed as follows:-

"The Hon'ble Apex Court in the case of Vijay Narain Singh versus State of Bihar and others (1984) 3 SCC 14 has been pleased to hold that it is essential to refer to at least two incidents of commission of crime for applicability of Clause (i) of section 2(b) of the Act. Since there is reference of one incident only in the notice, it falls short of the legal requirement as provided in Clause (i) of section 2(b) and in this way the notice being illegal could be challenged before this Court as laid down by the Full Bench of this Court in the case of Bhim Sain Tyagi v. State of U.P. And others 1999 (39) ACC 321. If there had been reference of two or more incidents in the impugned notice, then the minimum legal requirement of section, 2(b) Clause (i) would have been satisfied, and then in that case sufficiency of the material on merits could not be challenged before this Court, but before the authority concerned as laid down in the Division Bench ruling in the case of Jaindendra @ Chhotu Singh Versus State of U.P. (supra). But since the impugned notice in the present case is short of the legal requirement, it could be challenged in this Court. The observations in para 12 of the ruling in the case of Jaindendra (supra) which have been quoted

above, also support this conclusion."

As per definition and the law settled by this Court as well by the Apex Court, one cannot be treated to be a habitual offender unless and until there is recurrence of the offence and at the most the general reputation of the person is that he is desperate and dangerous to the community. Since in this case against the petitioner there is reference of one extreme instance only the petitioner could not be deemed to be a habitual offender on the basis of that single incident only and in the whole order of the respondent no. 3 there is no mention that general reputation of the petitioner is of a desperate person or of being dangerous to the community. So the notice falls short of legal requirement as provided in Clause (1) of Section 2 (b) of the 1970 Act.

In view of above, the impugned order dated 06.03.2017 lacks merit and consequently, the order of appellate court dated 11.05.2017 also cannot be sustained, hence, both the orders are liable to be quashed.

The writ petition is **allowed**. The impugned order dated 06.03.2017 passed by the respondent no. 3 – Additional District Magistrate (Finance & Revenue) Saharanpur and the appellate court order dated 11.05.2017 passed by the respondent no. 2 – Commissioner, Saharanpur Division, Saharanpur, are hereby quashed.

Order Date :- 16.03.2022

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