

**Bindu Kumar Agarwal and Others Vs. State of U.P. and Others**

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**Court :** Allahabad Lucknow

**Decided On :** Nov-27-2013

**Judge :** Imtiyaz Murtaza & D.K. Upadhyaya

**Appeal No. :** Writ Petition No. 11079 (MB) of 2013

**Appellant :** Bindu Kumar Agarwal and Others

**Respondent :** State of U.P. and Others

**Judgement :**

Under challenge in this petition, is an order dated 14.5.2013, whereby the District Magistrate/Collector, Faizabad has issued a direction for attachment of certain properties alleged to have been acquired by the petitioners by commission of offences under Section 14(1) of U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986 (hereinafter referred to as the Act).

Learned counsel for the petitioners has vehemently argued that before passing the order under Section 14(1) of the Act for attachment of properties, it was incumbent upon the District Magistrate to have recorded his reasons for being satisfied that the property intended to be attached was acquired as a result of offences triable under the Act. He has also argued that the only material considered by the District Magistrate to record such a satisfaction in the impugned order are the report dated 13.5.13 submitted by the Senior Superintendent of Police, Faizabad and the report of the investigating officer dated 29.4.2013 and that in absence of any other

material independent of the aforesaid two police reports, the satisfaction recorded by the District Magistrate that there were reasons to believe that the property was acquired as a result of commission of offences cannot be said to be lawful. Hence, the impugned order cannot be permitted to be sustained.

In support of his submission, he has placed reliance on a Division Bench judgement of this Court in the case of Smt. Kahkashan Parveen v. State of U.P., 1999 (39) ACC and referred to paragraphs 7 and 8 thereof, wherein it has been laid down that the provisions of Section 14 require that there must be reason to believe that the conditions for an action under Section 14 of the Act existed and that those conditions are that certain property in possession of any person must have been acquired by a gangster and that too by commission of an offence under the Act.

A perusal of the aforesaid judgment reveals that in this case it has been laid down that attachment of the properties can be made only if two conditions are fulfilled, namely, (i) that the District Magistrate is satisfied that the property in possession of any person has been acquired by a gangster; and (ii) the property has been acquired by commission of an offence under the Act.

A perusal of the impugned order reveals that the District Magistrate has recorded his satisfaction about reasons to believe that the properties were acquired by gangsters, namely, the petitioners, by commission of offences which are triable under the Act. Thus, without there being any quarrel on the proposition laid down in the judgment of Smt. Kahkashan Parveen (*supra*), we are of the considered opinion that the said judgment does not help the petitioners in the present case in any manner.

Reliance placed by the learned counsel for the petitioners on another Division Bench judgment of this Court in the case of Prem Narayan Pandey v. State of U.P. and others (Writ Petition No. 7095 (MB) of 2010) decided on 22.10.2010, also is of no assistance to the petitioners for the reason that though the said judgement clearly lays down that reasons to believe before passing an order under Section 14(1) of the Act are to be recorded by the District Magistrate on the issue as aforesaid, however, it also clearly lays down that sufficiency or adequacy of the

material for forming reasonable belief by the District Magistrate is not open to judicial scrutiny. The said judgement only says that in a case where there is no material on the basis of which reasonable belief can be said to have been formed, or in a case where District Magistrate does not apply his mind before passing the order of attachment, the orders so passed can be interfered with while judicially reviewing the same.

In view of the law laid down in the aforesaid two judgments of this Court, what needs to be considered in this case is as to whether reasons have been recorded by the District Magistrate before passing the order of attachment regarding his satisfaction on the issue that properties were acquired by gangsters as a result of commission of offences triable under the Act or not.

A perusal of the order passed by the District Magistrate clearly reveals that he has recorded his satisfaction regarding the fact that the properties intended to be attached were acquired by the petitioners i.e. gangsters by commission of offences under the Act.

Submission of the learned counsel for the petitioners that independent of the two police reports which have been relied upon by the District Magistrate to arrive at his satisfaction, there is no other material, does not appeal to us.

At this juncture what needs to be examined by the Court is as to whether there was any material at all or not. The impugned order shows that material was available with the District Magistrate. As observed above, sufficiency or adequacy of the material cannot be seen while scrutinizing such an order.

In view of above, without entering into the sufficiency or adequacy of the material, we are of the considered view that the impugned order does not suffer from any illegality.

In regard to the submission made by the learned counsel for the petitioners that despite there being two police reports available, the District Magistrate ought to have conducted independent enquiry into the matter, it would suffice to observe that the Act does not require any such exercise to be undertaken by the District

Magistrate. The precondition, as envisaged under Section 14 of the Act for passing an order of attachment, is recording of satisfaction by the District Magistrate regarding the reasons to believe that the property intended to be attached has been acquired by commission of offence triable under the Act. The said condition being fulfilled in the present case, the impugned order does not require any interference by this Court.

The writ petition, therefore, lacks merit and is hereby dismissed.

There shall be no order as to costs.

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