

Drigpal. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Aug-02-2010

Judge : Imtiyaz Murtaza, J.

Acts : U.P. Control of Goondas Act - Section 3.

Appeal No. : CRIMINAL MISC. WRIT PETITION No. - 6402 of 2010.

Appellant : Drigpal.

Respondent : State of U.P. and ors.

Advocate for Pet/Ap. : A.K. Ojha, Adv.

Judgement :

1. Challenge in this petition is to the show cause notice dated 6.3.2010 issued to the petitioner under the U.P. Control of Goondas Act by respondent no. 2 i. e. Addl. District Magistrate, Jalaun at Orai.

2. From a perusal of the notice, it would transpire that the notice has been issued listing charges firstly that he is a Goonda and has committed an offence defined under Chapters 16,17 and 22 I.P.C. secondly, the charge against the petitioner is that either no one dares to lodge the F.I.R. or give the evidence against him. Two cases have been cited to prop up the invocation of the provisions of the U.P. Control of Goondas Act against the petitioner. On the basis of alleged criminal history as embodied in the notice, the action was initiated under section (3) of the U.P. Control of Goondas Act 1970 spelling out the ground that the activities of the

petitioner are causing alarm and danger to person or property or that there are reasonable grounds for believing that that such person is engaged or is about to be engaged in commission of enumerated offenses or in the abetment of any such offense or is so desperate and dangerous as to render his being at large hazardous to the community.

3. The main brunt of the submissions advanced across the bar by the learned counsel for the petitioner is that the petitioner is not a habitual offender. It is further argued that the District Magistrate recited in the notice that the petitioner is indulging in offenses punishable under Chapter 16, 17 and 22 of the Act but the petitioner has never been involved in the offenses listed in the Chapters afore-stated. Another submission advanced across the bar is that the notice issued against the petitioner militates against the relevant provisions of the Control of Goondas Act inasmuch as the same do not contain "general nature of material allegations". It is further argued that the notice has been issued in a routine manner.

4. Reference in connection with the grounds and submission urged before us be made to two decisions of the Apex Court i.e. (1) Kabir Chawla V. State of U.P. and others 1994 SCC (Cri) 577 and (2) State of U.P. V. Chandra Shekhar Shukla (2000) 9 SCC 392. In Kabir Chawla V. State of U.P. and others(suprs), wherein the Apex Court taking exception to the order of the High Court quashing the notice observed that there is no ground for quashing the said proceedings at the stage of listing show cause notice. It appears from the said decision that the petitioner in that case challenged the show cause notice issued by the District Authority and in the facts of that case, the, the High Court proceeded to quash. The Apex Court made the following observations.

5." There is no ground for quashing the said proceedings at this stage. The matter is under consideration before the District Magistrate. It is open to the petitioner to satisfy the District Magistrate that no ground has been made out for passing the order against him. In the writ petition, the petitioner has not made out a case that in issuing the show cause notice, the District Magistrate was actuated by mala-fides. There is, therefore no reason to assume that the District Magistrate would

not give a fair consideration to the matter." (Emphasis supplied).

6. The decision of the Apex Court in the second case (State of U.P. V. Chandra Shekhar Shukla,(2000) 9 SCC 392) revolves round non application of mind by the High Court while passing interim order. In the said case show cause was issued to the respondent under section 3 of the U.P. Control of Goondas Act, 1970. The High Court through an interim order stayed further proceedings. The State of U.P. went up in Appeal before the Apex Court. The Apex Court in its order held that the High Court passed the impugned interim order without application of mind, mechanically and there was no justification for the High Court to pass such interim order at this stage. Ultimately, the Apex Court set aside the impugned order of stay granted by the High Court. The order in so far as it germane to the controversy involved in this petition is quoted below.

7. " On a notice being issued to the respondent to show cause under the provisions of Section 3 of the U.P. Control of Goondas Act, 1970, a writ petition was filed and the High court by the impugned order, without application of mind mechanically has passed order of interim stay of the further proceedings. We see no justification for the High Court to pass such interim order at this stage. This appears to us to be a total non-application of mind by the High Court while passing the interim order. We, therefore, set aside the impugned order of stay granted by the High Court and allow this appeal accordingly. (Emphasis supplied).

8. Be that as it may, in the above conspectus, no case is made out for interference at this stage as the matter is still inactive process of consideration before the District Magistrate and the petitioner would have ample opportunity of urging his contentions as canvassed in this court before the District Magistrate concerned.

The petition being premature is not sustainable and therefore, it is accordingly dismissed in limine.

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