

Musharraf Vs. State of U.P. and Others

Musharraf Vs. State of U.P. and Others

SooperKanoon Citation : sooperkanoon.com/917577

Court : Allahabad

Decided On : Mar-24-2011

Judge : Vineet Saran; Surendra Singh, JJ.

Acts : U.P. Control of Goondas Act, 1970 - Section 3, Clauses (a), (b) and(c) of sub-section (1) (3)

Appeal No. : CRIMINAL MISC. WRIT PETITION No. - 5229 of 2011

Appellant : Musharraf

Respondent : State of U.P. and Others

Advocate for Def. : Govt. Advocate

Advocate for Pet/Ap. : Manoj Misra, Adv

Judgement :

1. Heard Sri Manoj Misra, learned counsel for the petitioner as well as learned AGA appearing for the State respondents and have perused the record. With consent of learned counsel for the parties, this writ petition is being disposed of at this stage without calling for a counter affidavit.

2. The case of the petitioner is that in response to a notice issued to him under Section 3 of the U.P. Control of Goondas Act, 1970 (hereinafter after referred to as the Act), the petitioner submitted his reply. After considering the reply of the petitioner as also the evidence adduced by him and hearing his counsel, the

District Magistrate discharged the notice after holding that the petitioner does not appear to be having the characteristics of 'Goonda' as defined under the Act. By the said order, bail bonds have also been cancelled and sureties were discharged.

3. However, by the same order dated 26.2.2011, which has been passed by the Additional District Magistrate, Budaun, a direction has been given that the petitioner shall report at the nearest police station every 15 days for the next six months. It is this latter part of the aforesaid order dated 26.2.2011 by which the petitioner is aggrieved.

4. The submission of Sri Manoj Misra, learned counsel for the petitioner, in short, is that the condition as has been imposed by the impugned order, could have been imposed only after the petitioner was declared 'Goonda' under the provisions of the Act and not otherwise. It has been contended that since the notice has been discharged as there was no ingredient of 'Goonda' found, no such restriction could have been imposed as has been done in the present case.

5. A plain reading of Section 3 of the Act would go to show that it is only after being satisfied that the conditions specified in Clauses (a), (b) and (c) of sub-section (1) of Section 3 exist that the District Magistrate can issue any direction regarding externment or impose any restriction with regard to the movement of the petitioner as provided under sub-section (3) of Section 3 of the Act.

6. What we find in the present case is that on the basis of evidence adduced by the petitioner, a clear finding has been recorded in the impugned order itself that there is no evidence to show that the petitioner is 'Goonda' and thus the notice issued has been being withdrawn as no case has been made out against him. Once such a finding has been recorded, meaning thereby that there is no satisfaction of the District Magistrate that any of the conditions specified in subsection (1) of Section 3 exist, we are of the clear view that the District Magistrate could not have thereafter issued any direction imposing restriction on the movement of the petitioner. In having done so and issuing the aforesaid direction to the petitioner to report every 15 days at the police station for the next six months, the District Magistrate has overstepped his jurisdiction. As such, the said direction deserves to be quashed.

7. Accordingly, this writ petition stands allowed to the extent that the direction given in the order dated 26.2.2011 passed by the Additional District Magistrate, Budaun requiring the petitioner to report at the police station every 15 days for the next six months is quashed.

8. There shall be no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com