

Ram Raheesh and Another. Vs. State of U. P. and Others

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Court : Allahabad

Decided On : Oct-27-2010

Judge : Rajiv Sharma; Raj Mani Chauhan, JJ.

Appeal No. : Writ Petition No. 10555 (MB) of 2010

Appellant : Ram Raheesh and Another.

Respondent : State of U. P. and Others

Judgement :

1. Heard learned Counsel for the petitioners and learned Additional Government Advocate.
2. In the instant writ petition, the petitioners have sought quashing of the FIR dated 15.10.2010 registered as case crime no. 2853 of 2010, under Sections 2/3 of The U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 (in short referred to as the "Gangsters Act") at police station Kotwali City, District Hardoi. Further prayer in the writ petition is for a direction to the respondents not to arrest the petitioners in the aforesaid case.
3. Brief facts of the case are that in respect of an incident dated 11.10.2010, an FIR was lodged by the complainant Shiv Ratan Singh, which was registered as case crime no. 2851 of 2010, under Section 171 Cha, 147, 353, 504 IPC and 136 (2) of Representation of People Act at PS Kotwali City, district Hardoi. According to the petitioners, this FIR was registered against unknown persons but the

petitioners were falsely implicated by the police, which would be evident from the fact that in the said FIR, the complainant has alleged that when he was preparing necessary papers pertaining to election, at about 6 p.m., seven unknown persons came and started abusive language. They tried to snatch the ballot box but the Presiding Officer locked the door from inside. In the aforesaid case, the petitioners were arrested on 13.10.2010 and were granted bail by the competent Court on 14.10.2010. It has also been pointed out that there is no question of recovery of articles at the instance of the petitioners.

4. Learned Counsel for the petitioners has contended that after being enlarged on bail by the competent Court, the police registered a false impugned FIR under the provisions of the Gangsters Act. He has submitted that the petitioners are innocent and law abiding citizens. They have no criminal antecedents except the aforesaid case registered as case crime no. 2851 of 2010. Petitioner No.1 is a farmer and is engaged in agriculture work in the village, whereas petitioner No.2 Awanish Kumar is a young boy and is a student of B.A. Part-I.

5. Learned Counsel for the petitioners has submitted that the gang chart has been approved by the District Magistrate, Hardoi mechanically and without applying its independent mind. In the FIR, it has been alleged that the petitioners are maintaining a gang and are involved in criminal activities. Furthermore, the leader of the gang and its members in order to have economic/physical gain are engaged in committing crimes punishable under Chapters XVI, XVII and XXII of the Indian Penal Code.

6. It has been vehemently argued that no offence from the perusal of the FIR under the provisions of the Gangsters Act is made out against the petitioners. Furthermore, from the gang chart itself, which is the basis of invoking the provisions of Gangsters Act, the four accused persons (including the petitioners) have been shown to be involved only in case crime no. 2853 of 2010.

7. On the other hand, learned State Counsel has argued that from perusal of the FIR, commission of cognizable offence under the provisions of Gangsters Act is made and as such, the writ petition is liable to be dismissed. In order to substantiate his arguments, State Counsel has drawn our attention towards the

provisions of Section 2 of the Act, which is a definition clause and submitted that the activities of the petitioners fall within the ambit of the definition and as such the petitioners are not entitled for any relief.

8. However, during the course of arguments, when he was confronted with the question as to how, he would substantiate that the petitioners are habitual offenders and are involved in committing crimes punishable under Chapter XVI, XVII or XXII of the Indian Penal Code, the State Counsel fairly conceded that there is no such evidence. In the FIR it has been indicated that Abhimanyu Singh has formed a gang and the petitioners and other accused persons are members of the said gang. The gang is committing offences under Chapter XVI, XVII or XXII of the Code with the object of gaining temporal and pecuniary advantage. Surprisingly, no instance has been mentioned to show their involvement in anti-social activities.

9. In order to attract the provisions of Section 2/3 of the Gangsters Act, the essential requirements are being enumerated below:-

(i) There should be a group of persons, who acting singly or collectively;

(ii) by violence, or threat or show of violence or intimidation or coercion or otherwise;

(iii) with object of disturbing public order or of gaining any undue temporal pecuniary material or other advantage for himself or any other person;

(iv) indulge in anti-social activities categorized, in fifteen categories of Section 2(b)

10. In order to attract the substantive offence of Section 3 of the Gangsters Act, the ingredients as provided in the definition of the word 'Gang' under Section 2 (b) and that of word 'Gangster' under Section 2 (c) are to be fulfilled. The extract of

the definitions of the word 'Gang' and the word 'Gangster' is being reproduced below:-

2 (b) "Gang" means a group of persons, who acting either singly or collectively, by violence, or threat or show of violence, or intimidation, or coercion, or otherwise with the object of disturbing public order or of gaining any undue temporal, pecuniary, material or other advantage for himself or any other person, indulge in antisocial activities, namely (I) to (xv).

2 (c) "gangster" means a member or leader or organiser of a gang and includes any person who abets or assists in the activities of a gang enumerated in clause (b), whether before or after the commission of such activities or harbours any person who has indulged in such activities ;

11. From the bare perusal of both the definitions together, it is evident that the persons forming group may be said to be a gang if they by use of violence, threat, show of violence, intimidation, coercion or otherwise with the object of disturbing public order or if unlawfully gaining temporal, pecuniary, material or other advantages either for himself or for any other person indulged in any of the anti-social activity enumerated under Clause (i) to (xv) and those persons indulging in aforesaid activities as member, leader, organizer of the gang may be treated as gangster and may be liable for punishment under Section 3 of the Act.

12. Having considered the submissions made by the learned Counsel for the parties, we, prima facie are of the view that the gang chart has been approved in a mechanical manner by the District Magistrate and the said decision to lodge the FIR on that basis has been taken in haste. The haste with which, without examining the material on record by the authorities concerned, Gang chart has been approved is evident from the fact that on 15.10.2010 Inspector, Kotwali prepared the Gang chart and submitted to the Circle Officer, Hardoi City for approval. On the same day, he referred the matter to the Additional Superintendent of Police, Hardoi, who in turn, on the same day referred the matter to the Superintendent of Police, Hardoi. The Superintendent of Police, Hardoi made a note dated 15.10.2010 "recommended" and forwarded the gang chart to the District Magistrate, who in his turn, approved the gang chart on the same day

i.e. 15.10. 2010. Thus it cannot be said that the District Magistrate at any point of time recorded subjective satisfaction before imposition of the Gangsters Act.

13. In view of the aforesaid peculiar facts and circumstances of the case, the writ petition is finally disposed of with the direction that the petitioners shall not be arrested in the aforesaid case till cogent and credible material is collected showing the complicity of the petitioners in the instant case or till submission of police report under Section 173 (2) Cr PC before the Court concerned, whichever is earlier, subject to their cooperation in the investigation, which will go-on.

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