

Neutral Citation No. - 2023:AHC:169934-DB

AFR

Court No. - 67

Case :- CRIMINAL MISC. WRIT PETITION No. - 12619 of 2023

Petitioner :- Govardhan

Respondent :- State of U.P.

Counsel for Petitioner :- Akhilesh Srivastava, Saksham Srivastava

Counsel for Respondent :- G.A.

Hon'ble Rahul Chaturvedi, J.

Hon'ble Mohd. Azhar Husain Idrisi, J.

1. Heard Sri Akhilesh Srivastava, learned counsel for the petitioner and the learned A.G.A. for the State and also perused the record.

2. Present petition has been filed on behalf of petitioner Govardhan seeking following main prayer:

"Issue a writ, order or direction in the nature of Certiorari quashing the show cause notice dated 15.6.2023, issued by the Additional District Magistrate (Finance & Revenue), Aligarh, in Case No. 3400 of 2023 (State Vs. Govardhan), under Section 3 of the Uttar Pradesh Control of Goondas Act, 1970, Police Station Chharra, District Aligarh (Annexure No. 1 to the writ petition)."

3. Normally, we do not entertain such type of petitions, where only show cause notice is issued by the Additional District Magistrate (Finance & Revenue), Aligarh (the Executive Authority of the District), in Case No. 3400 of 2023, State Vs. Govardhan), under Section 3 of the Uttar Pradesh Control of Goondas Act, 1970, Police Station Chharra, District Aligarh.

4. In the instant case, the notice under Section 3 of the Uttar Pradesh Control of Goondas Act, 1970 dated 15.6.2023 has been issued on the basis of two cases, (i) Case Crime No. 69 of 2023, under Sections 323, 504, 506, 354, 354B, 452 IPC, Police Station Chharra, District Aligarh and (ii) Rapat No. 20, dated 3.5.2023. On the basis of these "so called two cases" the Additional District Magistrate (Finance & Revenue), Aligarh

has issued a notice under aforesaid section of the Act, 1970 against the petitioner for the purposes of bringing an additional offence within the four corners of Uttar Pradesh Control of Goondas Act, 1970. For this objective the person must be a "Goonda" and this expression of "Goonda" has been defined in Section 2(b) of the Uttar Pradesh Control of Goonda Act, 1970.

5. The peculiar feature of this enactment that the person who is branded as "Goonda" should be ousted from the municipal limits of the city as a preventive measure by the executive authorities of the district by passing externment order. That the person either himself or as a member or leader of a gang, who is *habitually* commits the offences mentioned in the Section 2(b) of the Act or he has got the tendency to commit the offence time and again. If a person is having a solitary case to his credit, he cannot be branded that he has a habitual Goonda pleaded by the learned counsel for the petitioner.

6. Provisions of Uttar Pradesh Control of Goonda Act, 1970 are applicable in the entire State of U.P. From the plain reading of the enactment, it could be said with utmost certainty that this enactment has been promulgated to save the citizens from habitual "Goonda". The expression of Goonda has been defined in Section 2(b) of Uttar Pradesh Control of Goonda Act, 1970 which is 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, or Chapter XVI, Chapter XVII or Chapter XXII of the said Code; or

(ii) has been convicted for an offence punishable under the Suppression 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 or

(v) has been habitually passing incident remarks or teasing women or girls; or

(vi) is a tout.

7. Its punishment is provided in Section 3 of the aforementioned enactment that when it appears to the District Magistrate that any person is a “Goonda” or his movements or acts in the district or any part thereof may cause or are calculated to alarm, danger or harm to the persons or property of the district. The District Magistrate feels and have a sufficient material of believing that, he is engaged or about to engage in the District or any part thereof, in the commission of offence referred to in sub-clauses (i) to (iii) of clause (b) of Section 2, or its abetment of such an offence and no witness would come forward to give evidence against him, meaning thereby, that individual has earned lots of bad name and has got sufficient 'nuisance value' in the district. By this reason of apprehension with regard to the safety of their person or property, the District Magistrate may pass externment order for a period of six months as specified in law with sole motive to save the citizens from the wrath of that individual “Goonda”. Thus, it can safely be termed that under this enactment, the District Magistrate are empowered to handle such type of miscreants and oust them from the municipal limit of the district maximum for the period of six months by way of preventive measures. This is a deterrent law whereby a person who is termed as a “Goonda” is asked to leave the premises of the district. It shall be branded as “Goonda” for rest of his life.

8. The District Magistrate before exercising this extraordinary and unusual powers conferred by this enactment, must exercise with all caution and care, but we are noticing that there is a rampant misuse of provisions of this enactment. The executive authorities for the extraneous consideration exercising this extraordinary powers at their whims and capricious and are issuing notices on a solitary case or some beat reports. This amounts to make the deterrent enactment blunt. The indiscreet exercise of provisions

of Goonda Act and sending the notices to the persons is not based on executive authorities' sweet will or choice. Issuing notice on solitary case is quite irritating and unnecessarily, there is piling up of litigation. In the instant case there is solitary case and solely on this basis no executive authority can justify that the petitioner is a 'habitual offender' or involved in the cases mentioned in Section 2(b) of the Uttar Pradesh Control of Goondas Act, 1970.

9. It is a fundamental right of every citizen to reside peacefully and profess his business, but if the executive authorities are issuing notice under this deterrent law, then they must be doubly sure about the individual's past image, his past credentials, his family, social educational back ground and after assessing all these factors if the executive authorities comes to the conclusion that individual is a "Goonda" or a potential threat to society at large and should be thrown out from the municipal limits, then only by well reasoned order, after applying his own independent judicial mind pass a well reasoned order for externment of that individual or even issue notice to that individual calling upon him to justify his past conduct.

10. The public perception regarding the individuals' image carries weight. If the individual is enjoying a bad reputation and name in the area and coupled with the fact that he has got a chequered past then executive authorities are well within their right to issue notice to that individual or to pass an externment order for that individual. Trivial and insignificant offences having one or two in number would not make the person branded as a "Goonda". This adjective "Goonda" itself carries bundle load of bad name, and the executive authorities casually and irresponsibly brand a person as a Goonda, goes without saying, that his entire future and reputation would go to dogs and cause irreparable damage to his name and reputation of his family.

11. Sri Srivastava, learned counsel for the petitioner has relied upon a

judgment of this Court in the case of **Kailash Jaiswal Vs. State Of U.P. And 3 Others (Criminal Misc. Writ Petition No. 10241 of 2019)** decided on **14.11.2022** in which the co-ordinate Bench of this Court while relying upon the judgment of **Suresh Tewari Versus State of U.P. and others, 2018 (5) ALJ 1** opined that requirement of applicability of clause (1) of Section 2 of Uttar Pradesh Control of Goondas Act, 1970 is that a person who either himself or as a member or leader of a gang habitually commits or attempt to commits or abets the commission of offence is punishable as referred in the clause (1) itself.

12. Paragraph nos. 11, 12, 14 & 16 of **Kailash Jaiswal (Supra)** are reproduced hereunder:

"11. In this backdrop, it is submitted that the notice under the U.P. Goondas Act Is not only malicious but misuse of the power vested upon the District Magistrate, the proceedings have been initiated in colourable exercise of power to coerce the petitioner to vacate the premises which admittedly does not vest with the State. Further, it is submitted that on a single case, proceedings under the U.P. Goondas Act cannot be initiated as the petitioner is not a habitual offender.

12. Reliance has been placed on the decision of this Court rendered in Suresh Tewari Versus State of U.P. and others, 2018 (5) ALJ 1.

14. Learned counsel for the petitioner submits that impugned notice is not in conformity with the Rule 4 of the U.P. Control of Goondas Rules, 1970. He further submits that Section 3 of the U.P. Control of Goondas Act, 1970 (hereinafter to be referred to as the "Act") confers powers on the concerned District Magistrate to extern anyone, who is the Goonda outside the district or to place restriction on his movement. If the District Magistrate is satisfied that the matters set forth in clauses (a), (b) and (c) of sub-Section (1) of the Goondas Act are made out he may issue notice to the Goonda informing him of the general nature of material allegations against him in clause (d) of the Act. He further submits that in the instant case clause (d) mentions about the only case registered against the petitioner being Case Crime No. 212 of 2019, thus the second respondent has mechanically noted the case pending against the petitioner in the prescribed proforma without applying its mind, as well as, without recording satisfaction about the matter set out in clauses (a), (b) and (c)

of Act.

16. The Division Bench of this Court in Suresh Tewari (2018(5) ALJ1), held relying upon the Supreme Court judgment that on one stray incident only petitioner could not be deemed to be habitual offender on the basis of that single incident. Para no. 19 reads thus:-

19..... The requirement of applicability of the clause (i) is that Goonda means that a person who either by himself or as a member or leader of a gang, habitually commits or attempts to commit, or abets the commission of offences punishable referred to in the said clause. In the impugned show cause notice there is a description of only one criminal case against the petitioner, while as per the definition and the law settled by this Court as well by the Hon'ble Apex Court, one cannot be treated to be a habitual offender unless and until there is recurrence of offences. Since there is a reference of one stray incident only in the notice, the petitioner could not be deemed to be a habitual offender on the basis of that single incident only and so the notice fails to satisfy the legal requirement."

13. In the impugned notice, there is a description of only one criminal case and one beat report against the petitioner while as per the definition and law settled by the Hon'ble Apex Court as well as by this Court "one" cannot be treated to be a 'habitual offender' unless and until there is a tendency of recurrence of the offence. In the instant case there is a solitary case to the credit of the petitioner, in which he has been granted anticipatory bail till the conclusion of trial, we find that this notice is nothing, but a sheer abuse of power vested in the executive authorities of the district.

14. In addition to above, there is mandatory requirement of the law, that if the executive authority is satisfied that the proceedings under Goonda Act spells out offences under clause (a), (b) and (c) of sub-Section 1 of the Act, he may issue notices to the particular "Goonda" informing him general nature of material allegations against him in clause (d) of the Act, his image among the masses, his nuisance value by which he is a potential threat to the peace and public order of the society at large.

15. But in the instant case, in the notice under challenge spells out the cases required against the petitioner which is allegedly issued on a "prescribed printed proforma" without application of mind by the

executive authorities. Not only this, except enumeration of pending solitary case and a beat report, there is total lack of any judicial mind spelling out the general nature of material allegations against the petitioner, making entire impugned notice per se defective and cannot be acted upon any further.

16. We record our strong displeasure in such type of routine pasting of such provisions of the Uttar Pradesh Control of Goondas Act, 1970 and Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 in a most capricious and casual way.

17. At this juncture, learned A.G.A. stood up and informed the Court that in addition to the cases mentioned in the show cause notice, the petitioner is also involved in two-three more cases which do not find place in the show cause notice. This submissions advanced by the learned A.G.A. itself is amusing. This clearly indicates that one hand does not know what another hand is doing. All of a sudden learned A.G.A. woke up and revealed that in addition to two cases mentioned in impugned notices, the petitioner has got two more cases. The Court cannot take the judicial notice of those additional cases; we cannot permit this hide and seek practice with the proposed "Goonda" i.e. the petitioner.

18. Present matter is squarely covered by the aforesaid judgment and liable to be quashed. Accordingly, we are quashing the show cause notice dated 15.6.2023, issued by the Additional District Magistrate (Finance & Revenue), Aligarh, in Case No. 3400 of 2023, State Vs. Govardhan), under Section 3 of the Uttar Pradesh Control of Goondas Act, 1970, Police Station Chharra, District Aligarh.

19. *Registrar General, High Court is directed to circulate the copy of this judgment apprising all the executive authorities of the State of U.P. to strictly adhere the ratio laid down mentioned above. Hence forth it is expected from the authorities that they would necessarily spell out 'general nature of particular allegations against the proposes Goonda',*

his personal image among the masses his social family background and then only pass a well reasoned order not on a prescribed proforma while issuing a show cause notice and thereafter a pass a well reasoned order of externment, (if at all required and needed) by the said executive authorities concerned. All the District Magistrates and the executive authorities working under him are directed to take appropriate action hence forth and proceed against the individual where they have got a strong reason to believe that the individual is rogue to the society and his externment is a desirable.

20. As mentioned above, we are witnessing rampant misuse of the provisions of Uttar Pradesh Control of Goondas Act, 1970. There is no uniformity in the executive authorities of the districts of UP regarding applicability of this deterrent enactment causing unwarranted piling up of the cases, challenging the notices under this Act etc.

(A). Thus in this regard, it is directed that the State Government too would form a uniform guide lines regarding the applicability of this Act in the light of the above judgment.

(B). This guidelines must be framed latest by 31st October 2023 and shall be circulated among all the District Magistrates of the Districts, so that they may strictly adhere to those guidelines and their shall be Uniformity in the application of the provisions of Uttar Pradesh Control of Goondas Act, 1970.

21. With this direction, the writ petition stands **allowed**. The impugned show cause notice dated 15.6.2023 issued by the Additional District Magistrate (Finance & Revenue), Aligarh is hereby quashed. No order as to cost.

Order Date :- 10.8.2023

M. Tarik