

Mohd Arshad And Another vs State Of U.P. And Another on 1 May, 2025

Author: Saurabh Srivastava

Bench: Saurabh Srivastava

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:70282

Court No. - 74

Case :- APPLICATION U/S 528 BNSS No. - 14972 of 2025

Applicant :- Mohd Arshad And Another

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Mohd Harish

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Srivastava,J.

1. Heard Mr. Mohd. Harish, learned counsel for applicants and learned AGA for State.
2. Instant application has been preferred with the prayer to quash the entire proceeding of Special Trial no. 07 of 2022 (State vs. Ajmeri & others) under Section 2/3 Gangster and Anti-Social Activities, 1986, arising out of Case Crime no. 664 of 2018, PS- Kokhraj, District Kaushambi pending in court of learned Additional Sessions Judge, F.T.C. II, Kaushambi and the impugned charge sheet no. 01 of 2020 dated 01.05.2020, as well as impugned summoning order dated 08.03.2022 passed by learned Special Judge (Gangster Act), Court no. 7, District Kaushambi.

3. Learned counsel for the applicant s submitted that the charge-sheet wherein the gang chart has been prepared and the same was forwarded and approved by the competent authorities were contrary to all canons of fairness and reasonableness and the same is highly illegal since none of the mandatory compliance has been made as issued by Special Notification from time to time by State Government of U.P., which later on culminated into U.P. Gangster and Anti-Social Activities (Prevention) Rules, 2021.

4. While assailing the order dated 08.03.2022, through which cognizance of offence has been taken up by learned court of Additional Session Judge/Special Judge (Gangster Act), Court No.7, District Kaushambi, it is submitted that the same has been passed on printed proforma only by way of filling the blanks in shape of inserting certain relevant information in shape of sections, case crime number, title of the case and name of the police station and at last the date is also filled with the hand written information. The contention of learned counsel appearing on behalf of the applicant is that the entire proceeding initiated through charge-sheet preferred against the applicant and thereafter summoning order issued on dated 08.03.2022 is highly illegal and the same is not sustainable in the eye of law.

5. While substantiating the arguments raised on behalf of the applicants, learned counsel relied upon the judgement passed by co-ordinate Bench of this Court in case of Rajeev Agarwal vs. State of U.P. and Another, decided on 28.08.2023 in Application under section 482 Cr.P.C. No.38502 of 2018. The above-mentioned judgement passed by co-ordinate Bench of this Court is strictly in the light of judgement rendered by Hon'ble Apex Court in case of Gulam Mustafa vs. State of Karnataka and Another, (2023) 5 SCR 354.

6. Learned counsel for applicants also submitted that co-accused Javed has also challenged the proceedings of Special Trial no. 07 of 2022 under Section 2/3 of Gangsters Act, by way of filing application u/s 482 no. 19106 of 2024 (Javed vs. State of U.P. and another) which came to be allowed vide order dated 04.04.2025 passed by this Court and the copy whereof is appended as Annexure no. 7 to this application.

7. Per contra, learned A.G.A. while rebutting the stand taken up by learned counsel for the applicant submitted that under section 10 of the act of 1986, it is specifically provided that "a Special Court may take cognizance of any offence triable by it, without the accused being committed to it for trial upon receiving a complaint of facts which constitute such offence or upon a police report of such facts" and as such there is hardly any infirmity in cognizance order dated 08.03.2022.

8. After hearing rival submissions extended by learned counsel for the parties, it is necessary to deal the arguments raised by learned A.G.A. at first instance, there is hardly any dispute raised by learned counsel for the applicant in pursuance to section 10 of the act of 1986, but at the same time the dispute raised through arguments the procedure adopted by learned Special Judge while taking cognizance of offence against the applicant, which is apparent from the record that it is a typed proforma wherein certain information has been filled up, meaning thereby compliance of section 190 Cr.P.C. has not been complied with wherein concerned learned Special Court has to go through the complaint/information/report submitted by concerned police authority/Investigating Officer in

detail along with connected papers appended therein, but in the instant matter the same has not been seems to be dealt in accordance with law, hence the entire order dated 08.03.2022 is a cryptic one since the same is typed proforma wherein certain information has been filled up.

9. The arguments raised by learned A.G.A. itself demolishes the entire stand taken up by State while protecting the order dated 08.03.2022.

10. So far as the veracity, genuineness and legality of the procedure adopted by framing charge in shape of gang chart, the same is also not in consonance with the provisions contained under Rules of 2021, which is nothing but the compilation of several notification issued by State Government of U.P., which has been mentioned in case of Rajeev Agarwal (supra) and the same is mandated and the competent authorities, who are forwarding and approving the gang chart is duty incumbent to follow the same.

11. In the instant matter, it is crystal clear that none of the procedure has been followed by the authorities concerned to put their signature at the time of preparation of gang chart on different dates irrespective of being forwarding authority and approving authority.

12. Considering the above facts and circumstances of the case and giving highest regards to the judgement rendered by co-ordinate Bench of this Court in case of Rajeev Agarwal (supra) and judgment passed by this Court in case of Javed (supra), proceedings initiated against the applicants in pursuance to Case Crime No.664 of 2018, P.S. Kokhraj, District- Kaushambi is hereby quashed and set-aside.

13. The instant application stands allowed accordingly.

14. However, the above mentioned order will not preclude the authorities concerned to re-initiate the proceedings against applicants in accordance with law, if required further.

Order Date :- 1.5.2025 Shaswat