

Faheem @ Faheem Khan And 5 Others vs State Of U.P. And Another on 3 March, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:29662

Court No. - 76

Case :- APPLICATION U/S 482 No. - 44221 of 2024

Applicant :- Faheem @ Faheem Khan And 5 Others

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

Counsel for Applicant :- Manoj Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Vinod Diwakar,J.

1. Heard learned counsel for the applicants, learned A.G.A. for the State, and perused the entire record.
2. This application under Section 482 Cr.P.C. has been filed with a prayer to quash the charge-sheet dated 16.12.2015, cognizance order dated 29.01.2016 passed by learned Special Judge, Gangster Act/Additional District Judge, Moradabad as well as entire proceedings of S.T. No. 39 of 2016 titled as State v. Bashir Khan and Others, arising out of Case Crime No. 535 of 2015, registered under Section 3(1) of U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986, at P.S. Sambhal, District Sambhal.
3. Learned counsel for the applicant submits the provisions of Gangster Act have been invoked against the applicants on the basis of two cases shown in Gang Chart, i.e. (i) case crime no.493 of 2015, under Sections 5 of Explosive Substances Act, P.S. Sambhal, District Sambhal, and (ii) Case

Crime No. 435 of 2015, under Sections 304, 286, 427 I.P.C. and Section 3, 4, 5, 6 of Explosive Substances Act and Section 9-B of Arms Act, P.S. Sambhal, District Sambhal. Learned counsel further submits that the applicants have been acquitted in the aforesaid cases vide order dated 04.11.2019 passed by Sessions Judge, Sambhal and order dated 25.07.2024 passed by Sessions Judge, Sambhal, respectively, therefore, there remain absolutely no basis to initiate and continue the instant proceedings, hence the proceedings of instant case are liable to be quashed.

4. Per contra, learned A.G.A. has opposed the application, but could not dispute the submissions raised by the learned counsel for the applicants.

5. In the instant case, perusal of record shows that the proceedings under Gangster Act were initiated against the applicants mainly on the basis of aforesaid cases, in which the applicants had already been acquitted by the trial Court. The case of the applicants is that as the very basis of initiating proceedings under Gangster Act stand vanished and thus, the impugned proceedings under Gangster Act cannot be continued. At this stage it would be pertinent to mention that recently in case of Farhana Versus State of U. P., SLP (Crl.) No.437 of 2023, decided on 19.2.2024, the Supreme Court held as under:

"12. From a bare perusal of Section 2(b)(i) of the Gangsters Act, it would become apparent that the person alleged to be the member of the gang should be found indulging in anti-social activities which would be covered under the offences punishable under Chapters XVI, or XVII or XXII IPC. There is no dispute that the case set up by the prosecution against the appellants insofar as the offences under the Gangsters Act are concerned, is limited to Section 2(b)(i) reproduced supra and none of the other clauses of the provision have been pressed into service for the proposed prosecution.

13. Needless to say that for framing a charge for the offence under the Gangsters Act and for continuing the prosecution of the accused under the above provisions, the prosecution would be required to clearly state that the appellants are being prosecuted for any one or more offences covered by anti-social activities as defined under Section 2(b).

14. There being no dispute that in the proceedings of the sole FIR registered against the appellants for the offences under Chapter XVII IPC being Crime Case No. 173 of 2019, the appellants stand exonerated with the quashing of the said FIR by the High Court of Judicature at Allahabad by exercising the powers under Section 482 of Code of Criminal Procedure, 1973, vide order dated 3rd March, 2023 passed in Application No. 7228 of 2023.

15. Hence, the very foundation for continuing the prosecution of the appellants under the provisions of the Gangsters Act stands struck off and as a consequence, the continued prosecution of the appellants for the said offence is unjustified and tantamounts to abuse of the process of Court.

16. As a consequence of the discussion made herein above, the impugned orders dated 14th November, 2022 and 6th December, 2022 passed by the High Court of Judicature at Allahabad are quashed and set aside. Resultantly, the impugned FIR being Crime Case No.424 of 2022 for offence punishable under Section 3(1) of the Gangsters Act, registered at Police Station- Bhognipur, District- Kanpur Dehat and all the proceedings sought to be taken thereunder against the appellants are hereby quashed.

17. The appeals are allowed accordingly"

6. From the aforesaid pronouncement of the Supreme Court, it appears that in aforesaid case the proceedings under Gangster Act were initiated on the basis of two criminal cases, which were quashed by the High Court and it was observed by the Supreme Court that since the very foundation of continuing the prosecution of the appellants under the provisions of Gangster Act stand struck off and consequently continuing prosecution of the appellant for offence under Gangster Act is unjustified and tantamount to the abuse of the process of the Court. The said case law is squarely applicable to facts of the present case. In the instant matter also, the proceedings of solitary case, on the basis of which impugned proceedings were initiated, have been quashed and thus, the very basis of the impugned proceedings stands vanished and receded. Here it would be relevant to mention that there is no such evidence of any specific incident that the applicants were found indulging in anti-social activities covered under Chapter XVI, XVII and XXII, so as to bring them within the purview of Section 2 (b) (i) of the Gangster Act.

7. In view of the aforesaid, particularly considering the fact that in the two cases, on the basis of which the proceedings under Gangster Act were initiated against the applicants, the applicants had already been acquitted by the learned trial Court and considering the aforesaid position of law, the instant criminal proceedings against the applicants for offence under Gangster Act are unjustified and tantamount to the abuse of the process of the Court, hence the impugned proceedings are liable to be quashed.

8. Accordingly, entire proceedings of charge-sheet dated 16.12.2015, cognizance order dated 29.01.2016 passed by learned Special Judge, Gangster Act/Additional District Judge, Moradabad as well as entire proceedings of S.T. No. 39 of 2016 titled as State v. Bashir Khan and Others, arising out of Case Crime No. 535 of 2015, registered under Section 3(1) of U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986, at P.S. Sambhal, District Sambhal, against the applicants, are hereby quashed.

9. Application under Section 482 Cr.P.C. is allowed.

Order Date :- 3.3.2025 Shafique Justice Vinod Diwakar