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PADMA MISHRA

v.

STATE OF UTTARAKHAND & ANR.

(Criminal Appeal No. 20 of 2010)

B

FEBRUARY 13, 2020

[INDIRA BANERJEE AND ANIRUDDHA BOSE, JJ.]

Constitution of India: Art.226 – FIR instituted against the appellant under ss.2/3 of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 – Writ petition seeking quashing of FIR, dismissed by High Court – On appeal, held: In proceedings under Art.226 of the Constitution, High Court does not adjudicate the correctness of the allegations in an FIR – The Court may only intervene in exceptional cases, if the allegations made in the FIR ex facie do not disclose any offence at all – In this case, the FIR, in substance, contained the allegation that the appellant and others were taking recourse to public threats and coercion including physical violence to gang the voices of witnesses in cases against them – Therefore, it cannot be said that the allegations in the FIR did not disclose any act warranting penalization under the Gangsters Act – High Court rightly refused to quash the FIR under Art.226 of the Constitution – No interference with the order of High Court called for – Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 – ss.2 and 3.

Dismissing the appeal, the Court

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HELD: 1.1 The definition of gangster is made in the Gangsters Act and includes any person who is a member or leader or organizer of a gang or abets or assists in the activities of a gang, which includes violence, threat, intimidation, coercion with the object of disturbing public order or of gaining any undue advantage for himself or any other person. In the FIR, it is categorically stated that the appellant has, along with others created terror, beating and fighting with the common people. The FIR, in substance, contains the allegation that the appellant and others are taking recourse to public threats and coercion including physical violence to gang the voices of witnesses in cases against them. [Paras 1, 2][1012-E-F]

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1.2. The FIR contains a list of various cases against the appellant pending at the material time when the FIR was lodged and they included offences under the relevant positions of the I.P.C., including Section 323 (voluntarily causing hurt), Section 506 (criminal intimidation) Section 504 (provoking breach of peace) Section 307 (attempt to murder). It cannot therefore, be said that the allegations in the FIR did not disclose any act warranting penalization under the Gangsters Act. In proceedings under Article 226 of the Constitution of India, the High Court does not adjudicate the correctness of the allegations in an FIR. The High Court rightly refused to quash the FIR under Article 226 of the Constitution of India and dismissed the writ petition. [Paras 3, 4, 5][1012-G-H][1013-A-B]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 20 of 2010.

From the Judgment and Order dated 09.06.2009 of the High Court of Uttarakhand at Nainital in Criminal Writ Petition No. 427 of 2009.

Rajesh Sharma, Firoz Saifi, Ms. Shalu Sharma, Advs. for the Appellant.

Jatinder Kumar Bhatia and Krishanam Mishara, Advs. for the Respondents.

The Judgment of the Court was delivered by

INDIRA BANERJEE, J.

1. This appeal is against the Order dated 9.06.2009 passed by the High Court of Uttarakhand at Nainital dismissing writ petition No. 427/2009 filed by the petitioner under Article 226 of the Constitution of India for quashing of an FIR instituted against the petitioner being FIR No.179/2009 under Sections 2/3 of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986, 'hereinafter referred' to as "Gangsters Act".

Sections 2(b) and 2(c) of the Gangsters Act define as : "gang" and Gangster.

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

A public order or of gaining any undue temporal, pecuniary, material or other advantage for himself or any other person, indulge in anti-social activities.

2(c) “gangster” means a member or leader or organizer 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.

Section 3 of the Gangsters Act provides as follows:

C 3. “Penalty (1) A gangster, shall be punished with imprisonment either description for a term which shall not be less than two years which may extend to ten years and also with fine which shall not be less than five thousand rupees:

D Provided that a gangster who commits an offence against the person of a public servant or the person of a member of the family of a public servant shall be punished with imprisonment of either description for a term which shall not be less than three years and also with fine which shall not be less than five thousand rupees.”

E The definition of gangster is made in the Gangsters Act and includes any person who is a member or leader or organizer of a gang or abets or assists in the activities of a gang, which includes violence, threat, intimidation, coercion with the object of disturbing public order or of going any undue advantage for himself or any other person.

F 2. In the FIR it is categorically stated that the appellant has, along with others created terror, beating and fighting with the common people. The FIR, in substance, contains the allegation that the appellant and others are taking recourse to public threats and coercion including physical violence to gang the voices of witnesses in cases against them.

G 3. The FIR contains a list of various cases against the appellant pending at the material time when the FIR was lodged and they included offences under the relevant positions of the I.P.C., including Section 323 (voluntarily causing hurt), Section 506 (criminal intimidation) Section 504 (provoking breach of peace) Section 307 (attempt to murder). It cannot therefore, be said that the allegations in the FIR did not disclose any act warranting penalization under the Gangsters Act.

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4. In proceedings under Article 226 of the Constitution of India, A
the High Court does not adjudicate the correctness of the allegations in
an FIR. The Court may only intervene in exceptional cases, if the
allegations made in the FIR ex facie do not disclose any offence at all.

5. In our considered opinion, the High Court rightly refused to B
quash the FIR under Article 226 of the Constitution of India and dismissed
the writ petition.

The Appeal is therefore, dismissed.

Pending application(s) stand disposed of.