

Shraddha Gupta vs The State Of Uttar Pradesh on 26 April, 2022

Author: M.R. Shah

Bench: B.V. Nagarathna, M.R. Shah

REPORTABLE
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NOS. 569-570 OF 2022

Shraddha Gupta

...Appellant

Versus

The State of Uttar Pradesh and Others

...Respondents

JUDGMENT

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned order dated 27.09.2019 passed by the High Court of Judicature at Allahabad in Criminal Miscellaneous Writ Petition No. 21964 of 2019 and the subsequent order dated 10.11.2020 passed in Criminal Miscellaneous Review Application No. 2/2019, the original accused, Shraddha Gupta, against whom an FIR has been filed under Section 2/3 of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 (hereinafter referred to as the 'Gangsters Act, 1986'), has filed the present appeals.

2. The facts leading to the present appeals in nutshell are as under:

That a written report was made by respondent no.4 herein (original informant) on 24.05.2016 to the effect that her sister and her family members had previous enmity with the accused persons, namely, (1) Shravan Kumar (husband of the appellant herein), (2) Guddu @ Sudhanshu, (3) Munna @ Brajendranth Sharma, (4) Kamal Sharma and (5) Bhure. That on 23.5.2016, her sister Kumari Sadhna Sharma, In-

charge, DGC(Crl.) in the Court of the District Judge, Badaun, had gone to the Court on her scooty to pursue the cases on behalf of the Government. Bhure and others had a hearing date in the Court of District Judge, Badaun for appearance. At about 5:30 p.m. her sister was returning from Badaun to Ujhani, sitting on the rear seat of the scooty being driven by her servant Bihari. When the scooty

reached near Balaji temple, they saw a car parked near the temple in which all the above- named accused were present. The car followed the scooty of her sister Sadhna and when she reached near Jiorlia village, the car of the accused rammed into her sister's scooty with the result both Sadhna and Behari fell on the road. Then the accused drove their car towards her sister, stopped it near Behari and shouted, 'kill this fellow also otherwise he may also give evidence'. The accused, however, ran away on the arrival of the people. The incident was witnessed by the passer-by and with their help Behari took her sister to Badaun hospital in a vehicle. Her sister Sadhna died in the hospital. The complainant further stated that she had come to the hospital at 11:00 on getting the information and lost her consciousness on seeing the dead body of her sister. The autopsy of the deceased was conducted in the night. When she regained her consciousness, Behari told her the entire incident. After making arrangements for the last rites of her sister, she came to the police station to lodge the report. The complainant alleged that she apprehends the association of the former BJP MLA Yogender Sagar in the entire conspiracy. On the basis of this report, a case under Section 147, 304, 504, 323, 506, 120-B IPC was registered against the above named six accused persons at P.S. Ujhani, District Badaun, vide Case Crime No. 337/2016 dated 24.05.2016.

2.1 That subsequently on 27.05.2017, a case under Sections 2/3 of the Gangsters Act, 1986 was registered against eight accused persons vide Case Crime No. 268/2017. The charge sheet was filed against the said eight accused persons on 26.5.2018 and the cognizance of the same was taken by the learned Special Judge under the Gangsters Act, Badaun on 2.7.2018.

2.2 It appears that thereafter on further investigation and on the basis of the call recordings between the co-accused, handed over to the Investigating Officer by the complainant, the names of the appellant – Shraddha Gupta, her husband Sharvan Gupta and Kamlesh Sharma, came to light and accordingly they were arrayed as accused in Case Crime No. 337/2016.

2.3 That in the course of investigation, it also revealed that the appellant – Shraddha Gupta, her husband – Sharvan Gupta and Kamlesh Sharma were also involved in the offence pertaining to the conspiracy of murder of deceased Sadhna Sharma. Therefore, supplementary charge sheet was also filed against the aforesaid three accused persons, namely, Shraddha Gupta, Sharvan Gupta and Kamlesh Sharma. That subsequently, it was brought to the notice of the Senior Superintendent of Police, Badaun, that the case under the Gangsters Act, 1986 has been registered only against eight accused persons and the charge sheet has been filed against eleven accused persons in Case Crime No. 337/2016.

2.4 Thereafter, a gang chart was prepared against the appellant and other two accused, which was sent to the Senior Superintendent of Police, District Badaun on 19.03.2019. That thereafter the Joint Director (Prosecution), Badaun granted approval on 1.4.2019 to register a case against the aforesaid three persons under Sections 2/3 of the Gangsters Act, 1986. SSP, Badaun, vide communication dated 2.4.2019 communicated to the Investigating Officer and accordingly FIR dated 27.05.2019 in Case Crime No. 268/2017 under Sections 2/3 of the Gangsters Act has been lodged/registered against the appellant and other two co-accused. Thus, the FIR for the offences under the Gangsters Act has been registered against eleven accused in all (eight accused charged earlier and the three accused including the appellant herein charge sheeted subsequently).

2.5 That the appellant herein filed the present Criminal Miscellaneous Writ Petition No. 21964/2019 before the High Court under Section 482 of the Criminal Procedure Code and prayed for the following reliefs:

i) Issue a writ, order or direction in the nature of certiorari to quash the orders dated 7.6.2019 and 2.4.2019 passed by the respondent no.3;

ii) Issue a writ, order or direction in the nature of certiorari to quash the impugned FIR dated 27.5.2017 as Case Crime No. 268/2017 under Section 2/3 Gangsters Act, P.S. Ujhani, Dist.

Badaun, only to the extent of the petitioner;

iii) Issue a writ, order or direction in the nature of mandamus commanding respondents no. 2 and 3 not to arrest the petitioner in case Crime No. 268/2017 under Sections 2/3 Gangsters Act, P.S. Ujhani, District Badaun.

2.6 It was the case on behalf of the appellant that she has been falsely implicated in the case; she was not named in the FIR; in the FIR, no role has been assigned to her; her name has surfaced in further investigation under Section 173(8) Cr.P.C.; the Senior Superintendent of Police, Badaun maliciously submitted the supplementary gang chart against her approved by the District Magistrate, Badaun; that she is neither a gang leader nor a member of the gang being a household lady. It was also the case on behalf of the appellant-accused that solely on the basis of the single FIR/charge sheet, she cannot be charged for the offences under the provisions of the Gangsters Act.

2.7 That by the impugned order, the High Court has dismissed the said writ petition and has refused to quash the criminal proceedings under Sections 2/3 of the Gangsters Act. A review application was also filed which has also been dismissed.

2.8 Feeling aggrieved and dissatisfied with the impugned orders passed by the High Court dismissing the writ petition under Section 482 Cr.P.C. and dismissing the review application, the accused Shraddha Gupta has preferred the present appeals.

3. Shri Divyesh Pratap Singh, learned counsel appearing on behalf of the appellant has, as such, reiterated what was argued before the High Court.

3.1 It is vehemently submitted by the learned counsel appearing on behalf of the appellant that in the facts and circumstances of the case, the appellant has been wrongly booked/charged for the offences under Sections 2/3 of the Gangsters Act, 1986.

3.2 It is contended that by no stretch of imagination, the appellant can be said to be a 'Gangster' and/or a member of the 'Gang'. It is submitted that solely on the basis of a single FIR/charge sheet and that too with respect to a single murder, the appellant cannot be said to be a 'Gangster' and/or a member of the 'Gang'.

3.3 It is submitted that the allegations against the appellant cannot be said to be in connection with anti-social activities for which she is to be charged for the offences under Sections 2/3 of the Gangsters Act, 1986. 3.4 Relying upon the decision of this Court in the case of Piyush Kantilal Mehta v. Commissioner of Police, Ahmedabad City, 1989 Supp (1) SCC 322, it is submitted that as held by this Court only such activity which adversely affect and/or likely to affect the maintenance of public order can be said to be an anti-social activity.

3.5 Relying upon the decision of the Gujarat High Court in the case of Karansinh Chetansinh Vaghela v. State of Gujarat, 2021 SCConLine Gujarat 1260, it is submitted that as held by the Gujarat High Court, a single FIR cannot be said to be sufficient for invocation of the preventive statutes.

3.6 It is further submitted by the learned counsel appearing on behalf of the appellant-accused that she cannot be implicated in the FIR in question under the Gangsters Act solely on the basis of an isolated case. It is contended that the appellant cannot be said to be a habitual offender and she does not indulge in anti-social activities. 3.7 That in the present case, as such, the appellant was implicated in the case on further investigation and by way of supplementary charge sheet. That prior thereto eight persons were already charge sheeted including for the offence under the Gangsters Act, 1986 and the learned Special Court took cognizance against eight accused persons. It is submitted that subsequently, the appellant and other two co-accused are implicated along with eight accused persons and also charged for the offences under the Gangsters Act also. It is contended that once the Special Court took cognizance against eight persons, thereafter it was not open to implicate the present accused, who were charge sheeted subsequently for the offences under the Gangsters Act.

4. The present appeals are vehemently opposed by Shri Sanjay Kumar Tyagi, learned counsel appearing on behalf of the State of Uttar Pradesh and Shri Shuvodeep Roy, learned counsel appearing for respondent No.4 herein (original informant).

4.1 It is vehemently submitted that in the facts and circumstances of the case, the appellant and two other accused are rightly charged for the offences under Sections 2/3 of the Gangsters Act, 1986. 4.2 It is contended that in the present case, the provisions of the Gangsters Act are invoked after following due procedure under the Gangsters Act and after the gang chart was prepared and the same was approved by the higher authority as well as the District Magistrate. 4.3 It is submitted that as such the eight co-accused persons, against whom the earlier charge sheet was filed, were already charged for the offences under Sections 2/3 of the Gangsters Act with respect to the same offence.

4.4 That however after the initial charge sheet was filed against the eight accused persons, during the course of further investigation, the names of the appellant and two other accused persons came to surface and therefore they were also arrayed as an accused. It is submitted that therefore with respect to the same offence, when the other accused persons were also charged for the offences under the Gangsters Act, being co-accused and considering the definitions of 'Gang' and 'Gangster' under the Gangsters Act, 1986, the appellant and other two co-accused who were charge sheeted subsequently were also required to be prosecuted for the offences under the Gangsters Act also. It is urged that therefore the appellant and other two co-accused are rightly being prosecuted for the

offences under the Gangsters Act. 4.5 It is submitted that in the present case, it has been revealed that the father of the appellant Ramindra Nath Sharma had five daughters and had no son. The deceased Sadhna Sharma was the eldest daughter while the complainant Viparna Gaur, respondent no.4 herein is the youngest. Late Ramindra Nath Sharma had left behind huge immovable properties and it was found during investigation that there was a chequered litigation amongst the daughters over the division of the properties left behind by their father.

4.6 It is submitted that during the course of the investigation, it has been revealed that the accused Shraddha Gupta, Sharvan Gupta and Kamlesh Sharma are also involved for the offence pertaining to the conspiracy of the murder of the deceased Sadhna Sharma. 4.7 It is pointed that the main co-accused P.C. Sharma, who is the Gang Leader, is a dangerous criminal. He has an organised gang. He along with his accomplices, with the purposes of making pecuniary gain indulges and causes to indulge in offences relating to human body and murder. It is submitted that all the accused now charge sheeted have joined hands, connived and hatched the conspiracy to kill the deceased with a view to make a pecuniary gain.

4.8 It is submitted that the appellant herein, being a member of the 'Gang', as defined under Section 2(b) of the Gangsters Act and is found to have indulged in anti-social activities, mentioned in Section 2(b) of the Gangsters Act, is also liable to be prosecuted for the offences under the Gangsters Act being 'Gangster' as defined in Section 2(c) of the Gangsters Act.

4.9 It is contended that even in case of a single FIR/charge sheet but with respect to anti-social activities mentioned in Section 2(b) of the Gangsters Act, there can be a prosecution under the Gangsters Act. It is urged that under the Gangsters Act, there is no bar like in the other statutes, such as, Maharashtra Control of Organized Crime Act, 1999 and the Gujarat Control of Terrorism and Organized Crime Act, 2015. 4.10 Learned counsel appearing on behalf of the respondents -State has heavily relied upon the various decisions of the High Court of Allahabad in which the High Court had an occasion to consider a similar issue and had taken the view that considering the provisions of the Gangsters Act, more particularly Sections 2(b) and 2(c), even in case of a single FIR/charge sheet for the anti-social activities mentioned in Section 2(b) of the Gangsters Act, an accused can be prosecuted for the offences under the Gangsters Act. (Reference is made to Criminal Miscellaneous Application No. 2226/2002, titled 'Vishnu Dayal Vishwanath v. State of UP', decided on 15.06.2007; Writ Petition No. 4936/1999, titled 'Rinku @ Hukku v. State of U.P.', decided on 12.1.2000; Application u/s 482 No., 32940/2015, titled 'Mohit Chaudhary v. State of U.P.', decided on 10.12.2015; Criminal Miscellaneous Writ Petition No. 3938/2021, titled 'Ritesh Kumar @ Rikki v. State of U.P.', decided on 5.8.2021; and Criminal Miscellaneous Writ Petition No. 16164/1994, titled 'Ajay Rai v. State of U.P.', decided on 22.11.1994). 4.11 Making the above submissions and relying upon the above decisions, it is prayed to dismiss the present appeals.

5. We have heard the learned counsel for the respective parties at length.

6. The short question which is posed for the consideration of this Court is, whether, a person against whom a single FIR/charge sheet is filed for any of the anti-social activities mentioned in section 2(b) of the Gangsters Act, 1986 can be prosecuted under the Gangsters Act. In other words, whether a

single crime committed by a ‘Gangster’ is sufficient to apply the Gangsters Act on such members of a ‘Gang’.

7. While considering the aforesaid issues/questions, the relevant provisions of the Gangsters Act, 1986 are required to be referred to. The object and purpose of enactment of the Gangsters Act, 1986 is to make special provisions for the prevention of, for coping with, gangsters and anti-social activities and for matters connected therewith or incidental thereto. Section 2(b) defines ‘Gang’ and Section 2(c) defines ‘Gangster’. Sections 2(b) and 2(c) read as under:

“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 anti-social activities (Act no. 2 of 1974), namely—

(i) offences punishable under Chapter XVI, or Chapter XVII, or Chapter XXII of the Indian Penal Code (Act no. 45 of 1860), or

(ii) distilling or manufacturing or storing or transporting or importing or exporting or selling or distributing any liquor, or intoxicating or dangerous drugs, or other intoxicants or narcotics or cultivating any plant, in contravention of any of the provisions of the U.P. Excise Act, 1910 (U.P. Act no. 4 of 1910) or the Narcotic Drugs and Psychotropic Substances Act, 1985 or any other law for the time being in force, or

(iii) occupying or taking possession of immovable property otherwise than in accordance with law, or setting-up false claims for title or possession of immovable property whether in himself or any other person, or (Act no. 61 of 1985)

(iv) preventing or attempting to prevent any public servant or any witness from discharging his lawful duties, or

(v) offences punishable under the Suppression of Immoral Traffic in Women and Girls Act, 1956, or

(vi) offences punishable under section 3 of the Public Gambling Act, 1867 (Act no. 104 of 1956), or

(vii) preventing any person from offering bids in auction lawfully conducted, or tender, lawfully invited, by or on behalf of any Government department, local body or public or private undertaking for any lease or right or supply of goods or work to be done, or

(viii) preventing or disturbing the smooth running by any person of his lawful business profession, trade or employment or any other lawful activity connected

therewith, or

(ix) offences punishable under section 171-E of the Indian Penal Code, or in preventing or obstructing any public election being lawfully held, by physically preventing the voter from exercising his electoral rights, or

(x) inciting others to resort to violence to disturb communal harmony, or

(xi) creating panic, alarm or terror in public, or

(xii) terrorising or assaulting employees or owners or occupiers of public or private undertakings or factories and causing mischief in respect of their properties, or

(xiii) inducing or attempting to induce any person to go to foreign countries on false representation that any employment, trade or profession shall be provided to him in such foreign country, or

(xiv) kidnapping or abducting any person with intent to extort ransom, or

(xv) diverting or otherwise preventing any aircraft or public transport vehicle from following its scheduled course;

(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.” 7.1 Section 3 of the Gangsters Act, 1986 provides for punishment, which reads as under:

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

Provided that a gangster who commits an offence against the person of a public servant of 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, (2) Whoever being a public servant renders any illegal help or support in any manner to a gangster, whether before or after the Commission of any offence by the gangster (whether by himself or through others) or abstains from taking lawful measures or intentionally avoids to carry out the directions of any court or of his superior officers, in this respect, shall be punished with imprisonment of either description for a term which may extend to ten years but shall not be less than three years and also with fine.” 7.2 Section 5 of the Gangsters Act provides for constitution of Special Courts for the speedy trial of the offences under the Act. Section 6 provides that a Special Court

may, if it considers it expedient or desirable so to do, hold its sitting for any of its proceedings at any place, other than the ordinary place of its sitting or seat. Section 8 of the Act provides that when trying any offence punishable under the Gangsters Act, a Special Court may also try any other offence with which the accused may, under any other law for the time being in force, be charged at the same trial.

Under Section 9 of the Gangsters Act, the State Government shall appoint a person to be the Public Prosecutor for every Special Court. Section 10 provides 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. Section 12 provides that the trial under the Gangsters Act of any offence by Special Court shall have precedence over the trial of any other case against the accused in any other court (not being a Special Court) and shall be concluded in preference to the trial of such other case and accordingly the trial of such other case shall remain in abeyance. Section 13 of the Gangsters Act provides that where, after taking cognizance of any offence, a Special Court is opinion that the offence is not triable by it, it shall, notwithstanding that it has no jurisdiction to try such an offence, transfer the case for trial of such offence to any other court having jurisdiction under the Code and the court to which the case is transferred may proceed with the trial of the offence as if it has taken cognizance of the offence.

8. From the aforesaid, it can be seen that all provisions are to ensure that the offences under the Gangsters Act should be given preference and should be tried expeditiously and that too, by the Special Courts, to achieve the object and purpose of the enactment of the Gangsters Act.

9. Now so far as the main submission on behalf of the accused that for a single offence/FIR/charge sheet with respect to any of the anti- social activities, such an accused cannot be prosecuted under the Gangsters Act, 1986 is concerned, on a fair reading of the definitions of 'Gang' and 'Gangster' under the Gangsters Act, 1986, it can be seen that a 'Gang' is a group of one or more persons who commit/s the crimes mentioned in the definition clause for the motive of earning undue advantage, whether pecuniary, material or otherwise. Even a single crime committed by a 'Gang' is sufficient to implant Gangsters Act on such members of the 'Gang'. The definition clause does not engulf plurality of offence before the Gangsters Act is invoked.

A group of persons may act collectively or anyone of the members of the group may also act singly, with the object of disturbing public order indulging in anti-social activities mentioned in Section 2(b) of the Gangsters Act, who can be termed as 'Gangster'. A member of a 'Gang' acting either singly or collectively may be termed as a member of the 'Gang' and comes within the definition of 'Gang', provided he/she is found to have indulged in any of the anti-social activities mentioned in Section 2(b) of the Gangsters Act.

10. On a fair reading of the definitions of 'Gang' contained in Section 2(b) and 'Gangster' contained in Section 2(c) of the Gangsters Act, a 'Gangster' means a member or leader or organiser of a gang including any person who abets or assists in the activities of a gang enumerated in clause (b) of Section 2, who either acting singly or collectively commits and indulges in any of the anti-social activities mentioned in Section 2(b) can be said to have committed the offence under the Gangsters

Act and can be prosecuted and punished for the offence under the Gangsters Act. There is no specific provision under the Gangsters Act, 1986 like the specific provisions under the Maharashtra Control of Organized Crime Act, 1999 and the Gujarat Control of Terrorism and Organized Crime Act, 2015 that while prosecuting an accused under the Gangsters Act, there shall be more than one offence or the FIR/charge sheet. As per the settled position of law, the provisions of the statute are to be read and considered as it is. Therefore, considering the provisions under the Gangsters Act, 1986 as they are, even in case of a single offence/FIR/charge sheet, if it is found that the accused is a member of a 'Gang' and has indulged in any of the anti-social activities mentioned in Section 2(b) of the Gangsters Act, such as, 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 and he/she can be termed as 'Gangster' within the definition of Section 2(c) of the Act, he/she can be prosecuted for the offences under the Gangsters Act. Therefore, so far as the Gangsters Act, 1986 is concerned, there can be prosecution against a person even in case of a single offence/FIR/charge sheet for any of the anti-social activities mentioned in Section 2(b) of the Act provided such an anti-social activity is 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.

11. In the present case, it is alleged that the main accused P.C. Sharma was a gang leader and who was the mastermind and he hatched the criminal conspiracy along with other co-accused including the appellant herein to commit the murder of the deceased Sadhna Sharma for a pecuniary benefit as there was a property dispute going on since long between the family members. It is also to be noted that the other co-accused were already charge sheeted/prosecuted for the offence under the Gangsters Act and therefore the appellant and the other two co-accused being members of the 'Gang' were also required to be prosecuted for the offences under the Gangsters Act also like other co-accused. Therefore, in the facts and circumstances of the case, it cannot be said that no prosecution could have been initiated against the appellant-accused for the offences under Sections 2/3 of the Gangsters Act, 1986.

12. In view of the above discussion and for the reasons stated above, the High Court has rightly refused to quash the criminal proceedings against the appellant-accused under Sections 2/3 of the Gangsters Act, 1986, in exercise of powers under Section 482 Cr.P.C. We are in complete agreement with the view taken by the High Court. Under the circumstances, the present appeals fail and the same deserve to be dismissed and are accordingly dismissed.

.....J.
[M.R. SHAH]

NEW DELHI;
APRIL 26, 2022.

.....J.
[B.V. NAGARATHNA]

