

Rajbir Singh Tyagi vs State Of U.P. & Others on 23 August, 2018

Equivalent citations: AIRONLINE 2018 ALL 3533

HIGH COURT OF JUDICATURE AT ALLAHABAD

A.F.R.

JUDGMENT RESERVED ON : 09.07.2018.

JUDGMENT DELIVERED ON : 23.08.2018.

Case :- CRIMINAL MISC. WRIT PETITION No. - 17245 of 2009

Petitioner :- Rajbir Singh Tyagi

Respondent :- State Of U.P. & Others

Counsel for Petitioner :- S.M.G. Asghar,A.K. Srivastava,P K Tyagi,Smt. Archana Tyagi,Swe

Counsel for Respondent :- Govt. Advocate

Hon'ble Om Prakash-VII,J.

1. Present writ petition has been filed by the petitioner Rajbir Singh Tyagi with the prayer to issue a writ, order or direction in the nature of certiorari quashing the judgments and orders dated 14.11.2008 and 21.1.2009 passed by the District Magistrate, Muzaffar Nagar in criminal case no. 04 of 2008-09, under Section 14 of the U. P. Gangsters and Anti Social Activities (Prevention) Act, 1986 (hereinafter referred to as the Act) as well as the order dated 11.8.2009 passed by the Special Judge (Gangster Act), Saharanpur in Misc. Case No. 05 of 2009 (State Vs. Rajbir).

2. Brief facts of the case are as follows :

3. S.H.O. concerned of the Police Station Civil Lines, Muzaffar Nagar submitted a report to S.S.P. Concerned and the same was forwarded by the Superintendent of Police concerned under Section 14 of the Act to the District Magistrate concerned with the prayer that several criminal cases are

pending against the petitioner and his son Vicky Tyagi @ Vikrant. They have earned lot of money and property illegally after committing crime and prayer was made to attach the moveable and immovable property in possession of the petitioner and Vicky Tyagi @ Vikrant. Police concerned has also given details of the criminal cases pending against the petitioner and Vicky Tyagi @ Vikrant as well as the cases pending under the Act. It was also reported that petitioner has an organised gang whose main activity is to acquire wealth by putting the general public in fear of death or hurt. Being a gangster and by criminal activities petitioner acquired vast wealth with the help of which he has constructed a palatial building bearing no. 37 Indira Colony, Muzaffar Nagar and has also purchased luxury goods. It is also evident from the attachment order (Annexure No. 2) passed by the District Magistrate concerned on the basis of the aforesaid report of the S.H.O. concerned and recommended by the Senior Superintendent of Police, Muzaffar Nagar that Rajbir Singh Tyagi and Vicky Tyagi @ Vikrant being gangster has amaze wealth by illegal means committing crime under the Act and held various properties. Vide order dated 14.11.2008 following properties were attached :

(I) House No. 37 Indira Colony, Muzaffar Nagar which is recorded as house no. 39 in the revenue record in the name of the petitioner and all the articles/goods/valuable/luxury items kept in this house.

(II) House adjacent to the house no. 37 Indira Colony, Muzaffar Nagar recorded in the revenue record in the name of Smt. Vandana Tyagi @ Meenu wife of Vicky Tyagi @ Vikrant which is being reconstructed after demolishing it.

(III) House No. 40 Indira Colony, Muzaffar Nagar adjacent to house no. 37 recorded in the name of Smt. Vandana Tyagi @ Meenu and Smt. Suprabha Tyagi was being reconstructed after demolition.

(IV) House No. 474/890/7 Mohalla Saket Colony, Muzaffar Nagar in front of the police outpost and all the articles/goods kept in this house.

4. It is also evident from the record that the petitioner along with the person who were affected by the said attachment order made a representation to the District Magistrate.

5. Specific case of the petitioner before the District Magistrate concerned was that property, said to be in his possession, was not acquired as a result of commission of any offence under the Act. No material is placed by the police concerned to hold the same. Details of any such information received from other sources or mode and manner of earning the property or money have also not been specifically described. Petitioner also refuted the allegation that he is a gangster. His assertion was that land over which the house in question is situate was purchased before the Act came into force. He also possessed agricultural land in his native village and house in question was constructed on the basis of income accrued from the agriculture land.

6. Police case was that although petitioner possessed his agricultural land but he never submitted any income tax return nor disclosed any legal source of income. Police case was also that if the

income accrued through the known sources possessed by the petitioner is compared with the value of the property held by the petitioner, the same is not commensurate to his known source of income. On representation made by the petitioner and other affected parties, the District Magistrate allowed the representation of Urmila Tyagi and order dated 14.11.2008 (attachment order) was modified vide order dated 21.1.2009 releasing the attached property house no. 474/890/7 Mohalla Saket Colony and confirm the attachment order dated 14.11.2008 passed in respect of the other properties.

7. Feeling aggrieved by order dated 21.1.2009 passed by the concerned District Magistrate, representation/reference was made before the Special Judge, Gangster Act, Saharanpur. Learned Special Judge after inviting the objection and hearing the parties vide impugned order dated 11.8.2009 confirmed the order dated 11.1.2009. Thus the petitioner filed this writ petition.

8. Heard learned counsel for the petitioner, learned A.G.A. for the State and perused the entire record.

9. Submission of the learned counsel for the petitioner is that property in question belonging to the petitioner had been purchased on 25.2.1978. The Act came into existence in the year 1986. Construction was made in the year 1978-79 itself. At this juncture learned counsel appearing for the petitioner referred to the sale deed and the affidavit annexed with the writ petition and also referred to the provisions of Section 14, 15 and 16 of the Act and argued that impugned judgment and order passed by the District Magistrate concerned as well as Special Judge, Gangster Act both are illegal. There was no evidence to connect the house in question with the provisions of Section 14 of the Act.

10. Learned A.G.A. opposed the submissions made by the learned counsel for the petitioner.

11. I have considered the rival submissions made by the learned counsel for the parties.

12. For better appreciation, Section 14(1) of the Act is reproduced hereunder:

"14. Attachment of property - (1) If the District Magistrate has reason to believe that any property, whether movable or immovable, in possession of any person has been acquired by a gangster as a result of the commission of an offence triable under this Act, he may order attachment of such property whether or not cognizance of such offence has been taken by any Court."

13. The aforesaid provision clearly envisages that the order of the District Magistrate attaching one's property should be based on reasons and not arbitrary. The expression "reason to believe" appearing therein has some intent and purpose. It puts fetter in the arbitrary exercise of power of attachment to deny a person of his right to any property. What law requires is that there must be reason to believe that the property sought to be attached has been acquired by a 'gangster' as a result of commission of any offence under the Act. The expression "reason to believe" contemplates an objective determination based on intelligent care and deliberation involving judicial review, as distinguished from purely subjective consideration. There must be rational and intelligible nexus between 'reason' and 'belief'. The word 'believe' is a very much stronger word than 'suspect' and it

involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind that what has been alleged is true. The expression 'reason to believe' is also defined in Section 26 of the Indian Penal Code. According to the said definition a person is said to have 'reason to believe' a thing, if he has sufficient cause to believe that thing but not otherwise. "Reason to believe" is not the same thing as "suspicion" or "doubt" and mere seeing also cannot be equated to believing. "Reason to believe" is a higher level of state of mind. The belief entertained by the authority must not be arbitrary or irrational. It must be reasonable or in other words, it must be based on reasons which are relevant and material. The Court, of course, cannot investigate into the adequacy or sufficiency of the reasons which weighed with the authority in coming to the belief, but the Court can certainly examine whether the reasons are relevant and have a bearing in the matter in regard to which it is required to entertain the belief.

14. So keeping in mind the meaning of the words "reason to believe" in Section 14 of the Act coupled with the effect of order of attachment which makes one homeless and pauper, it is to be seen whether in the present case there were sufficient materials before the District Magistrate, Muzaffar Nagar for his belief that petitioner Rajbir Singh Tyagi is a gangster and that he has acquired the properties as a result of commission of any offence triable under the Act.

15. For answering the questions posed, reference may be made to the definition of words "Gang" and "Gangster" as defined in Section 2 (b) and 2 (c) of the Act:

"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, namely: (i) to (xv) [omitted as not necessary to reproduce].

2(c) "Gangster" means a member or leader or organizer of a gang and includes any person who abets or assists in the activities or 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."

16. A conjoint reading of the aforesaid two definitions what appears is that for taking action under Section 14 against a person, there must be materials for objective determination of the District Magistrate that he either as a member, leader or organizer of a gang acquired any property as a result of commission of any offence under the Act. There must be nexus between his criminal act and the property acquired by him. His mere involvement in any offence is not sufficient to attach his property. In other words, what is necessary to find is whether his acquisition of property was as a result of commission of any offence enumerated in the Act being a member, leader or organizer of a gang. One might have committed several offences, but if the property acquired by him was with the aid of his earning from legal source, no action under Section 14 of the Act can be taken against him.

17. In the present case, it transpires from the impugned orders, that petitioner Rajbir Singh Tyagi is involved in several cases since 1995 to 2004. It appears that the case No. 470 of 2003 is registered

under Section 2/3 of the Act other cases are related to attempt to murder as well as causing hindrance to public servant in discharge of their official duties and referring to those two cases, the District Magistrate came to hold that petitioner Rajbir Singh Tyagi is a gangster whose main object is to commit murder, extortion and other heinous crimes with the object to have pecuniary gain. The impugned orders however, do not reveal as to the nature of allegations made against him in the aforementioned case and the result thereof, in as much as, whether they ended in conviction or acquittal. His order is also silent as to when the house No. 37, Indira Colony, Muzaffar Nagar was constructed and the time of acquisition of the movable properties. Since as observed earlier, there must be nexus between the commission of any offence and acquisition of the property. The impugned orders, do not show that the District Magistrate, Muzaffar Nagar decided the issue in the manner as law demands. Rather it appears that he being influenced by the report of the Police concerned about involvement of petitioner Rajbir Singh Tyagi in large number of cases, hastened to exercise power under the Act and attached the properties in absence of any material to show that those properties were acquired as a result of commission of any offence.

18. Section 14 of the Act is a harsh provision that affects one's right to property which is a constitutional right under the Constitution. Therefore, initial burden was upon the State to satisfy the District Magistrate with necessary materials that petitioner Rajbir Singh Tyagi being a gangster acquired the properties as a result of commission of any offence. That was however, not done. So, complaining the attachment order to be illegal, a move was made by the petitioners by filing a representation for release of the properties. The said prayer was rejected with the observation that the petitioners could not establish the source of income to build the house and acquire the movables. This approach of the District Magistrate, in my opinion, has no sanction under law. The Act does not provide that aggrieved person seeking release of the properties from attachment must prove the source of income for acquisition thereof. So, on a conspectus of the relevant provisions of the Act, I am of the considered opinion that the order of attachment passed by the District Magistrate, Muzaffar Nagar is illegal, arbitrary and against the weight of the materials on record.

19. In view of the findings in the preceding paragraph that the order of attachment is illegal, the question of legality and correctness of the order, passed by the learned Special Judge becomes academic. Admittedly, the land on which the residential is situate was purchased by petitioner and his brother on 25.2.1978. The case of the petitioner is that house in question was constructed in the year 1978-79 from the agricultural income and he is paying house tax since 1980. Most of the goods and valuables have been purchased during that period before coming into force the Act. In support of his case, he has filed affidavits and other relevant documents. Learned Special Judge dealt with the issue as if he was exercising power under the Prevention of Corruption Act and concluded that the petitioner failed to prove by leading evidence regarding the saving with the aid of which the house in question was built. He rejected the claim of the petitioner observing that he failed to discharge the burden that lay on him to prove that the attached properties had not been acquired by Rajbir Singh Tyagi as a gangster as a result of commission of any offence under the Act.

20. Sub-section (3) and (5) of Section 16 which have relevance for deciding the issue are extracted as under:

"3(a) On receipt of the reference under sub-section (1) or an application under sub-section (2), the Court shall fix a date for inquiry and give notices thereof to the person making the application under sub-section (2) or, as the case may be, to the person making the representation under Section 15 and to the State Government, and also to any other person whose interest appears to be involved in the case.

(b) On the date so fixed on any subsequent date to which the inquiry may be adjourned, the Court shall hear the parties, receive evidence produced by them, take such further evidence as it considers necessary, decide whether the property was acquired by a gangster as a result of the commission of an offence triable under this Act and shall pass such order under Section 17 as may be just and necessary in the circumstances of the case.

(5) In any proceedings under this Section the burden of proving that the property in question or any part thereof was not acquired by gangster as a result of the commission of any offence triable under this Act, shall be on the person claiming the property, anything to the contrary contained in the Indian Evidence Act notwithstanding."

21. The authority to hold enquiry as provided under Section 16 is the Court which has jurisdiction to try the offences under the Act. In the case in hand, Special Judge, Saharanpur is the competent Court to try the offences under the Act and accordingly, on a reference he passed the impugned order. Clause (b) of sub-section (3) prescribes the procedure for holding enquiry by the Court. As provided therein, on the date of hearing, the Court shall receive evidence produced by the parties and take further evidence which it may consider necessary and then decide whether properties were acquired by a gangster as a result of commission of any offence under Act. The Act is a special Statute which has been enacted for the prevention of and for coping with gangsters and anti-social activities and for matters connected therewith or incidental thereto. These being the objects and reasons for having the Act, the Legislature in its wisdom thought it expedient to place burden upon the claimant to prove in the negative as provided in sub-section (5) that properties were not acquired by a gangster as a result of commission of any offence under the Act. But before asking the claimant to discharge the burden, it is incumbent upon the State to initially prove that one is a 'gangster' as defined in the Act who alleged to have acquired the attached properties. During enquiry under Section 16 of the Act, the State was required to prove that petitioner was a gangster. If this was established, then the burden shifts to the petitioner as provided in sub-section (5) to prove that the attached properties were not acquired by him as a result of commission of any offence. In the case in hand, the initial burden as aforesaid had not been discharged by the State. Yet the learned Special Judge with the aid of sub-section (5) came to hold that the petitioner could not prove that he had not acquired the properties as a 'gangster' as a result of commission of any offence under the Act and consequently, affirmed the order of the District Magistrate. In that view of the matter, I would hold that the impugned order, is contrary to law and thus unsustainable.

22. Thus in view of the facts and circumstances discussed above, the petition is liable to be allowed.

23. Writ petition is allowed. Impugned orders dated 14.11.2008 and 21.1.2009 passed by the District Magistrate, Muzaffar Nagar in criminal case no. 04 of 2008-09, under Section 14 of the U. P. Gangsters and Anti Social Activities (Prevention) Act, 1986 as well as the order dated 11.8.2009 passed by the Special Judge (Gangster Act), Saharanpur in Misc. Case No. 05 of 2009 (State Vs. Rajbir) in respect of petitioner are hereby quashed.

Order Dated :23-08-2018 Sachdeva