

**Court No. - 48**

**Case :-** CRIMINAL MISC. WRIT PETITION No. - 728 of 2021

**Petitioner :-** Pramod Singh

**Respondent :-** State Of U.P. And 4 Others

**Counsel for Petitioner :-** Ashish Mishra, Arun Kumar Mishra

**Counsel for Respondent :-** G.A.

**Hon'ble Anjani Kumar Mishra, J.**

**Hon'ble Shekhar Kumar Yadav, J.**

Heard Shri Arun Kumar Mishra, learned counsel for the petitioner and learned AGA for the State.

By means of this writ petition, petitioner seeks quashing of the first information report dated 07.11.2020 giving rise to Case Crime No.728 of 2020, under Section 3(1) of the Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986, Police Station Robertsganj, District Sonebhadra.

The order dated 04.11.2020, passed by the second respondent, District Magistrate, Sonebhadra granting approval to the Gang Chart, Annexure-5 to the writ petition is also sought to be quashed.

We have heard Shri Arun Kumar Mishra, learned counsel for the petitioner and learned AGA for the State.

We have also heard Shri V.P. Srivastava, learned Senior Advocate on behalf of the petitioner, who had offered to assisted the Court in the instant matter.

The submission of learned counsel for the petitioner is that the first information report has been lodged on the basis of two criminal cases registered against the petitioner; First, being Case Crime No.387 of 2020 under Sections 307, 504, 506 Indian Penal Code, Police Station Robertsganj, District Sonebhadra. The first information report in this case, which is a cross case was lodged on 24.05.2020, the other case in this regard being case Crime No.386 of 2020. These cases arose from a private dispute regarding an electricity connection and the petitioner was one of the injured in the cross case.

The second case on the basis whereof, the impugned first

information report has been registered, in Case Crime No.543 of 2020 under Sections 307 and 323 of Indian Penal Code, Police Station Robertsganj, District Sonbhadra. This first information report in this regard was lodged on 17.08.2020. As regards this case, the submission is that the incident took place on account of the private property dispute. Admittedly, there is enmity between the parties and it is a case of no injury.

Counsel for the petitioner has also reiterated that he has been granted bail in both the criminal cases lodged against him.

On the basis of the aforementioned, it is submitted that the facts alleged in the first information report do not make out any violence, threat or show of violence, intimidation, coercion etc. which would amount to disturbing public order. No temporal, pecuniary, material or other advantage having been procured by the petitioner, is alleged in the criminal cases lodged against him. Therefore, the requirements of Section 2(b) & 2(b) (viii) of the Act are not made out.

Sub-section (viii) referred to by counsel for the petitioner reads as follows -

*" Preventing or disturbing the smooth running by any person of his lawful business, profession, trade or employment or any other lawful business, profession, trade or employment or any other lawful activity connected therewith, or".*

It is next contended that recovery of a pistol and empty cartridges is from the co-accused in Case Crime No.386 of 2020, which was registered on the basis of an FIR lodged by one Arti Patel. From the allegations made in the FIR, it appears that the petitioner was intervening in a dispute between the first informant and the other accused, pertaining to an electricity connection.

Learned counsel for the petitioner has also relied upon the findings returned in the order granting bail to him in Case Crime No.387 of 2020 to canvas that the writ petition deserves to be allowed.

He has further submitted that the impugned FIR under the Gangsters Act is a case of false implication. In any case, the material satisfaction, allegedly recorded by the District Magistrate, while approving the Gang Chart is, without any basis.

Elaborating on the arguments advanced by learned counsel for the petitioner, Shri V.P. Srivastava, learned Senior Advocate has contended that for invocation of the provisions of the Act.

Section 2(b) of the Act, which defines a Gang, is crucial.

He has submitted that there has to be violence, or threat or show violence, or intimidation, or coercion with the object of disturbing public order or for gaining any undue temporal, pecuniary, material or other advantage for himself or any other person.

The submission on the basis of the aforementioned Section 2(b) is that the criminal cases against the petitioner are not such, which would fall within the scope of the term "disturbing public order". They might be criminal acts but then every criminal Act cannot be construed as disturbing public order. Since, the public order was not disturbed in the two cases against the petitioner. Gangsters Act has wrongly been invoked. The impugned first information report deserves to be quashed. In support of his contention, he has relied upon the following decisions -

**1. *Ashok Dixit Vs. State of U.P. another, 1987, U.P.Crl. R.***

In paragraph 40 of this judgement, the following portion of a judgement of the Apex Court has been extracted". . . . *public order' is an expression of wide connotation and signifies that state of tranquillity prevailing among the members of a political society as a result of the internal regulations enforced by the Government which they have instituted. Although [Section 9 \(1A\)](#) refers to "securing the public safety" and "the maintenance of public order" as distinct purposes, it must be taken that "public safety" is used as a part of the wider concept of public order."*

**2. *Romesh Thappar Vs. State of Madras, 1950 SC 124***

This judgement dealt with the powers conferred by Section 9(1) A of the Madras Maintenance of the Public Order Act 1949. In this judgement, it has been observed- ".....*But it was urged that the expression "public safety" in the impugned Act, which is a statute relating to law and order, means the security of the Province, and, therefore, 'the security of the State" with the meaning of [article 19 \(2\)](#) as "the State" has been defined in [article 12](#) as including, among other things, the Government and the Legislature of each of the erstwhile Provinces. Much reliance was placed in support of this view on *Rex v. Wormwood Scrubbs Prison*(1) where it was held that the phrase "for securing the public safety and the' defence of. the realm" in section 1 of the *Defence of the Realm (Consolidation) Act, 1914*, was not limited to securing the country against a foreign foe but included also protection against internal disorder such as a rebellion. The decision is not of much assistance to the respondents as the context in (1) L.R. [1920] 2 K.B. 805.*

*which the words "public safety" occurred in that Act showed unmistakably that the security of the State was the aim in view. Our attention has not been drawn to any definition of the expression "public safety," nor does it appear that the words have acquired any technical signification as words of art".*

The judgement finally goes on to hold as follows - *In other words, clause (2) of [article 19](#) having allowed the imposition of restrictions on the freedom of speech and expression only in cases where danger to the State is involved, an enactment, which is capable of being applied to cases where no such danger could arise, cannot be held to be constitutional and valid to any extent.*

### **3. The Superintendent Central Prison Vs. Dr. Lohia, 1960 Cri. L.J. 1002**

The Supreme Court decision in the Superintendent, Central Prison and another Vs. Dr. Ram Manohar Lohia was with regard to the term "public order" contained in Section 3 of the U.P. Special Power Act, 1932 while in *Ram Manohar Lohia Vs. State of Bihar*. The said term was considered in the light of Rule 30(1)(b) of the Defence of India Rules, 1962. In paragraph 14, the Apex Court observed as follows -

*" By Section 3 of the U.P. Special Powers Act 1932 any instigation by word or visible representation not to pay or defer payment of any exaction or even contractual dues to Government, authority or a land-owner is made an offence. Even innocuous speeches are prohibited by threat of punishment. It was held that there is no proximate or even foreseeable connection between such instigation and the public order sought to be protected under this section and that it is void"*

The judgement finally went on to hold in paragraph 18 as follows -

*" The foregoing discussion yields the following results: (1) " Public order " is synonymous with public safety and tranquillity : it is the absence of disorder involving breaches of local significance in contradistinction to national upheavals, such as revolution, civil strife, war, affecting the security of the State; (2) there must be proximate and reasonable nexus between the speech and the public order; (3) [S. 3](#), as it now stands, does not establish in most of the cases comprehended by it any such nexus; (4) there is a conflict of decision on the question of severability in the context of an offending provision the language whereof is wide enough to cover restrictions both within and without the limits of constitutionally permissible legislation; one view is that it cannot be split up if there is possibility of its being applied for purposes not sanctioned by the Constitution and the other view is that such a provision is valid if it is severable in its application to an object which is clearly demarcated from other object or objects falling outside the limits of constitutionally permissible legislation; and (5) the provisions of the section are so inextricably mixed up that it is not possible to apply the doctrine of severability so as to enable us to affirm the validity of a part of it and reject the rest".*

**4. Ram Manohar Lohia Vs. State of Bihar 1966 CrLJ 608.** By this judgement, a Habeas Corpus Petition filed by Ram Manohar Lohia was allowed on the ground that the expression "public order" used in the Defence of India Rules, 1962 is

clearly distinguishable from the term "law and order" and that detention for maintenance of public order is permissible only with regard to disturbances with special word the public order. The order impugned in this case purported to have been made under R. 30(1) (b) of the Defence of India Rules, 1962.

**5. *Amiya Kumar Karmakar Vs. The State of West Bengal (1972) 2 Supreme Court Cases 672.***

The Apex Court in this case has also drawn a distinction between "law and order" and "public order" while dealing with the provisions of Section 3(1) and read with Section 3(2) of the Maintenance of Internal Security Act, 26 of 1971(MISA). In paragraph 7 of the judgement, it has been observed as follows -

*" Viewed from this angle it is difficult to regard such an act as a mere infraction of law and Order, for, such an act committed with such an intent and object and in such circumstances is one which strikes at the normal, Orderly life of the community in that locality. Its impact and potentiality thus affect public Order in the sense that it was aimed at bringing about dis Order and chaos upsetting the even tempo of life in that locality. It is, therefore, not possible to agree with the proposition that it affected the problem of law and Order only and was for that reason extraneous or irrelevant to the objects specified in Section 3 of the Act, in relation to which only a valid Order of detention there under could be made".*

**6. *Ram Ranjan Chatterjee Vs. The State of West Bengal (1975) 4 Supreme Court Cases 143.***

Similar is the position in this case, where again the order of detention under Section 3 of the Maintenance of Internal Security Act was under challenge. Paragraph 9 of the said judgement, reads as follows -

*"As observed by Hidayatullah, J. (as he then was) in [Dr. Ram Manohar - Lohia v. State of Bihar & Ors.](#) one has to imagine three concentric circles, in order to understand the meaning and import of the above expressions. 'Law and order' represents the largest circle within which is the next circle representing "public order" and the smallest circle represents "security of State". It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of State. It is in view of the above distinction, the Act defines the expressions "acting in any manner prejudicial to the security of the State" and "acting in any manner prejudicial to the maintenance of public order" separately. An order of detention made either on the basis that the detaining authority is satisfied that the person against whom the order is being made is acting in any manner prejudicial to the security of the State or on the basis that he is satisfied that such person is acting in any manner prejudicial to the maintenance of public order but which is attempted to be supported by placing reliance on both the bases in the grounds furnished to the detenu has to be held to be an illegal one vide decisions of this Court in [Bhupal Chandra Ghosh v. Arif Ali & Ors.](#)(2) and [Satya Brata Ghose v. Arif Ali & Ors](#)(3).*

*The order of detention is, therefore, liable to be quashed and the detenu is entitled to be set at liberty. The petition is accordingly allowed".*

From the arguments as also from the judgements cited, it is clear that the emphasis of Shri V.P. Srivastava, learned Senior Advocate is on the words "with object of disturbing public order" used in Section 2(b) of the Act, which defines a Gang. The said provision is extracted herein below -

*(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 of himself or any other person, indulge in anti-social activities".*

Upon a bare reading of the provision quoted above, we are unable to accept the contention made on behalf of the petitioner that to constitute a Gang, the member of the Gang should be operating only with the object of disturbing public order. The definition no doubt includes within its ambit acts of violence or threat, or show of violence, carried out with the object of disturbing public order. However, this is just the first part of the definition. The second part, which starts with the word 'or of gaining any as of undue temporal, pecuniary, material or other advantage of himself or any other person, indulge in anti social activities.

We are of the considered opinion that the definition of a Gang is therefore, clearly in two parts and both are mutually exclusive. Each one of the two parts by itself would be enough to bring a case within the ambit of the term Gang.

To clarify further Section 2(b) in our opinion, provides that a group of person, singly or collectively would constitute a gang in either or the two conditions below-

(i) by violence, or thereat or show of violence or intimidation or coercion, or otherwise try to disturb public order,

OR

(ii) by violence or threat or show of violence or intimidation or coercion or otherwise try to obtain undue temporal, pecuniary, material or other advantage for himself or any other person.

The words " indulge in anti-social activities refer to the various illustrations/ conditions specified thereafter as (i) to (xxv).

Under the circumstances, the contention that the impugned first information report deserves to be quashed as it does not fall

within the purview of the definition of a 'Gang' in Section 2(b) of the Act, cannot be accepted and is hereby, repelled.

The contention of counsel for the petitioner that recovery of the fire arms and empty cartridges from the accused in Case Crime No.286 of 2020 would necessarily show that the said case against the petitioner is one of the false implication, cannot be accepted at this stage. The issue can be decided only after due investigation. In any case, the allegations are that the petitioner interfered in a private dispute between the two parties, with which, he prima facie had no connection. It is, therefore, clearly a case of coercion, intimidation and use of force against a person, who is alleged to have refused to provide electricity to his neighbour, who is stated to be a friend of the petitioner.

In any case, the existence of two criminal cases against the petitioner is not in dispute and therefore, in our considered opinion, no ground exists for quashing the impugned FIR.

Accordingly and for the reasons given above, the writ petition fails and is dismissed.

**Order Date :- 16.7.2021**

**RKM**