

**A.F.R.***Reserved***Case :-** CRIMINAL APPEAL No. - 2130 of 2021**Appellant :-** Abrar**Respondent :-** State of U.P. and Another**Counsel for Appellant :-** Bhuvnesh Kumar Singh**Counsel for Respondent :-** G.A.**Hon'ble Subhash Chandra Sharma,J.**

1. This criminal appeal has been filed against the judgment and order dated 19.12.2000 passed by Additional Sessions Judge, Gangster Act, Court No. 5, Bijnor in Misc. Application No. 278 of 2020 (Abrar Vs. State of U.P.) which is as reference made to the court under Section 16 of U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 (hereinafter referred to as "Act") whereby the order of the District Magistrate, Bijnor dated 19.10.2020 attaching the house of appellant under Section 14 of the Act dated 2.9.2020 as well as order dated 19.10.2020 dismissed the objection moved by the appellant have been affirmed.

2. The facts of the case in brief are that the District Magistrate, Bijnor have passed an order under Section 14(1) of the Act attaching the house of the appellant on the basis of report of in-charge Inspector, Police Station Mandawar, District Bijnor dated 07.07.2020, submitted through S.S.P., Bijnor. It was mentioned in the report that During investigation of Case Crime No. 232 of 2020 under Section 2/3 of the Act, it was found that appellant owned one house measuring 90 m<sup>2</sup> amounting to cost for Rs.

10,00,000/- (ten lacs) which was constructed with illegally earned money as gangster.

3. Against the aforesaid attachment order, the appellant had filed objection on 14.09.2020. The District Magistrate, Bijnor dismissed the objection of the appellant and affirmed the order of attachment dated 02.09.2020. Simultaneously, he made reference to the court of Additional Sessions Judge, Gangster Act under Section 16 of the Act.

4. Specific case of appellant before the District Magistrate/Additional District Judge concerned was that the house said to be in his possession was constructed with the money earned by him and members of his family. He purchased the land measuring 90 m<sup>2</sup> by registered sale deed in the year 2004 for Rs. 23,000/- on which house was constructed. Money for construction of the house was taken from the Punjab & Sind Bank as loan amounting to Rs. 40,000/-. In the year 2019, he took loan of Rs. 40,000/- from Sairin Credit Care Network Limited in the name of his wife. In the year 2018, he took loan of Rs. 80,000/- from Bandhan Bank, Bijnor. His son who works in Kuwait sends money in the account of his parents in the Punjab National Bank. His son Istakhar went to Kuwait where he lived for two years thereafter three months vacation, he again went there in July 2019. He got Rs. 70,000/- as salary. His other son Ikrar works at furniture house and earns Rs. 30,000/- per month. Except the house under attachment, he has no any other property. He is a poor labour having three young daughters and

being his house under attachment is compelled to live under the open sky. No any case of cow slaughter was registered against him. In the year 2010 a single case under cow slaughter Act was registered which was false, thereafter in the year 2019 two cases shown in the gang chart were registered on the basis of which this case under Section 2/3 of the Act was lodged.

5. Learned Additional Sessions Judge, Court no. 5, Bijnor passed the order dated 19.12.2020, under challenge in this appeal, upholding the order of the District Magistrate dated 19.10.2020 dismissed the reference. It has been recorded by the court that appellant neither disclosed any source of his income nor produced any evidence which could prove that the house under attachment was constructed with the money earned by him. Therefore, he found no ground to make interference in the order passed by the District Magistrate, Bijnor dated 19.10.2020 and accordingly, rejected the application filed on behalf of appellant.

6. Learned District Magistrate, Bijnor did not consider the plea of appellant and arbitrarily confirmed his order of attachment while rejecting his representation and holding that it was constructed with illegally earned money and referred the case to Special Judge Gangster Act, Bijnor. Learned trial judge after inviting objection and hearing the parties confirmed the order dated 19.10.2020.

7. Being aggrieved by these orders, this criminal appeal has been filed before this Court.

8. Heard Shri Bhuvnesh Kumar Singh learned counsel for the appellant, learned A.G.A. and perused the record.

9. Learned counsel for the appellant submitted that the land of the house in question belonging to the appellant was purchased by him in the year 2004 by registered sale deed, thereafter he constructed the house with the money taken on loan from several banks and also with the money contributed by his sons. The loan taken by him is in arrear. No any case relating to Cow Slaughter was registered against him except a single case in the year 2010. In the year 2019 other cases under cow slaughter act have been registered against him and on that basis this F.I.R. under Gangster Act was lodged in which his house has been attached without any proof of the fact that it was constructed with the money earned illegally as Gangster while conducting business in slaughtering of cows. There is no any material on record to show this fact. The police sent a report assessing the amount of the house Rs. 10,00,000/- (ten lacs). District Magistrate has also not tried to verify this fact but acted on the false report of police. Even a report of Tehshildar which was taken by the police inspector does not disclose the value of house as Rs.10,00,000/-(ten lacs). Even learned special judge has also not conducted the inquiry as provided under Section 16 of the Act but rejected the plea of appellant and affirmed the order passed by learned District Magistrate which is illegal and against the mandate of law.

10. Learned A.G.A. vehemently opposed the contentions

made by learned counsel for the appellant.

11. In order to appreciate the rival submissions, it seems to be just and expedient to refer to the relevant provisions of the Gangster Act which are as under:

*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.*

*(2) The provisions of the Code shall mutatis mutandis apply to every such attachment.*

*(3) Notwithstanding the provisions of the Code the District Magistrate may appoint an Administrator of any property attached under sub-section (1) and the Administrator shall have all the powers to administer such property in the best interest thereof.*

*(4) The District Magistrate may provide police help to the Administrator for proper and effective administration of such property.*

*15. Release of property .- (1) Where any property is attached under Section 14, the claimant thereof may, within three months from the date of knowledge of such attachment, make a representation to the District Magistrate showing the circumstances in and the sources by which such property was acquired by him.*

*(2) If the District Magistrate is satisfied about the genuineness of the claim made under sub-section (1) he shall forthwith release the property from attachment and thereupon such*

*property shall be made over to the claimant.*

*16. Inquiry into the character of acquisition of property by court .- (1) Where no representation is made within the period specified in sub-section (1) of Section 15 or the District Magistrate does not release the property under sub-section (2) of Section 15 he shall refer the matter with his report to the Court having jurisdiction to try an offence under this Act.*

*(2) Where the District Magistrate has refused to attach any property under sub-section (1) of Section 14 or has ordered for release of any property under sub-section (2) of Section 15, the State Government or any person aggrieved by such refusal or release may make an application to the Court referred to in sub-section (1) for inquiry as to whether the property was acquired by or as a result of the commission of an offence triable under this Act. Such court may, if it considers necessary or expedient in the interest of justice so to do, order attachment of such property.*

*(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 or 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.*

*(4) For the purpose of inquiry under sub-section (3), the Court shall have the power of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Act No. V of 1908), in respect of the following matters, namely:*

*(a) summoning and enforcing the attendance of any person and examining him on oath ;*

*(b) requiring the discovery and production of documents;*

*(c) receiving evidence on affidavits;*

*(d) requisitioning any public record or copy thereof from any court or office ;*

*(e) issuing commission for examination of witnesses or documents ;*

*(f) dismissing a reference for default or deciding it ex parte ;*

*(g) setting aside an order of dismissal for default or ex parte decision.*

*(5) In any proceedings under this section, the burden of proving that the property in question or any part thereof was not acquired by a 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, 1872 (Act No. 1 of 1872), notwithstanding.*

*17. Order after inquiry .- If upon such inquiry the Court finds that the property was not acquired by a gangster as a result of the commission of any offence triable under this Act it shall order for release of the property of the person from whose possession it was attached. In any other case the Court may make such order as it thinks fit for the disposal of the property by attachment, confiscation or delivery to any person entitled to the possession thereof, or otherwise.*

12. From the above provision it is evident 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 check on the arbitrary exercise of power of attachment by denying him of his right to any property. What the 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 "belief" is 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 defined in u/s 26 of the Indian Penal Code as: *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 the state of mind. Similar words "reason to believe" as appearing in the Act are also there in the Income Tax Act.

13. Interpreting the said expression, the Supreme Court in the case of ***M/s. Ganga Saran and Sons Private***

***Limited Calcutta vs. Income Tax Officer and Others, AIR 1981 SC 1363***, observed that: words "has reason to believe" is stronger than the words "is satisfied". The belief entertained by the authority must not 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. It is now well settled that property being made subject matter of an attachment under sections 14 of the Act must have been acquired by a gangster and that too by commission of an offence triable under the Act. The District Magistrate has to record its satisfaction on this point. The satisfaction of the District Magistrate is not open to challenge in any appeal. Only a representation is provided for before the District Magistrate himself under section 15 of the Act and in case he refuses to release the property on such representation, he is to make a reference to the Court having jurisdiction to try an offence under the Act. The Court, while dealing with the reference made under sub-section (2) of Section 15 of the Act has to see whether the property was acquired by a gangster as a result of commission of an offence triable under the Act and has to enter into the question and record his own finding on the basis of the inquiry held by him under section 16 of the Act. If the Court comes to the conclusion that the property was not acquired by the gangster as a result of commission of an offence triable under the Act,

the Court shall order for release of the property in favour of the person from whose possession it was attached. If the conclusion of the Court is otherwise, it may pass such orders as it thinks fit for the disposal of the property by attachment, confiscation or delivery to any person entitled to the possession thereof or otherwise. This power has been conferred on the Court under Section 17 of the Act. In other words, the attachment made under Section 14 of the Act can be upset by Court after an inquiry under section 16 of the Act and in that situation the Court has power to release the attached property in favor of the person from whose possession the property was attached. The power of the Court to hold an inquiry under Section 16 on the reference made by District Magistrate is not a mere formality, but has a purpose behind it. The object behind providing the power of judicial scrutiny under section 16 of the Code is to check arbitrary exercise of power by the District Magistrate in depriving a person of his properties and to restore the rule of law, therefore a heavy duty lies upon the Court to hold a formal enquiry to find out the truth with regard to the question, whether the property was acquired by or as a result of the commission of an offence triable under the Act. The order to be passed under section 17 of the Act must disclose reasons and the evidence in support of finding of the Court. The Court is not empowered to act as a post office or mouthpiece of the State or the District Magistrate. If a person has no criminal history during the period the property was acquired by him, how the property can be held to be a property acquired by or as a result of commission of an

offence triable under the Act is a pivotal question which has to be answered by the Court. Besides, the aforesaid question, the other important question to be considered by the Court is whether the property which was acquired prior to the registration of the case against the accused under the Act or prior to the registration of the first case of the Gangster chart can be attached by District Magistrate under Section 14 of the Act.

15. In the instant case learned Special Judge has completely overlooked to consider the aforesaid important questions and he has not recorded any specific finding thereon. It was obligatory on his part to consider the aforesaid questions while considering the main question whether the property attached by the District Magistrate was acquired by or as a result of the commission of an offence triable under the Act. The reasoning reflected from the impugned order seems to be that the property which has been attached is believed to have been acquired by the accused Abrar in his name because the Court below has expressed its agreement with the opinion of the District Magistrate that appellant did not have sufficient means/source of income to purchase the property & construct the house thereon. No direct nexus has been established between acquisition of this property by the accused Abrar and the source of income generated for purchasing this property by indulgence in commission of offences under the Act as a "gangster". It is also not reflected from the impugned order as to whether a detailed enquiry has been conducted by the Court below

as is contemplated under Section 16 of the Act, which was statutory duty cast upon the Court below.

16. It is also apparent that no proper appreciation has been made of the evidence given by the appellant containing the details of the source of income by which purchase and construction of the property was made as has been narrated above.

17. It was bounden duty of the Court below to take into consideration the details of the purchase made, sources of income disclosed for making that purchase & construction and whether they were not justified. No clear finding has been recorded by the Court below as to how this property which was purchased much prior to initiation of first case against Abrar shown in the gang chart, could have been linked to the income generated through indulgence in commission of offence under the Act. It was also required from the Court below to record its findings as to which of the cases out of the cases shown in the gang chart were covered under the Gangster Act. Meticulous detail has been provided by the appellant regarding purchase of this property & construction thereon as well as the source of income. How the sources of income are disbelieved, is not made clear. The learned Special Judge has overlooked these material aspects of the case and did not consider the evidence on record in correct perspective, therefore the impugned judgment and order in respect of the appellant's property deserves to be set aside and the matter needs to be remanded back to the learned Special Session Judge for deciding the matter afresh in

accordance with law in the light of observations made by this Court as aforesaid.

18. The appeal is **allowed**. The impugned judgment and order dated 19.10.2020 is set aside. The case is remanded back to the Special Judge for being considered afresh in the light of the observations made by this Court herein above. The learned Special Judge shall decide the matter afresh in accordance with law as expeditiously as possible within two months after providing a reasonable opportunity of hearing to all the parties, if required, even opportunity of leading evidence would also be given to them.

19. Copy of this judgment be transmitted to the Court concerned for necessary compliance.

**Order Date :-** 23<sup>rd</sup> October, 2021

A. Singh

(Subhash Chandra Sharma,J.)