

Court No. - 43

Case :- CRIMINAL MISC. WRIT PETITION No. - 13508 of 2020

Petitioner :- Umesh Singh

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Anurag Vajpeyi, Atharva Dixit, Manish Tiwary (Senior Adv.)

Counsel for Respondent :- G.A.

Hon'ble Pankaj Naqvi, J.

Hon'ble Vivek Agarwal, J.

Heard Sri Manish Tiwary, learned Senior Advocate assisted by Sri Anurag Vajpeyi, learned counsel for the petitioner and the learned AGA.

Petitioner has filed this writ petition under Article 226 of the Constitution of India seeking a writ, order or direction in the nature of certiorari quashing the impugned order dated 21.10.2020 and 29.10.2020 with further prayer to issue a writ of mandamus to release the property attached in pursuance of these orders.

Petitioner's contention is that vide order dated 21.10.2020, the District Magistrate, Mau has directed for attachment of properties of the petitioner exercising his authority under Section 14(1) of the UP Gangsters and Anti Social Activities (Prevention) Act, 1986 (hereinafter referred to as the Gangsters Act) whereas vide order dated 29.10.2020, the District Magistrate by revising this order also attached 300 tons of coal illegally stored in such properties.

Learned counsel for the petitioner submits that the impugned orders are illegal and arbitrary and have been passed overlooking the fact that the petitioner is a law abiding citizen enjoying very good reputation in the society. It is submitted that petitioner is victimized merely on the basis of suspicion. Petitioner is innocent and impugned orders are nothing but a tool to coerce him. He further submits that as per gang chart appended alongwith FIR registering Case Crime No. 47 of 2010 under Section 3(1) of the Gangsters Act at Police Station Kotwali, District Mau, there is mention of a solitary case against petitioner wherein name of the petitioner has been shown at serial no. 9. It is submitted that on the basis of the solitary case registering Case Crime No. 1866 of 2009 under Sections 147, 148, 149 302, 307, 404, 120-B, 325 IPC and Section 7 of Criminal Law Amendment Act, a case has been

registered under the Gangsters Act, therefore, the petitioner having been falsely implicated with oblique motive needs to be exonerated.

Learned AGA in his turn submits that petitioner's contention is that he has been implicated in a case under the provisions of Gangsters Act on the basis of solitary criminal case is factually incorrect. It is submitted that petitioner has cleverly suppressed material information from the main body of the writ petition and has subsequently filed supplementary affidavit bringing on record copy of orders/judgment showing that petitioner was an accused in Case Crime No. 91-A/95 registered at Police Station – Sarailansi, District Mau under Sections 147, 148, 302/149, 325/149, 323/149, 504, 506 IPC where petitioner was though exonerated vide judgment dated 7.1.2004 in Sessions Case No. 142 of 1998 passed by Additional Sessions Judge, FTC No. 2, Mau, but it does not reflect that petitioner has no criminal history.

It is further submitted that in Case Crime No. 100 of 1995 petitioner was charged under the provisions of Sections 147, 148, 149, 324, 323, 325, 504, 506 IPC where on account of witness turning hostile, petitioner was exonerated. Order passed in Criminal Misc. Bail Application No. 23873 of 2014 reveals that Case Crime No. 20 of 2014 was also registered against the petitioner under sections 147, 148, 149, 302, 307, 506 and 120-B IPC and Section 7 of Criminal Law Amendment Act at Police Station Tarawan, District Azamgarh where petitioner was taken into custody on 7.7.2014. Thus, learned AGA submits that there is long history of the petitioner's involvement in criminal cases. He is habitually involved in several criminal matters and these materials have been taken into consideration by the District Magistrate, but arbitrarily petitioner has mentioned that he was involved only in one case namely Case Crime No. 1866 of 2009 which is factually incorrect and that amounts to suppression of material information from this Court, therefore this writ petition be dismissed with exemplary cost.

We are amazed that the petitioner neither at the time when he preferred his earlier Writ Petition No. 9950 of 2020 challenging the impugned order therein i.e. order dated 10.8.2020 an order of attachment under section 14(1) of the Gangsters Act, disclosed that apart from the solitary case ie. 1866 of 2009 u/s 147, 148, 149, 302, 307, 404, 120-B, 325 IPC and Section 7 of Criminal Law Amendment Act, he had history of other criminal cases to his credit nor in the present writ petition as was originally filed and the alleged criminal history came on record in the supplementary affidavit. We posed Sri Tiwary, learned senior counsel for the petitioner as regards the aforesaid

relevant and material omission to which he had no answer. We are thus of the considered view that the omission was intentional and deliberate with a view to hoodwink the court for ulterior motives which cannot go unpunished. It is apparent that petitioner is guilty of suppressing material facts. Whatever has been appended by way of supplementary affidavit was also within the knowledge of the petitioner prior to filing of the writ petition. Cleverly or under some advice this material was sought to be suppressed from the Court. It is also apparent that petitioner has made an incorrect statement in the writ petition that merely on the basis of solitary case, Gangsters Act has been invoked against him. In fact, petitioner's case is squarely covered by Clause i, ii and XXV of Section 2(1) (b) of the Gangsters Act, and therefore there is no ground to quash the impugned orders.

It will also not be out of place to mention that order dated 21.10.2020 has been merged with the later order dated 29.10.2020 and therefore there is no justification for seeking quashing of both orders.

Further for misrepresenting the facts before the Court, this Court is of the view that heavy cost be imposed on the petitioner as apparently he did not approach the court with clean hands to seek equitable relief in the form of issuance of either writ of certiorari or writ of mandamus. Therefore, we not only dismiss the writ petition but also impose a cost of Rs. 5,00,000/- (Rupees Five Lakhs) on the petitioner. Let this cost be deposited in the High Court Legal Services Authority within 30 days from today failing which Registrar General shall send a communication to the District Magistrate, Mau for recovery of this amount as arrears of land revenue from the estate of the petitioner.

Order Date :- 26.11.2020

S.K.S.