

(2008) 09 AHC CK 0269

Allahabad High Court

Case No: Writ Petition No. 6124 (M/B) of 2008

Ashok Dhar Dwivedi

APPELLANT

Vs

District Magistrate, Shravasti and
Another

RESPONDENT

Date of Decision: Sept. 10, 2008

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302, 307, 333, 353, 504
- Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 - Section 14, 14(1), 15, 3(1)

Citation: (2009) 1 ACR 664

Hon'ble Judges: U.K. Dhaon, J; Satish Chandra, J

Bench: Division Bench

Advocate: R.N. Gupta, for the Appellant; P.K. Nigam, for the Respondent

Final Decision: Disposed Of

Judgement

@JUDGMENTTAG-ORDER

U.K. Dhaon and Satish Chandra, JJ.

Heard Sri R.N. Gupta, learned Counsel for the Petitioner and Sri P.K. Nigam, learned Additional Government Advocate.

2. The Petitioner being aggrieved by the order dated 27th June, 2008, passed by the District Magistrate, Shravasti has filed the instant writ petition. The Petitioner has alleged that he is an Assistant Teacher in Basic Primary School in village Hadilla Block, Bilaula, district Shravasti. The Petitioner has also alleged that, at present, he is holding the charge of Head Master since 1990 and is drawing salary of Rs. 12,000 per month. The Petitioner has also alleged that he has purchased the vehicles No. UP-46-5631, UP-46-6065, UP-46-6570, UP-46-6575 and UP-46-6875 after taking loan from Mahindra and Mahindra Financial Service Limited, Faizabad Road, Lucknow. The Petitioner has also alleged that all the vehicles are registered as "taxi" and were

plying on the route.

3. Learned Counsel for the Petitioner submits that in a most arbitrary and illegal manner, the District Magistrate, Shravasti attached the vehicles of the Petitioner by invoking the provisions of Section 14(1) of U. P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 (hereinafter referred as the Act). He further submits that in the impugned order, there is no mention that the Petitioner has acquired the property as a result of commission of an offence under the Act. He further submits that against the impugned order dated 27th June, 2008 the Petitioner has already preferred a reply under the provisions of Section 15 of the Act before the District Magistrate on 23.7.2008. He further submits that the Petitioner is a bhumidhar of 20 bighas of agricultural land which is the ancestral property.

4. Sri P.K. Nigam, learned Additional Government Advocate appearing on behalf of the opposite parties, submits that the Petitioner has purchased the aforesaid vehicles out of illegal funds within a short period of five years. He further submits that after receiving the impugned notice, the Petitioner has already submitted his reply before the District Magistrate, which is pending for consideration. He further submits that the Petitioner may move an application before the District Magistrate for release of the property which has been attached. He further submits that, at present, 14 criminal cases are pending against the Petitioner.

5. We have considered the submissions made by the learned Counsel for the parties and gone through the record.

6. The Petitioner has alleged that he is an Assistant Teacher in a Basic Primary School run by Basic Shiksha Parishad, U. P., Lucknow. The Petitioner has also alleged that he has purchased the aforesaid vehicles after receiving financial help from Mahindra and Mahindra Financial Services Ltd., Faizabad Road, Lucknow. It is admitted case of the parties that the vehicles which have been attached by the impugned order are registered as "taxi" and are hypothecated to the Finance Company. The Petitioner has also annexed a copy of khatauni of village Aswa, Pargana Bahraich, Tehsil Ekauna, district Shravasti of 1410-1415 fasli which shows that the Petitioner is a bhumidhar of khasra No. 345 area 0.5900 hectare. The Petitioner is also a co-bhumidhar of agricultural land of village Suvikha, Pargana Bahraich, Tehsil Ekauna, district Shravasti.

7. Section 14(1) of U. P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 reads 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.

8. In the impugned order, there is no mention about the fact that the property which is in possession of the Petitioner has been acquired as a result of commission of an offence triable under the Act. In the impugned order, the District Magistrate has mentioned about the Case Crime No. 643 of 2006, under Sections 302, 307, 333, 353, 504 and 506, I.P.C. read with Section 7 Criminal Law Amendment Act and Section 3(1) of Gangsters Act. While passing the order of attachment, the District Magistrate has not mentioned about his satisfaction that the Petitioner was a gangster and the properties had been acquired by commission of offence triable under the Act, Section 14 of the Act gives power of attachment to the District Magistrate only under certain conditions, the satisfaction must not be arbitrary and must be passed on the legal conditions indicated in Section 14 of the Act. In the absence of any finding to the effect that the Petitioner has acquired the vehicles as a result of commission of an offence under the Act, the attachment of the aforesaid vehicles is not legal.

9. Against the impugned order, the Petitioner has already submitted his reply as provided u/s 15 of the Act, to the District Magistrate.

10. We, therefore, dispose of this writ petition with a direction that the District Magistrate, Shravasti shall lift the attachment of vehicles No. UP-46-5631, UP-46-6065, UP-46-6570, UP-46-6575 and UP-46-6875, within three days, from the date a certified copy of this order is produced before him. The proceedings pending under the Act shall continue. During pendency of the case under the Gangsters Act, the Petitioner shall not transfer the aforesaid vehicles to anyone.