
Mahmood and Others Vs State of U.P.

Criminal Miscellaneous Application No. 487 of 2011

Court: Allahabad High Court

Date of Decision: Feb. 14, 2011

Acts Referred:

Constitution of India, 1950 " Article 21#Criminal Procedure Code, 1973 (CrPC) " Section 309#Penal Code, 1860 (IPC) " Section 120B, 302#Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 " Section 12

Citation: (2011) 3 ADJ 494 : (2011) 8 RCR(Criminal) 2119

Hon'ble Judges: Vinod Prasad, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Vinod Prasad, J.

Heard Sri S.K. Srivastava, advocate holding brief of Sri Mazhar Ullah, learned Counsel for the applicants and learned

A.G.A.

2. Applicants are accused in S.T. No. 435 of 2009, State v. Mahmood and Ors. under Sections 302/120B I.P.C. P.S. Milak Khanam, District

Rampur, pending before Additional Sessions Judge/F.T.C-3, Rampur. Aforesaid Session Trial relates to Crime No. 70 of 2009. An order dated

14.12.2010 has been challenged in this 482 Application by the accused-applicants, Mahmood and others whereby the trial Judge has refused to

stay the proceedings of the trial which is for offences under Sections 302/120B I.P.C.

3. The grievance of the accused-applicants is that in view of Section 12 of the U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986

(hereinafter referred to as the act), the trial of other cases should be stayed as the trial under the Gangsters Act has to be given preference over any

other trial, which is pending in other Court, except the Court of Special Judge, Gangsters Act.

4.I have perused Section 12 of the Act. For a ready reference, the aforesaid section is reproduced herein under:

Trial by Special Courts to have precedence.--The trial under this act of any offence by Special Court shall have precedence over the trial of any

other case against the accused in any other Court (not being a Special Court) and shall be concluded in preference to the trial of such other case

and accordingly the trial of such other case shall remain in abeyance.

A bare reading of the aforesaid statutory provision reveals that the legislative intent was that the trial under the Gangsters Act should not get undue

delayed because of pendency of other cases in other Courts than the Court of Special Judge Gangsters Act. This does not mean that trial of other

offences must be kept in abeyance till conclusion of trial under the Gangsters Act. What legislative intent is that the dates fixed in the other trials and

in the case under the Gangsters Act should not clash with each other so that the trial under the Gangsters Act is not got unduly delayed or

hampered with. It was not the intention of the legislature that if a person is required in other cases of such serious nature as murder, dacoity, loot

and rape etc, then the trial for those offences should not proceed or , be stayed till conclusion of trial under Gangsters Act. The legislative intent, in

this respect seems to be clear without any ambiguity that cases in which Gangsters Act accused are required if are pending in other Courts, then

dates can be fixed on those trials when the dates under the Gangsters Act are not fixed.

5. The statutory provision has to be interpreted in such a way which fosters the legislative intent. Principle of harmonious construction of statute has

also to be applied. Section 309 Code of Criminal Procedure provides that if examination of witness has been started, the Session trial has to be

conducted on day to day basis. Section 309 Code of Criminal Procedure has to be read in conjunction with Section 12 of the Act and therefore,

filling of the gray area, the legislative intent seems to be only this much that trial under the Gangsters Act, should not be hampered because of the

dates fixed in the other trials. It is not the intention that the trial of all other offences must be stayed till conclusion of trial under the Gangster Act

because that will be against the public policy, as well as against the statutory provision. Cases which are pending against the accused persons for

other offences, except under the Gangsters Act, can be fixed and can be decided on those dates where the proceedings under the Gangsters Act

has not to be taken.

6. Analyzing from another aspect of the mooted question, it transpires that accused under the Gangsters Act are normally involved in many

offences. Gangsters Act has been enacted to curb the activities of Gangsterism. These activities are conducted by those people, who have got

criminal proclivities and indulge in repeated crimes. Such people are danger to the society and their remaining at large will not be conducive to

social interest. Those people who are either the leader of the gang or a member thereof, are normally booked under the Gangsters Act on the basis

of a gang chart indicating various past crimes committed by them. If the trial of such persons for those offences which are mentioned in the gang

chart are stayed till the conclusion of their trial under the Gangsters Act, it will be very hazardous to the public policy and security of society. The

grounds often canvased by the accused before this Court under the Gangsters Act to secure bail are that the accused persons have not been

convicted in any of the dozier offences. Thus if the trial of dozier offences are stayed, till the conclusion of trial under the Gangsters Act in a blanket

manner, probably no gangster will ever be get convicted for his activities as Gangster. To charge an accused as a gangster, what is of utmost

importance is his activities. It is to curb those activities that the legislature felt need to enact Gangsters Act. This however, does not mean that the

activities which are the earlier offences of a gangster should not be tried expeditiously without delay.

7. The axillary reason for not accepting the prayer of the Appellant is that speedy trial is a constitutional mandate. It is in the public interest that the

offences in which gangsters are involved are tried without delay alongwith Gangsters Act case. The expeditious disposal of trial is one of the

fundamental rights enshrined under Article 21 of the Constitution of India. In such a view, to stay the trial of dozier offences till the conclusion of

trial under the Gangsters Act will not be sanctified exercise in consonance with legislative and constitutional mandate.

In view of above discussion, I do not find any illegality in the impugned order dated 14.12.2010 passed by Additional Sessions Judge FTC No. 3,

Rampur, in the aforesaid Session Trial.

This 482 Application is merit less and is hereby dismissed.