

**(2014) 04 AHC CK 0149**

**Allahabad High Court**

**Case No:** Criminal Misc. Writ Petition No. 18351 of 2009

Vijay

APPELLANT

Vs

State of U.P.

RESPONDENT

**Date of Decision:** April 17, 2014

**Acts Referred:**

- Uttar Pradesh Excise Act, 1910 - Section 60, 63
- Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 - Section 14, 15, 16, 16(1), 17

**Citation:** (2014) 3 ACR 2967 : (2014) 5 ADJ 623

**Hon'ble Judges:** Vijay Lakshmi, J

**Bench:** Single Bench

**Advocate:** Kaushlesh Tripathi and U.K. Saxena, Advocate for the Appellant

**Final Decision:** Allowed

### **Judgement**

Vijay Lakshmi, J.

By means of this writ petition, the petitioner has prayed to quash the orders dated 24.7.2009 passed by Special Judge, Gangster Act, Jhansi, as well as order dated 1.2.2009 and 25.2.2009 passed by the District Magistrate, Lalitpur. The petitioner has also prayed to issue a writ in the nature of mandamus commanding the respondents to release the property attached in pursuance of attachment order dated 1.2.2009 in favour of the petitioner.

2. Heard and perused the record.

3. Some brief facts are that a criminal case was lodged against the petitioner u/s 2/3 of U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 (hereinafter referred to as "Gangster Act") at P.S. Talbehat. In Gang Chart, two separate offences were shown against the applicant/petitioner i.e. case Crime No. 136 of 2009 u/s 60

of Excise Act, P.S. Talbehat and Case crime No. 553 of 2008 u/s 60/63 Excise Act, P.S. Talbehat, Lalitpur. The S.O. Talbehat, Lalitpur submitted its report dated 5.8.2008 and 8.11.2008 through S.S.P. Lalitpur to the District Magistrate, Lalitpur stating that the properties mentioned above were acquired by the applicant as a result of commission of offence triable under the Gangster Act. The District Magistrate issued notice to the petitioner and attached the said properties vide order dated 1.2.2009. The applicant filed his objections alongwith an affidavit and certificates issued by Mahindra Finance Co. Ltd., In his objections, applicant stated that source of his income is agriculture, his house with "Khaprail" roof is ancestral, he has purchased the Bolero Car by the savings of his agricultural income and also by a loan taken by him from Mahindra Finance Co. Ltd. on 24.6.2006. He has repaid the loan to some extent from the income of the said vehicle but still Rs. 65,000/- is due for payment. The motorcycle has been gifted to his son in marriage by his in laws. But learned District Magistrate, Lalitpur refused to release the aforesaid properties in favour of the petitioner. Learned District Magistrate rejected his application of release vide impugned order dated 25.2.2009. Exercising his powers u/s 16(1) of the Gangster Act learned District Magistrate referred the matter to the Special Court, constituted under the Gangster Act. The petitioner also moved an application before the Court concerned for release of the properties attached.

4. The learned Special judge (Gangster) while relying on a judgment of Allahabad High Court, cited before him as Ram Kumar Dubey Vs. State of U.P. held that an order u/s 17 of the Act can only be made after the trial of the commission of an offence is over. The learned Special Judge after observing that as the trial of the applicant/petitioner is still pending in his Court and the application for release of the property can only be decided after trial is over, rejected the release application moved by the petitioner.

5. I have carefully gone through the aforesaid judgment of Ram Kumar Dubey passed by Single Judge of this Court and after going through the judgment and the relevant legal provisions, I am of the view that the judgment passed by learned Single Judge in Ram Kumar Dubey's case (Supra), has no application in the instant case because the facts are entirely different. In Ram Kumar Dubey's case, by an interim order, the trial Court had released the property in favour of the applicants subject to some conditions till final disposal of the enquiry and the learned Single Judge, after quoting the relevant provision i.e. Section 17 of the Gangster Act held that "the provisions of the Act clearly stipulates for the enquiry Court to pass a final order u/s 17 of the Gangster Act and does not empower the Court to pass an interim order. There is no such provisions in the Act whereby the Court can pass the interim order as has been done in the present case".

6. Thus the facts of Ram Kumar Dubey's case are entirely different from the facts of the case in hand where the enquiry regarding the source of acquisition of properties was already concluded.

7. Learned counsel for the petitioner has argued that Section 16 of the Gangster Act provide for an enquiry and not for a trial. There is difference between an "enquiry" and a "trial" and learned Special Judge while passing the impugned order has wrongly interpreted and intermingled both the words by holding that the application for release of property can only be decided after the "trial" is over.

8. The relevant part of Section 16 and Section 17 of the Gangster Act are reproduced below:

Section 16. Inquiry into the character of acquisition of property by Court.-- (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 u/s 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 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 u/s 17 as may be just and necessary in the circumstances of the case.

Section 17. Order after enquiry.--"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.

9. A perusal of record shows that the petitioner had filed various affidavits and the documents pertaining to the loan of Rs. 3 lacs taken by the petitioner from the Mahindra Finance Co. Ltd. The petitioner had also filed the receipts of sale proceeds of crops and the copy of the sale-deed of his ancestral "Khaprail" house. The record further shows that only two cases u/s 60 of Excise Act were registered against the petitioner on the basis of which he was involved in case crime No. 555 of 2008 u/s 2/3 U.P. Gangster Act. But learned District Magistrate without any cogent reasons disbelieved the documents filed by the petitioner. Before the learned Special Judge

Gangster Act, the petitioner had produced documentary evidence as well as oral evidence in proof of the fact that he was earning from agricultural work and he had taken loan from Mahindra Finance Co. but learned Special Judge without assigning any reason for not relying on the affidavit and deposition of witnesses, rejected the application only on the ground that as his trial is still pending, the properties cannot be released.

10. There is no such provision under Gangster Act that during pendency of trial, the property cannot be released. Trial" and "Enquiry" are two different things but learned Special Judge has wrongly interpreted both terms and thereby he has committed error while passing the impugned order.

11. Under these circumstances, both the orders impugned are liable to be quashed and the writ petition deserves to be allowed. Accordingly, the writ petition is allowed. The impugned orders dated 24.7.2009 passed by Special Judge, Gangster Act, Jhansi, as well as order dated 1.2.2009 and 25.2.2009 passed by the District Magistrate, Lalitpur are hereby quashed and the respondents are directed to release the attached property in favour of the petitioner forthwith, if those properties are not required to be attached in any other case.