

Reserved on 08.02.2024.

Delivered on 04.03.2024.

A.F.R.

In Chamber

Case :- CRIMINAL MISC. WRIT PETITION No. - 1049 of
2024

Petitioner :- Dharmendra @ Bheema And Another

Respondent :- State Of Up And 4 Others

Counsel for Petitioner :- Mohit Singh, Anil Kumar

Counsel for Respondent :- G.A.

Hon'ble Mahesh Chandra Tripathi, J.

Hon'ble Kshitij Shailendra, J.

(Delivered by the Court)

1. Heard Shri Mohit Singh, learned counsel for the petitioners, Shri P.C. Srivastava, learned Additional Advocate General assisted by Shri J.K. Upadhyay, learned A.G.A. for the State-respondents and perused the record.

2. The instant writ petition has been preferred with the prayer to quash the First Information Report dated 01.01.2024, registered as Case Crime No.0001 of 2024, under Sections 2/3 of the Uttar Pradesh Gangster and Anti-Social Activities (Prevention) Act, 1986 (hereinafter referred to 'the Act of 1986'), Police Station-Bilari, District Moradabad with a further

prayer to direct the respondents not to take any coercive action against the petitioners pursuant to the aforesaid F.I.R.

FACTS OF THE CASE

3. The respondent No.5 lodged the aforesaid F.I.R. alleging that the accused persons named therein are indulged in anti-social activities and are operating a gang; that the investigation in relation to the aforesaid case crime is still pending and that no charge-sheet has been submitted against the petitioners. As regards the gang-chart dated 25.11.2023, it is pleaded that incorrect details of criminal cases pending against the petitioners were furnished to the Authorities by the Station House Officer of Police Station concerned recommending prosecution of the petitioners under the Act of 1986. It is stated that in relation to Case Crime No.417 of 2023, under Sections 147, 148, 149, 323, 307/34 IPC read with Section 3/25/27 Arms Act, mentioned at serial No. 1 in the gang chart, it is mentioned that charge-sheet has been submitted before the court on 11.11.2023 whereas the charge-sheet has not been submitted in the court. Regarding Case Crime No.334 of 2016, under Sections 441, 447, 504, 506 IPC read with Section 3 of Prevention of Damage to Public Property Act, 1984, mentioned at Serial No.2 in the gang chart, it has been shown to be pending against the petitioners *vide* charge-sheet No.199/2016 dated 08.08.2016, information pertaining whereto has been pleaded as “incorrect” stating that challenging the proceedings arising out of the said charge-sheet, Application U/S 482 Cr.P.C. No.5191 of 2017 (Dharmendra Kumar and 3 others vs. State of U.P. and

another) was filed, in which, an interim order has been passed on 16.02.2017 by this Court and Application U/S 482 Cr.P.C. is still pending but this fact has not been mentioned in the Gang chart.

GROUND OF CHALLENGE

4. The F.I.R. has been challenged mainly on the grounds that while preparing the gang-chart, the respondents have violated the Uttar Pradesh Gangster and Anti-Social Activities (Prevention) Rules, 2021 (hereinafter referred to as 'the Rules'), inasmuch as, incorrect and incomplete information was furnished before the Authorities by the Station House Officer concerned; that the gang-chart has been approved by the Competent Authority without application of mind; that the details of criminal history of accused on dossier do not reflect any discussion of District Magistrate and the Senior Superintendent of Police in a joint meeting which is contrary to Rule 5(3)(a) of the Rules; that as per the gang chart, proceedings in pursuance of charge-sheet dated 08.08.2016 filed in Case Crime No.334 of 2016 are stated to be pending whereas there is an interim order dated 16.02.2017 passed by this Court, which has not been mentioned in the gang chart and the same has been approved on the basis of unconfirmed details of cases without verifying the status which is in violation of Rule 8(3) of the Rules; that the procedure prescribed under Rules 16 and 17 has not been followed and the gang-chart has been approved by using the language provided in the proforma without application of mind; and that no date is mentioned alongwith signatures of the District Magistrate and the Senior Superintendent Police,

Moradabad on the gang chart. Much emphasis has been laid on the aspect that in relation to Case Crime No.417 of 2023, under Sections 147, 148, 149, 323, 307/34 IPC read with Section 3/25/27 Arms Act, gang chart mentions that charge-sheet has been submitted before the court on 11.11.2023 whereas, infact, the charge-sheet has not been submitted in the court, rather it is lying with the Police Authorities. In sum and substance, violation of Rules 5(3)(a), 8(3), 10, 16 and 17 has been pressed into service and it is contended that the gang-chart does not conform to the guidelines laid down by this Court *vide* judgement dated 13.12.2023 passed in **Criminal Misc. Writ Petition No.16258 of 2023 (Sanni Mishra @ Sanjayan Kumar Mishra vs. State of U.P. and 2 others)**.

5. Another submission was made by learned counsel for the petitioner that the impugned F.I.R. has been registered under Section 2/3 of the Act of 1986, however, though sub-clause (b) of Section 2 describes various offences from (i) to (xxv), it is not clear from the F.I.R. as to under which sub-clause of Section 2, the F.I.R. has been registered and, therefore, the F.I.R. is liable to be quashed on this ground too.

PREVIOUS PROCEEDINGS IN THIS CASE

6. This Court, after noting down certain infirmities in preparation of gang-chart, by order dated 01.02.2024, directed filing of personal affidavit of Senior Superintendent of Police Moradabad as well as Station House Officer, Police Station-Bilari and also ordered for their personal appearance fixing 08.02.2024, on which date, Shri Sandeep Kumar Meena,

Superintendent of Police, Rural, Moradabad and Shri Ravindra Pratap Singh, Station House Officer, Bilari, District Moradabad appeared in-person and also filed affidavits. An application for exemption from personal appearance of Senior Superintendent of Police Moradabad was allowed on the same day.

STAND TAKEN IN PERSONAL AFFIDAVITS

7. Shri Ravindra Pratap Singh, Station House Officer, Police Station-Bilari, Moradabad, in his personal affidavit states that the gang-chart was prepared ensuring strict compliance of Rules 5(3)(c) and 8(3) of the Rules, making true disclosure of criminal history of the petitioners. Further stand is that as per Rules 16 and 17, the Inspector Incharge prepared the gang-chart and presented the same before the Nodal Officer/Circle Officer, whereafter, the same was forwarded by Nodal Officer/Circle Officer to the Superintendent of Police, Rural, Moradabad, who further forwarded the same to Senior Superintendent of Police Moradabad, thereafter, the Senior Superintendent of Police, Moradabad recommended and forwarded the same to the District Magistrate, Moradabad and then, after due discussion in a joint meeting between the Senior Superintendent of Police and District Magistrate, Moradabad, it was approved. The affidavit is accompanied by voluminous documents which shall be discussed in the later part of this judgement. Similar stand has been taken in the affidavit of Senior Superintendent of Police, Moradabad and arguments on the same line have been advanced before this Court from the State side.

QUESTIONS ARISING FOR CONSIDERATION

8. After perusing the writ petition and the affidavits and having heard learned counsel for the parties at length, the questions that arise for consideration by this Court are as to whether, in the present case, the State/ Police Authorities have ensured compliance of the provisions of Act of 1986 and the Rules of 2021 and whether non-compliance, if any, would vitiate the proceedings undertaken by the officers or would create sufficient grounds for quashing the impugned F.I.R.

9. Another question that arises before us is whether registration of an F.I.R. only under Section 3 of the Act of 1986, without mentioning any one or the other offences mentioned in sub-clause (b) of Section 2, would vitiate the F.I.R itself. In order to consider the said issues and the said questions, it is necessary to refer certain relevant provisions of the Act of 1986 and the Rules of 2021.

STATUTORY PROVISIONS

10. The Uttar Pradesh Gangster and Anti-Social Activities (Prevention) Act, 1986 (U.P. Act No.7 of 1986) was passed by the U.P. Legislature as an Act to make special provisions for prevention of and for coping with gangster and anti-social elements and for matters connected therewith or incidental thereto. In exercise of powers conferred by Section 23 of the Act of 1986, the State Government framed the 'Uttar Pradesh Gangster and Anti-Social Activities (Prevention) Rules, 2021 (for short 'the Rules of 2021') with a view to provide for a

speedy and transparent procedure to punish gangsters to establish efficient recovery system in respect of property of gangster and incidental benefits acquired through crimes and acts related therewith.

11. Section 20 of the Act describes the “OVERRIDING EFFECT” of the Act of 1986 and Rules of 2021 over any other enactment in the following words:-

“20. Overriding effect. - The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other enactment.”

12. Section 2(f) of the Act provides that words and phrases used but not defined in the Act but defined in Code of Criminal Procedure, 1973 or Indian Penal Code, 1860 shall have the meanings respectively assigned to them in such Codes. It, therefore, follows that if certain words are described in the Act itself, the meaning assigned to them would be understood as it is but, in other eventuality, aid of I.P.C. and Cr.P.C. would be taken. Further, any provision of the Act or any Rule made thereunder would be given precedence and supremacy over anything inconsistent therewith contained in any other enactment, including I.P.C. and Cr.P.C.

13. Since, in the present case, violation of various Rules of the Rules of 2021 has been alleged by the petitioners, certain rules relevant to the present case are being reproduced as under :-

“5. General Rules. - (1) To initiate proceedings under this Act, the concerned Incharge of Police Station/Station House

Officer/Inspector shall prepare a gang-chart mentioning the details of criminal activities of the gang.

(2) The gang-chart will be presented to the district head of police after clear recommendation of the Additional Superintendent of Police mentioning the detailed activities in relation to all the persons of the said gang.

(3) The following provisions shall be complied with in respect of gang-charts:

(a) The gang-chart will not be approved summarily but after due discussion in a joint meeting of the Commissioner of Police/District Magistrate/ Senior Superintendent of Police/ Superintendent of Police.

(b) There may be no gang of one person but there may be a gang of known and other unknown persons and in that form the gang-chart may be approved as per these rules.

(c) The gang-chart shall not mention those cases in which acquittal has been granted by the Special Court or in which the final report has been filed after the investigation. However, the gang-chart shall not be approved without the completion of investigation of the base case.

(d) Those cases shall not be mentioned in the gang-chart, on the basis of which action has already been taken once under this Act.

(e) A separate list of criminal history, as given in Form No.-4, shall be attached with the gang-chart detailing all the criminal activities of that gang and mentioning all the criminal cases, even if acquittal has been granted in those cases or even where final report has been submitted in the absence of evidence.

Along with the above, a certified copy of the gang register kept at the police station shall also be attached with the gang-chart. In addition to the above, the information of crime and gang members mentioned in the gang-chart will also be updated on Interoperable

Criminal Justice System (ICJS) portal and Crime and Criminal Tracking Network System (CCTNS).

8. Stating unconfirmed or false information is prohibited.-(1) The Incharge of Police Station/Station House Officer/Inspector shall not mention the cases as Part Trial or Partial Trial (PT) without ascertaining the up-to- date status of the cases in the gang-chart.

(2) No unconfirmed or false information shall be entered in the gang-chart.

(3) The latest status of the cases against the gang, which are being shown in he gang-chart, regarding their pendency in the Special Court, the convictions or the stage at which they are in the Court, must be clearly mentioned.

(4) The responsibility of recording the correct and true information shall lie on the concerned Incharge of Police Station/ Station House Officer/Inspector.

(5) On discovering an adverse situation, the Incharge of Police Station/Station House Officer/Inspector shall be held liable for negligence under departmental and criminal proceedings.

“10. Records of Base Cases.-(1) Alongwith gang chart, the certified copy of the charge-sheet and recovery memo shall be attached compulsorily.

(2) Where the accused is not named in the First Information Report and document discloses the way in which his name came to light and if something has been recovered, a certified copy of the recovery memo shall be attached.”

16. Forwarding of Gang-Chart.-The following manner shall be followed in the forwarding of Gang-Chart :

(1) **Forwarding of the gang-chart by the Additional**

Superintendent of Police. The Additional Superintendent of Police will not only take a quick forwarding action in the case but he will duly peruse the gang-chart and all the attached forms; and when it is satisfied that there is a just and satisfactory basis to pursue the case, only then will he forward the letter along with the recommendation given below on the gang-chart to the Superintendent of Police / Senior Superintendent of Police.

"Thoroughly studied the gang-chart and attached evidence. The basis of action under the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act 1986 exists. Accordingly, forwarded with recommendation."

(2) Forwarding of the gang-chart by the district police in-charge.-When the gang-chart along with all the Forms is received by the Senior Superintendent of Police/Superintendent of Police with the clear recommendation of the Additional Superintendent of Police, he will also thoroughly analyze all the facts and when it is confirmed that all the formalities of the Act have been fulfilled and there is a legal basis for taking action in the case, then he should forward the gang-chart to the Commissioner of Police/District Magistrate stating that: "I have duly perused the gang-chart and attached forms and I am fully satisfied that all the particulars mentioned in the case are correct and there is a satisfactory basis for taking action under the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act 1986. Accordingly, approved."

(3) Resolution of the Commissioner of Police/District Magistrate.- When the gang-chart is sent to the Commissioner of Police/District Magistrate along with all the Forms, all the facts will also be thoroughly perused by the Commissioner of

Police/District Magistrate and when he is satisfied that the basis of action exists in the case, then he will approve the gang-chart stating therein that: "I duly perused the gang-chart and attached Forms in the light of the evidence attached with the gang-chart satisfactory grounds exist for taking action under the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986. The gang-chart is approved accordingly."

It is noteworthy that the words written above are only illustrative. There is no compulsion to write the same verbatim but it is necessary that the meaning of approval should be the same as the recommendations written above, and it should also be clear from the note of approval marked.

17. Use of independent mind.- (1) The Competent Authority shall be bound to exercise its own independent mind while forwarding the gang-chart.

(2). A pre-printed rubber seal gang-chart should not be signed by the Competent Authority; otherwise the same shall tantamount to the fact that the Competent Authority has not exercised its free mind."

14. Apart from the aforesaid provisions of the Act of 1986 and Rules framed thereunder, certain other provisions of penal law have also to be looked into before arriving at a conclusion as to whether there is compliance or non-compliance of the provisions of law by the respondents while preparing and approving the gang-chart in the present case. The same shall be referred to at appropriate place in this judgement.

15. Learned counsel for the petitioners, referring to the gang-chart and other documents attached thereto, has

vehemently argued that though it is mentioned therein that charge-sheet in relation to Case Crime No.417 of 2023 has been sent to the court on 11.11.2023, the said fact is patently false and incorrect in the light of 'Annexure No.9' to the writ petition. He submits that when progress report qua investigation was sought from the Court of Judicial Magistrate Moradabad, *vide* application dated 06.01.2024, the said court, through its office, has issued a certified copy of an application dated 07.01.2024, sent by Shri Pradeep Kumar, Sub-Inspector of Police Station-Bilari, Moradabad, annexed at 'page 151' of the paper-book of the petition, wherein he has stated that after completing the investigation in Case Crime No.417 of 2023, Charge-sheet No.410 of 2023 has been sent on 11.11.2023 to Circle Officer, Bilari. It is, therefore, contended that once the Sub Inspector has himself on 07.01.2024 mentioned that charge-sheet has been sent to the Circle Officer, Bilari, it shows that by the time the gang-chart was approved in the last week of December 2023, charge-sheet was not submitted before the court. Hence, it is clear that absolutely false and incorrect information was incorporated in the gang-chart which, being in teeth of Rule 8(3) of the Rules, would vitiate the proceedings and would suffice quashing of the impugned F.I.R.

16. Learned counsel for the petitioners has also argued that Rule 10 of the Rules makes it mandatory to attach certified copy of the charge-sheet alongwith the gang-chart, however, once charge-sheet has not been submitted in the court in relation to Case Crime No.417 of 2023, there is no question of issuance of certified copy thereof and, hence, no occasion ever arose to

attach certified copy of the charge-sheet alongwith the gang-chart, as a consequence whereof, the impugned action is wholly unsustainable.

MEANING AND IMPORT OF 'CERTIFIED COPY OF CHARGE SHEET'

17. At this stage, the Court deems it appropriate to explain the requirement of attaching certified copy of the charge-sheet as per Rule 10. To appreciate this, Rule 60 of the Rules of 2021 needs thoughtful consideration and is quoted hereinbelow:-

“60. Certified copies shall be primary evidence- Notwithstanding anything to the contrary contained in any other Act, in the trial of cases under this Act the criminal cases included in the gang-chart and the FIRs mentioned in the list can be proved by the Officer certifying the certified copy of the charge-sheet. No original form shall be required for the same and the facts contained in the Forms so proved shall be deemed to be proved unless it is rebutted by any evidence to the contrary.”

18. Significantly, Rule 60 finds place in Chapter-8 of the Rules with a heading-GENERAL RULES OF TRIAL. The Rule clearly reflects that certification of a charge-sheet is associated with the police officer, however, it clearly and unambiguously relates to trial of cases under the Act and the role of the officer has been assigned only to prove the certified copy of the charge sheet during the course of trial itself. Therefore, proving certified copy of the charge-sheet has nothing to do with preparation or approval of the gang-chart at the initial stage of proceedings,

rather Rule 60 would come into application during the course of trial and that would certainly begin when the charge-sheet is submitted before the court concerned and cognizance is taken thereon, otherwise, trial cannot begin. The language used in Rule 60 is clear and unambiguous, i.e., “CERTIFYING THE CERTIFIED COPY OF THE CHARGE-SHEET and “NOT CERTIFYING THE CHARGE-SHEET ITSELF”. Therefore, Rule 60 would come into play at that stage when gang-chart alongwith certified copy issued by the competent Court is already filed before the Trial Court and the police officer is called upon during the course of trial to certify that certified copy of the charge-sheet. Hence, it cannot be said that Rule 60 would empower the police officer to certify the charge-sheet itself during the course of investigation so as to satisfy the requirement of Rule 10 which casts mandatory duty upon police officer to compulsorily attach the certified copy of the charge-sheet alongwith gang-chart.

19. Here, certain provisions of Cr.P.C. also need a glance. Though, in common parlance, we frequently use the word “charge-sheet”, surprisingly, Cr.P.C. does not define “charge-sheet”. What it defines in relation to completion of investigation is a “police report” as per Section 2(r) in the following words:-

“(r) “police report” means a report forwarded by a police officer to a Magistrate under sub-section (2) of Section 173;”

20. Therefore, a police report is referable to the one which the Incharge of the police station forwards to a Magistrate after

completion of investigation. Section 173(2) of Cr.P.C. needs reference here and is reproduced as below:-

Section 173

(1).....

(2)(i) As soon as it is completed, the officer-in-charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating -.....

21. The police report can either be in the form of a charge-sheet containing the conclusion drawn by the Investigating Officer that the accused persons should be tried after being summoned before the court or it can be a final report disclosing that accusation made through FIR has been found to be false giving rise to no occasion for trial of accused persons. In both the cases it will be a “police report” only.

22. Insofar as the word “charge” is concerned, Chapter XVII Cr.P.C. is titled as “THE CHARGE” and contains various provisions in relation to framing of charge, its alteration etc. etc. Therefore, the word “charge” has been used in relation to competence of the court concerned for trial of offenders and has nothing to do with the power of police officers in relation to accusation. As a matter of fact, the police officers have no right to frame the charge which is the sole prerogative of the Trial Court concerned after it takes cognizance of the police report submitted under Section 173(2) Cr.P.C.

23. When aforesaid is the situation, then what would be the

meaning and significance of words “charge sheet” used in Rule 10 of the Rules. Since the words “charge sheet” have not been defined either in the Act of 1986 or the Rules of 2021 or even in Cr.P.C., these words used in common parlance would be understood as they are but certainly in the light of same words used in the Act of 1986.

24. The Court has got the occasion to go through certain judgements pronounced by esteemed co-ordinate benches of our Court where necessity of attaching certified copy of the charge-sheet has been discussed. In the judgements dated 31.05.2023, 02.05.2023 and 28.08.2023 passed in Criminal Misc. Writ Petition Nos.5202 of 2023 (Manoj Maurya vs. State of U.P. and another), 19638 of 2022 (Binni Lala @ Vinod Kumar Jain vs. State of U.P. and 3 others) and 12808 of 2023 (Rahul Saxena @ Bhola/Bholu vs. State of U.P. and 3 others) respectively, the Co-ordinate Benches of this Court have dealt with Section 76 of the Indian Evidence Act, 1872 (hereinafter referred to as ‘the Act of 1872’) and have observed that it is not the requirement of law, particularly, Rule 10 of the Rules of 2021, to attach certified copy of the charge-sheet obtained from the court concerned, rather the certification made by the public officer in whose custody of public document remains, would suffice, provided requirements of Section 76 are satisfied. For a ready reference, Section 76 of the Act of 1872 needs reproduction as follows:-

“76. Certified copies of public documents.- Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefore,

together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies.”

Explanation.-Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

25. The Court is conscious of the fact that Section 76 finds place in Chapter V of the Act of 1872 which is titled as “OF DOCUMENTARY EVIDENCE”. The Chapter contains provisions in relation to proof of documents and contents thereof by way of primary and secondary evidence, their admissibility, rules as to notice to produce, attestation, admission and many other related provisions. The Scheme of the Act of 1872 is clear and, therefore, Section 76 has to be read in relation to the proceedings during the course of trial before the court of law where stage of proving or disproving a document reaches and it cannot be associated with the stage when trial has not even commenced in cases arising out of Act of 1986. Therefore, Section 76 cannot be associated with preparation or approval of gang-chart where charge-sheet has not been filed in the base cases, subject to contingencies mentioned in Rule 22 discussed later. Rule 2(b) of the Rules 2021 defines “base cases” as the cases on the basis of which a gang-chart has been prepared with the intention of taking action against the gang under the Act.

26. We may emphasize that since the issue involved in this case is as to whether without completion of investigation and without submission of charge-sheet by the police in the base case(s), a person can be made an accused under the Act of 1986, it is also necessary to refer to Rule 22 of the Rules of 2021, as quoted below:-

“22. Criminal history not mandatory and sections of the Act can be imposed in the course of investigation – (1) A single act/omission will also constitute an offence under the Act, and First Information Report may be registered on the basis of a single case i.e., it is not mandatory that any criminal history must be recorded and alleged before registering an offence under the Act.

(2) The Act may also come into force on a single prosecution in certain class of cases, such as -

if it appears that the gang has committed a single offence mentioned in Sections 302, 376D, 395, 396 or 397 of the Penal Code out of the offences mentioned in sub-clause (i) of clause (b) of Section 2 of the Act or sub-clauses (ii), (iii), (v), (vii), (x), (xii), (xiv), (xv), (xvii), (xviii), (xix), (xx) or (xxi) of clause (b) of Section 2 of the Act, which is presently under investigation, and the offence under this Act is being proved by collected evidence, then along with the criminal act under consideration, the gang-chart should also be approved by the concerned Commissioner of Police/District Magistrate involved in the investigation of the said offence and the provisions of the Act can be imposed while investigating both the offences together in accordance with the provisions of the Act. Further,

the charge-sheet can be sent to the Special Court constituted under the Act.”

27. It is apparently clear from Rule 22(1) that a single act/omission can also constitute an offence under the Act of 1986 and First Information Report may be registered on the basis of a single case. This Rule has already been interpreted by the Supreme Court in the case of **Shraddha Gupta vs. State of U.P.** decided on 26.04.2022 in **Criminal Appeal No.569-570 of 2022** reported in 2022 SCCOnline SC 514 and, hence, needs no further deliberation. However, sub-rule (2) of Rule 22 is of quite significance in the present case which, infact, is an exception to Rule 5(3)(c) in the sense that whereas Rule 5(3)(c) provides that the gang-chart shall not be approved without completion of investigation of the base case(s), sub-rule (2) of Rule 22 mentions various sub-sections of Section 2 of the Act of 1986 and the sub-rule implies that after the gang has committed a single offence mentioned under Sections 302, 376D, 395, 396 or 397 of the Penal Code out of the offences mentioned in sub-clause (i) of clause (b) of Section 2 of the Act or sub-clauses (ii), (iii), (v), (vii), (x), (xii), (xiv), (xv), (xvii), (xviii), (xix), (xx) or (xxi) of clause (b) of Section 2 of the Act, which offences are under investigation, then alongwith criminal act under consideration, the gang-chart should be approved by the concerned Commissioner of Police/District Magistrate involved in investigation of the said offence and the provisions of the Act can be imposed while investigating both the offences altogether in accordance with the provisions of the Act. Rule 22(2) of the Rules of 2021, as such, carves out an exception to the

requirement of completion of investigation before the gang-chart is approved, however, it can be done only when the First Information Report in the base case(s) is registered under any of the penal provisions mentioned under sub-rule (2) of Rule 22, otherwise, Rule 5(3)(c) shall, generally, be read with Rule 10 and understood in absolute terms and before approving the gang-chart, not only the investigation must be completed but a charge-sheet also must be submitted before the Competent Court and the certified copy must have been issued by the said Court so as to compulsorily form part of the gang-chart as per Rule 10(1).

28. In the present case, the base case covered by Case Crime No. 417 of 2023 is not covered by Rule 22(2) of the Rules 2021 in the sense that it is not an offence mentioned in sections 302, 376D, 395, 396 or 397 of the Penal Code out of the offences mentioned in sub-clause (i) of clause (b) of Section 2 of the Act or sub-clauses (ii), (iii), (v), (vii), (x), (xii), (xiv), (xv), (xvii), (xviii), (xix), (xx) or (xxi) of clause (b) of Section 2 of the Act, and, therefore, the present case is not the one which falls within exception to the general Rules 5 and 10 and, hence, in the facts of the present case, the Court is of the considered view that without completion of investigation and without forwarding the charge-sheet in Case Crime No.417 of 2023 to the Court, the gang-chart, could not be approved.

29. Now coming to the aspect as to whether in view of Rules 5(3)(a), 8(3), 16 and 17, the preparation/approval of the gang-chart in the present case, is according to law, the Court has

carefully gone through the record of proceedings and it finds that in every document including gang-chart, its format, charts and tables describing criminal history etc., the factum of submission of charge-sheet No. 410 of 2023 on 11.11.2023 in the Court and pendency of proceedings before the Judicial Magistrate has been written down and described. Surprisingly, the current status column too contains the same disclosure in all the tables and charts filed alongwith personal affidavit of the Station House Officer.

30. During the course of arguments, learned State Counsel could not dispute the submission advanced on behalf of the petitioners that the Sub-Inspector of Police Station Bilari himself, on 07.01.2024, submitted an application before the Judicial Magistrate that charge-sheet No.410 of 2023 had been forwarded on 11.11.2023 to the Circle Officer, Bilari. The said report forms part of the record of the Court of Judicial Magistrate where the CASE NUMBER has not been mentioned which is normally allotted after cognizance is taken on the charge sheet, but the report has been issued by mentioning CRIME NUMBER and the relevant sections only. This, in itself, suggests that charge-sheet has not been filed in the Court of Judicial Magistrate and the trial is not pending based thereupon and, therefore, the information entered into in the gang-chart and other charts that proceedings are pending before the Judicial Magistrate and that charge-sheet has been forwarded to the Magistrate is incorrect and incomplete disclosure of true and factual position. Therefore, preparation of gang-chart in the present case is clearly in teeth of Rule 8 (2) of the Rules.

31. The Court has already discussed that unconfirmed or false information shall not be entered in the gang-chart as mandated under Rule 8(2) and now this Court is inclined to make the officers understand the seriousness of furnishing false and unconfirmed information as, in such event, the statutory responsibility is fastened on the Incharge of police station concerned as per sub-rules (4) and (5) of Rule 8 reproduced as such:-

“(4) The responsibility of recording the correct and true information shall lie on the concerned Incharge of Police Station/ Station House Officer/Inspector.

(5) On discovering an adverse situation, the Incharge of Police Station/Station House Officer/Inspector shall be held liable for negligence under departmental and criminal proceedings.”

32. As far as compliance of Rules 16 and 17 is concerned, though the State has made attempts to support the gang-chart and the approval granted to it by referring to the documents annexed to the personal affidavit, a careful scrutiny of the documents would reveal that the Nodal Officer/Regional Officer Moradabad forwarded the gang chart for approval on 27.12.2023, the Superintendent of Police, Rural, Moradabad forwarded the gang-chart for approval on 28.12.2023 and the joint meeting of Senior Superintendent of Police and District Magistrate, Moradabad has been shown to have been held on 01.01.2024. It is not clear from the gang-chart as to on what date the Senior Superintendent of Police forwarded the gang-chart for approval and as to on which date the District Magistrate approved the gang-chart. Clearly and visibly the columns and signatures of Senior Superintendent of

Police and District Magistrate are “undated”. No minutes of joint meeting have been annexed. It is not clear as to where was this joint meeting held and who were present therein. In any case, there are chances of doing only paper work as regards holding a joint meeting without actually holding it. In that event, the entire scheme of the Rules would frustrate.

33. Rule 17 of the Rules casts a mandatory duty on the Competent Authority to exercise its own independent mind while forwarding the gang-chart, however, the dates referred to hereinabove i.e. 27.12.2023, 28.12.2023 and 01.01.2024 and the ‘undated signatures’ made by the District Magistrate and the Senior Superintendent of Police, particularly considering the fact that charge-sheet has not at all been submitted in the case covered by Case Crime No.417 of 2023, are sufficient to convince this Court that gang-chart has been hurriedly prepared, forwarded and approved without application of independent mind and, therefore, there is a clear violation of Rule 17 of the Rules of 2021.

34. At this stage, it is apposite to refer to a latest circular dated 21.01.2024 whereby the State Government has directed the Deputy Inspector General, U.P., Lucknow, Additional Commissioners of Police, Prosecution Directorate, Lucknow, all the Commissioners, all the District Magistrates, all the Police Commissioners, Senior Superintendents of Police, Superintendents of Police in the State of U.P. to ensure strict compliance of Rules 2021 by referring to Rules 5(3), 8, 16, 17, 20 and 26, 36 and 64. The Circular, surprisingly, does not refer

to Rule 10 which casts a compulsory and mandatory duty of attaching certified copy of the charge-sheet alongwith the gang-chart. This Court has already interpreted the said provision in detail, hereinabove.

35. The Court also finds that significance of Rule 64 of the Rules of 2021 contained in Chapter 10 has seldom been noticed by the highest police officials as well as the District Magistrate. For the sake of convenience, Rule 64 is reproduced as follows:-

64. Supervision by three-tier Committees. -The following three-tier Committees shall be constituted in relation to the regular supervision and review of any proceedings under the Act and the disposal and management of their ancillary matters:

(1) District Level Supervision Committee-

(a) Every quarter, the action taken under this Act, including the proceedings under Section 14 of the Act and the cases decided, shall be compulsorily reviewed by the District Level Supervision Committee;

(b) Essentially, the police officers who have filed a case under the Act and who are doing the investigation will be present with all the case diaries and information.

(c) The said District Level Supervision Committee will be constituted as under:

(i) Commissioner of Police/District Magistrate-Chairman

(ii) District Police In-charge, Senior Superintendent of Police/ Superintendent of Police-Vice President

(iii) Additional Superintendent of Police/Circle Officer-Nodal Officer

(iv) Joint Director Prosecution-Member
Secretary

(v) Public Prosecutor of the Gangster Act-Member;

(d) Minutes of the decisions taken and the review made in the said District Level Supervision Committee will be prepared by the Judicial Assistant/Confidential Assistant and sent to the Divisional Level Supervision Committee and the Home Department of the Government as soon as possible with the signature of the Chairman;

(e) In addition to the above, the said Committee shall have the authority to get the properties of any gang or criminals investigated by any appropriate institution and to issue all such orders so that such gangs or criminals cannot get the benefit of any government services, business, contracts, leases, State schemes, etc. and if such benefit has been received by them, then the same should be recovered. The compliance of the Witness Protection Scheme, 2018 and the instructions related to witness protection in force for the time being shall also be ensured by this Committee.

(2) Divisional Level Supervision Committee-

(a) The Divisional Level Supervision Committee shall consider the quarterly review report of the District Level Supervision Committee and the action taken by it under this Act, including the proceedings under Section 14 of the Act;

(b) The cases decided by the District Level Supervision Committee will be compulsorily reviewed by the Divisional Level Supervision Committee in every six

months;

(c) In the review meeting of the said Committee, the Nodal Officer of the concerned district will necessarily be present with relevant information;

(d) The said Divisional Level Supervision Committee will be constituted as under:

(i) Divisional Commissioner-Chairman

(ii) Inspector General of Police/Joint Commissioner of Police (Crime)-Vice President/ Nodal Officer

(iii) Additional Director Prosecution-Member Secretary

(iv) Officer of the local body of the Divisional Headquarters (Municipal Commissioner /Executive Officer)-Member

(v) Regional Lead Branch Manager of National and Private Bank-Member

(vi) Senior most officer of Income Tax Department-Member

(vii) Senior most officer of the GST/Sales Tax Business Tax Department-Member;

(e) In addition to reviewing the criminal cases, the said Committee will provide proper information to the Investigating Officers regarding the activities related to the property acquired by the gangster under the Act and share the relevant information with all the concerned at the divisional level;

(f) Minutes of the decisions taken and the review done in the Divisional Level Supervision Committee will be prepared and sent to the Home Department of the Government as soon as possible with the signature of

the Chairman;

(g) In addition to the above, the said Committee shall have the authority to get the properties of any gang or criminals investigated by any appropriate institution and to issue all such orders so that such gangs or criminals cannot get the benefit of any government services, business, contracts, leases, State schemes, etc. and if such benefit has been received by them, the same should be recovered. The compliance of the Witness Protection Scheme, 2018 and the instructions related to witness protection in force for the time being shall also be ensured by this Committee.

(3) State Level Supervision Committee-

(a) The State Level Supervision Committee shall supervise the Divisional Level Supervision Committee and District Level Committees half-yearly and make policy after considering their reports regarding punishment of criminals and disposal of their illegal properties in favour of the State;

(b) The State Level Supervision Committee will be constituted at the State level to take appropriate action as follows:

(i) Additional Chief Secretary, Home-Chairman

(ii) Principal Secretary, Justice/Legal Adviser-Vice President

(iii) Director General of Police-Vice President

(iv) Director General, Prosecution-Member Secretary

(v) Head of State of National and Private Bank-Member

(vi) Senior most officer of Income Tax Department-Member

(vii) Senior most officer of GST/Sales Tax Business Tax Department-Member;

(c) In addition to the above, the said Committee shall have the authority to get the properties of any gang or criminals investigated by any appropriate institution and issue all such orders so that such gangs or criminals cannot get the benefit of any government services, business, contracts, leases, State schemes, etc. and if such benefit has been received by them, the same should be recovered. The compliance of the Witness Protection Scheme, 2018 and the instructions related to witness protection in force for the time being shall also be ensured by this Committee.”

36. The afore-quoted Rule 64 describes three-tier system where the Committee, namely District Level Supervision Committee, shall be constituted in relation to the regular supervision and review of any proceedings under the Act and disposal and management of their ancillary matters. The importance of Rule 64 is that every action under the Act, right from the beginning till end, has to be under regular supervision and review of such Committees but what the Court finds in almost all the cases, including the present one, that the gang-charts are hurriedly prepared containing various infirmities and irregularities which are altogether ignored by the members of the said Committee and taking advantage of the technical shortfalls, even a hard core criminal easily escapes from the stringent action under the Act.

37. It is now necessary to give reference to certain judicial

pronouncements on purposive interpretation of a statute.

38. Jurisprudence of statutory interpretation has moved from "literal interpretation" to "purposive interpretation", which advances the purpose and object of a legislation. The Supreme Court, in catena of judgments, has dealt with the issue of literal interpretation vis-a-vis purposive interpretation.

39. The Apex Court, in **Central India Spinning and Weaving Manufacturing Comp. versus Municipal Committee, Wardha, AIR 1958 SC 341**, has held that it is a recognised principle of construction that general words and phrases, however wide and comprehensive they may be in their literal sense, must usually be construed as being limited to the actual objects of the Act.

40. The Supreme Court, in **Girdhari Lal & Sons versus Balbir Nath Mathur; 1986(2) SCC 237**, has held that the primary and foremost task of a Court in interpreting a statute is to ascertain the intention of the legislature, actual or imputed. Having ascertained the intention, the Court must then strive to so interpret the statute as to promote and advance the object and purpose of the enactment. For this purpose, where necessary the Court may even depart from the rule that plain words should be interpreted according to their plain meaning and there need no meek and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the court would be well justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment by

supplementing the written word if necessary. It went to observe that ascertainment of legislative intent is a basic rule of statutory construction and that a rule of construction should be preferred which advances the purpose and object of a legislation and that though a construction, according to plain language, should ordinarily be adopted, such a construction should not be adopted where it leads to anomalies, injustices, or absurdities, vide **K.P. Varghese v. ITO, (1981) 4 SCC 173, State Bank of Travancore v. Mohd. M. Khan, (1981) 4 SCC 82, Som Prakash Rekhi v. Union of India (1981) 1 SCC 449, Ravula Subba Rao v. CIT, AIR 1956 SC 604, Govindlal V Agricultural Produce Market Committee, (1975) 2 SCC 482 and Babaji Kondaji v. Nasik Merchants Co-op Bank Ltd. (1984) 2 SCC 50.**

41. The Supreme Court, in **Utkal Contractors & Joinery Pvt. Ltd. versus State of Orissa; 1987 (3) SCC 279**, has observed that a statute is best understood if we know the reason for it. The reason for a statute is the safest guide to its interpretation. The words of a statute take their colour from the reason for it. There are external and internal aids. The external aids are Statement of Objects and Reasons when the Bill is presented to Parliament, the reports of Committees which preceded the Bill and the reports of Parliamentary Committees. Occasional excursions into the debates of Parliament are permitted. Internal aids are the Preamble, the scheme and the provisions of the Act. Having discovered the reason for the statute and so having set the sail to the wind, the interpreter may proceed ahead. No provision in the statute and no word of the

statute may be construed in isolation. Every provision and every word must be looked at generally before any provision or word is attempted to be construed. The setting and the pattern are important. It is again important to remember that Parliament does not waste its breath unnecessarily. Just as Parliament is not expected to use unnecessary expressions, Parliament is also not expected to express itself unnecessarily. Even as Parliament does not use any word without meaning something, Parliament does not legislate where no legislation is called for. Parliament cannot be assumed to legislate for the sake of legislation; nor can it be assumed to make pointless legislation. [See-Eera (through **Dr. Manjula Krippendorf**) v. **State (NCT of Delhi) and Anr** 2017(15) SCC 133].

42. The more stringent the Law, the less is the discretion of the Court. Stringent laws are made for the purpose to achieve its objectives. This being the intendment of the legislature, the duty of the court is to see that the intention of the legislature is not frustrated. If there is any doubt or ambiguity in the statutes, the rule of purposive construction should be taken recourse to, to achieve the objectives. (See **Swedish Match AB & Anr. Securities & Exchange Board, India & Anr.**, (2004) 11 SCC 641).

43. The Apex Court, in **Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. & Ors.** (1987) 1 SCC 424, held that Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That

interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.

44. Same view has been reiterated in **S. Gopal Reddy Vs. State of Andhra Pradesh, (1996) 4 SCC 596, Prakash Kumar Alias Prakash Bhutto Vs. State of Gujarat, (2005) 2 SCC 409, Anwar Hasan Khan Vs. Mohd. Shafi & Ors. (2001) 8 SCC 540, Union of India & Ors. Vs. Filip Tiago De Gama of Vedem Vasco De Gama, (1990) 1 SCC 277, Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd., (1987) 1 SCC 424: (AIR 1987 SC 1023) and N. K. Jain v. C. K. Shah (1991) 2 SCC 495: (AIR 1991 SC1289).**

REFERENCE TO A LARGER BENCH

45. This Court is satisfied in the present case that

preparation/forwarding as well as approval of the gang-chart is in teeth of Rules 5, 8, 10, 16 and 17 of the Rules, but since our esteemed Co-ordinate Benches of this Court, in above-noted judgments, have interpreted Rule 10 contrary to the view taken by this Court in this judgment, the question on interpretation of Rules 5, 10, 22 and 60 needs to be referred to the larger Bench.

46. As regards second limb of argument of learned counsel for the petitioner regarding validity of an F.I.R. under section 3 of the Act only, without mentioning any other offences described in section 2(b) thereof, learned counsel for the petitioner placed reliance on a recent decision of this Court in **Criminal Misc. Writ Petition No.18729 of 2023 (Asim @ Hassim vs. State of U.P. and another)** decided on 02.12.2023 and reported in 2024 (1) ADJ 125(DB).

47. The Court has perused the said judgment wherein an F.I.R. lodged under Section 3(1) of the Act of 1986 was quashed by the Court on the ground that apart from Section 3(1) of the Act, no corresponding provision mentioning anti-social activities, in which the accused was allegedly involved and was named as gangster as per one or the other sub-section of Section 2, was there in the F.I.R.

48. This Court, having gone through the Scheme of the Act read with general penal law covered by Indian Penal Code, 1860 is of the view that First Information Report is always lodged under the provision inflicting penalty of imprisonment and/or fine against the accused and not under the provision where the offence itself is defined. For example, 'cheating' is defined

under Section 415 of Indian Penal Code, 1860, whereas F.I.R. in relation to commission of 'offence of cheating' is lodged under Section 420 I.P.C. which is a penal provision. Similarly, 'criminal breach of trust' is defined under Section 405 but FIR is registered under Section 406 IPC; 'forgery' is defined under Section 463 IPC but F.I.R. is lodged under Section 465/467/468/471 IPC, murder is defined under Section 300 but F.I.R. is lodged under Section 302, so on and so forth.

49. Admittedly, Section 3 is the penal provision under the Act, 1986 in relation to the offences described under various sub-sections of Section 2 of the Act and, hence, this Court is of the view that it is not necessary to mention any one or the other clause of Section 2 while registering F.I.R. under the Act of 1986, for which, mentioning of Section 3 is sufficient. Therefore, this Court is in respectful disagreement with the judgment of our esteemed Co-ordinate Bench in **Criminal Misc. Writ Petition No.18729 of 2023 (Asim @ Hassim vs. State of U.P. and another)** decided on 02.12.2023 and reported in 2024 (1) ADJ 125(DB) and reference on this point is also required to be made and is being made.

50. In connection to the aforesaid, we may take aid to a very recent decision dated 19.02.2024 pronounced by the Hon'ble Supreme Court in **Criminal Appeal Nos(s).... of 2024 (arising out of SLP (Crl.) No(s). 437 of 2023 (Farhana vs. State of U.P. and others)** connected with another case can be taken. The Supreme Court was dealing with a case where the accused had been exonerated/acquitted in the base case,

however, the acquittal was not taken note of while preparing the gang-chart and, hence, the Supreme Court quashed the FIR and also reversed the decision of this Court, by which, this Court had declined quashing of the FIR by placing reliance upon judgement in the case of **Shraddha Gupta** (supra) and. In ‘paragraph 13’ of the judgement in the case of Farhana (supra), the Supreme Court observed as follows:-

“13. Needless to say that for framing a charge for the offence under the Gangsters Act and for continuing the prosecution of the accused under the above provisions, the prosecution would be required to clearly state that the appellants are being prosecuted for any one or more offences covered by anti-social activities as defined under Section 2(b).”

51. It is clear from a bare reading of paragraph 13 of the said judgement that the prosecution would be under an obligation to clearly state that the accused persons are being prosecuted for any one of the offences covered by anti-social activities as defined under Section 2(b), however, that stage would come while framing the charge for the offence under the Gangster Act. It is, thus, apparent that there is no such requirement at the time of bare registration of FIR and, therefore, mentioning Section 3 of the Act, 1860 only would suffice at that stage.

52. Therefore, the judicial propriety demands that the aforesaid aspects should also to be referred for being answered by a Larger Bench.

53. The Registry is, accordingly, directed to place this matter before Hon'ble the Chief Justice for constituting Larger Bench to answer the following questions:-

(A) Whether, in the light of Rule 60 of the Uttar Pradesh Gangster and Anti-Social Activities (Prevention) Rules, 2021 the words "certified copy of the charge-sheet" used in Rule 10(1) mean certified copy issued from the trial Court after submission of police report by the Investigating Agency before the trial Court and after the Court takes cognizance thereupon, or a certification made on the charge sheet by the police officer involved in investigation prior to its submission before the trial Court is sufficient as per section 76 of the Evidence Act, 1872, where the offences are not covered by those specified under Rule 22(2)?

(B). Whether in view of the scheme of penal law covered by Indian Penal Code, 1860 and/or the Uttar Pradesh Gangster and Anti-Social Activities (Prevention) Act, 1986, is it necessary at all to mention in the F.I.R. any one or more of the offences described under Section 2(b) of the Act?

54. Till the aforesaid questions are answered by the Larger Bench, interim protection granted to the petitioners under the order dated 08.02.2024 shall remain in operation.

55. Although we have referred the above-noted questions for being answered by the Larger Bench, it is made clear that in the peculiar facts and circumstances of the present case, the protection granted to the petitioners or reference made to the Larger Bench would, under no circumstances, be treated as a judgment/order in *rem* so as to install any proceedings in any

other case pending in the State of U.P. under the Uttar Pradesh Gangster and Anti-Social Activities (Prevention) Act, 1986 before any Authority or Court, including this Court.

Order Date:-04.03.2024

Jyotsana

(Kshitij Shailendra, J.) (Mahesh Chandra Tripathi, J.)