RESERVED
A.F.R.

Court No. - 74

Case :- CRIMINAL MISC. WRIT PETITION No. - 16202 of 2019

Petitioner :- Pavan @ Pavan Singhal
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Anant Ram Gupta
Counsel for Respondent :- G.A.

Hon'ble J.J. Munir,J.

The petitioner questions an order of Ms. Selva Kumari J., the then District Magistrate, Firozabad, dated 13.03.2019, ordering him to be externed under Section 3(3) of the Uttar Pradesh Control of Goondas Act, 1970[1]. The petitioner also challenges an appellate approval of the externment order by the Commissioner, Agra Division, Agra, *vide* his order dated 23.05.2019, passed in Case No. 00719 of 2019.

2. This petition was presented on 07.06.2019, and came up for admission before this Court, for the first time, on 11.06.2019. On the said date, after hearing learned counsel for the petitioner in support of motion to admit the petition, and the learned A.G.A. in opposition, the cause was adjourned to 04.07.2019. On 04.07.2019, the learned A.G.A. was granted four weeks' time to file a counter affidavit, and the petitioner, a rejoinder, within another two weeks. It appears that no counter affidavit was filed, and by the order dated 10.09.2019, two weeks and no more time was granted to the State to file a counter affidavit. Again, on 17.10.2019, further three weeks' time was granted, with a repetition of the stop order. Subsequently, on 10.09.2020 and 24.09.2020, the matter was adjourned on the request of learned counsel for the petitioner. The case again came up on 07.10.2020. On the said date, this Court took note of the fact that

1 **hereinafter referred to as "the Act of 1970"**

there was no return filed on behalf of the State. The petition was admitted to hearing and heard forthwith. Judgment was reserved.

3. It was urged as a preliminary objection on behalf of the State by the learned A.G.A. that this petition has become infructuous, inasmuch as the life of the externment order impugned had come to an end. The externment order was effective for a period of six months, and apparently, its operation was not suspended. The externment order is one dated 13.03.2019, and by a reckoning of the calendar, the learned A.G.A. submits that it has outlived itself. The learned counsel for the petitioner, on the other hand, says that the order of externment adversely impacts his reputation in society, and, therefore, notwithstanding the fact that it has outlived its term of operation, the petitioner is entitled to question its validity and ask this Court to quash it. Learned counsel for the petitioner, in support of his submission, has relied on a decision of this Court in **Rishav Raghav (Minor) v. State of U.P. & 2 Others**[2]. In that decision, the externment order had outlived its life, pending appeal, which had become infructuous, and yet this Court proceeded to examine the merits of the externment order and its affirmation in appeal. The orders were quashed on merits, bearing in mind the fact that if left undisturbed, would affect the petitioner's career, who, in that case, was a student and had to do a follow up of his studies and apply for a job. There are remarks in **Rishav Raghav** *(supra)* to the following effect :

> **21.** The learned Counsel for the petitioner argued that appeal of the petitioner was dismissed by the respondent No. 2, who did not passed any order on the stay application and allowed the appeal to become infructuous.
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> **22.** Learned Counsel for the petitioner further submits that present petition may be decided on merits after examining the records as the applicant is a student and his entire career would be spoiled, which would also affect his future, if the externment orders is not quashed, as he is a student and has to follow up studies and to get a job, under these circumstances the Court proceed to hear the matter on merits.

2 **2015 SCC OnLine All 8978**

4. The learned A.G.A., on the other hand, says that the decision in **Rishav Raghav** was indicated not to serve as a precedent by the court, when it was specifically remarked :

> 30. .....The Court has interfere in this matter in a peculiar facts and circumstances of the case and it is made clear that the present case shall not be treated as a precedent, for challenging the order passed in the appeals which have become infructuous, due to unavoidable circumstances.

5. This Court has considered the matter, so far as the preliminary objection is concerned. It is true that this Court in **Rishav Raghav** said that the decision would not serve as a precedent, for the purpose of challenging orders passed in appeal, that have become infructuous, but the question is whether a person, who is externed under the Act of 1970, is entitled to question the order of externment, after it has outlived its life. Apart from the decision in **Rishav Raghav**, none of the parties placed any authority that may serve as guidance on the point.

6. To the understanding of this Court, the fact that the Act of 1970 is a preventive measure to exclude from a locale, persons who are found to be *goondas* or anti-social elements, in order to maintain public order or prevent them from committing certain crimes, does not make externment a benign or inert measure, which attracts no stigma. The object of the Act of 1970 and its scheme as a whole, clearly shows it to be a statute that is designed to be applied against persons who are desperados or habitual offenders, and who threaten peace and tranquility of the society by their repeat involvement in certain specific crimes or their general predisposition as desperate and dangerous persons.

7. Considering the scheme and object of the Act of 1970, an order of externment cannot be compared to a preventive detention under the National Security Act, 1980, which may cast no stigma, or be explained consistent with a person's upright character. Once a person is proceeded with against under the Act of 1970, and externed under Section 3(3), classifying him as a *goonda*, the order is certainly

stigmatic. It is for this reason also that an order of externment envisages provision of opportunity to show cause, under Section 3(2). This is not to say that the provision for opportunity is engrafted in the Statute, for the reason alone of its stigmatic effect; it is also there because an order of externment is a serious inroad on a citizen's liberty.

8. It was suggested during the hearing on behalf of the State that the decision in **Rishav Raghav** was rendered in the context of the petitioner there being a young student, who had a career before him, which is not the case here. This Court must remark that the petitioner is not a convict so far, and every man has a right to his reputation and good name in society. Every person is presumed to be an honourable and respectable man, unless that presumption is dislodged in accordance with law. Therefore, dubbing some citizen as a *goonda* and externing him under the Act of 1970, is an act that would afford a cause of action to the person who suffers that order, which enures beyond its physical consequences. In the opinion of this Court, it would not be a sound legal proposition to say that a man may suffer the slur of being called a *goonda,* because he could not bring the order of externment passed against him to test within the term of its life. In the opinion of this Court, the petitioner is entitled to question the externment order, notwithstanding that order outrunning its life.

9. The right to one's reputation is now unquestionably regarded as a facet of the Right to Life, guaranteed under Article 21 of the Constitution. The horizon of the right guaranteed under Article 21 has been given its true meaning and content over the years that our polity has flourished under the constitutional umbrella. Right to Life has long been expanded to mean immensely more than mere physical, animal or biological existence. It has been interpreted by the Supreme Court and the High Courts over the years, to bring within its fold, all that it means and requires to elevate the mere physical existence of an individual to the position of a human being, who has

all opportunity and facility to realise his potential to its fullest. In the quest to realise the wholesome guarantee of life in its varied facets, the right to one's reputation has been regarded as an inseperable part.

10. In **Subramanian Swamy v. Union of India, Ministry of Law & Others**[3] challenge was laid to the *vires* of Section 499 and 500 of the Indian Penal Code, 1860[4] and Section 199 of the Code of Criminal Procedure, 1973 on ground that these Statutes negated the fundamental right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution. The validity of the provisions was upheld by their Lordships of the Supreme Court on varied parameters, but one of these was the right of an individual to his reputation. The Right to Reputation was regarded as a concomitant of the Right to Life guaranteed under Article 21 of the Constitution. In was held in **Subramanian Swamy** *(supra)* thus:

> **132.** ……..Personal liberty, as used in Article 21, is treated as a composition of rights relatable to various spheres of life to confer the meaning to the said right. Thus perceived, the right to life under Article 21 is equally expansive and it, in its connotative sense, carries a collection or bouquet of rights. In the case at hand, the emphasis is on right to reputation which has been treated as an inherent facet of Article 21. In *Haridas Das* v. *Usha Rani Banik*[*Haridas Das* v. *Usha Rani Banik*, (2007) 14 SCC 1 : (2009) 1 SCC (Cri) 750] , it has been stated that a good name is better than good riches. In a different context, the majority in *S.P. Mittal* v. *Union of India*[*S.P. Mittal* v.*Union of India*, (1983) 1 SCC 51 : AIR 1983 SC 1] , has opined that man, as a rational being, endowed with a sense of freedom and responsibility, does not remain satisfied with any material existence. He has the urge to indulge in creative activities and effort is to realise the value of life in them. The said decision lays down that the value of life is incomprehensible without dignity.
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> **133. [Ed.: Para 133 corrected vide Official Corrigendum No. F.3/Ed.B.J./33/2016 dated 4-8-2016.]** In *Charu Khurana* v. *Union of India* [*Charu Khurana* v.*Union of India*, (2015) 1 SCC 192 : (2015) 1 SCC

3 **(2016) 7 SCC 221**
4 **for short "IPC"**

> (L&S) 161] , it has been ruled that dignity is the quintessential quality of a personality, for it is a highly cherished value. Thus perceived, right to honour, dignity and reputation are the basic constituents of right under Article 21. The submission of the learned counsel for the petitioners is that reputation as an aspect of Article 21 is always available against the high-handed action of the State. To state that such right can be impinged and remains unprotected*inter se* private disputes pertaining to reputation would not be correct. Neither can this right be overridden and blotched notwithstanding malice, vile and venal attack to tarnish and destroy the reputation of another by stating that the same curbs and puts unreasonable restriction on the freedom of speech and expression. There is no gainsaying that individual rights form the fundamental fulcrum of collective harmony and interest of a society. There can be no denial of the fact that the right to freedom of speech and expression is absolutely sacrosanct. Simultaneously, right to life as is understood in the expansive horizon of Article 21 has its own significance.

11. In **Om Prakash Chautala v. Kanwar Bhan & others**[5], the right to a person's reputation, being a part of his fundamental right guaranteed under Article 21 of the Constitution, was exposited by their Lordships with reference to earlier authority, thus :

> **21.** Another facet gaining significance deserves to be adverted to, when caustic observations are made which are not necessary as an integral part of adjudication and it affects the person's reputation—a cherished right under Article 21 of the Constitution. In*Umesh Kumar* v. *State of A.P.* [(2013) 10 SCC 591 : (2014) 1 SCC (Cri) 338] this Court has observed: (SCC p. 604, para 18)
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> > "*18*. … Personal rights of a human being include the right of reputation. A good reputation is an element of personal security and is protected by the Constitution equally with the right to the enjoyment of life, liberty and property. Therefore, it has been held to be a necessary element in regard to right to life of a citizen under Article 21 of the Constitution. The International Covenant on Civil and Political Rights, 1966 recognises the right to have opinions and the right to freedom of expression under Article 19 is *subject to the right of reputation of others*."

5 **(2014) 5 SCC 417**

22. In *Kiran Bedi* v. *Committee of Inquiry* [(1989) 1 SCC 494] this Court reproduced the following observations from the decision in *D.F. Marion* v. *Davis* [217 Ala 16 : 114 So 357 : 55 ALR 171 (1927)] : (*Kiran Bedi case* [(1989) 1 SCC 494] , SCC p. 515, para 25)

> "*25.* … 'The right to the enjoyment of a private reputation, unassailed by malicious slander is of ancient origin, and is necessary to human society. A good reputation is an element of personal security, and is protected by the Constitution equally with the right to the enjoyment of life, liberty, and property.'"

23. In *Vishwanath Agrawal* v. *Sarla Vishwanath Agrawal* [(2012) 7 SCC 288 : (2012) 4 SCC (Civ) 224 : (2012) 3 SCC (Cri) 347] , although in a different context, while dealing with the aspect of reputation, this Court has observed that: (SCC p. 307, para 55)

> "*55.* … reputation which is not only the salt of life, but also the purest treasure and the most precious perfume of life. It is extremely delicate and a cherished value this side of the grave. It is a revenue generator for the present as well as for the posterity."

24. In *Mehmood Nayyar Azam* v. *State of Chhattisgarh* [(2012) 8 SCC 1 : (2012) 4 SCC (Civ) 34 : (2012) 3 SCC (Cri) 733 : (2012) 2 SCC (L&S) 449] this Court has ruled that: (SCC p. 6, para 1)

> "*1.* … The reverence of life is insegregably associated with the dignity of a human being who is basically divine, not servile. A human personality is endowed with potential infinity and it blossoms when dignity is sustained. The sustenance of such dignity has to be the superlative concern of every sensitive soul. The essence of dignity can never be treated as a momentary spark of light or, for that matter, 'a brief candle', or 'a hollow bubble'. The spark of life gets more resplendent when man is treated with dignity sans humiliation, for every man is expected to lead an honourable life which is a splendid gift of 'creative intelligence'. When a dent is created in the reputation, humanism is paralysed."

25. In *Port of Bombay* v. *Dilipkumar Raghavendranath Nadkarni* [(1983) 1 SCC 124 : 1983 SCC (L&S) 61] , while dealing with the value of reputation, a two-Judge Bench expressed thus: (SCC p. 134, para 13)

> "*13*. … The expression 'life' has a much wider meaning. Where therefore the outcome of a departmental enquiry is likely to adversely affect reputation or livelihood of a person, some of the finer graces of human civilisation which make life worth living would be jeopardised and the same can be put in jeopardy only by law which inheres fair procedures. In this context one can recall the famous words of Chapter II of *Bhagwad Gita*:
> 'Sambhavitasya cha kirti marnadati richyate'"

The aforesaid principle has been reiterated in *State of Maharashtra* v. *Public Concern for Governance Trust*[(2007) 3 SCC 587].

12. The justiciability of the right to one's reputation and its inextricable link to a person's fundamental right under Article 21 of the Constitution, also engaged the attention of this Court in **Sumpuranand v. State of U.P. & others**[6]. That was a case where the issue arose in the context of the right to consideration for appointment of fair price shop dealers on compassionate grounds, which the kin of the deceased dealer had, under a certain Government Order dated 17.08.2020. Clause 10 (JHA) *inter-alia* provided that the good reputation of the deceased fair price shop dealer was a condition precedent for appointment of his kin as a fair price shop dealer, on compassionate grounds. The clause in the Government Order that cast a disentitling shadow on the son's right to compassionate appointment as a fair price shop dealer, if the deceased dealer did not enjoy a good reputation, was held to be discriminatory and violative of Articles 14, 15 and 21 of the Constitution. It was in that context the Court made a searching analysis of the Right to Reputation and traced its source to a person's Right to Life, guaranteed under Article 21 of the Constitution. In **Sumpuranand** *(supra)* there are some very illuminating remarks about the Right to Life and its connection to Article 21 of the Constitution, which read :

> **30.** The resolve to create the Constitution was the collective will of the people of India. The promise of the Constitution is to every individual citizen

6 **2018 (11) ADJ 550**

of India. Part III of the Constitution is anchored in the individual and revolves around the individual citizens. The simple word "life" in Article 21 of the Constitution of India presented a complex jurisprudential problem to the courts. The simple word "life" did not disguise for long the profound intent of the constitution framers. The approach of the courts to the provision in the Constitution progressed from tentative to visionary, the interpretation of the provision advanced from literal to prophetic.

31. What was the meaning of life for the people of India on the morrow of our independence? If life meant physical existence and mere survival, Indian people had shown remarkable resilience to live through the vicissitudes of history. The people of India have lived in servitude, survived famines, lived in an iniquitous social order often dominated by prejudice, penury and illiteracy. Trackless centuries are filled with the record of survival of the people of India. Surely life of the Indian people could not remain the same after the dawn of independence of India. Surely the meaning of life for the people of India had to change after the advent of the Republic of India. The founding fathers, had the audacity to dream of transforming the meaning of life for the people of India. The courts in India had the vision and the courage to make the dreams a reality. Life had to embrace all the attributes which made life meaningful and all the pursuits which made life worth living.

34. The courts in India, knew early on that understanding the significance of life was the key to providing the security of justice. While interpreting Article 21 of the Constitution of India, the Hon'ble Supreme Court, embraced life in all its breadth and profundity and eschewed a narrow interpretation. The law laid down by the Hon'ble Supreme Court while construing Article 21 of the Constitution of India brought a citizen's reputation within its sweep.

44. The right to reputation inheres in the right to life and it has been embedded in Article 21 of the Constitution of India, by consistent judicial authority. Reference can be made with profit to the judgments of the Hon'ble Supreme Court rendered in the case of Port of Bombay Vs. Dilip Kumar Raghuvendranath Nadkarni, reported at (1983)1 SCC 124. In Gian Kaur Vs. State of Punjab, the Hon'ble Supreme Court confirmed that the right to reputation is a natural right.

13. In the context of how the Right to Reputation is viewed by the law, it would be almost preposterous to suggest that the physical consequences of an externment order having come to an end, no cause of action survives to the petitioner to assail it. An externment order, under the Act of 1970, has clearly two facets. One is that which relates to the tangible consequence of forbidding the person proceeded with against, from entering the district for a certain period of time. This consequence of the externment order is indeed preventive in nature, and, may be, of immense importance in a given case to the maintenance of public order. So far as the person against whom the order of externment is made is concerned, it certainly does curtail his liberty, by preventing his movement in a defined territory. But, the inconvenience stemming from the abridgment of liberty, that comes in the wake of an externment order, prohibiting entry in the district, is of trivial consequence to the one externed, if this consequence were to be weighed against the harm that it brings to the individual's reputation.

14. The order of externment proceeds on an innate declaration that the person externed is a *goonda*. A *goonda* has been defined under the Act of 1970, and otherwise also, has an understandable connotation in ordinary parlance. A *goonda* is the anti-thesis of what a respectable or honourable man is. An externment order, which, thus, works as an innate declaration about the man externed being a *goonda*, is irreversibly ruinous of his reputation. It has been said time over again that reputation once lost can never been redeemed. The physical consequences of an externment order that last only for a period of six months, with the limited effect of abridgment of some liberty, are trivial when compared to the timeless consequence of ruining a reputation, that can perhaps never be regained. In this view of the matter, this Court does not find any force in the objection raised by the learned A.G.A., that the cause of action does not survive, and that this petition has become infructuous. In the opinion of this Court, this cause requires determination on merits.

15. It has been pointed out by Mr. Anant Ram Gupta, learned counsel for the petitioner, that the petitioner, who is a resident of Firozabad, is a respectable citizen, a businessman and an income tax payee. It is urged that he is, by no means, a *goonda*, within the meaning of Section 2(b) of the Act of 1970. It is urged that a solitary case, being Case Crime No. 648 of 2016, under Sections 364A, 302, 404, 201, 120B IPC, was registered against him on 24.08.2016, at Police Station - Tundla, District - Firozabad, whereafter, there was a consequential implication in Case Crime No. 841 of 2016, under Section 2/3 of The Uttar Pradesh Gangsters and Anti-social Activities (Prevention) Act, 1986[7], which is not a substantive offence. Subsequently, the Police have implicated him in N.C.R. No. 504/506, under Section 506 IPC, which is based on beat report no. 59 dated 15.11.2017. It is argued that the two matters are contemporaneous implications and the third a dress-up, based on the beat information engineered by the Police. It is also pointed out that in Case Crime Nos. 648 of 2016 and 841 of 2016, the petitioner has been granted bail by this Court. He has not been convicted of any offence so far. It is, particularly, pointed out that the beat information was *mala fide* engineered by Pradeep Mittal, who is the informant of Case Crime No. 648 of 2016, and the uncle of the victim of the crime in that case. This beat information was lodged deliberately, in order to secure cancellation of bail granted to the petitioner in Case Crime No. 648 of 2016 by this Court, *vide* order dated 22.07.2017, passed in *Criminal Misc. Bail Application No. 40678 of 2016*. Learned counsel for the petitioner, by referring to these facts, has attempted to impress upon the Court that prior to registration of Case Crime No. 648 of 2016, there was absolutely nothing against the petitioner to show that he is, in any way, habitually into commission of offences of any kind. Rather, the learned counsel for the petitioner has drawn the Court's attention towards the educational testimonials of the petitioner and

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7 **hereinafter referred to as "the Act of 1986"**

his income tax returns, in an attempt to show that the petitioner is a respectable man, engaged in business.

16. It has also been argued by the learned counsel for the petitioner that quite apart from the fact that the petitioner is not a *goonda*, within the definition of Section 2(b) of the Act of 1970, the orders impugned are flawed, because the notice issued under Section 3(1) of the Act of 1970 does not conform to the requirements of the Statute. It is urged that the said notice does not carry the "general nature of material allegations" against him, in respect of matters enumerated in Clauses (a), (b) and (c) of sub-Section (1) of Section 3 of the Act last mentioned. Learned counsel for the petitioner has taken this Court through notice dated 17.01.2018, issued under Section 3(1) of the Act of 1970. He submitted that once this notice does not conform to the essential requirements of the Act of 1970, all subsequent proceedings founded on it would stand vitiated. The externment order and its affirmation in appeal would be bad in law and liable to be quashed.

17. Learned A.G.A., on the other hand, has defended the orders impugned and says that the proceedings taken are strictly in accordance with the requirements of the Act of 1970, and no exception can be taken to the orders impugned, passed by the two Authorities below.

18. It must be remarked here that since there is no return on behalf of the State, which they have not put in despite time being granted, the allegations in the writ petition have to be accepted as unrebutted.

19. This Court has keenly considered the submissions advanced by the learned counsel. So far as the first part of the submission is concerned, it does not appear from a perusal of the materials available on record that the petitioner, either by himself or in association with a gang, habitually commits offences punishable under Chapter XVI, XVII and XXII of the Penal Code. This is relevant because the petitioner has been proposed to be proceeded with

against as a *goonda*, in terms of the notice dated 17.01.2018, on the ground that he habitually commits offences punishable under Chapter XVI, XVII and XXII of the Penal Code, and that his general reputation is that of a person who is desperate and dangerous to the community. What the word “habitually” means for the purpose of Section 2(b)(i) of the Act of 1970, is a person who is habitually into commission of offences. It has been held to be distinguishable from a single or solitary act. “Habitually” postulates repeated or persistent indulgence in the specified kind of offences. Here, that inference has been drawn on account of the petitioner’s involvement in Case Crime No. 648 of 2016, which is still pending trial. The other offence, being Case Crime No. 841 of 2016, is not a substantive offence, but a case registered under the Act of 1986, on account of the petitioner's implication in Case Crime No. 648 of 2016. The registration of an offence under the Act of 1986, shortly after his implication in Case Crime No. 648 of 2016, does not, *ex-facie,* show the petitioner to be a man who habitually commits offences of the specified kind. The last reference to the beat information no. 59, on the basis of which N.C.R. No. 504/506, under Section 506 IPC has been registered, also appears to be part of an ongoing strife between members of the victim's family in Case Crime No. 648 of 2016, and the petitioner. This Court does not, in the least, mean to say that the petitioner is involved or not in Case Crime No. 648 of 2016, but apparently, there is no repetitive indulgence discernible on the petitioner's part, so as to attract the provisions of Section 2(b) of the Act of 1970.

20. So far as the other limb to invoke the provisions of the Act of 1970 is concerned, there is no tangible material referred to in the orders impugned, on the basis of which, an inference may be drawn that the petitioner is a person who is desperate and dangerous to the community. These inferences have been drawn by the two Authorities below, merely on the basis that the crimes under reference have been registered against the petitioner, and the Police have expressed some opinion. On the mere registration of a crime or expression of an

opinion by the Police in the report, sans any tangible material to conclude that the petitioner is a person who is desperate or dangerous to the community, the satisfaction of the Authorities below about the petitioner being a *goonda* would be vitiated for lack of consideration of relevant material. The manner in which the two Authorities below have proceeded to conclude that the petitioner is a *goonda*, merely because two crimes, contemporaneous in point of time, have been registered against him, besides a beat report, renders the conclusions no more than an *ipse dixit* of the Officers writing the orders impugned. The question what “habitually” means under Section 2(b) of the Act of 1970, fell for consideration of a Division Bench of this Court in **Imran *alias* Abdul Quddus Khan v. State of U.P. & Others**[8]. It has been held :

> 11. Ex facie, a person is termed as a 'goonda' if he is a habitual criminal. The provisions of Section 2(b) of the Act are almost akin to the expression 'anti social element' occurring in Section 2(d) of Bihar Prevention of Crimes Act, 1981. In the context of the expression 'anti social element' the connotation 'habitually commits' came to be interpreted by the apex Court in the case of Vijay Narain Singh v. State of Bihar, (1984) 3 SCC 14 : AIR 1984 SC 1334. The meaning put to the aforesaid expression by the apex Court would squarely apply to the expression used in the Act, in question. The majority view was that the word 'habitually' means 'repeatedly' or 'persistently'. It implies a thread of continuity stringing together similar repetitive acts. Repeated, persistent and similar but not isolated, individual and dissimilar acts are necessary to justify an inference of habit. It connotes frequent commission of acts or omissions of the same kind referred to in each of the said sub-clauses or an aggregate of similar acts or omissions. Even the minority view which was taken in Vijay Narain's case (supra) was that the word 'habitually' means 'by force of habit'. It is the force of habit inherent or latent in an individual with a criminal insteinct with a criminal disposition of mind, that makes a person accustomed to lead a life of crime posing danger to the society in general. If a person with criminal tendencies consistently or persistently or repeatedly commits or attempts to commit or abets the commission of offences punishable under the specified chapters of

8 **2000 CrLJ 1323**

> the Code, he should be considered to be a 'anti social element'. There are thus two views with regard to the expression 'habitually' flowing from the decision of Vijay Narain's case (supra). The majority was inclined to give a restricted meaning to the word 'habitually' as denoting 'repetitive' and that on the basis of a single act cannot be said to be forming the habit of the person. That is to say, the act complained of must be repeated more than once and be inherent in his nature. The minority view is that a person in habitual criminal who by force of habit or inward disposition inherent or latent in him has grown accustomed to lead a life or crime. In simple language, the minority view was expressed that the word 'habitually' means 'by force of habit'. The minority view is based on the meaning given in Stroud's Judicial Dictionary, Fourth Ed. Vol. II-1204 - habitually requires a continuance and permanence of some tendency, something that has developed into a propensity, that is, present from day to day. Thus, the word 'habitual' connotes some degree of frequency and continuity.

21. Again, about the exercise of powers under the Act of 1970, bearing in mind reference to who is a *goonda*, it has been held in **Imran** *(supra)* thus :

> 14. Expressions like 'by habit' 'habitual' 'desperate' 'dangerous' and 'hazardous' cannot be flung in the face of a man with laxity or semanitics. The Court must insist on specificity of facts and a consistent course of conduct convincingly enough to draw the rigourous inference that by confirmed habit, the petitioner is sure to commit the offence if not externed or say directed to take himself out of the district. It is not a case where the petitioner has ever involved himself in committing the crime or has adopted crime as his profession. There is not even faint or feeble material against the petitioner that he is a person of a criminal propensity. The case of the petitioner does not come in either of the clauses of Section 2(b) of the Act, which defines the expression 'Goonda'. Therefore, to outright label a bona fide student as 'goonda' was not only arbitrary capricious and unjustified but also counter productive. A bona fide student who is pursuing his studies in the Post Graduate course and has never seen the world of the criminals is now being forced to enter the arena. The intention of the Act is to afford protection to the public against hardened or habitual criminals or bullies or dangerous or desperate class who menace the security of a person or of property. The order of externment under the Act is required to be passed against persons who

> cannot readily be brought under the ordinary penal law and who for personal reasons cannot be convicted for the offences said to have been committed by them. The legislation is preventive and not punitive. Its sole purpose is to protect the citizens from the habitual criminals and to secure future good behaviour and not to punish the innocent students. The Act is a powerful tool for the control and suppression of the 'Goondas'; it should be used very sparingly in very clear cases of 'public disorder' or for the maintenance of 'public order'. If the provisions of the Act are recklessly used without adopting caution and descretion, it may easily become an engine of operession. Its provisions are not intended to secure indirectly a conviction in case where a prosecution for a substantial offence is likely to fail. Similarly the Act should not obviously be used against mere innocent people or to march over the opponents who are taking recourse to democractic process to get their certain demands fulfilled or to wreck the private vengeance.

22. The decision of the Division Bench in **Imran** shows that powers under the Act of 1970 are not required to be exercised, because someone has been reported to the Police in connection with a serious crime. It is also not to be exercised because that man has been admitted to bail. It has to be exercised against a person who, on the basis of tangible material on record before the Authorities under the Act of 1970, can be classified as a *goonda*, under one or the other clauses of Section 2(b) of that Act. It must also be borne in mind that the Act of 1970, being one that seriously abridges liberty, no clause of the Statute can be liberally construed. It has to be strictly construed in favour of the citizen.

23. In the present case, a reading of both the orders passed by the Authorities below, that is to say, the externment order made by the District Magistrate and the Appellate order passed by Commissioner, betray a very casual approach and an utter lack of application of mind to the relevant material on record. These do not show conclusions that accord with the requirements of Section 2 and 3 of the Act of 1970. Both the orders virtually betray a mechanical and nonchalant approval to what the Police have proposed in their report. The

Authorities below have shown scant regard to their duty to find out whether the petitioner's act can, indeed, qualify him as a *goonda*, under the Act of 1970, given the material appearing against him. It is, therefore, inevitably to be held that, on a perusal of the record and the two orders impugned, there is nothing to show or reasonably infer that the petitioner is a *goonda*, within the meaning of Section 2(b) of the Act of 1970.

24. Now, the other contention advanced by the learned counsel for the petitioner that the notice issued under Section 3(1) does not conform to the essential requirements of the Statute, is also required to be tested. This is particularly so, for the reason that if the notice dated 17.01.2018, issued under Section 3(1) of the Act of 1970, does not conform to the mandatory requirements of the Statute, all proceedings, including the orders impugned, have to fall. The material part of the notice dated 17.01.2018, issued under Section 3(1) of the Act of 1970 reads thus :

> चूंकि मेरे सामने रखी गयी सूचना के आधार पर मुझे यह प्रतीत होता है कि -
>
> (क) पवन आत्मज श्री ललित मोहन जो सामान्यतः गणेश नगर, थाना उत्तर, जनपद फिरोजाबाद में निवास करता है, "गुण्डा" है। वह अभ्यरततः भारतीय दण्ड संहिता के अध्याय 16, 17 व 22 के अधीन दण्डनीय अपराध करता है। उसकी सामान्य ख्याति दुःसाहसिक और समुदाय के लिए खतरनाक व्यक्ति होने की है और
>
> (ख) जिला फिरोजाबाद में उसकी गतिविधियाँ या कार्य व्यक्तियों की जान या सम्पत्ति के लिए संत्रास, संकट या अपहानि करते हैं, ऐसा विश्वास करने का उचित कारण है कि वह जिले या उसके किसी भाग में भारतीय दण्ड संहिता के अध्याय 16, 17 व 22 के अधीन दण्डनीय किसी अपराध के दुष्प्रेरण में लगा है और
>
> (ग) साक्षीगण अपनी जान या सम्पत्ति के सम्बन्ध में अपनी आशंका के कारण उसके विरूद्ध साक्ष्य देने को तैयार नहीं है, और उपर्युक्त खण्ड (क) (ख) (ग) के सम्बन्ध में उसके विरूद्ध सारवान आरोप निम्नलिखित सामान्य प्रकृति के हैंः-
>
> | | |
> |---|---|
> | 1.मु0 अ 0 सं0-648/2016 | धारा364 ए/302/404/201/120 बी आई 0 पी0 सी0 |
> | 2. मु0 अ 0 सं0-841/2016 | धारा-2/3 गैंगस्टर एक्ट |
> | 3. एनसीआर सं0-504/506 | धारा-506 आई 0 पी0 सी0 |
> | 4. बीट सूचना सं0-59 | बीट सूचना दिनांक 15.11.2017 |

25. Learned counsel for the petitioner has particularly emphasized that this notice, which is the progenitor of proceedings drawn against the petitioner under the Act of 1970, is vitiated, for the reason that it fails to disclose the "general nature of material allegations", a *sine qua non* of a valid notice under Section 3(1) of the Act. The question as to what constitutes "general nature of material allegations", the legal subtleties apart, has been settled consistently by this Court, to mean that in the notice under Section 3(1) of the Act of 1970, the general nature of material allegations, with reference to Clauses (a), (b) and (c) of Section 3(1) of the Act of 1970, would not imply furnishing a list of the first information reports and case crimes registered against the person proposed to be proceeded with against. Even if the District Magistrates and Divisional Commissioners cannot understand the precise import that the words "general nature of material allegations", they are reasonably expected to understand that they must not rest content with a mere mention of the list of cases registered against the person put under notice, but must indicate something of the allegations against him, may not be the full particulars, with the precision of a charge. This issue was dealt with as long back as the decision of this Court in **Harsh Narain *alias* Harshu v. District Magistrate Allahabad & Another**[9]. In **Harsh Narain** *(supra)* it was observed :

> **15.** .....In the opening part of each notice it is stated that it appeared to the District Magistral that the petitioners were *goondas* satisfying the requirements of Sec. 2(b)(i) and (iv), that their movements and acts were causing or were calculator to cause alarm, danger or harm to persons or property and that witnesses were not willing to come forward to give evidence against them by reason of apprehension on their part as regards the safety of their person or property. After the opening part, the prescribed form states:
>
> "And whereas the material allegations against him in respect of the aforesaid clauses (a)/(b)/(c) are of the following general nature:
> (1) – – – – – – – – – – –
> (2) – – – – – – – – – – –

9 **1972 SCC OnLine All 146**

(3) – – – – – – – – – – –"

16. In each of the notices given to the petitioners, in this blank space, instead of setting out the general nature of the material allegations against each one of the petitioners is given a list of First Information Reports filed against each petitioner in the last several years and references of cases in which they were convicted. The learned Advocate-General has frankly and fairly accepted that the notices in the present cases do not set out the general nature of the material allegations against the petitioners. He faintly argued that this defect in the notices did not handicap the petitioners in making their representations. In our opinion, the defect of not setting out the genera nature of the material allegations in the notices is a fatal defect as it results in non-compliance with the provisions of Sec. 3(1). The notice cannot be deemed to be notices under Sec. 3(1). Sec. 3(1) enjoins upon the District Magistrate to inform the *goonda* of the general nature of the material allegations against him in respect of clauses (a), (b) and (c) and further enjoins upon to give the *goonda* a reasonable opportunity of furnishing his explanation regarding them. If the *goonda* is not informed of the general nature of the material allegations regarding clauses (a), (b) and (c), he can flurnish no explanation in respect of them and would be deprived of the reasonable-opportunity to which he is entitled under Sec. 3(1). Not only this, in the absence of a proper explanation, he would also be deprived of the reasonable opportunity under Sub-sec. (2) of producing his evidence in support of his explanation. When he is deprived of the reasonable opportunity at both these stages, the action taken must be held to be illegal. ......

26. The decision in **Harsh Narain** *(supra)* was very early in time, after the Act of 1970 came into force. There was considerable debate regarding what was the precise import of the expression "general nature of material allegations" occurring under Section 3(1) of the Act of 1970. The decision in **Harsh Narain** about the import of the expression in question, was referred for reconsideration by a larger Bench, in view of the decision of the Supreme Court in **State of Gujarat & Another v. Mehbub Khan Usman Khan & Another**[10]. The reference came to be considered by a Full Bench of this Court in **Ramji Pandey v. State of U.P. & Others**[11]. The decision in **Mehbub**

10 **AIR 1968 SC 1468**
11 **1981 SCC OnLine All 305**

Khan *(supra)* by the Supreme Court had disapproved a decision of the Bombay High Court, which apparently required particulars of the allegations to be indicated in a notice under Section 59 of the Bombay Police Act, 1951, the provisions of which were *pari materia* to Section 3(1) of the Act. Reference to the larger Bench came to be made as **Mehbub Khan**'s case was not cited before the Division Bench in **Harsh Narain**. While approving of the principle in **Harsh Narain**, their Lordships of the full Bench in **Ramji Pandey** *(supra)* held :

> **18.** *Mehbub Khan's case* was not placed before the Bench dealing with *Harsh Narain's case* and it had no occasion to consider the same, although the principles laid down by the Supreme Court in interpreting Section 59(1) of the Bombay Police Act with regard to the necessity of "giving general nature of material allegation" are fully applicable to a notice issued under Section 3(1) of the Act. As discussed above, the Supreme Court has emphasised that the material allegations do not require giving of particulars of allegations, such as setting out of the date, time and place is not necessary, nor it is necessary to give the names of persons, who may have given information or who may refuse to appear as witnesses. In *Harsh Narain's case*, the Division Bench held that the notice issued in that case did not set out the general nature of material allegations. The Bench, unlike Gujarat High Court in *Mahbub Khan's case*, did not hold that the notice was invalid as it failed to set out particulars of the allegations instead it held that the notice did not contain even the minimum possible material allegations, as the column in the notice which was meant for setting out "the general nature of material allegations" contained in list of convictions and first information reports lodged against the petitioner of that case. By any standard, the notice in *Harsh Narain's case* filed to set out the general nature of material allegations, while notice in *Mehbub Khan's case* contained the essential statement of facts giving the general nature of the activities of Mehbub Khan. The view taken by the Bench of *Harsh Narain's case* is not in conflict with that of the Supreme Court. The question whether *Harsh Narain's case* is contrary to the law declared by the Supreme Court in *Mehbub Khan's case* was considered in *Pannu* v. *Commissioner*, [1974 A.W.R. 21.] and it was held that even though the case of *Mehbub Khan* was not cited before the Bench dealing with *Harsh Narain's case*, but that did

> not affect the position of law. We are also of the view that the decision of the Division Bench in *Harsh Narain's case* is not inconsistent with the law laid down by the Supreme Court in *Mehbub Khan's case* or *Pandharinath's case*.

27. It would be relevant to refer to the notice that was subject matter of action in **Ramji Pandey**. The notice is set out in *extenso* in the report in **Ramji Pandey** *(supra)*. It reads :

> **19.** We would now advert to the notice issued to the petitioner in the instant case. The notice is as under.
>
> > "Notice under Section 3 of the U.P. Control of Goondas Act, 1970.
> >
> > It appears to me on the basis of the information placed before me by the Superintendent of Police Ballia, that;—
> >
> > (a) Shri Ranji Pandey, son of Shiv Poojan Pandey is a resident of Village Damanpura, P.S. Sikanderpur, District Bellia, and is a goonda, i.e. he himself habitually commits crime or attempts to commit or abets the commission of offence punishable under Chapters XVI, XVII XXII of the Penal Code, 1860. He is generally reputed to be a person, who is desperate and dangerous to the community.
> >
> > (b) That his movements and acts are causing alarm, danger and harm to the lives and property of the persons within the circle of P.S. Sikanderpur, District Ballia. There is reasonable ground for believing that he is engaged in the commission and abetment of offences punishable under Chapters XVI, XVII and XXII in the aforesaid region of the district.
> >
> > (c) The witnesses are not willing to come forward to give evidence against him by reason of apprehension on their part as regards the safety of their personal property.
> >
> > (d) In regard to the sub-paragraphs (a), (b) and (c) the material allegations of general nature against him are as follows;
> >
> > 1. He was convicted for two years by the Court of J.M. Ballia on 17-9-1979 in connection with offence No. 21/74 under Section 39 I.P.C.
> >
> > 2. The case as Crime No. 15/71 under Section 379 I.P.C. is pending.
> >
> > 3. The case as Crime No. 83/79 under Section 52/504 I.P.C. is pending.

4. The case Crime No. 162/79 under Section 110 Cr. P.C. is pending.

5. He was acquitted in the case Crime No. 102/72 under Section 394 I.P.C.

6. He was acquitted in the case Crime No. 250/71 under Section 177/452 I.P.C.

7. M.C.R. No. Section 109/79 Section 504/506 I.P.C.

8. M.C.R. No. Section 192/79 Section 323/504 I.P.C.

9. M.C.R. No. Section 262 Section 352/504 I.P.C.

10. M.C.R. No. Section 263 Section 504/506 I.P.C.

11. M.C.R. No. Section 107/177 Cr. P.C.

The aforesaid Shri Ramji Pandey is hereby directed to present himself before me in any Court on 12-12-1979 at 10 A.M. In regard to the aforesaid material allegations he may if he so desires, give his explanation in writing giving reasons as to why an order be not passed against him under sub-section (3) of Section 3 of the U.P. Control of Goondas Act 1970 and he should also inform, if in support of his explanation he wished himself to be examined or other witnesses if any to be examined and if so their names and addresses should also be furnished.

The aforesaid Ramji Pandey is hereby further informed that if he does not present himself in the aforesaid manner or if within the specified time no explanation or information is received, it shall be presumed that Shri Ramji Pandey does not wish to give any explanation in respect of the aforesaid allegations or does not want to examine any evidence and I shall take proceedings for the compliance of the proposed order."

28. In dealing with the notice above extracted, their Lordships of the Full Bench held it to be one not conforming to the requirements of the law, as it did not carry the "general nature of material allegations". In reaching this conclusion, their Lordships of the Full Bench held :

21. The above notice is in the form prescribed under Rule 4 of the U.P. Control of Goondas Rules, 1970. In column (d) of the notice meant for setting out material allegations of general nature against the petitioner, no statement of fact relating to the petitioner's conduct has been stated, instead it mentions details of a criminal case where the petitioner was convicted for an offence of robbery and the list of criminal cases pending against him and also a list of first information reports lodged with the police. Column (d) does not contain any allegation

or material allegation against the petitioner. It was argued that if column (d) is read with clauses (a), (b) and (c) of the notice, it is possible to discern the material allegations against the petitioner. A notice under Section 3(1) cannot be issued unless the District Magistrate is satisfied about the matters set out in clauses (a), (b) and (c) of Section 3(1). The prescribed from also requires the District Magistrate to state in the notice that on the basis of the information laid before him he is satisfied that the person concerned is Goonda and that his movements and acts and conduct fulfil the conditions as set out in clauses (a), (b) and (c) of Section 3(1) of the Act. In the impugned notice the District Magistrate has set out matters as required by clauses (a), (b) and (c) in the prescribed form. The prescribed form as well as the impugned notice both seek to maintain a distinction between material allegations and the matters set out in clauses (a), (b) and (c) of the notice. The facts stated in columns (a), (b) and (c) of the notice refer to the satisfaction of the District Magistrate with regard to the matters set out in clauses (a), (b) and (c) of Section 3(1) of the Act. Clause (d) of the notice is intended to set out general nature of material allegations against the petitioner with a view to give him opportunity to submit his explanation and to defend himself. In this view of the matter, it is not possible to accept the contention that columns (a), (b) and (c) of the notice set out the general nature of material allegations against the petitioner.

22. In the instant case, the general nature of material allegations appears to be that the petitioner was waylaying persons and robbing them within the circle of Police Station Sikanderpur District Ballia and also committing theft. The allegation further appears to be that the petitioner has been assaulting people and causing injuries to them within the circle of Police Station Sikanderpur District Ballia and that witnesses are not willing to come forward to give evidence against him on account of apprehension to their lives and property. These matters could have been stated in a narrative form as was done in the case of *Mehbub Khan* and *Pandharinath*, but the impugned notice does not contain these allegations, instead it contains a list of first information reports and pending cases. **In our opinion, it is difficult to uphold the respondents' contention that the list of first information reports or list of cases in which the petitioner was convicted or the list of cases in which the petitioner was acquitted or the list of pending criminal cases against the petitioner is sufficient to meet the requirement of setting out "the general nature of material allegations."** The impugned notice is, therefore, not in accordance with Section

> 3(1) of the Act as it fails to set out general nature of material allegations against the petitioner.
>
> **(emphasis by Court)**

29. There were amendments made to the Act of 1970 by Act No. 1 of 1985 w.e.f. 18.01.1971. These did no change to the phraseology of Section 3(1), or the requirements of the Statute about a notice issued under Section 3(1). However, a Division Bench of this Court in **Bhim Sain Tyagi v. State of U.P. through D.M. Mahamaya Nagar**[12] found that there was conflict between the Division Bench decisions in **Ballabh Chaubey v. ADM (Finance), Mathura & Another**[13] and a decision of another Division Bench in **Subas Singh *alias* Subhash Singh v. District Magistrate, Ghazipur**[14] about the issue whether a notice under Section 3(1) of the Act of 1970, not in conformity with the Statute, could be challenged, without requiring the person put under notice to show cause against it, or, in other words, requiring him to resort to his legal remedy under the Statute. Both the Division Benches, that is to say, **Ballabh Chaubey** *(supra)* and **Subas Singh** *(supra)* had relied upon the Full Bench decision in **Ramji Pandey** to reach contrary conclusion about the maintainability of a writ petition to challenge a notice under Section 3(1) of the Act of 1970, that did not conform to the statutory requirements. Accordingly, the Division Bench hearing **Bhim Sain Tyagi** referred the following questions to a larger Bench (extracted from report of the decision of the full Bench in **Bhim Sain Tyagi)** :

> **(1)** If the opportunity of show cause before the authority, who issues a show cause notice, not in conformity with the provisions of Section 3(1) of the U.P. Control of Goondas Act, could be considered an alternative remedy and,
>
> **(2)** if a writ petition may be refused to be entertained only on the ground of existence of an alternative remedy even though the Court finds a particular notice illegal which makes consequential acts also illegal.

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12 **Criminal Misc. Writ Petition No. 461 of 1998**
13 **1997 SCC OnLine All 1111**
14 **(1997) 35 ACC 262**

30. The aforesaid reference came up before a larger Bench of five Hon'ble Judges of this Court. The Full Bench in **Bhim Sain Tyagi v. State of U.P. through D.M. Mahamaya Nagar**[15] upheld the principles regarding requirements of the Statute about the import of the words "general nature of material allegations" and what these precisely mean, to render a notice under Section 3(1) of the Act valid. It must be remarked that the decision in **Bhim Sain Tyagi** was primarily on a reference about the maintainability of a writ petition under Article 226 of the Constitution, against a notice under Section 3(1) and not directly about the meaning of the expression "general nature of material allegations" occurring in that section. Nevertheless, it was pivotal to the decision about the maintainability of a writ petition against a notice under Section 3(1) of the Act, as to what the expression "general nature of material allegations" meant. It was in that context that their Lordships of the Full Bench in **Bhim Sain Tyagi** reviewed the precise connotation of the expression, and approved what was held in **Ramji Pandey** about the particulars in a notice under Section 3(1), that would satisfy what was postulated by the expression under reference. In **Bhim Sain Tyagi** it was held by their Lordships of the Full Bench :

> **26.** The aforesaid anxiety of the Division Bench should be taken due note by the Executive and whenever a show cause notice is issued it should strictly comply with the provisions of the Act and rules. Once the decision of Ramjit Pandey has held the field in this State for more than 18 years there does not seem to be any necessity of taking a contrary view for the simple reason that all that the District Magistrate was expected by that decision to do is that the proposed Goonda should be made aware of "general nature of material allegation" against him, which is the requirement of the law. By asking the respondents to furnish to the proposed Goonda the general nature of material allegations against him, the Full Bench in Ramji Pandey only required the law to be followed. None should doubt that once in the show cause notice the general nature of the material allegations exists, no Court interference with such a show cause notice is called for. Challenge to a valid show cause

15 **1999 SCC OnLine All 1403**

> notice complying with the requirement of law has always failed and no scope of exercising provisions under Art. 226 of the Constitution of India exists in such matters. On the contrary, whenever general nature of material allegations are absent and the proposed goonda raises a grievance through a petition under Art. 226 of the Constitution of India, this Court's interference to the extent of the illegality of the notice being examined has been rightly upheld in Ramji Pandey but simultaneously it must be added that, always ensuring that, fresh notice may be issued by the District Magistrate in accordance with law. It has already been noticed above that in Subas Singh (1997 All Cri C 262) (supra) the respondents right to issue fresh notice in accordance with law was upheld and even in Harsh Narain (1972 All LJ 762) (supra) subsequent proceedings alone were quashed due to the defective notice.
>
> **27.** In the administration of criminal law in our country one comes across two very important terms (1) charge and (ii) statement of accused. In fact these two are fundamental requirements of the principles of natural justice which have to be followed before an accused is condemned. One would shudder at the idea that an accused shall have stood condemned when the charge would only narrate that there is an FIR against him registered under S. 302, IPC at a police station or that in the statement of the accused only one question is put to him that an FIR has been lodged against him under S. 302 at a police station and that alone is held sufficient compliance of law. For action against a proposed goonda, the provisions contained in S. 3 of the Act, bereft of the technicalities and broader legal necessities in atrial of an accused under the Criminal Procedure Code, combine not only the "charge" and the "Statement of the accused", but also requires his "defence evidence". Thus the proposed goonda must get the fullest opportunity to defend himself. Therefore, the general nature of the material allegations must be disclosed to him by the District Magistrate.

31. The inevitable conclusion from the consistent position of the law regarding the requirements of a valid notice under Section 3(1) of the Act of 1970 is, thus, well settled, at least since **Harsh Narain** was decided and has not undergone any change. The law, as laid down in **Ramji Pandey** and otherwise consistent, is that in order to satisfy this statutory requirement about the notice carrying "general nature of material allegations" postulated under Section 3(1), there has to be

some mention of what the person proposed to be proceeded with against has done, relevant to form an opinion under Clauses (a), (b) and (c) and sub-Section (1) of Section 3. It is also beyond doubt that post mention of the fact that the person put under notice has indulged in acts or done something which attracts Clauses (a), (b) and (c) of sub-Section (1) of Section 3, it is not sufficient compliance with the requirement of informing that person about the “general nature of material allegations” against him, that a list of case crimes or the first information reports registered against him be mentioned. No doubt, particulars of the allegations are not required to be detailed in a notice under Section 3(1) of the Act of 1970, such as the date, time and place of a specific act, as in the case of a charge, but some substance of it must be mentioned. If a person is sought to be proceeded with against on ground that he is a *goonda* under Clause (a) of Section 3(1), the general nature of material allegations may, for instance, indicate the number of acts that he has habitually committed, abetted or attempted, that constitute commission, attempt or abetment of an offence punishable under Section 153-B of the Penal Code, over a specified period of time, in a particular locality or part of the town. The date, time and place of occurrence of each of those repeated acts, that constitute the habitual commission of that offence, may not be mentioned in the fashion of a charge; but it would be no compliance with the quintessence of Section 3(1) of the Act of 1970, if a list of the case crimes alone were to be indicated in the notice as the *raison de etre* for the invocation of Clauses (a), (b) and (c) of sub-Section (1) of Section 3. The notice would be vitiated. For the further removal of any doubt, that the District Magistrates may harbour, this Court is minded to say that a notice under Section 3(1) of the Act must say something about the act, which the person put under notice has done, rather than listing the cases registered against him. If the mandated course is followed, the notice would certainly be valid.

32. Now, in the present case, a perusal of the notice shows that after a reference to Clauses (a), (b) and (c), all that is said by the District Magistrate in the notice under Section 3(1) is that four crimes are registered against the petitioner. Details of these have already been extracted hereinabove. It has been pointed out by the learned Counsel for the petitioners, during the hearing, that the beat report and the N.C.R. are one and the same matter, and not two different cases. Learned A.G.A. has not disputed the position for a fact.

33. Be that as it may, what is relevant is that nothing more than mention of the crime numbers is all that one finds, instead of the general nature of material allegations. A list of case crimes/first information reports/N.C.Rs. registered against the petitioner does not satisfy the test of a valid notice under Section 3(1) carrying the "general nature of material allegations". Truly, the notice, on the foundation of which the orders impugned have been made, is strictly in the teeth of the law laid down consistently by this Court; particularly, the Full Bench decision in **Ramji Pandey** and reiterated in **Bhim Sain Tyagi**. A notice under Section 3(1) of the kind that is the foundation of proceedings here has been held in **Bhim Sain Tyagi** and in earlier decisions also, to violate the minimum guarantee of the opportunity that the Statute envisages for a person proceeded with against under the Act of 1970. Thus, in this case, the impugned orders, founded as they are, on a notice under Section 3(1) of the Act, stand vitiated by defects that go to the root of the matter.

34. In the result, this petition **succeeds** and stands **allowed**. The impugned order dated 13.03.2019 passed by the District Magistrate, Firozabad, in Case No. 00049 of 2018, State of U.P. v. Pavan, under Section 3(1) of the Act of 1970 and the order dated 23.05.2019 passed in appeal by the Commissioner, Agra Division, Agra, in Case No. 00719 of 2019, Pavan Singhal v. State, under Section 6 of the Act of 1970, are hereby **quashed**.

35. Let this order be communicated to the Commissioner, Agra Division, Agra, the District Magistrate, Firozabad and the Superintendent of Police, Firozabad by the Joint Registrar (Compliance).

Order Date :- March the 15th, 2021
I. Batabyal