Magistrate. It may be noted that in the scheme of subordination carved out in Chapter II of the Cr. P.C. Executive Magistracy has not been made subordinate to the Sessions Judge. It is obviously for the reason that Chapter II speaks of administrative control and subordination of the hierarchy of courts classified under Sec. 6 thereof. Chapter XXIX, XXX and XXXI relating to appeals, references and "revisions, transfer of criminal cases respectively and some other provisions in the Cr. P.C. deal with judicial subordination of the criminal courts.."

16. The issue can be summarized like this that since the High Court is empowered to exercise its superintendence over the Court of Judicial Magistrates subordinate to it to ensure the expeditious and proper disposal of the cases by such Magistrate but when an order is passed by an Executive Magistrate or any direction is required to be issued for expeditious and proper disposal of a case which is pending before the Executive Magistrate, the High Court can't exercise its superintendence over the courts of Executive Magistrates.

17. Further more, Section 6 of Criminal Procedure(Section 6 of BNSS as well) Code defines the Classes of Criminal Courts in the following manner:

"Classes of Criminal Courts –

Besides the High Courts and the Courts constituted under any law, other than this Code, there shall be, in every State, the following classes of Criminal Courts, namely:—

(i) Courts of Session;

(ii) Judicial Magistrates of the first class and, in any metropolitan area, Metropolitan Magistrates;

(iii) Judicial Magistrates of the second class; and

(iv) Executive Magistrates."

18. The aforesaid definition clearly provides a distinction between the Judicial Magistrates and Executive Magistrates and since the provisions of Section 483 Cr.P.C.(Section 529 of BNSS) have been made applicable to Judicial Magistrates consequently they are not applicable to the orders passed by an Executive Magistrate, hence relying upon the aforesaid provisions and case laws, it can be safely concluded that the High Court under Sec. 529 BNSS (Section 483 Cr.P.C.) is not required to make any superintendence over the working of a Executive Magistrate and no direction under Section 483 Cr.P.C. (Section 529 of BNSS) can be issued to the Executive Magistrates where a case under Section 145 Cr.P.C. is pending before it like the present one as prescribed in Section 483 Cr.P.C.(Section 529 of BNSS).

19. Hence, the present application is not entertainable before this Court, and is liable to be rejected and is accordingly, **rejected.**

(2025) 5 ILRA 1636
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 30.05.2025

BEFORE

THE HON'BLE SAURABH LAVANIA, J.

Application U/S 483 No. 49 of 2025
And
Application U/S 483 No. 116 of 2025

Abdul Raqib @ Pehtul ...Applicant
Versus
State Of U.P. ...Opposite Party

Counsel for the Applicant:
Sukhveer Singh

Counsel for the Opposite Party:
G.A.

Criminal Law-The Bharatiya Nagarik Suraksha Sanhita,2023-Section 529 - The Code of Criminal Procedure,1973-Section 483--- Whether the remedy under Section 483 Criminal Procedure Code, 1973 (now repealed) or Section 529 Bharatiya Nagarik Suraksha Sanhita, 2023, as the case may be, would be available to the concerned for seeking prayer of expeditious disposal of the case under Section 16 of Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986--- The 'Court' while exercising the power under Section 16 of the Act of 1986, related to the matters connected with Sections 14 and 15 of the Act of 1986, being an authority under the Act of 1986, would be inferior Criminal Court in relation to High Court. Therefore, the application for expeditious disposal of the proceedings under Section 16 of the Act of 1986 would be maintainable under Section 483 Cr.P.C. or Section 529 BNSS---Petition disposed of with a direction to the concerned Court to conclude the proceedings of the case(s) most expeditiously.

Petition disposed of. (E-15)

List of the cases referred-:

1. Ashok Kumar Dixit Vs St. of U.P., 1987 (34) ACC 164: 1987 ACR 230: AIR 1987 (All) 235 (All HC, FB)

2. Kailash Sahkari Avas Samiti Ltd. Vs St. of U.P. & ors.; 2012 SCC OnLine All 5288

3. Jangali Pasi Vs St. of U.P.; 2015 SCC OnLine All 8748

4. Government Appeal No. 6042 of 2010 (St. of U.P. Vs Nasim Khan & ors.)

5. U.O.I. through the Assistant Director Vs Kanhaiya Prasad; 2025 SCC OnLine SC 306

6. St. (Union of India) Vs Ram Sharan; (2003) 12 SCC 578

7. Maru Ram Vs Union of India; (1981) 1 SCC 107

8. Kaushalya Rani Vs Gopal Singh; AIR 1964 SC 260,

9. Thakur Das (Dead) by L.Rs. Vs St. of Madhya Pradesh & anr.; (1978) 1 SCC 27.

10. LIC Vs Nadini J. Shah; (2018) 15 SCC 356

(Delivered by Hon'ble Saurabh Lavania, J.)

1. Heard Sri Avinash Singh Vishen, Advocate, who assisted the Court on being asked; Sri Sukhveer Singh, Advocate, learned counsel appearing for the applicant/Abdul Raqib @ Pehtul in APPLICATION U/S 483 No. 49 of 2025; Sri Sukh Deo Singh, learned counsel appearing for the applicant/Rashid Khan in APPLICATION U/S 483 No. 116 of 2025 and Sri Ajay Kumar Srivastava, learned AGA as well as Sri Badrul Hasan, learned AGA-I, who appeared for the State of U.P.

2. The applications have been preferred seeking following main relief(s):-

2.1. Main relief(s) sought in APPLICATION U/S 483 No. 49 of 2025.

"It is, therefore, most respectfully prayed that the case under section 16(1) of U.P. Gangster Act, 1986 is pending before the Learned Additional District and Sessions Judge, Fast Track Second/ Special Judge Gangster Act, Ambedkar Nagar, as Miscellaneous Case No. 195 of 2023 (Government vs Abdul Raqib @ Pehtul) since 01.06.2023 may be decided expeditiously within the stipulated time.

Further, this Hon'ble Court may also direct to the state authorities to provide some shelter home/accommodate to live in

the severe cold by which the life of the family of applicant along with children may remain saved until the property of the applicant is not released."

2.2 Main relief(s) sought in APPLICATION U/S 483 No. 116 of 2025.

"i. Issue a suitable, order or direction commanding Learned court below to decide the proceeding under section 16 (1) UP Gangster and Anti-Social Activities Act, bearing Criminal Misc. Case No. 4/2023, 'Dr. Rashid Khan. Vs. State of UP.', currently pending before Learned Additional Sessions Judge, Court No. 2, Sultanpur, within such period as may be stipulated by this Hon'ble Court, in the interest of justice;"

3. On the objection with regard to maintainability of the Applications under Section 483 Cr.P.C., under consideration, this Court has to answer the following question.

Whether the remedy under Section 483 Criminal Procedure Code, 1973 (in short "Cr.P.C.") (now repealed) or Section 529 Bharatiya Nagarik Suraksha Sanhita, 2023 (in short "BNSS"), as the case may be, would be available to the concerned for seeking prayer of expeditious disposal of the case under Section 16 of Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 (in short "Act of 1986").

4. Learned counsel appearing for the applicants, in nutshell, submitted that remedy of Section 483 Cr.P.C. (now repealed)/Section 529 BNSS would be available for seeking direction for expeditious disposal of the case under Section 16 of the Act of 1986, as under Section 16 of the Act of 1986 the decision as to "whether the attachment of the property is justified or not", regarding the property attached by the District Magistrate in exercise of power under Section 14 has to be taken by the 'Court' having jurisdiction to try an offence under the Act of 1986.

5. On the contrary, learned AGA submitted that the matter relates to special Act i.e. Act of 1986 and accordingly, the remedy under Section 482 Cr.P.C. or Section 529 BNSS, as the case may be, would not be available. The only remedy which could be availed in such type of cases would be available under Article 226/227 of the Constitution of India.

6. Considered the aforesaid and perused the record.

7. In order to decide the controversy involved in these case(s), this Court finds it appropriate to refer Section 483 Cr.P.C. (now repealed), Section 529 BNSS, certain provisions of the Act of 1986 and also the pronouncements on the issue, which could be helpful for deciding the issue involved in the instant case(s), indicated above.

8. Section 483 Cr.P.C. (now repealed), Section 529 BNSS, 'Objects and Reasons' of the Act of 1986, 'Preamble of the Act of 1986' and Sections 4, 7, 8, 10, 14, 15, 16, 17, 18, 19 & 20 of the Act of 1986 are quoted hereunder for ready reference:-

8(a). Section 483 Cr.P.C.

483. Duty of High Court to exercise continuous superintendence over Courts of Judicial Magistrates.-

Every High Court shall so exercise its superintendence over the Courts of Judicial Magistrates subordinate to it as to ensure that there is an expeditious and proper disposal of cases by such Magistrates.

8(b). Section 529 BNSS

529. Duty of High Court to exercise continuous superintendence over Courts.- Every High Court shall so exercise its superintendence over the Courts of Sessions and Courts of Judicial Magistrates subordinate to it as to ensure that there is an expeditious and proper disposal of cases by the Judges and Magistrates.

8(c). Objects and reason of the Act of 1986 as observed in the case of Ashok Kumar Dixit v. State of U.P., 1987 (34) ACC 164: 1987 ACR 230: AIR 1987 (All) 235 (All HC, FB)

Object and reason of the Act.- Gangsterism and anti-social activities influenced the State Legislature in making introduction of such Act. The object and reason of the Act is that gangsterism and anti-social activities were on the increase in the state posing threat to lives and properties of the citizens. The existing measures were not found effective enough to cope with new menace. With a view to break the gangs by punishing the gangsters and to hip their conspirational designs it was considered necessary to make special provision for the prevention of and for coping with gangsters and anti-social activities in the State.

8(d). Preamble of Act of 1986 as observed in the case of Ashok Kumar Dixit v. State of U.P., 1987 (34) ACC 164: 1987 ACR 230: AIR 1987 (All) 235 (All HC, FB)

Preamble of Act.- The Act seeks to punish declared criminals who have deliberately chosen the life of crime. The activities of these professional perpeterators of organised crimes, violence and orgy has a far more baneful effect on the health and morals of the society and its people. If the activities of such recidivitis are subjected to same punishment as that other ordinary criminals, the confidence of public in the efficacy and efficiency of State Administration is bound to shake.

8(e). **Section 4 of the Act of 1986**

4. Special Rules of Evidence.- Notwithstanding anything to the contrary contained in the Code or the Indian Evidence Act, 1872 (1 of 1872) for the purposes of trial and punishment for offences under this Act or connected offences-

(a) the Court may take into consideration to fact that the accused was-

(i) on any previous occasion bound down under Section 107 or Section 108 or Section 109 or Section 110 of the Code; or

(ii) detained under any law relating to preventive detention; or

(iii) externed under the Uttar Pradesh Control of Goondas Act, 1970 (Act No. 8 of 1971) or any other such law;

(b) where it is proved that a gangster or any person on his behalf is or has at any time been, in possession of movable or immovable property which he cannot satisfactorily account for, or where his pecuniary resources are

disproportionate to his known sources of income, the Court shall, unless contrary is proved, presume that such property or pecuniary resources have been acquired or derived by his activities as a gangster;

(c) where it is proved that the accused has kidnapped or abducted any person, the Court shall, presume that it was for ransom;

(d) where it is proved that a gangster has wrongfully concealed or confined a kidnapped or abducted person, the Court shall presume that the gangster knew that such person was kidnapped or abducted, as the case may be;

(e) the Court may, if for reasons to be recorded thinks fit so to do proceed with the trial in the absence of the accused and record the evidence of any witness,

Provided that the witness may be recalled for cross-examination if the accused so desires but recording his examination-in-chief afresh in presence of the accused shall not be necessary.

8(f). **Section 7 of the Act of 1986**

7. Jurisdiction of Special Courts.-(1) Notwithstanding anything contained in the Code, where a Special Court has been constituted for any local area, every offence punishable under any provision of this Act or any rule made thereunder shall be triable only by the Special Court within whose local jurisdiction it was committed whether before or after the constitution of such Special Court.

(2) All cases triable by a Special Court, which immediately before the constitution of such Special Court were pending before any Court, shall on creation of such Special Court having jurisdiction over such cases, stand transferred to it.

(3) Where it appears to any Court in the course of any inquiry or trial in respect of any offence that the case is one which should be tried by a Special Court constituted under this Act for the area in which such case has arisen, it shall transfer such case to such Special Court, and thereupon such case shall be tried and disposed of by the Special Court in accordance with the provisions of this Act:

Provided that it shall be lawful for the Special Court to act on the evidence, if any, recorded by the Court in the case in the presence of the accused before the transfer of the case under this section :

Provided further that if the Special Court is of opinion that further examination of any of the witnesses whose evidence is already recorded in the case is necessary in the interest of justice, it may re-summon any such witness and after such further examination, cross-examination and reexamination, if any, as it may permit, the witness shall be discharged.

(4) The State Government may, if satisfied that it is necessary or expedient in the public interest so to do, transfer any case pending before a Special Court to another Special Court

8(g). **Section 8 of the Act of 1986**

8. Power of Special Courts with respect to other offences.-(1) When trying any offence punishable under this Act a Special Court may also try any other

offence with which the accused may, under any other law for the time being in force, be charged at the same trial.

(2) If in the course of any trial under this Act of any offence, it is found that the accused has committed any other offence under this Act or any rule thereunder or under any other law, the Special Court may convict such person of such other offence and pass any sentence authorised by this Act or such rule or, as the case may be, such other law, for the punishment thereof.

8(h). **Section 10 of the Act of 1986**

10. Procedure and powers of Special Courts.-(1) A Special Court may take cognizance of any offence triable by it, without the accused being committed to it for trial upon receiving a complaint of facts which constitute such offence or upon a police report of such facts.

(2) Where an offence triable by a Special Court is punishable with imprisonment for a term not exceeding three years or with fine or with both, the Special Court may, notwithstanding anything contained in subsection (1) of Section 260 or Section 262 of the Code, try the offence in a summary way in accordance with the procedure prescribed in the Code and the provisions of Sections 263 to 265 of the Code, shall, so far as may be, apply to such trial :

Provided that when in the course of a summary trial under this subsection, it appears to the Special Court that the nature of the case is such that it is undesirable to try in a summary way, the Special Court shall recall any witnesses who may have been examined and proceed to rehear the case in the manner provided by the provisions of the Code for the trial of such offence and the said provisions shall apply to and in relation to a Special Court as they apply to and in relation to a Magistrate :

Provided further that in the case of any conviction in a summary trial under this sub-section, it shall be lawful for a Special Court to pass sentence of imprisonment for a term not exceeding two years.

(3) A Special Court may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to an offence, tender a pardon to such person, on condition of his making a full and true disclosure of the whole circumstances within his knowledge relative to the offence and to every other person concerned whether as principal or abettor in the commission, thereof, and any pardon so tendered shall, for the purposes of Section 308 of the Code, be deemed to have been tendered under Section 307 thereof.

(4) Subject to the other provisions of this Act a Special Court for the purpose of trial of any offence, have all the powers of a Court of Session and shall follow the procedure prescribed in the Code for the trial of warrant cases by the Magistrate.

(5) Subject to the other provisions of this Act every case transferred to a Special Court under sub-section (3) of Section 7 shall be dealt with as if such case had been transferred under Section 406 of the Code to such Special Court.

8(i). **Section 14 of the Act of 1986**

14. Attachment of property.-(1) If the District Magistrate has reason to believe that any property, whether movable or immovable, in possession of any person has been acquired by a gangster as a result of the commission of an offence triable under this Act, he may order attachment of such property whether or not cognizance of such offence has been taken by any Court.

(2) The provisions of the Code shall mutatis mutandis apply to every such attachment.

(3) Notwithstanding the provisions of the Code the District Magistrate may appoint an Administrator of any property attached under sub-section (1) and the Administrator shall have all the powers to administer such property in the best interest thereof.

(4) The District Magistrate may provide police help to the Administrator for proper and effective administration of such property.

8(j). **Section 15 of the Act of 1986**

15. Release of property.-(1) Where any property is attached under Section 14, the claimant thereof may within three months from the date of knowledge of such attachment make a representation to the District Magistrate showing the circumstances in and the sources by which such property was acquired by him.

(2) If the District Magistrate is satisfied about the genuineness of the claim made under sub-section (1) he shall forthwith release the property from attachment and thereupon such property shall be made over to the claimant.

8(k). **Section 16 of the Act of 1986**

16. Inquiry into the character of acquisition of property by Court.-(1) Where no representation is made within the period specified in sub-section (1) of Section 15 or the District Magistrate does not release the property under sub-section (2) of Section 15 he shall refer the matter with his report to the Court having jurisdiction to try an offence under this Act.

(2) Where the District Magistrate has refused to attach any property under sub-section (1) of Section 14 or has ordered for release of any property under sub-section (2) of Section 15, the State Government or any person aggrieved by such refusal or release may make an application to the Court referred to in sub-section (1) for inquiry as to whether the property was acquired by or as a result of the commission of an offence triable under this Act. Such Court may, if it considers necessary or expedient in the interest of justice so to do, order attachment of such property.

(3)(a) On receipt of the reference under sub-section (1) or an application under sub-section (2), the Court shall fix a date for inquiry and give notices thereof to the person making the application under subsection (2) or, as the case may be, to the person making the representation under Section 15 and to the State Government, and also to any other person whose interest appears to be involved in the case.

(b) On the date so fixed or any subsequent date to which the inquiry may be adjourned, the Court shall hear the parties, receive evidence produced by them, take such further evidence as it considers

necessary, decide whether the property was acquired by a gangster as a result of the commission of an offence triable under this Act and shall pass such order under Section 17 as may be just and necessary in the circumstances of the case.

(4) For the purpose of inquiry under sub-section (3) the Court, shall have the power of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Act No. V of 1908), in respect of the following matters, namely :

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any Court or office;

(e) issuing commission for examination of witness or documents;

(f) dismissing a reference for default or deciding it ex parte;

(g) setting aside an order of dismissal for default or ex parte decision.

(5) In any proceedings under this section, the burden of proving that the property in question or any part thereof was not acquired by a gangster as a result of the commission of any offence triable under this Act, shall be on the person claiming the property, anything to the contrary contained in the Indian Evidence Act, 1872 (Act No. 1 of 1872) notwithstanding.

8(l). **Section 17 of the Act of 1986**

17. Order after inquiry.-If upon such inquiry the Court finds that the property was not acquired by a gangster as a result of the commission of any offence triable under this Act it shall order for release of the property of the person from whose possession it was attached. In any other case the Court may make such order as it thinks fit for the disposal of the property by attachment, confiscation or delivery to any person entitled to the possession thereof, or otherwise.

8(m). **Section 18 of the Act of 1986**

18. Appeal.-The provisions of Chapter XXIX of the Code shall, mutatis mutandis, apply to an appeal against any judgment on order of a Court passed under the provisions of this Act.

8(n). **Section 19 of the Act of 1986**

19. Modified application of certain provisions of the Code.-(1) Notwithstanding anything contained in the Code every offence punishable under this Act or any rule made thereunder shall be deemed to be a cognizable offence within the meaning of clause (c) of Section 2 of the Code and cognizable case as defined in that clause shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to case involving an offence punishable under this Act or any

rule made thereunder subject to the modifications that-

(a) the reference in sub-section (1) thereof to "Judicial Magistrate" shall be construed as a reference to " Judicial Magistrate or Executive Magistrate";

(b) the references in sub-section (2) thereof to "fifteen days" , "ninety days" and "sixty days", wherever they occur, shall be construed as references to "sixty days" , "one year" and "one year" , respectively;

(c) sub-section (2A) thereof shall be deemed to have been omitted.

(3) Sections 366, 367, 368 and 371 of the Code shall apply in relation to a case involving an offence triable by a Special Court, subject to the modification that the reference to "Court of Session" wherever occurring herein, shall be construed as reference to "Special Court" .

(4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act or any rule made thereunder shall, if in custody, be released on bail or on his own bond unless:-

(a) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(5) The limitations on granting of bail specified in sub-section (4) are in addition to the limitations under the Code.

8(o). **Section 20 of the Act of 1986**

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

9. From the above referred provisions of the Act of 1986, it is apparent that (i) the Act is a special statute which has been enacted for the prevention of and for coping with gangsterism and anti-social activities, (ii) the Act is a penal statute and Section 3 prescribes punishment to be awarded to a gangster as well as public servant rendering illegal help or support to a gangster and (iii) the Act of 1986 is a self contained code and the same can also be deduced from the observations made in the judgment passed in the case of ***Kailash Sahkari Avas Samiti Ltd. vs. State of U.P. and others; 2012 SCC OnLine All 5288*** affirmed by the Division Bench of this Court in the case of **Jangali Pasi vs.** ***State of U.P.; 2015 SCC OnLine All 8748.***

10. The relevant paragraphs 18, 29 and 31 of the judgment passed in the case of **Jangali Pasi (supra)** are as under:-

"18. The said judgment was cited before a learned Single Judge raising a preliminary objection to the maintainability of the appeal on the strength of the aforesaid observations. The matter came to be considered in Criminal Appeal No. 3000 of 2003, Kailash Sahkari Awas Sarniti v. State of U.P. learned Single Judge upon a consideration of all the relevant provisions of the Act as well as the Criminal Procedure Code ruled as under vide order dated 2.2.2010 to the following effect:—

"xxx xxx xxx

I have heard both the sides and have pondered over rival submissions. Since the bone of contention between rival sides require interpretation of a statutory provision of an enacted statute, consideration of the whole of the said statute seems to be un-eschewable to foresee legislative intent of the section to be interpreted and while undertaking that exercise a glimpse of the Act indicates that the Act was enacted to contain gangsterism and anti social activities within the State of U.P. which has attained menacing dimensions. The Act was brought to life on 19.3.1986, on which date it was published in the U.P. Gazette part one. Section 1 of the Act mentions it's title and extent of application, Section 2 provides definitions and meaning of various words occurring under the Act. Section 2(f) which is of some importance to the present controversy provides that the words and phrases used but not defined in, the Act but defined under the Code of Criminal Procedure, 1973 or the Penal Code, 1860 shall have the respective meanings assigned to them in those statutes. Section 3 of the Act provides for penalty for offences under the Act, whereas section 4 lays down special rule of evidence to be applied in the trial of offences under the Act. Sections 5 to 10 contemplates creation of special Courts to try offences under the Act, eligibility of the presiding Judge, place of sitting of special courts and the nature of offences to be tried and procedure to be followed by it. Without volumenising, itis recorded that according to section 10 of the Act Special Judge shall have the Power of a Session's Judge and shall follow the same warrant trial procedure which is to be followed by a Magistrate unless the offence is punishable with imprisonment not exceeding three years, in which case it can try the offence in a summary way in consonance with sections 263 to 265 of the code. Section 11 provides for protection to the witnesses whereas section 12 mentions that the trial under the Act shall have precedence over the trial of other cases. Section 13 registers the power to transfer the cases to regular Courts by the Special Court if it finds that the offences being tried by it is not triable by it. From section Section 14 to section 17, the Act provides for attachment of property and it's release. Section 14 lays down that if the District Magistrate has reason to believe that any property, whether movable or immovable, possessed by any person has been acquired by gangsterism as a result of commission of any offence under the Act, then the District Magistrate can order attachment of such property irrespective of the fact whether cognizance of such offence has been taken by any Court or not. Sub-section 14(2) provides that provisions of Cr.P.C. shall applied mutatis mutandis to every attachment carried out under the Act. Section 14(3) and (4) provides for appointing of an administrator over the attached property by the District Magistrate and for police help to administer such property. Section 15 of the Act provides for applying for release of the property by any claimant through an application made to the District Magistrate within three months from the date of the knowledge of attachment. Section 15(2) enact that if the District Magistrate is satisfied about the case of the claimant then he can direct the release of the property from attachment and thereafter the property shall be handed over to the claimant. Terusal of the Section 16 of the Act indicate that if no representation is made within the specified period of three months from the date of the knowledge of attachment or the District Magistrate does

not release the property to the claimant as is provided under Section 15(2) of the Act then he (District Magistrate) shall refer the matter with his report to the Court having jurisdiction to try the offences under the Act. Section 16(2) postulates that if the District Magistrate does not act under Section 14(1) of the Act to attach the property, or releases the property under Section 15(2) of the Act then the State Government or any person aggrieved by such refusal or release can make an application to the Court having jurisdiction to try an offence under this Act for inquiry for the purposes of determining whether any property has been acquired by gangsterism or not? Pendente lite such inquiry, the court has been conferred with the power to order for attachment of such property as was done in the instant case. Section 16(3) of the Act, which is in two parts contemplates in sub-section (a) that the Court on a reference under sub-section (1) of Section 16 or on an application under sub-section (2) of the said section shall conduct an inquiry and sub-section (b) provides that on the date so fixed the Court shall hear the parties, receive evidences produced by them, take such further evidences as it considered necessary and decide whether the property was acquired by a gangster as a result of commission of an offence under the Act or not and then shall pass an order under Section 17 as the case may be which is necessary in its opinion. Section 16(4) confers same power on the Court under the Act which is possessed by a civil court under Code of Civil Procedure 1908 in matters of inquiry. Section 16(5) of the Act legislates that the burden of proving that the property or any part thereof has not been acquired by gangsterism or by commission of any offence under the Act shall be on the person claiming the release of the property irrespective of any provision to the contrary contained in the Indian Evidence Act. Section 17 of the Act provides that upon such an inquiry if the Court finds that the property was not acquired by a gangster as a result of commission of any offence under the Act then the Court shall order for release of such property to the person from whose possession it was attached. In any other case, the Court may make such orders as it deems fit for disposal of such property either by attachment, confiscation or delivery to any person entitled to possession thereof or otherwise. Section 18, which is the apple of discard between the rival sides, legislates and provides for applicability of chapter XXIX of the Code in an appeal preferred under the Act. For a clear understanding of the legislative intent, Sections 17 and 18 of the Act are reproduced below:—

"17. Order after inquiry-If upon such inquiry the Court finds that the property was not acquired by a gangster as a result of the commission of any offence triable under this Act it shall order for release of the property of the person from whose possession it was attached. In any other case the Court may make such order as it thinks fit for the disposal of the property by attachment, confiscation or delivery to any person entitled to the possession thereof, or otherwise.

18. Appeal-The provisions of Chapter XXIX of the Code shall mutatis mutandis, apply to an appeal against any judgment or order of a Court passed under the provisions of this Act."

From the two referred statutory provisions it is abundantly clear that Sections 14 to 17 of the Act, which deals with attachment/non attachment or release

of any property in question is analogous to sections 451, 452, and 457 of the Code. For a ready reference, the aforesaid provisions of Cr.P.C. are registered herein below:—

"451. Order for custody and disposal of property pending trial in certain cases-When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposal of.

Explanation-For the purposes of this section, "property" includes—

(a) property of any kind or document which is produced before the Court or which is in its custody.

(b) any property regarding which an of fence appears to have been committed or which appears to have been used for the com mission of any offence.

452. Order for disposal of property at conclusion of trial- (1) When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

(2) An order may be made under sub-section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond with or without sureties, to the satisfaction of the Court, engaging to restore such property to the Court if the order made; under sub-section (1) is modified or set aside on appeal or revision.

(3) A Court of Session may, instead of itself making an order under sub-section (1), direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in sections 457, 458 and 459.

(4) Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of sub-section (2), an order made under subsection (1) shall not be carried out for two months, or when an appeal is presented, until such appeal has been disposed of.

(5) In this section, the term "property" includes, in the case Of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

457. Procedure by police upon seizure of property-

(1) Whenever the seizure of property by any police officer; is reported to a Magistrate under the provisions of this Code, and such property is not produced

before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation."

What is noticeable here is that an order under sections 452 and 453 of the Code is appealable under section 454 thereof. The special provision has been enacted under the Act for a solemn purpose to deter an individual and/or public to acquire property by commission of offences under the Act and thereby to curb the activities of gangsterism. Attachment and release of property or any order of such a nature dealing with disposal of any property by a court has serious consequences of far reaching effects and it impinges upon the right to property of an individual and consequently, under the code such types of orders are made appealable under section 454 thereof. For a ready reference Section 454, Cr.P.C. is reproduced below:—

"454. Appeal against orders under section 452 or section 453.- (1) Any person aggrieved by an order made by a Court under section 452 or section 453, may appeal against it to the Court to which appeals ordinarily lie from convictions by the former Court.

(2) On such appeal, the Appellate Court may direct the order to be stayed pending disposal of the appeal, or may modify, alter or annul the order and make any further orders that may be just.

(3) The powers referred to in sub-section (2) may also be exercised; by a Court of appeal, confirmation or revision while dealing with the case in which the order referred to in sub-section (1) was made.

Now, turning towards the Act it is recorded that the Act is not a self contained Code. For innumerable aspects of trial procedure and for many interlocutory matters it falls back on the Code. What is of significance here is that the Act does not provide anywhere what orders are appealable and what are not? Under section 18 only this much has been legislated that Chapter XXIX of the Code shall mutatis mutandis apply to an appeal against any judgment and order of a court passed under the provisions of this Act. Thus the Act confers right to appeal against all orders and judgment of a court under it as the words "an appeal" and "any judgment and order" occurring in section 18 are of enormous magnitude. In consonance with the Principles of interpretation of Statute and harmonious construction of various statutes, these words should be taken to preserve all appeals provided under the Code. The meaning attached to these words cannot be restricted in it's scope only to take in it's purview convictions and sentences passed under the Act. Divastation of once property has got enormous

detrimental civil consequences which even cannot be recouped in future and in such matters the remedial remedy of appeal can and should not be squeezed from an aggrieved person by the courts when they are called upon to fillup the grey areas left by the legislature in matters of interpretation of a statutory provision. It seems that it is because of this reason that section 454 has been enacted in the code and therefore benefit of the said right under the Act to an individual should not be denied against consequentially analogous orders, especially when there is no legislative intent to the contrary, as the Act is silent on the aspects as to which orders are appealable and which are not?

Another dimensional facet of the involved issue is that courts are required to adopt warrant trial or summary trial procedures while prosecuting an accused as is mandated under section 10 of the Act. Various orders in those trial procedures are appealable. Once the Act does not carve out any exception in matters of appeal in those trial procedures, it will be very injudicious to read them in a statute (Act), as doing so will amount to legislate, which the courts are not capable of Besides 454, other exempler appealable sections are 86, 341, 351, and 449 of the Code.

More over the two trial procedures, in it's application to offences under the Act and those of IPC and other statutes, cannot be bifurcated into two. If the trial procedure provides for filing of an appeal against any order passed during the trial, then those orders shall be appealable under the Act as well. Drawing of such an opinion can be countenanced even on the basis of the words used in section 372 of the code as well which falls under chapter XXIX thereof. Section 372 of the Code postulates that no appeal shall lie from any judgment or order of a criminal Court except as is provided in the Code or in any other law for the time being enforce. The said section clearly indicates that an appeal shall lie from a judgment and order of a criminal court, if it is so provided under the Code or under any other statute in vogue. This section, therefore, imbibes in itself all appeals under Sections 86, 341, 351, 454 and 449 of the Code. In this connection, Section 386(d) is also noticeable and is of much significance as it provides as follows:—

"386. Powers of the Appellate Court. After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and in case of an appeal under Section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may—

(a) to (c)……

(d) in an appeal from any other order, alter or reverse such order;

(e)
……"

Thus a co-joint reading of Sections 372 and 386(d) of the code conspicuously lays down maintainability of all appeals provided under the code. Since section 17 of the Act is an analogous provision of sections 451, 452 and 457, Cr.P.C., the same will be appealable under chapter XXIX of the Code as all appeals under the Act has to be dealt with under that chapter. I am also fortified in my view from the phraseology of Section 18 f the

Act, which provides that the provisions of appeal under Chapter XXIX shall mutatis mutandis apply to an appeal under the Act. Section 18 has been couched in a general phraseology and, therefore, it has to be read in conjunction with chapter XXIX of the Code. Eikly, in matters of appeal under Section 15 of the Act Cr.P.C. will also apply as Section 2 of the Act specifically provides for its application. It will be preposterous to cogitate that the offences under the Gangsters Act, which is an off shoot of various offences mentioned under the Penal Code and other statutes will be tried differentially and will have different appealable sections than that of Cr.P.C. If the legislative intend was that only a conviction and sentence passed under the Act be made appealable, the legislature would have provided for such an eventuality which it has not done consciously as it was conscious of the fact that the attachment, confiscation or disposal of property in any manner has got serious consequences as it even impinges upon the right to property of a citizen of this country. To accept the argument of learned counsel for the respondents, in this respect will lead to hazardous consequences. If a person is deprived of his property without any right of appeal, that will be in direct contradiction with the provisions of Code of Criminal Procedure. In such a view the appeal provided for under Section 18 of the Act takes into its purview all the appeals which are provided for under the Code of Criminal Procedure.

Turning towards, the decision relied upon by the counsel for the respondents, it is to be noted that in the said judgment Hon'ble Single Judge has himself observed thus:—

"No separate procedure is prescribed to challenge the Order of conviction or acquittal passed by the Special Judge in exercise of power of Chapter XXIX, Cr.P.C. and Sections 3 and 18 of the Act what appears is that appeal would lie against the order of conviction or acquittal under the Act and not against the order of attachment of the District Magistrate or the order of the Special Court on the reference made by the District Magistrate. Even assuming that Section 18 has the application and orders of the District Magistrate and the Special Court can be challenged by way of appeal yet I would hold that the writ petition under Article 2-26 of the Constitution is maintainable when the very order of attachment passed by the District Magistrate is illegal, arbitrary and without jurisdiction."

(Underline emphasis mine)

Thus the aforesaid judgment Badan Singh, (2001 ALJ 2852) (supra), does not rule out maintainability of an appeal against an order passed under Section 17 of the Act.

Further, I find that the appeal was admitted by this Court vide order dated 10.7.2003. The State did not object maintainability of an appeal at that stage and, therefore, also I am of the considered view that the instant appeal is maintainable for challenging an order passed under section 17 of the Act and therefore I reject the preliminary objection raised by the counsels for the respondents 1 to 18.

This appeal will now be listed on 8.2.2010 for further final hearing on merits as part heard.

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29. The reasoning given by the learned Single Judge in the case of Kailash Sahkari Awas Samiti (supra) appears to be perfect and sound whereas the apprehension expressed in the referring order dated 28.1.2015 does not appear to have noticed the same. For all the reasons given hereinabove and for the reasons given by the learned Single Judge, referred to hereinabove, we approve of the ratio of the decision in the case of Kailash Sahkari Awas Samiti (supra).

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31. Having considered the above, we therefore find ourselves in full agreement with the judgment of the learned single Judge in the case of Kailash Sahkari Awas Samiti (supra) which lays down the law correctly and an appeal against an order refusing to release attachment under Section 17 of the 1986 Act would be maintainable under Section 18 of the same Act."

11. The view taken by the Division Bench of this Court in the case of ***Jangali Pasi (supra)*** was affirmed by another Division Bench of this Court in the ***judgment dated 06.12.2016*** passed in ***Government Appeal No. 6042 of 2010 (State of U.P. vs. Nasim Khan and others)***. The relevant portion of the judgment dated 06.12.2016 is extracted hereunder:-

"This issue is no longer res-integra and is squarely covered by the judgment dated 16.4.2005 passed by the Division Bench of this Court in Criminal Misc. Writ Petition No. 8053 of 2015 (Jangali Pasi Vs. State of UP through Secretary and another). For ready reference, relevant portion of the aforementioned judgment dated 16.4.2015 passed by this Court is quoted hereinbelow;

"We have been informed that the said reference is still pending before a division bench and has not yet been answered.

Since this issue has been raised before us by the learned A.G.A., we proceed to deal with the same in the light of the facts stated hereinabove. To us, it appears that the learned Single Judge who has made the reference on 28.1.2015 has not noticed the judgment in the case of Kailash Sahkari Awas Samiti (supra). The other two judgments that have also not been noticed are the division bench judgment in the case of Krishna Murari Agrawal (supra) and the decision of the learned Single Judge in the case of State of U.P. Vs. Manoj Kumar Pandey (supra). We also find that the learned Single Judge while making the reference has not referred to the provisions particularly Sections 5, 451, 452 and 457 of the Criminal Procedure Code that have been compared with analogous provisions in the case of Kailash Sahkari Awas Samiti (supra) along with the provisions of appeal under Section 454 of the Code read with Section 18 of the 1986 Act. In our opinion, the learned Single Judge in the case of Kailash Sahkari Awas Samiti (supra) has rightly distinguished the case of Badan Singh (supra) by observing that it does not rule out the maintainability of an appeal against an order passed under Section 17 of the Act. The conclusion drawn in the case of Kailash Sahkari Awas Samiti (supra) finds our approval for all the reasons given therein inasmuch as, even if an appeal is a creature of statute, yet in view of the provisions of Section 18 of the 1986 Act read with Chapter XXIX of the Criminal Procedure Code we find that a provision of appeal is necessary

and has to be interpreted as such because the property attached in such proceedings can be confiscated as well under Section 17 of the 1986 Act. This provision, therefore, is plenary and peremptory in nature thereby depriving a person of his property by operation of law. The power of confiscation is positively imperious, even though the order of the District Magistrate or the court concerned before whom the reference is made does not appear to be final. In the circumstances they are subject to recall or otherwise appealable.

In such a situation, where there is a constitutional mandate under Article 300-A that no person should be deprived of property save by authority of law, then the provision of an appeal against an order of confiscation is necessary, inasmuch as, to allow the order of the court to become final in a matter of confiscation of property would be depriving a person to question and contest this matter before a higher forum that is inbuilt intentionally by the legislature in the Statute. We say this because it will not be possible for a person to claim the property in question through any other mode or source of law except through a writ petition. There is no doubt that property acquired through unlawful means and being an outcome of crime cannot be claimed as a matter of right but at the same time a law that provides for attachment, release or confiscation of such property should be capable of, and visited with a procedure, so as to adjudicate any claim arising therefrom in a fair and reasonable manner.

The 1986 Act therefore has to be read as a complete Code in itself so as to provide such benefit of appeal which the legislature appears to have intended under Section 18. Applying the interpretive tool, Section 18 categorically provides an appeal against any judgment or order and then mutatis mutandis applies Chapter XXIX of the Cr.P.C. to such an appeal. Judges while interpreting such provisions have to adopt the legalistic method as well as the pragmatistic method as they are said to wear two hats. This distinguishes them from mere umpires and they enjoy a more certain interpretive freedom by applying reasoning through analogy in order to interpret and explain cannons of statutory construction. Applying the said principles, we are also of the opinion that Section 18 does not contain any prohibitive language nor does it give a restrictive meaning to the right of appeal against any judgment or order under the Act which is a special act. This therefore includes the right of an appeal against an order refusing to release attached property. The interpretation has to be meaningful and that which advances the cause of justice. That also checks infallibility and rules out any possibility of failure or miscarriage of justice. There is yet a dimension to ponder. If ultimately the prosecution ends in acquittal or there is a probability of acquittal then a release of attached property has to be adjudicated. There is yet another grey area, namely what happens to attached property if the proceedings abate due to the death of an undertrial under the Gangsters Act. Should the property be automatically refused to be released or released to the heirs of the deceased. In the former case if the trial fails to end up in conviction in such a contingency due to the death of an undertrial, then the question of release

has to be determined but in the latter case can the attached property be released automatically even if no proof is provided by the heirs of the mode of acquisition of the property. In both cases an adjudication has to be made at the instance of the State Government or any interested person. In such a situation if release is refused, then an appellate forum with co-extensive powers should be available and that is what Section 18 purports to do when it recites the words any order or judgment. This is analogous to Section 452 of the Cr.P.C. and therefore the legislature was conscious of also making a provision that Chapter XXIX will mutatis mutandis apply.

Even though the writ jurisdiction may not be barred in appropriate matters as held in Badan Singh's case (supra) but if the statutory remedy of appeal is available, then filing of writ petitions stands obviated for at least two reasons. First that in an appeal all questions of fact and law can be pleaded, evidence led and be adjudicated. Secondly, ordinarily questions of fact that may be disputed, cannot be gone into in the exercise of jurisdiction under Article 226 of the Constitution. This has been held in a short judgment in the case of Krishna Murari Agarwal Vs. District Magistrate, Jhansi & others, 2000 Cr.L.J. Page 949, extracted hereinunder :-

"1. The property of the petitioner was attached under Section 14(1) of the U.P. Gangsters & Anti Social (Activities) Prevention Act, 1986 by order of the District Magistrate, Jhansi.

2. The petitioner made a representation against the order of attachment under Section 16(1) of the said Act. The District Magistrate by his order dated 12.10.2000 rejected the representation and referred the matter with his report to the Special Judge (Gangsters Act) in accordance with Section 16(1) of the Act. It is this order which is subject-matter of challenge in the present writ petition.

3. We have heard Sri UK Saxena, learned counsel for the petitioner at considerable length and have perused the record.

4. The question whether the property attached has been acquired by a gangster as a result of the commission of an offence under U.P. Gangsters & Anti Social Activities (Prevention) Act, 1986 is a pure question of fact. The claim of the petitioner that the property has not been acquired by commission of an offence or that it is an ancestral property can only be established by appraisal of the evidence. It will be open to the petitioner to lead oral and documentary evidence in support of his claim before the Special Judge (Gangsters Act) where the matter has been referred. Such appraisal of evidence is not possible in the present proceedings under Article 226 of the Constitution of India. The Act provides a complete machinery as against the decision of the Court an appeal lies under Section 18 of the Act.

5. In these circumstances we do not consider it a fit case for interference under Article 226 of the Constitution of India.

6. Learned counsel for the petitioner has submitted that the house of the petitioner has been attached and

he is suffering great hardship and, therefore, a direction may be issued to the Special Judge concerned to decide the proceedings at an early date.

7. Taking into consideration the entire facts and circumstances of the case, it is directed that the proceedings referred to the Special Judge by the District Magistrate under Section 16(1) of the Act shall be concluded as expeditiously as possible preferably within three months of the filing of a certified copy of this order before the Court concerned. It is understood that the petitioner will co-operate with the enquiry and will not seek adjournments unless absolutely necessary.

8. Subject to the observations made above, the writ petition is dismissed."

The reasoning given by the learned Single Judge in the case of Kailash Sahkari Awas Samiti (supra) appears to be perfect and sound whereas the apprehension expressed in the referring order dated 28.1.2015 does not appear to have noticed the same. For all the reasons given hereinabove and for the reasons given by the learned Single Judge, referred to hereinabove, we approve of the ratio of the decision in the case of Kailash Sahkari Awas Samiti (supra).

Why is a statutory appeal necessary and what is the purpose of providing an appeal has been very elaborately dealt with by the Apex Court explaining its philosophy in the celebrated decision of Sita Ram and others Vs. State of U.P. (1979) 2 SCC Page 656. Thus, the importance of a provision of appeal cannot be diluted and the learned Single Judge in the case of Kailash Sahkari Awas Samiti (supra) was fully justified in interpreting Section 18 to be available for such purpose. Retention of property may not be a guaranteed fundamental right, but it is reasonable to construe that deprivation of property without authority of law is unconstitutional and leads to civil consequences of a permanent nature. We, therefore, extract para 25, portion of para 31, paras 41, 42 and 45 of Sita Ram's case (supra) to the following effect :-

25. At the threshold, we have to delineate the amplitude of an appeal, not in abstract terms but in the concrete context of Article 134 read with Article 145 and order XXI Rule 15 and s. 384 of the Criminal Procedure Code, 1973. The nature of the appeal process cannot be cast in a rigid mould as it varies with jurisdictions and systems of jurisprudence. This point has been brought out sharply in "Final Appeal". The learned authors ask :

But what does 'appeal' really mean : indeed, is it a meaningful term at all in any universal sense ? The word is in fact merely a term of convenient usage, part of a system of linguistic shorthand which accepts the need for a penumbra of uncertainty in order to achieve universal comprehensibility at a very low level of exactitude. Thus, while 'appeal' is a generic term broadly meaningful to all lawyers in describing a feature common to a wide range of legal systems, it would be misleading to impute a precise meaning to the term, or to assume, on the grounds that the word (or its translated equivalent) has

international currency, that the concept of an appeal means the same thing in a wide range of systems.

On any orthodox definition, a appeal includes three basic elements: a decision (usually the judgment of a court or the ruling of an administrative body) from which an appeal is made; a person or persons aggrieved by the decision (who is often, though by no means necessarily party to the original proceedings) and a reviewing body ready and willing to entertain the appeal.

The elasticity of the idea is illumined by yet another passage which bears quotation:

'Appeals' can be arranged along a continuum of increasingly formalised procedure, ranging from a condemned man in supplication before his tribal chief to something as jurisprudentially sophisticated as appeal by certiorari to the Supreme Court of the United States. Like Aneurin Bevan's elephant an appeal can only be described when it walks through the court room door..... The nature of a particular appellate process-indeed the character of an entire legal system-depends upon a multiplicity of interrelated (though largely imponderable) factors operating within the system. The structure of the courts; the status and rule (both objectively and subjectively perceived) of judges and lawyers, the form of law itself-whether, for example it is derived from a code or from judicial precedent modified by statute; the attitude of the courts to the authority of decided cases; the political and administrative structure of the country concerned-whether for example its internal sovereignty is limited by its allegience to a colonizing power. The list of possible factors is endless, and their weight and function in the social equation defy precise analysis."

In short, we agree in principle with the sum-up of the concept made by the author:

Appeal, as we have stressed, covers a multitude of jurisprudential ideas. The layman's expectation of an appeal is very often quite different from that of the lawyer and many an aggrieved plaintiff denied his 'just' remedy by judge or jury has come upon the disturbing reality that in England a disputed finding of fact can seldom, if ever, form the basis of an appeal. Similarly, a Frenchman accustomed to a narrowly legalistic appeal incessation, subject to subsequent reargument in a court below, would find little familiarity in the ponderous finality of the judgment of the House of Lords. And a seventeenth-century lawyer accustomed to a painstaking search for trivial mistakes in the court record, which formed the basis of the appeal by writ of error, would be bewildered by the great flexibility and increased sophistication of a jurisprudential argument which characterize a modern appeal.

31. x x x x x A single right of appeal is more or less a universal requirement of the guarantee of life and liberty rooted in the conception that men are fallible, that Judges are men and that making assurance doubly sure, before irrevocable deprivation of life or liberty comes to pass, a full-scale re-examination of the facts and the law is made an integral part of fundamental fairness or procedure.

41. Going to the basics, an appeal is the right of entering a superior court and invoking its aid and interposition to redress the error of the court below.... An appeal, strictly so called, is one "in which the question is, whether the order of the court from which the appeal is brought was right on the materials which that court had before it" (per Lord Davey, Ponnamma v. Arumogam, (1905) A.C. at p.390) .... A right of appeal, where it exists, is a matter of substance, and not of procedure (Colonial Sugar Refining Co. v. Irving, (1905) AC 369 and Newman v. Klausner, (1922) 1 K.B. 228). Thus, the right of appeal is para mount, the procedure for hearing canalises so that extravagant prolixity or abuse of process can be avoided and a fair workability provided. Amputation is not procedure while pruning may be.

42. Of course, procedure is within the Court's power but where it pares down prejudicially the very right, carving the kernal out, it violates the provision creating the right. Appeal is a remedial right and if the remedy is reduced to a husk by procedural excess, the right becomes a casualty. That cannot be.

45. An appeal is a re-hearing, and as Viscount Cave laid down, it was the duty of a court of appeal in an appeal from a judge sitting alone to make up its own mind, not disregarding the judgment appealed from and giving special weight to that judgment where the credibility of witnesses comes into question, but with full liberty to draw its own inferences from the facts proved or admitted, and to decide accordingly."

Having considered the above, we therefore find ourselves in full agreement with the judgment of the learned Single Judge in the case of Kailash Sahkari Awas Samiti (supra) which lays down the law correctly and an appeal against an order refusing to release attachment under Section 17 of the 1986 Act would be maintainable under Section 18 of the same Act.

After having held that, we partly allow this petition with a direction to the District Magistrate to proceed to refer the matter to the court concerned and to that extent the impugned order dated 18.12.2014 stands modified. The District Magistrate ought to have reflected on the provisions of Sections 15 and 16 of the 1986 Act carefully but such errors may keep on recurring as Rules do not appear to have been framed inspite of the query raised by this Court in Akbar's case (supra). Once the reference is made to the court concerned, as indicated above, then the matter shall be disposed off by the court in accordance with the provisions quoted hereinabove and the law indicated in this regard. The aforesaid process be completed expeditiously and the District Magistrate shall pass appropriate orders preferably within four weeks' from the date of production of a certified copy of this order before him. Once the matter reaches the court, the court shall endeavour to dispose of the same under the provisions of the 1986 Act read with Criminal Procedure Code preferably within three months thereafter.

A copy of this judgment may also be placed on the record of Government Appeal No.6042 of 2010 for information and the Reporting Section of

the High Court shall also take notice of this judgment to proceed for reporting such appeals filed under Section 18 of the 1986 Act. The learned Government Advocate may apprise the State Government as well the learned Advocate General of this judgment so as to expedite considering framing of appropriate Rules as observed hereinabove."

From perusal of the aforementioned judgment Jangli Pasi Vs. State of UP (supra), it is clearly evident that the Division Bench of this Court after discussing the various provisions of the Act 1986, Criminal Procedure Code and the relevant case laws on the subject has held that the appeal against an order passed under Section 17 of the 1986 Act would be maintainable under Section 18 of the same Act.

We find ourselves in full agreement with the judgment and order dated 16.4.2015 passed by the Division Bench of this Court in the Criminal Misc. Writ Petition No. 8053 of 2015 (Jangali Pasi Vs. State of U.P. through Secretary and another) with regard to maintainability of the appeal under section 18 of the Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986 filed against the order passed under section 17 of the same Act, as such, the present appeal filed against the impugned judgment and order dated 23.7.2010 is maintainable."

12. At this stage, it would be apt to indicate that it is settled principle of law that special law would prevail over general law. Reference in this regard can be made to the judgment passed by the Hon'ble Apex Court in the case of ***Union of India through the Assistant Director vs. Kanhaiya Prasad; 2025 SCC OnLine SC 306***.

13. The applicability of the provisions of the Code in an area covered by a special or local law, in the context of the saving clause under section 5 of the Code was considered in the Constitution Bench judgment in the case of ***Maru Ram vs. Union of India; (1981) 1 SCC 107*** *and also in* ***State (Union of India) vs. Ram Sharan; (2003) 12 SCC 578,*** and it was held that the section consists of three components : (i) the Code covers matters covered by it; (ii) if a special or local law exists covering the same area, the said law is saved and will prevail; (iii) if there is a special provision to the contrary, that will override the special or local law.

14. As per observations made by the Hon'ble Apex Court in the case of ***Kaushalya Rani v. Gopal Singh; AIR 1964 SC 260,*** a “special law”, means a law enacted for special cases, in special circumstances, as distinguished from the general rules of law laid down as being applicable to all cases dealt with by the general law.

15. It would also be relevant to indicate that as per various authorities, the Court dealing with the matter under Sections 16 of the Act of 1986 would not fall under the expression 'persona designata'. Reference in this regard can be made to the following judgment(s):-

(A). Thakur Das (Dead) by L.Rs. vs. State of Madhya Pradesh and another; (1978) 1 SCC 27.

(B). LIC vs. Nadini J. Shah; (2018) 15 SCC 356.

(C). Radha Kishan Yadav vs. State of U.P. and others; 2021 SCC OnLine All 822.

16. The three Judges Bench of the Hon'ble Apex Court in the case of **Thakur Das (supra)** observed and held as under:-

"7. If the Sessions Judge presiding over the Sessions Court is the judicial authority, the question is: would it be an inferior criminal court subordinate to the High Court for the purposes of Sections 435 and 439 of the Criminal Procedure Code? At the one end of the spectrum the submission is that the judicial authority appointed under Section 6-C would be persona designata and that if by a fortuitous circumstance the appointed judicial authority happens to be the Sessions Judge, while entertaining and hearing an appeal under Section 6-C it would not be an inferior criminal court subordinate to the High Court and, therefore, no revision application can be entertained against his order by the High Court. While conferring power on the State Government to appoint appellate forum, the Parliament clearly manifested its intention as to who should be such Appellate Authority. The expression "judicial" qualifying the "authority" clearly indicates that that authority alone can be appointed to entertain and hear appeals under Section 6-C on which was conferred the judicial power of the State. The expression "judicial power of the State" has to be understood in contradistinction to executive power. The framers of the Constitution clearly envisaged courts to be the repository of the judicial power of the State. The Appellate Authority under Section 6-C must be a judicial authority. By using the expression "judicial authority" it was cleanly indicated that the Appellate Authority must be one such pre-existing authority which was exercising judicial power of the State. If any other authority as persona designata was to be constituted there was no purpose in qualifying the word "authority" by the specific adjective "judicial". A judicial authority exercising judicial power of the State is an authority having its own hierarchy of superior and inferior court, the law of procedure according to which it would dispose of matters coming before it depending upon the nature of jurisdiction exercised by it acting in judicial manner. In using the compact expression "judicial authority" the legislative intention is clearly manifested that from amongst several pre-existing authorities exercising judicial powers of the State and discharging judicial functions, one such may be appointed as would be competent to discharge the appellate functions as envisaged by Section 6-C. There is one in-built suggestion indicating who could be appointed. In the concept of appeal inheres hierarchy and the Appellate Authority broadly speaking would be higher than the authority against whose order the appeal can be entertained. Here the Appellate Authority would entertain appeal against the order of Collector, the highest revenue officer in a district. Sessions Judge is the highest judicial officer in the district and this situation would provide material for determining Appellate Authority. In this connection the legislative history may throw some light on what the legislature intended by using the expression "judicial authority". The Defence of India Rules, 1962, conferred power on certain authorities to seize essential commodities under certain circumstances. Against the seizure an appeal was provided to the State Government whose order was made final. By the Amending Act 25 of 1966 Sections

6-A to 6-D were introduced in the Act. This introduced a basic change in one respect, namely, that an order of confiscation being penal in character, the person on whom penalty is imposed is given an opportunity of approaching a judicial authority. Earlier appeal from executive officer would lie to another executive forum. The change is appeal to judicial authority. Therefore, the expression clearly envisages a pre-existing judicial authority has to be appointed Appellate Authority under Section 6-C. When the provision contained in Section 6-C is examined in the background of another provision made in the order itself it would become further distinctly clear that pre-existing judicial authority was to be designated as Appellate Authority under Section 6-C. A seizure of essential commodity on the allegation that the relevant licensing order is violated, would incur three penalties: (1) cancellation of licence; (2) forfeiture of security deposit; and (3) confiscation of seized essential commodity, apart from any prosecution that may be launched under Section 7. In respect of the first two penalties an appeal lies to the State Government but in respect of the third though prior to the introduction of Section 6-C an appeal would lie to the State Government, a distinct departure is made in providing an appellate forum which must qualify for the description and satisfy the test of judicial authority. Therefore, when the Sessions Judge was appointed a judicial authority it could not be said that he was persona designata and was not functioning as a court.

8. Sections 7 and 9 of the Code of Criminal Procedure, 1898, envisage division of the State into various Sessions Divisions and setting up of Sessions Court for each such division, and further provides for appointment of a Judge to preside over that court. The Sessions Judge gets his designation as Sessions Judge as he presides over the Sessions Court and thereby enjoys the powers and discharges the functions conferred by the Code. Therefore, even if the judicial authority appointed under Section 6-C is the Sessions Judge it would only mean the Judge presiding over the Sessions Court and discharging the functions of that court. If by the Sessions Judge is meant the Judge presiding over the Sessions Court and that is the appointed Appellate Authority, the conclusion is inescapable that he was not persona designata which expression is understood to mean a person pointed out or described as an individual as opposed to a person ascertained as a member of a class or as filling a particular character (vide Central Talkies Ltd. v. Dwarka Prasad [AIR 1961 SC 606 : (1961) 3 SCR 495 : (1961) 1 Cri LJ 740] and Ram Chandra v. State of U.P. [AIR 1966 SC 1888 : 1966 Supp SCR 393 : 1966 Cri LJ 1514]).

9. Our attention was drawn to a cleavage of opinion amongst High Courts on the construction of the expression "judicial authority" used in Section 6-C. In State of Mysore v. Pandurang P. Naik [(1971) 1 Mys LJ 401] , the Mysore High Court was of the opinion that though a District and Sessions Judge was appointed as a judicial authority by the State Government in exercise of the powers conferred by Section 6-C of the Act in that capacity it would not be an inferior criminal court within the meaning of Section 435. Same view was taken by the Gujarat High Court in State of Gujarat v. C.M. Shah [1974 Cri LJ 716 (Guj HC)] . The exact specification of the Appellate Authority constituted by the notification could not be gathered from the

judgment but it appears that the appeal was heard by the Additional Sessions Judge which would indicate that even if a District and Sessions Judge was appointed as "judicial authority" that expression would comprehend the Additional Sessions Judge also or the Sessions Judge could transfer such appeal pending before him to Additional Sessions Judge which was a pointer that he was not a persona designata. After referring to certain sections of the Code of Criminal Procedure it has been held that the Additional Sessions Judge hearing an appeal under Section 6-C is not an inferior criminal court within the meaning of Section 435(1). Our attention was also drawn to State of Madhya Pradesh v. Vasant Kumar [1972 Jab LJ 80] . Only a short note on this judgment appears in 1972 Jabalpur Law Journal 80 but it clearly transpires that the point under discussion has not been dealt with by the Court.

10. As against this, this very question was examined by a Full Bench of the Andhra Pradesh High Court in Public Prosecutor (A.P.) v. L. Ramayya [1975 Cri LJ 144 : 1975 MLJ (Cri) 155 : 1974 Andh LJ 372] . Two questions were referred to the Full Bench. The first was: whether the District and Sessions Judge who is appointed judicial authority for hearing appeals under Section 6-C is a persona designata or an inferior Criminal Court, and the second was: whether even if it is an inferior Criminal Court, a revision application against the order of the Appellate Authority would lie to the High Court? The Full Bench answered the first question in the affirmative. While summing up its conclusions, the Court held that when a judicial authority like an officer who presides over a court is appointed to perform the functions, to judge and decide in accordance with law and as nothing has been mentioned about the finality or otherwise of the decisions made by that authority, it is an indication that the authority is to act as a court in which case it is not necessary to mention whether they are final or not as all the incidents of exercising jurisdiction as a court would necessarily follow. We are in broad agreement with this conclusion.

11. We are accordingly of the opinion that even though the State Government is authorised to appoint an Appellate Authority under Section 6-C, the legislature clearly indicated that such Appellate Authority must of necessity be a judicial authority. Since under the Constitution the courts being the repository of the judicial power and the officer presiding over the court derives his designation from the nomenclature of the Court, even if the appointment is made by the designation of the judicial officer the Appellate Authority indicated is the Court over which he presides discharging functions under the relevant Code and placed in the hierarchy of courts for the purposes of appeal and revision. Viewed from this angle, the Sessions Judge, though appointed and Appellate Authority by the notification, what the State Government did was to constitute an Appellate Authority in the Sessions Court over which the Sessions Judge presides. The Sessions Court is constituted under the Code of Criminal Procedure and indisputably it is an inferior criminal court in relation to High Court. Therefore, against the order made in exercise of powers conferred by Section 6-C a revision application would lie to the High Court and the High Court would be entitled to entertain a revision application under Sections 435 and 439 of the Code of Criminal Procedure, 1898 which was in

force at the relevant time and such revision application would be competent."

17. Another three Judges Bench of the Hon'ble Apex Court in the case of **Nandini J. Shah (supra)** observed as under:-

"34. ***We are not called upon to consider the question as to whether the Estate Officer, while exercising powers invested in him, acts as a court or has the trappings of a court. The only question that we have attempted to answer is whether the appointment of the Appellate Officer referred to in Section 9 of the Act before whom an appeal shall lie, is in the capacity of persona designata or as a court.

35. Sub-section (1) of Section 9 is the core provision to be kept in mind for answering the point in issue. It postulates that an appeal shall lie from every order of the Estate Officer, passed under the Act, to an Appellate Officer. As to who shall be the Appellate Officer, has also been specified in the same provision. It predicates the District Judge of the district in which the public premises are situated or such other judicial officer in that district of not less than 10 years' standing as the District Judge to be designated for that purpose. The first part of the provision does suggest that the appeal shall lie to an Appellate Officer, however, it does not follow therefrom that the Appellate Officer is persona designata. Something more is required to hold so. Had it been a case of designating a person by name as an Appellate Officer, the concomitant would be entirely different. However, when the Appellate Officer is either the District Judge of the district or any another judicial officer in that district possessing necessary qualification who could be designated by the District Judge, the question of such investiture of power of an appellate authority in the District Judge or Designated Judge would by no standards acquire the colour or for that matter trappings of persona designata. In the first place, the power to be exercised by the Appellate Officer in terms of Section 9 is a judicial power of the State which is quite distinct from the executive power of the State. Secondly, the District Judge or designated judicial officer exercises judicial authority within his jurisdiction. Thirdly, as the Act predicates the Appellate Officer is to be a District Judge or judicial officer, it is indicative of the fact of a pre-existing authority exercising judicial power of the State. Fourthly, the District Judge is the creature of Section 5 of the Maharashtra Civil Courts Act, 1869, who presides over a District Court invariably consisting of more than one Judge in the district concerned. The District Court exercises original and appellate jurisdiction by virtue of Sections 7 and 8 respectively, of the 1869 Act and is the principal court of original civil jurisdiction in the district within the meaning of CPC, as per Section 7 of that Act. As per Section 8 of the Act of 1869, the District Court is the court of appeal from all decrees and orders passed by the subordinate courts from which an appeal lies under any law for the time being in force.

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39. Indeed, the expression used in Section 9 is 'Appellate Officer' and not 'appellate authority' as has been used in Section 6-C of the Essential Commodities Act, 1955, considered by the Supreme Court in Thakur Das [Thakur Das v. State of M.P., (1978) 1 SCC 27 : 1978 SCC (Cri) 21]. That, however, would neither make any difference nor undermine the status of

the District Judge or the designated judicial officer so as to reckon their appointment as persona designata. The thrust of Section 9(1) is to provide for remedy of an appeal against the order of the Estate Officer before the District Judge who, undeniably, is a pre-existing authority and head of the judiciary within the district, discharging judicial power of the State including power to condone the delay in filing of the appeal and to grant interim relief during the pendency of the appeal. Though described as an Appellate Officer, the District Judge, for deciding an appeal under Section 9, can and is expected to exercise the powers of the civil court.

***

59. Reverting to the facts of the present case, the respondents had resorted to remedy of writ petition under Articles 226 and 227 of the Constitution of India. In view of our conclusion that the order passed by the District Judge (in this case, Judge, the Bombay City Civil Court at Mumbai) as an Appellate Officer is an order of the subordinate court, the challenge thereto must ordinarily proceed only under Article 227 of the Constitution of India and not under Article 226.***"

(emphasis supplied)"

18. Upon due consideration of the aforesaid including the expression "Court having jurisdiction to try an offence under this Act" in Section 16 of the Act of 1986, this Court is of the firm view that the 'Court' while exercising the power under Section 16 of the Act of 1986, related to the matters connected with Sections 14 and 15 of the Act of 1986, being an authority under the Act of 1986, would be inferior Criminal Court in relation to High Court. Therefore, the application for expeditious disposal of the proceedings under Section 16 of the Act of 1986 would be maintainable under Section 483 Cr.P.C. (now repealed) or Section 529 BNSS, as the case may be.

19. Having held as above, after considering the period of pendency of the case(s) and also the right to enjoy the property available to the concerned, the application(s) under consideration are ***disposed of*** with a direction to the concerned Court(s), indicated in prayer(s), quoted above, to conclude the proceedings of the case(s) most expeditiously, if already not concluded.

20. The Court records the valuable assistance given by Ms. Urmish Shankar, Research Associate, attached with me in drafting this judgment and finding out case laws applicable in the present case.

(2025) 5 ILRA 1662
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 28.05.2025

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Criminal Misc. Anticipatory Bail Application U/S 482 B.N.S.S. No. 487 of 2025

Nafees Ahmad ...Applicant
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Applicant:
Brijesh Kumar Yadav , Bal Keshwar Srivastava

Counsel for the Opposite Party:
G.A

Criminal Law-The Bharatiya Nagarik Suraksha Sanhita,2023-Section 482--- Application seeking anticipatory bail in Case