

Counsel for the Appellant:

Kshitij Mishra, Pravin Kumar Singh

Counsel for the Respondent:

G.A.

(A) Criminal Law - Attachment and Release of Property - Maintainability of Appeal - U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 - Sections 14, 15, 16, 17, 18 & 29 - Scheme of Act provides appeal lies only against order of Court and not administrative order - District Magistrate (or delegated authority) is mandated to refer matter to competent Court for inquiry after rejection of application for release - Liberty to approach Special Court cannot substitute statutory reference obligation - Where the authority fails to make a mandatory reference under Section 16 after rejecting a Section 15 application, the High Court can modify the order to direct such reference . (Para - 12 to 18)

Dispute relates to attachment of property under Gangsters Act - Commissioner of Police attached a flat under Section 14(1) of the Gangsters Act - alleging it was acquired from proceeds of crime - Appellant claimed to be a bonafide purchaser for value and in possession of the said flat since 2016 - Appellant's application for release of the property under Section 15 was rejected by the Commissioner of Police - against which the present appeal under Section 18 was filed. (Para - 6 to 8)

HELD: - Impugned order rejecting the release application was modified to the extent that the matter stands referred to the Special Court having jurisdiction to try such matters. Commissioner of Police was directed to pass appropriate orders for referring the matter to the competent Court with expedition. Order of attachment was directed to be kept in abeyance till the matter is decided by the competent Court in accordance with law. (Para 18 to 20).

Appeal partly allowed. (E-7)

(Delivered by Hon'ble Alok Mathur, J.)

1. Heard Sri Sanjay Bhasin, learned Senior Advocate assisted by Sri Pravin Kumar Singh, learned counsel for the appellant as well as learned Additional Government Advocate for the respondents.

2. Present criminal appeal under Section 18 of the U.P. Gangster Act, 1986 has been preferred against judgment and order dated 16.10.2023, 26.02.2024 and 24.02.2025, passed by the Police Commissioner, Lucknow in Case No. 4 of 2022 and 4 of 2022.

3. Brief fact as stated by the appellant are that present dispute pertains to the property situated at Flat No. M-1202, Rohtash Plumeria Apartment, Lucknow. With regard to aforesaid property the Commissioner of Police, Lucknow in exercise of power under Section 14(1) of the Gangsters Act, passed order of attachment on 26.02.2024.

4. The appellant submits that the said property was initially built by one Paresh Rastogi S/o Laxmi Chandra Rastogi who is Director of M/s Andes Town Planner Ltd.. It is stated that said flat - Flat No. M 1202, Rohtas Plumeria Vibhuti Khand, Gomti Nagar, Lucknow, was purchased by M/s Sachin Buildcon Pvt. Ltd from M/s Andes Town Planner Ltd. by letter of allotment dated 07.10.2011 for an amount of Rs.28,44,525/-. The appellant has stated that he in turn has purchased the said property from M/s Sachin Buildcon Pvt. Ltd. for consideration of Rs.55,00,000/- which has been paid by him through Cheque No. 066105 dated 17.05.2016 drawn on Central Bank of India amounting to Rs.1,00,000/-, Cheque No. 068441 dated 17.06.2016 drawn on Central Bank of India amounting to Rs.4,00,000/-, Rs.50,00,000/- has been paid through Housing Loan from

HDFC Bank by means of Demand Draft No. 124075 dated 21.06.2016. It is further submitted that when the said flat was handed over by M/s Andes Town Planner Ltd. the purchase was finalized by the HDFC Bank.

5. It is in the aforesaid circumstances that the appellant who has paid entire consideration for purchase of disputed flat and even possession has been granted to him on 17.05.2016. Because the builder of the flat who was director of M/s Andes Town Planner Ltd., has fled and has not transferred the flat, due to which registered sale deed of the said flat could not be executed in favour of appellant, though he is in possession of the said property.

6. The proceedings under the Gangsters Act were initiated against one Paresh Rastogi and the building which was constructed by him was attached, holding that same has been acquired out of proceeds of crime and accordingly ceased. In the aforesaid circumstances, an application for release was given by the appellant under Section 15 of the Gangsters Act. In the said application it was stated that the appellant is bonafide purchaser for consideration, apart from which he has further stated that there is no material to indicate that the said property was constructed or purchased out of the proceeds of crime and consequently prayed for release of the said flat.

7. On the application preferred by the appellant an order dated 24.02.2025 has been passed by the Commissioner of Police, Lucknow, stating that as per records and as per report received from the I/C Police Station - Gomti Nagar, Lucknow, it has been stated that the building has been constructed by Paresh Rastogi out of

proceeds of crime and accordingly 22 properties belonging to Paresh Rastogi have been ceased and thereby rejected the application of the appellant for release of the said property. □

8. The appellant, against order dated 24.02.2025, preferred an appeal under Section 18 of the Gangsters Act.

9. Learned counsel for the appellant has submitted that the Commissioner of Police, Lucknow has failed to consider any of the ground raised by the appellant and invoked Section 14 of Gangsters Act for attaching the said property after recording that the said flat was built/purchased out of proceeds of crime inasmuch as general and vague findings have been recorded without having any actual basis. It is further submitted that the appellant being bonafide purchaser for consideration should not be adversely prejudiced and also that he is in possession of the said property since 2016 and his rights deserve to be protected.

10. Learned A.G.A. on the other hand has opposed the present appeal by submitting that an appeal would not be maintainable under Section 18 of the Gangsters Act. He submits that under Section 18 of the Gangsters Act appeal would be maintainable only against order of a Court and presently the order impugned in the present appeal has been passed in exercise of power conferred under Section 15 of Gangsters Act by the Commissioner of Police, Lucknow and therefore prays for dismissal of the appeal.

11. Heard learned counsel for the parties and perused the record.

12. With regard to maintainability of present appeal scheme of Act would be

relevant to be considered. According to Section 14 of the Gangsters Act, the District Magistrate has been empowered to attach any property where he has reason to believe that the said property whether movable or immovable has been acquired by any person as a result of commission of offence triable under the said Act. Once order of attachment has been passed an application for release of the same can be moved by any person who is aggrieved under Section 15 of the Gangsters Act. For making a prayer for release of the property a representation has to be made to the District Magistrate, clearly stating the circumstances and sources from which the said property was acquired and the District Magistrate is mandated to consider said application and in case he is satisfied by the genuineness of the claim made, he shall forthwith release the property in favour of the claimant.

13. In case where attachment has been made under Section 14 of the Gangsters Act and no application for release is made under Section 15 of the Gangsters Act, or even if an application is made under Section 15 of the Act and said application is rejected, the District Magistrate has to refer the matter alongwith his report to the Court having jurisdiction to try the offence under the said Act.

14. Accordingly, at this stage coming back to the facts of the present case where the application of the appellant has been rejected by means of impugned order dated 24.02.2025, it was incumbent upon the District Magistrate or any other authority exercising power of the District Magistrate to refer the matter to the Court having jurisdiction to try such offences.

15. In the impugned order, instead of referring the matter to the Court having jurisdiction, the Police Commissioner,

Lucknow has granted liberty to the appellant to approach the Court of Special Judge (Gangsters Act). Once the matter has been referred under Section 16 of the Gangsters Act, then the competent Court has to consider such matters, and conduct an inquiry to find out whether the property was acquired as a result of commission of any crime. In case Court finds that there is no material to indicate that property has been acquired through source of proceeds which have been obtained through crime, he would release the said property from attachment and deliver it to the person who is entitled for its possession. Any person who is summoned by order of the Court which has been passed under Section 17 of the Gangsters Act, has liberty to prefer an appeal under Section 18 of the Act and such an appeal would lie before the Court which is referred under Section 29 of the Cr.P.C.

16. From the aforesaid provisions of the Gangsters Act it is clear that once application for release has been rejected, the District Magistrate or Authority exercising power of the District Magistrate, is mandated to refer the matter to the Court competent to try any offence under the said Act. While rejecting the application for release under Section 15 of the Gangsters Act, it is mandatory for the District Magistrate to refer the matter to the competent Court, accordingly in the present case the District Magistrate could not have given liberty to approach Special Court or any other Court of competent jurisdiction. Accordingly, to that extent the impugned order requires interference and instead of liberty granted to the appellant to approach the Court against the order of release, matter stands referred to the Court competent to consider the said issue in exercise of power conferred under Section 17 of the Gangsters Act.

17. Accordingly, this Court finds merit in the preliminary objection raised by learned A.G.A. that claim of the appellant ought to have been considered by the competent Court under Section 17 of the Gangsters Act and he do not dispute the fact that the District Magistrate has failed to refer the matter in accordance with the statutory provisions as contained under Section 16 of the Gangsters Act.

18. In view of above, the impugned order is modified to the extent that the matter stands referred to the Special Court having jurisdiction to try such matters and the Commissioner of Police, Lucknow is directed to pass appropriate orders referring the said matter to the competent Court with expedition.

19. From the factual matrix as submitted by the appellant and also from perusal of order of attachment as well as impugned order dated 24.02.2025, case for limited interference in favour of appellant is made out to the extent that the attachment order shall be kept in abeyance till the matter is decided by the competent Court in accordance with law.

20. In the light of above, the present appeal is partly allowed. The impugned order stands modified as per directions stated herein above. The Commissioner of Police shall pass appropriate orders within two weeks from the date of production of certified copy of this order and the Special Court to the which the matter has been referred is directed to proceed in accordance with law and decide the matter with expedition.

(2025) 5 ILRA 162
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 29.05.2025

BEFORE

THE HON'BLE MRS. SANGEETA CHANDRA, J.
THE HON'BLE SHREE PRAKASH SINGH, J.

Criminal Appeal No. 1598 of 2007

Rajesh @ Sajesh Tewari ...Appellant
Versus
State of U.P. ...Respondents

Counsel for the Appellant:
Dinesh Chandra Tiwari, Desh Ratan Mishra,
Desh Ratan

Counsel for the Respondents:
Government Advocate

Circumstantial evidence- no direct evidence of the murder -facts about mental illness of the appellant emerging from very beginning of lodging of the first information report by the first informant (father of the appellant)- and in the deposition witnesses, 2,3 & 4, which has been ignored -plea of mental sickness taken by the appellant in his defence-in his St.ment u/s313 of the Cr.P.C- medical prescriptions produced -trial court has failed to appreciate the evidence led by the defence -conviction set aside.

Appeal allowed. (E-9)

List of Cases cited:

1. Bhajju Vs St. of M.P. reported in (2012)4 SCC 327
2. Trimukh Maroti Kirkan Vs St. of Mah. (2006)10 SCC, 681
3. 'Sabitri Samantaray Vs St. of Odisha' (2023) 11 SCC 813
4. Sharad Birdhichand Sharda Vs St. of Mah., (1984) 4 SCC, 116
5. James Martin Vs St. of Kerala, (2004)2 SCC 23
6. Chunni Bai Vs St. of Chhattisgarh 2025 SCC Online SC 955