2026 INSC 894

Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No.3979 of 2026
(Arising out of SLP (Crl) No.16398 of 2025)

Shiv Pratap Singh Alias Chinu

.... Appellant(s)

Versus

State of U.P & Ors.

.... Respondent(s)

With

Criminal Appeal No.3980 of 2026
(Arising out of SLP (Crl) No.1997 of 2026)

Himanshu Srivastava

.... Appellant(s)

Versus

State of U.P & Ors.

.... Respondent(s)

J U D G M E N T

"Those who abjure violence can do so only because others are committing violence on their behalf."

~ George Orwell

Leave granted.

2. Both the above appeals challenge the proceedings initiated under the Uttar Pradesh Gangsters and Anti-Social

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Activities (Prevention) Act, 1986[1] and the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Rules, 2021[1].

3. Though the facts leading to the proceedings are distinct and different, the issue agitated is the very same; the validity of the proceedings under the U.P. Act and hence, we heard the matters together and this common judgment disposes of the matters jointly.

Special Leave Petition (Crl) No.16398 of 2025

4. The appellant herein is a practicing Advocate who was involved actively in a dispute with respect to the elections to the Bar Association, Fatehgarh, Farrukhabad, a brief narration of which is necessary to understand how it culminated in the proceedings under the Act and the Rules.

5. On a complaint raised by one individual regarding the conduct of elections to the Bar Association, Fatehgarh, the Bar Council of Uttar Pradesh issued a communication dated 07.09.2018 directing the elections to be conducted in accordance with the rules and the applicable law. On allegations raised regarding the conduct of election, five Advocates were debarred from practicing for a period of 10 years, including the

[1] *Hereinafter referred to as 'the U.P. Act' and 'the U.P. Rules'*

appellant, by proceedings dated 09.02.2019. The Bar Association, Fatehgarh, challenged the communication dated 07.09.2018 issued by the Bar Council of Uttar Pradesh before the High Court. The High Court *vide* Annexure P-3 judgment dated 11.07.2019, struck it down as being without jurisdiction following an earlier judgment of a Division Bench of that High Court, based on which Complaint No.90 of 2018 was dismissed, observing only that the elections to the Bar Association, Fatehgarh, be conducted as per the Byelaws, evident from Annexure P-4.

6. Again, proceedings were taken by the Disciplinary Committee of the Bar Council of Uttar Pradesh and an order was issued on 16.07.2023 debarring the appellant and one Sri Sanjeev Paria from practicing in the Bar for a period of 15 years, with a further direction to lodge a complaint before the Superintendent of Police, Farrukhabad, with a like request to the District Judge/Chief Judicial Magistrate, Farrukhabad. The Elders Committee of the Bar was also requested to conduct the election. The appellant alleges that he was not heard in the matter and he had just appeared before the Disciplinary Committee representing the other Advocate, Sri Sanjeev Paria.

7. Pursuant to the complaint made by the Disciplinary Committee, an FIR was registered in the Police Station of District Farrukhabad as FIR No.377 of 2023 under various provisions of the Indian Penal Code; a copy of which is produced as Annexure P-6. Later to this, the direction issued by the Bar Council of Uttar Pradesh dated 16.07.2023 was stayed by the High Court as per Annexure P-7. Subsequently, the Bar Council of India by Annexure P-8 dated 31.08.2024 declared the orders of the Bar Council of Uttar Pradesh a nullity.

8. The Police then registered FIR No.41 of 2024 under the Act, along with two others arrayed as accused. FIR No.41 of 2024 as is produced, with a translated copy produced as Annexure P-10, is dated 13.02.2024, enclosing a Gang Chart of even date prepared under the U.P. Rules. The appellant was shown as Accused No.3 and one Sanjeev Paria and Dr. Anupam Dubey as Accused Nos.1 & 2.

9. A reading of the First Information Statement (FIS) shows general allegations without any specifics; that Sanjeev Paria is the gang leader and the two other members together as a criminal gang commit offences under Chapter XVI, XVII and XXII of the IPC and induce fear and terror among the general public

which makes their free movement, to be against the interest of the general public. They are said to be indulging in criminal activities, anti-social activities, embezzling government money and so on. The investigation undertaken is for an offence levelled under Section 2 of the U.P. Act. A chargesheet was filed again under Section 2; the translated copy of which is produced as Annexure P-14. The appellant had moved the High Court with two separate applications, one of which stayed the proceedings in Case Crime No.248 of 2024 arising from FIR No.377 of 2023 and the other resulting in Annexure P-13-Order injuncting the respondent from taking any coercive action under FIR No.41 of 2024. The chargesheet was filed on 12.02.2025 against which an application was filed under Section 482 of *Code of Criminal Procedure*[2]*, 1973,* rejected by the impugned judgment in one of the above appeals.

10. We make it clear that we are not concerned with the disputes with the Bar Council of Uttar Pradesh or the *inter se* dispute in the Bar Association of Fatehgarh against which an appropriate civil proceeding is taken by the appellant herein, which as we see from the records, went in favour of the appellant.

[2] *In short 'CrPC'*

The thread of arguments against FIR No. 41 of 2024, with which alone we are concerned at this stage, is the validity of the proceedings initiated under the Act and the Rules based merely on a Gang Chart which would result in peremptory conviction followed with a sentence as stipulated in Section 3 of the U.P. Act.

11. The respondent-State has filed a counter-affidavit and vigorously argued for rejection of the appeal since the appellant is a known criminal, and his antecedents being suspect and highly objectionable, these were considered, culminating in a valid Gang Chart prepared in accordance with the Rules. It is pointed out from the FIR produced as Annexure P-6 that the allegation against the three accused arrayed therein was also of disrupting the security system of the Court Council, bringing ammunition inside the Court Council, causing an explosion and shooting with illegal firearms, endangering the lives of judicial officers, employees, advocates, litigants etc. The three Advocates have been debarred from practicing. Immediately we have to notice, though, the allegations are very serious, there is no indication of any complaint having been raised by the District Judge or any Presiding Officer of the Courts in the

premises of which such 'horrific' (sic) acts were alleged to have been perpetrated.

12. We cannot but also observe that the counter-affidavit seeks to support the debarring of the accused arrayed and the proceedings taken by the Bar Council of Uttar Pradesh, which as is clear from the above narration of facts had been interfered with by the jurisdictional High Court and the Bar Council of India.

Special Leave Petition (Crl) No.1997 of 2026

13. The appellant herein is also an Advocate, and he is aggrieved with the proceedings initiated under the U.P. Act and the U.P. Rules, against himself, his brother; the 3rd respondent herein and his father; the 4th respondent herein. The allegation is of various crimes registered against the appellant and the party respondents which led to the proceedings under the U.P. Act and the U.P. Rules.

14. The appellant and the party respondents together filed an application under Section 482 of the CrPC before the High Court seeking to quash Charge Sheet No.1 dated 05.12.2023 filed in Sessions Case No.73 of 2024 arising out of Case Crime No.740 of

2022 under Sections 2/3 of the U.P. Act registered at Police Station Loni Border, District Ghaziabad Rural.

15. The appellant herein was applicant No.3 before the High Court. It was found that the proceedings against applicant Nos.1 and 2 (respondent Nos.3 and 4), challenged by them is pending consideration, with a stay in operation, by a coordinate bench of the High Court. Hence, it was found that no proceedings could be taken against them as of now. Insofar as the appellant, who was applicant No.3, there was Case Crime No.61 of 2022 pending against him under Sections 322, 323, 504, 506 and 452 of IPC read with Sections 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

16. It is based on the above FIR that FIR No.740 dated 30.09.2022 was registered under Sections 2/3 of the U.P. Act registered at Police Station Loni Border, District-Rural (Commissionerate Ghaziabad). The FIRs narrate the various crimes registered against the accused arrayed therein and speaks of Santosh Srivastava being the leader of the gang, consisting of his two sons, one the appellant here, and another person. Gang Chart annexed to the FIR has not been produced along with the records.

17. In the above case also, the State Government has filed a counter-affidavit and learned Advocate on Record has argued vehemently against the relief claimed by the appellant herein. In the counter-affidavit, attempt is made to bring about the specific allegations and the provisions under which the charges were levelled, which we are not concerned with. If crimes are registered under the IPC and other penal enactments, trial will have to proceed in accordance with the respective laws and our decision in the present case would not govern the same at all. We are only concerned in both the above cases, with the specific FIR registered under Sections 2/3 of the U.P. Act; the first of which contains the definition clause and Section 3 deals with the punishment. The offences as listed out from clause (i) to (xxv) of Section 2(b); the definition clause, defining 'Gang', are punishable under various penal enactments. We are, here, concerned only with the absence of an 'offence', as coming out from the subject enactment being Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986.

The Acts and the Rules

18. The U.P. Act as the preamble suggests, intends prevention of and proliferation of gangsters and anti-social activities, as also

matters connected therewith and incidental thereto, a laudable object indeed. Section 2 is the definition clause which, in addition to the other definitions, defines 'Gang' & 'Gangsters'. Sub-sections (b) & (c) of Section 2 are extracted hereinbelow: -

> *"2. In this Act, —*
> *(a) "Code" means the Code of Criminal Procedure, 1973;*
> *(b) "Gang" means a group of persons, who acting either singly or collectively, by violence, or threat or show of violence, or intimidation, or coercion or otherwise with the object of disturbing public order or of gaining any undue temporal, pecuniary, material or other advantage for himself or any other person, indulge in anti-social activities, namely —…*
>
> *(i) offences punishable under Chapter XVI, or Chapter XVII, or Chapter XXII of the Indian Penal Code, or*
> *(ii) distilling or manufacturing or storing or transporting or importing or exporting or selling or distributing any liquor, or intoxicating or dangerous drugs, or other intoxicants or narcotics or cultivating any plant, in contravention of any of the provisions of the U. P. Excise Act, 1910 or the Narcotic Drugs and Psychotropic Substances Act, 1985 or any other law for the time being in force, or*
> *(iii) occupying or taking possession of immovable property otherwise than in accordance with law, or setting-up false claims, for title or possession of immoveable property whether in himself or any other person, or*
> *(iv) preventing or attempting to prevent any public servant or any witness from discharging his lawful duties, or*
> *(v) offences punishable under the Suppression of Immoral Traffic in Women and Girls Act, 1956, or*

(vi) *offences punishable under section 3 of the Public Gambling Act, 1867, or*

(vii) *preventing any person from offering bids in auction lawfully conducted, or tender, lawfully invited, by or on behalf of any Government department, local body or public or private undertaking, for any lease or rights or supply of goods or work to be done, or*

(viii) *preventing or disturbing the smooth running by any person of his lawful business, profession, trade or employment or any other lawful activity connected therewith, or*

(ix) *offences punishable under section 171-E of the Indian Penal Code, or in preventing or obstructing any public election being lawfully held, by physically preventing the voter from exercising his electoral rights, or*

(x) *inciting others to resort to violence to disturb communal harmony, or*

(xi) *creating panic, alarm or terror in public, or*

(xii) *terrorising or assaulting employees or owners or occupiers of public or private undertaking or factories and causing mischief in respect of their properties, or*

(xiii) *inducing or attempting to induce any person to go to foreign countries on false representation that any employment, trade or profession shall be provided to him in such foreign country, or*

(xiv) *kidnapping or abducting any person with intent to extort ransom, or*

(xv) *diverting or otherwise preventing any aircraft or public transport vehicle from following its scheduled course ;*

(xvi) *offences punishable under the Regulation of Money Lending Act, 1976 ;*

(xvii) *illegally transporting and/or smuggling of cattle and indulging in acts in contravention of the provisions in the Prevention of Cow Slaughter Act, 1955 and the Prevention of Cruelty to Animals Act, 1960 ;*

(xviii) human trafficking for purposes of commercial exploitation, bonded labour, child labour, sexual exploitation, organ removing and trafficking, beggary and the like activities;

(xix) offences punishable under the Unlawful Activities (Prevention) Act, 1966;

(xx) printing, transporting and circulating of fake Indian currency notes;

(xxi) involving in production, sale and distribution of spurious drugs;

(xxii) involving in manufacture, sale and transportation of arms and ammunition in contravention of sections 5, 7 and 12 of the Arms Act, 1959;

(xxiii) felling or killing for economic gains, smuggling of products in contravention of the Indian Forest Act, 1927 and the Wildlife Protection Act, 1972;

(xxiv) offences punishable under the Entertainment and Betting Tax Act, 1979;

(xxv) indulging in crimes that impact security of State, public order and even tempo of life.

(c) "gangster" means a member or leader or organizer of a gang and includes any person who abets or assists in the activities of a gang enumerated in clause (b), whether before or after the commission of such activities or harbors any person who has indulged in such activities;

xxx xxx xxx."

19. Section 3 refers to penalty which is also extracted hereinbelow: -

"3. (1) A gangster shall be punished with imprisonment of either description for a term which shall not be less than two years and which may extend to ten years and also with fine which shall not be less than five thousand rupees : Provided that a gangster who commits an offence against the person of a public servant or the person of a member of the family of a public servant shall be punished with imprisonment of either description for a

term which shall not be less than three years and also with fine which shall not be less than five thousand rupees.
(2) Whoever being a public servant renders any illegal help or support in any manner to a gangster, whether before or after the commission of any offence by the gangster (whether by himself or through others) or abstains from taking lawful measures or intentionally avoids to carry out the directions of any court or of his superior officers, in this respect, shall be punished with imprisonment of either description for a term which may extend to ten years but shall not be less than three years and also with fine."

20. Section 4 speaks of the special rules of evidence by which additional aspects, regarding prior specified criminal antecedents, could be reckoned by the Special Court constituted to try the cases under the Act, notwithstanding the provisions of the CrPC and the Indian Evidence Act, 1872. Section 5 enables constitution of Special Courts and appointment of a Presiding Judge in consultation with the Chief Justice of the High Court. Section 6 empowers the Special Courts to sit at any place other than the ordinary place of sitting, even on a certification made by the Public Prosecutor, but after hearing the accused. Section 7 dealing with the jurisdiction of the Special Courts, is a *non obstante* clause restricting trial of '*every offence punishable under any provision of this Act or any rule made thereunder*' to be exclusively tried by the Special Court.

21. We specifically emphasize and extract the above words from the provision under Section 7, since '*any offence punishable under this Act'* has also been referred to in Sections 8, 10, 11, 12 and 13 of the Act. Section 8 empowers the Special Courts to try any other offence with which the accused, under any other law is charged, to be tried along with the offence punishable under the U.P. Act. Section 9 confers power on the Government to appoint Public Prosecutors; Additional PP or Special PP too, and prescribes the eligibility to be so appointed. Section 10 permits cognizance to be taken by a Special Court, of any offence triable by it, without a committal proceeding, even on a complaint of facts received by it or a police report, and enables a summary trial in cases where the punishment does not exceed three years imprisonment or with fine or both. It also bestows the Special Courts with the powers; of a Sessions Court; to convert a summary trial to a regular one and tender a pardon in accordance with the CrPC. Section 11 is with respect to in-camera proceedings and keeping secret the identity of the witnesses, which we will deal with a bit later. As of now, we highlight the employment of the words: *'an offence under this Act'*

only to emphasize that there is no action or omission penalized as an offence under the subject Act.

22. The other provisions except Section 19 and Section 23 are not relevant for our purposes. Section 19 also is a non obstante clause deeming every offence punishable under the Act or the Rules made thereunder to be a cognizable offence within the meaning of Section 2(c) of the CrPC and enhancing the period for default bail as provided under the CrPC. Sub-section (4) also stipulates that no person arraigned under the Act shall be released on bail or on bond, unless the Public Prosecutor is given opportunity to oppose and on such opposition, the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such an offence and is not likely to commit any offence while on bail. Section 23 enables the State Government to frame rules to carry out the purposes of this Act which provides that any contravention of any provisions of the Rules shall also be made punishable with imprisonment for a term of 6 months with or without fine.

23. Purportedly, in exercise of Section 23, the Rules of 2021 have been brought out wherein the condition of criminal liability with respect to gangs have been fixed under Rule 3. Rule 3

speaks of the offences mentioned under clauses (i) to (xxv) of Section 2(b) of the Act to be punishable under the Act, only if they disturb public order or causes violence or threat or display of violence, intimidation, coercion or otherwise, either singly or collectively, for the purpose of obtaining any unfair advantage; the advantage being worldly, economic, material, pecuniary or otherwise. The term 'worldly' being defined under the Rules as audacious acts which are illegal and aimed at seeking temporal gratification. Rule 4 speaks of a person being liable even if he is not at the scene of the incident or directly participating in the incident, if the offence is committed together with his passive involvement.

24. Chapter 3 prescribes the procedure for preparing the gang chart which has to be done at the grass root level by the In-charge of a Police Station/Station House Officer/Inspector, forwarded with the recommendation of the Additional Superintendent of Police (ASP), but approved only after due decision is taken in the joint meeting of the Commissioner of Police/District Magistrate/Senior Superintendent of Police/ Superintendent of Police. While preparing the gang chart, it is provided by Rule 6 that the specific provision, the violation of

which is alleged under sub-section (b) of Section 2 of the Act has to be mentioned. The other provisions in Chapter 2 provides for, restriction in; including the charges mentioned in an earlier gang chart (R.7), stating unconfirmed or false information (R.8) and requires support by records of; additional aspects as coming out from Section 4 of the Act (R.9) & also of base cases (R.10), the present status of the witnesses and the accused (R.11) and so on and so forth. A procedure is clearly prescribed as to how the gang chart is to be forwarded under Rule 16.

25. Chapter IV deals with the sanction of investigation and prosecution. Rule 22 provides that a single prosecution in certain class of cases, which are enumerated thereunder; all under the Penal Code, out of the sub-clauses mentioned under the various clauses of Section 2(b), if committed as a single offence, on which investigation is pending, to reckon that for inclusion in the Gang Chart, the it ought to be approved by the Investigating Officer (I.O) of that single crime too. The provision seems to indicate that even if there is pending only one crime, which is also in the stage of investigation then the rigor of the Act can be applied to the accused, if the I.O in that case approves the Gang Chart.

26. We cannot but observe that the U.P. Act and the U.P. Rules proceed on the basis that an offence is specifically provided for in the Act; which is absent, as we noticed. But for the definition clause, defining 'gang' and 'gangster', there is no offence insofar as the membership in the gang or acting in cohort with a gang, either singly or together.

27. In ***Ashok Kumar Dixit v. State of U.P. and Another***[3]***,*** a Full Bench of the Allahabad High Court upheld the Act and negatived the arguments addressed on many facets. The arguments raised against the U.P. Act were: - (i) no offence having been created, (ii) an attempt to punish the mere status of a person, (iii) legislative competence, (iv) in-camera trial impinging upon the right to an open trial, (v) the identity of the witnesses being kept secret, (vi) a speedy trial compromising the reasonable opportunity to defend, (vii) the extended term for default bail having an impact on the pre-trial liberty of an individual and (viii) the sustainability of the enactment on the definition of public order and the established tenets of criminal jurisprudence.

[3] AIR 1987 All 235

28. With regard to sub-section (2) of Section 11, enabling the Court, on the application of a witness or by the Public Prosecutor, to keep the identity and address of the witness secret, the learned Judges found it unnecessary to pronounce on its constitutionality. The categorical stand taken by the learned Senior Counsel and the learned Chief Counsel appearing on behalf of the State that indeed the accused would be provided with the identity of the witness was recorded, holding that thus the accused would not be deprived of the very right to defend themselves. Insofar as Section 19(2), extending the period of default bail under the CrPC, the challenge was that it has the effect of keeping, the one accused under the Act, in jail without bail and without closing the investigation, resulting in a situation akin to preventive detention, without the safeguards available thereunder. The challenge was brushed aside, on the premise that the impugned Act was designed to deal with a class of crime entirely distinct from the ordinary offences, that too against persons involved being such, as against whom, it will be difficult to collect evidence. This reasoning, we have to immediately observe gives short shrift to the fundamental principle of criminal jurisprudence that there shall be no conviction without

evidence; enabling anyone to be punished with a period of imprisonment. The larger period of remand in that circumstances cannot be held to be *ultra vires* was the finding; difficult to subscribe to. On the other aspects, the Act was upheld.

29. We reiterate that we are not dealing with a challenge on the constitutionality of the enactment, hence we would not examine the U.P. Act in that perspective but however on the facts coming out from the two cases before us, we have to look at two issues. The foremost being, the total absence of creation of a crime, which is mandatory in a penal statute; going by the Latin principle '*nulla poena sine lege',* which means *'no punishment without law'* or *'without an offence in law'*, which is reflected in the definition of 'offence' as coming out in the General Clauses Act, '*any act or omission made punishable by any law for the time being in force'.* Equally important is the question as to the punishment being imposed on a status determined of a person that too on the *ipse dixit* of the administrative officers and police personnel by preparation of a Gang Chart under the Rules, not specifically provided under the statute.

30. The Allahabad High Court dealt with this ground raised of a person being punished on the mere status, without there being any *actus reus.* In fact, the Full Bench dwelt upon the definition of the term 'crime' with reference to the formal definition coined by Professor Glanville Williams (1955) 8 Current Legal Problems, 107, to hold that *"the greatest fools can ask questions that the wisest of men cannot answer" (sic)*. We cannot but observe, with respect, that there is always a tendency among the wisest of men to label a question; to which they find no answer or a difficult or unpalatable one, as foolish and the one who raised it, a fool. We hence, endeavoured to find an answer to the two questions we have posed above, by posing it to the learned Counsel appearing for the State. We did so, at the risk of being called foolhardy and our only solace is that the very same questions were raised before the Full Bench of the Allahabad High Court, at that juncture, but by wise men, eminent lawyers of considerable repute. The learned Counsel appearing for the State neither could give an answer at the time of arguments nor attempted to do so in the written submissions placed before us.

31. Insofar as the principle of *nulla poena sine lege* which finds reflection in the definition of 'offence' in the General Clauses Act,

the petitioners relied on Article 20 which was declared; to have taken within its broad import, prohibition of convictions and sentence under *ex post fact* laws, in ***Rao Shiv Bahadur Singh and Another v. State of Vindhya Pradesh***[4]***.*** This argument too was brushed aside on the premise that Section 2 of the Act of 1986 encompasses only those social activities enumerated in Section 2 (b) (i) to (xv) [as it then existed which now stands as (i) to (xxv)] and no one can be punished in respect of any anti-social activities indulged in, prior to the U.P. Act of 1986. On the issue raised of *actus reus,* holding that *actus reus* and *mens rea* were analytical tools, placing reliance on a quote; a question was posed: '*Can it be useful to exclude the conduct from the definition of the basic concepts of crime*'. The answer provided, to negative the challenge on these counts, was the avowed object of the Act; the need to check anti-social activities and cope with the menace of gangsters, to which end the U.P. Act was enacted. The said thread of justification running through the entire decision, we confess, but with profound respect to the learned Judges, we are unable to subscribe to.

[4] (1953) 2 SCC 111

32. The Full Bench of the Allahabad High Court took note of the pernicious consequences that arises from the Act, but, however, sought to sustain it drawing a distinction between habitual criminals of desperate character and habitual criminals not of a desperate character; collection of evidence against the later of whom would be difficult. It was noticed that the provisions of the Act could be used as a weapon to wreak vengeance or harass or intimidate innocent citizens or to settle scores on political or other fronts. However, this observation only resulted in a caution to the prosecution that they should always bear in mind that they are obliged to bring home the guilt of the accused. It was also held that the provision for appeal, ensuring judicial review of an action proceeded with in sheer bad faith out of malice and by reason of political vendetta, would suffice. The contention that a mere status was punished was brushed aside on the finding that it was not the status but the act which is made punishable. It was also justified on the ground that activities of gangsters are offences under the Act since they pose grave threat to the even tempo of society and therefore, call for sterner and more deterrent punishment and speedier trial and early booking.

33. ***S.A. Venkataraman v. Union of India and Anr.***[5] though, not in an identical context could be relied on to understand what an 'offence' means in criminal jurisprudence. Therein a Constitution Bench was considering a petition under Article 32 of the Constitution, praying for a certiorari of the criminal proceedings initiated against the petitioner by the Special Judge, Sessions Court, Delhi for offences under the Indian Penal Code and the Prevention of Corruption Act. The petitioner was a Member of the Civil Services, employed as a Secretary to the Government of India, when imputation of misbehaviour was raised against him. In the public inquiry carried out under the Public Servants (Inquiries) Act, 1850, a Former Chief Justice of the Calcutta High Court was appointed as Commissioner under that Act to conduct an inquiry and report to the Government his opinion on the articles of charges formulated against the petitioner.

34. The Commissioner after carrying out a full-fledged inquiry against the charges drawn up under six heads with various sub-heads, found four under the various sub-heads to be proved, which opinion was accepted by the President and a show cause

[5] (1954) 1 SCC 586

notice was issued. Considering the representation filed, the President after consultation with the Union Public Service Commission imposed the penalty of dismissal on 17.09.1953. On 23.02.1954, a chargesheet was submitted before the Special Judge under the IPC & the PC Act, the legality of which was challenged on the ground that it infringes upon the rights of the petitioner under Article 20(2) of the Constitution. Dilating upon the principle enshrined in Article 20(2) reliance was placed on the decision in ***Maqbool Hussain v. State of Bombay***[6] which held that for application of Article 20, the prosecution and the punishment of a person must be, in the nature of criminal proceeding, before a Court of law or Judicial Tribunal and not before a Tribunal which entertains a departmental or administrative inquiry.

35. This Court found that the charges levelled though identical, to that under the Public Servants Act, despite the Commissioner appointed being a Judicial Tribunal, who adjudicated on the charges judicially, upon evidence recorded under oath with the prosecution being conducted by a Prosecutor appointed, eventually the Commissioner did not have the power to impose

[6] (1953) 1 SCC 736

a punishment but could only record his finding and forward the report to the Government. The Government under Section 22 of the Act was entitled to pass orders within its authority and despite the Commissioner being invested with some of the powers of a Court, it cannot necessarily be concluded that the inquiry initiated and concluded amounts to prosecution and punishment for an offence as contemplated in Article 20(2) of the Constitution. The background of the provisions relating to inquiry into the conduct of the public servants were examined to hold that the inquiry conducted under the Public Servants Act was merely to help the Government to come to a definite conclusion as to the misbehaviour of the public servant and thus enable it to determine provisionally the punishment which should be imposed, prior to the reasonable opportunity under Article 311(2) of the Constitution.

36. It was held so in paragraph 17 as under: -

> ***17.*** *It may be pointed out that the words "prosecution" and "punishment" have no fixed connotation and they are susceptible of both a wider and a narrower meaning; but in Article 20(2) both these words have been used with reference to an "offence" and the word "offence" has to be taken in*

the sense in which it is used in the General Clauses Act as meaning "an act or omission made punishable by any law for the time being in force". It follows that the prosecution must be in reference to the law which creates the offence and the punishment must also be in accordance with what that law prescribes. The acts alleged to have been committed by the petitioner in the present case and on the basis of which the charges have been framed against him do come within the definition of "offences" described in Sections 161 and 165 of the Penal Code and Section 5(2) of the Prevention of Corruption Act. The Public Servants (Inquiries) Act does not itself create any offence nor does it provide any punishment for it. Rule 49 of the Civil Services Rules mentioned above merely speaks of imposing certain penalties upon public servants for good and sufficient reasons. The Rule does not mention any particular offence and obviously can create none...

[Underlining by us for emphasis]

37. What assumes relevance for our purpose in the instant cases is the definition of 'offence' as employed in the General Clauses Act which is "*an act or omission made punishable by any law for the time being in force*" (*sic).* Hence, the penal law under which the criminal proceeding is initiated should create an

offence and the punishment should also be in accordance with what that law prescribes. Looking at the enactment, which is up for scrutiny, we cannot find any offence having been created. The State seems to proceed on the premise that Section 2 (b) of the Act creates an offence, which is merely a definition clause. As we noticed, the definition refers to a group of persons acting either singly or collectively using violence, threat, display of violence, intimidation or coercion to disturb public order or gain undue temporal worldly, economic, material, pecuniary or other advantage by indulging in the anti-social activities which are referred to in clauses (i) to (xxv) of Section 2(b). We cannot but notice that the offences mentioned therein specifically refers to provisions under penal laws either enacted by the Legislature of the State or the Union Parliament, some of which are; the Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, Suppression of Immoral Traffic in Women and Girls Act, the Public Gambling Act and so on, specifically mentioned in the various sub-clauses. Insofar as sub-clauses (iii), (iv), (vii), (viii), (x) to (xv), (xx), (xxi) and (xxv) those are acts which could be prosecuted under the provisions of the IPC.

38. The indulgence in any of the activities under clauses (i) to (xxv) would hence lead to initiation of a criminal prosecution under that penal law which makes that act or omission, an offence, which is independent of the U.P. Act. The U.P. Act merely provides for a punishment insofar as involvement in any of the activities specified under sub-clause (i) to (xxv) which is already penalised under a different penal law; without creating a distinct offence under the subject Act. The U.P. Act is said to have been enacted as an alternative to a measure of preventive detention, but with a mere semblance of a trial before the Special Court which cannot at all go beyond the Gang Chart as prescribed under the Rules, the preparation of which and the inclusion of such members of a gang, indirectly having been made an offence in the Rules and not under the Act.

39. The preparation of a Gang Chart for the purpose of punishing a person for involvement in any of the activities specified in the sub-clauses under Section 2 (b), *dehors* the prosecution and punishment as contemplated under the respective penal laws, would be beyond the power conferred under Section 23 of the U.P. Act. It would result in the same offence being punished under the two laws, one enactment

merely presuming the status of the accused; indulging in a criminal act punishable under the other law, to punish again for the very same act. Pertinently, this also enables the investigating agency to delay investigation and filing of charge sheet, extending the pre-trial incarceration to an year. There being no offence created under the U.P. Act, there is no question of a prescription under the U.P. Rules laying down a procedure by which an offence is created, and punishment is guaranteed in accordance with Section 3 of the Act.

40. As we observed, at the time of arguments we queried on this specific aspect of absence of an offence, to which the response was to the clauses defining 'gang' and 'gangster'. We were also informed that this Court has considered the validity of the enactment multiple times. After going through the decisions, we are of the opinion that the constitutional validity of the enactment is still at large, as has been noticed in ***Dharmendra Kirthal v. State of Uttar Pradesh and Anr.***[7]. The learned Judges observed at the outset itself, twice the constitutionality of the U.P. Gangsters Act was referred to a Constitution Bench. The referred matter was posted along with the cases pending

[7] (2013) 8 SCC 368

consideration of the *vires* of the Terrorists Affected Areas (Special Courts) Act, 1984. When that matter was listed before the Bench in ***Kartar Singh v. State of Punjab***[8], the Constitution Bench eventually forbore from considering the constitutional validity of the Gangsters Act, since the hearing was concluded only in the matters pertaining to certain other Acts. Again, in ***Subhash Yadav v. State of U.P. and Anr.***[9], this Court noticed that the petitioner therein had been discharged and one another accused acquitted, which made the determination of the constitutional validity of the Gangsters Act merely of academic interest.

41. Even in ***Dharmendra Kirthal***[7], the only issue considered was the constitutional validity of Section 12 of the Act, which provided for the trial under the Act to have precedence over the trial of any other case against the accused in any other court till conclusion of which the other case should be kept in abeyance. Yet again, the Act was considered in ***Shraddha Gupta v. State of Uttar Pradesh and Others***[10] only insofar as a single crime being sufficient to invoke the Act. Therein the commission of a single

[8] (1994) 3 SCC 569
[9] (2000) 10 SCC 145
[10] (2022) 19 SCC 57

crime led to the appellant being proceeded with under the Act, particularly Sections 2(b) and 2(c) read with Section 3. It was held that even a single crime committed by a gang or gangster is sufficient to bring in the provisions of the Act and the definition clause does not engulf plurality of offences, to enable invocation of the provisions of the Act. This Court specifically referred to the Maharashtra Control of Organised Crime Act, 1999 and Gujarat Control of Terrorism and Organised Crime Act, 2015 and found the U.P. Act to have no provision in it, as available under the Maharashtra Act and Gujarat Act to enable invocation only on more than one offence, on which FIR has been registered or charge-sheet is filed. This particular question with respect to requirement of an offence, did not come up for consideration and it remains *res integra* insofar as this Court is concerned, though negatived by a Full Bench of the High Court.

42. The Maharashtra Act & the Gujarat Act defines continuing unlawful activities (practice), economic offences and organized crime. Those enactments also provide, under Section 3, that whoever commits a terrorist act or organised crime, (sub-section 1), conspires or attempts to commit or advocates, abets or knowingly facilitates such commission (sub-section 2) or

intentionally harbours or conceal or attempts to harbour or conceal any person who has committed such act, commits an offence under the respective enactments, which also separately provides the punishment for such commission of offence. The said enactments also provide for speedy trial and the trial of any other offence connected with the offence under the Act as is provided in the U.P. Act.

43. ***Mahipal Singh v. Central Bureau of Investigation and Anr.***[11]*,* considering the definitions of *'continuing unlawful activity'* and *'organised crime'* under the Maharashtra Act held that, to impose punishment for the offence of organised crime under Section 3 of that Act, the accused is required to be involved in continuing unlawful activity which inter alia provides that more than one charge-sheets are to be filed before a competent court within the preceding period of ten years, and the court had taken cognizance of such offence. However, what is obviously absent in the U.P. Act is a provision determining the offence as one created under the Act. After defining gang, which includes commission of the offences listed under sub-clauses (i) to (xxv) and defining gangster as a member or leader or organiser of a

[11] (2014) 11 SCC 282

gang, the punishment is prescribed for a gangster without an offence being created by statute; which makes the penal act, stillborn.

44. Article 20 is ingrained in judicial minds but none trained in law has enough of its resonance of double jeopardy, hence we extract the same; though not in direct application but still has a bearing considering the point arising of an offence not in existence being tried to award punishment provided in a penal law :

> ***20. Protection in respect of conviction for offences.*** *- (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.*
>
> *(2) No person shall be prosecuted and punished for the same offence more than once.*
>
> *(3) No person accused of any offence shall be compelled to be a witness against him*self.

45. ***Keshavan Madhava Menon v. State of Bombay***[12], held that every statute is *prima facie* prospective unless it is expressly or by necessary implication made to have retrospective operation. Applying this rule of interpretation, the language in Article 13(1)

[12] 1951 SCC Online SC 3

of the Constitution was read as indicating no intention to give it retrospective operation. Therefore, the voidness of the existing law was limited to the future exercise of the fundamental rights and it does not obliterate the entire operation of the inconsistent laws, or wipe them out altogether from the statute book, for to do so will be to give them retrospective effect, was the finding (Paras 13 & 14). The prosecutions initiated before the fundamental rights came into operation were permitted to be continued, despite a prosecution against a like action, after the Constitution came into force could be resisted as due exercise of fundamental rights.

46. In ***Rao Shiv Bahadur Singh and Anr.***[4], the offences alleged were under an Ordinance, enacted long after the commission, but given retrospective effect from a prior date. In consideration was, the proper construction of Article 20, and whether, the offences for which the appellants were convicted were already constituted as an offence in the State of Vindhya Pradesh. The phrase "law in force" used in Article 20 was held to relate not to a law "deemed" to be in force, but the law factually in operation at the time or what may be called, the then existing law. Otherwise the whole purpose of Article 20 would be defeated in

its application even to ex-post facto laws passed after the Constitution. Finding that the acts alleged were offences under a criminal law in existence at the time of commission; and that it was within the legislative competence, though charged under the Ordinance, the objection raised under Article 20, to the convictions and sentences were held unsustainable.

47. ***Soni Devrajbhai Babubhai v. State of Gujarat and Ors.***[13] affirmed the view of the High Court that the respondents cannot be tried and punished for the offence provided in Section 304-B of the Penal Code, 1860 which was a new offence created, subsequent to the commission of the offence. The argument that Section 304-B does not create a new offence, but is a mere rule of evidence was held untenable, since the rule of evidence to prove dowry death was incorporated, simultaneously as Section 113-B in the Indian Evidence Act.

48. ***Mahipal Singh***[11] held that the ingredients of the criminal offence must exist on the date of the Act and later events cannot supplant the earlier Act with criminality. *'It is trite that to bring an accused within the mischief of the penal provision, ingredients of the offence have to be satisfied on the date the offence was*

[13] (1991) 4 SCC 298

committed. Article 20(1) of the Constitution of India permits conviction of a person for an offence for violation of law in force at the time of commission of the act charged as an offence' (sic) (para-14).

49. ***Union of India and Anr. v. Ganpati Dealcom Private Limited***[14] reiterated that retroactive criminal liability is impermissible. A punitive confiscation cannot be given retrospective effect by labelling it, civil or procedure.

50. Another Constitution Bench in ***Central Bureau of Investigation v. R.R. Kishore***[15] reiterated that the first limb of Article 20(1) prohibits conviction of any offence, only if there is violation of a law in force at the time of commission of the alleged act and the second limb prohibits infliction of a greater penalty than that which exists under the law in force. It was held so:

> ***38.*** *… The Constitution Bench of this Court in Rao Shiv Bahadur Singh v. State of Vindhya Pradesh [Rao Shiv Bahadur Singh v. State of Vindhya Pradesh, (1953) 2 SCC 111 : 1953 SCR 1188] , highlighted the principle underlying the prohibition by relying upon judgment of Willes, J. in Phillips v. Eyre [Phillips v. Eyre, (1870) LR 6 QB 1 at pp. 23 and 25] and of the United States Supreme Court in Calder v. Bull [Calder v. Bull, 1 L Ed 648 at*

[14] (2023) 3 SCC 315
[15] (2023) 15 SCC 339

p. 649 : 3 Dall 386 : 3 US 386 (1798)] , to hold that it would be highly unjust, unfair and in violation of human rights to punish a person under the ex post facto law for acts or omissions that were not an offence when committed.

40. *The aforesaid rationale and principles of interpretation equally apply to the second part of clause (1) of Article 20, which states that a person can only be subjected to penalties prescribed under the law at the time when the offence for which he is charged was committed. Any additional or higher penalty prescribed by any law after the offence was committed cannot be imposed or inflicted on him. The clause does not prohibit substitution of the penalty or sentence which is not higher or greater than the previous one or modification of rigours of criminal law. [See T. Barai v. Henry Ah Hoe, (1983) 1 SCC 177 : 1983 SCC (Cri) 143 and Pratap Singh v. State of Jharkhand, (2005) 3 SCC 551 : 2005 SCC (Cri) 742. The latter judgment refers to several judgments.]*

51. The principles that can be culled out from the above decisions are as follows:

i) A later statute cannot make a previously innocent act criminal
ii) A later statute cannot increase the punishment for an already committed offence.
iii) A later procedural change may apply to pending matters if it does not create a new offence or a new punitive exposure.

iv) If the legislature clearly indicates prospectivity, courts give effect to that, but if it seeks retrospectivity in criminal matters, Article 20(1) blocks it.

52. Article 20(1) encapsulates the principle of "*nullum crimen nulla poena sine lege*", (No crime or punishment can exist without a penal law); there can be no punishment without an offence in law. As we found, the Act of 1986 does not create a crime/offence and it merely defines the status of a person indulging in a crime, specified in the definition clause, as a '*gangster*' going by the definition of *'gang'* and *'gangster'* provided respectively under sub-sections (b) and (c) of Section 2. The status is also determined not by a procedure in the enactment but a prescription made in the Rules. The power to frame Rules is found from the Act, in Section 23, which enables the State Government to make rules for carrying out the purposes of this Act and to provide any contravention of the Rules to be punishable with a term of imprisonment not exceeding 6 months, with or without fine, not exceeding Rs.1,000/-. The Rules provided for a Gang Chart to be prepared by the police, recommended through its hierarchy and approved in a joint meeting of the higher authorities of the Police

and the head of the District Administration. The preparation of the Gang Chart and the involvement in a crime, as specified under the clauses of Section 2(b) determines the status of a person, as a gangster, for which punishment is prescribed, as we time and again observed in this very same judgment; without an offence being created.

53. The Rules thus go beyond the powers conferred under the Statute and the determination of the status as found from the definition clause of the Statute, without any guidelines in the Statute itself. The determination of a status as coming out from the Statute will have to be from the provisions of the Statute itself and otherwise it would be unbridled and unfettered power conferred on the executive government. The menace of criminal gangs is to be curbed, but the end does not justify the means especially in enacting a penal law, interfering with the liberty of citizens. ***Ganpati Dealcom Private Limited***[14] held, the mere fact that the object of the statute is to promote welfare activities or to eradicate a grave social evil, by itself is not decisive of the question as to whether the element of a guilty mind is excluded from the ingredients of an offence.

54. A *'gangster'* is defined under the Act and the determination of who a gangster is, for the purpose of punishment, is as prescribed in the Rules, left to the *ipsi dixit* of the Executive. The creation of crime, or to make an act or omission subject to penal consequences as an offence, is essentially a legislative function and it cannot be thrown away and left to sprout in the thickets of subordinate legislation. As we noticed, the provisions of the Act could lead to a detention of the accused without trial for long, which is akin to a statute enjoining preventive detention. Though preventive detention has been held to be permissible even in the teeth of Article 21, the same is hedged with safeguards, which are held to be sacrosanct and even a minor procedural violation would entail release of the detenu. The safeguards in preventive detention are numerous, since it is the subjective satisfaction of the Administration and the Police that leads to a detention, the period in which such detention continues being the exclusive premise of the State Government, who also has the authority to release the detenu at any point of time. The period provided in which such detention order has to be forwarded to the State Government; the materials to be supplied to the detenu; the right of representation to the

various authorities, at every stage, as granted to the detenu; the reference to an Advisory Board constituted by statute and the decision to be arrived there at within a time frame, mitigates and erases to an extent the rigour & malice of subjectivity, which subjectivity pervades a preventive detention order. The subject enactment, the U.P. Act not only permits detention for a period without anything more than the inclusion in a Gang Chart but also enables a trial and punishment on the basis of the very same Gang Chart, in addition to the pre-trial incarceration, but without an offence being created by the Act itself. It is akin to the English proverb: '*Give a dog a bad name and hang him'.*

55. The consideration of continuation of preventive detention, abound in technicalities and scrupulous compliance of procedures, within the time frames statutorily stipulated with strict compliance of the safeguards, especially since the detention is on a subjective satisfaction made by the administrative authorities, though approved by an Advisory Board which cannot supplant the subjective opinion of the detaining authority. Though, a subjective opinion is arrived at in ordering a preventive detention it should be supported with substantive material which should also be provided to the

detenu within the time provided in the statute. In preventive detention, the procedure sheds the cloak of a handmaiden and assumes the form of a thumb rule.

56. Here, we have to observe again, with reference to preventive detention statutes, that the safeguards available therein are not made applicable in the present case. The justification seems to be that there is a proper trial conducted before the Special Court constituted, which is presided over by a Judicial Officer. However, in the context of the mere status being punished, which is determined by the administrative and police authorities by the preparation of a gang chart, nothing remains to be considered by the Judicial Officer but to punish him, even if he is acquitted of the predicate offence for reason of the status determination of a gangster, on the ground only of being accused of an offence as coming out from Clauses (i) to (xxv) of Section 2(b). The end result of a trial under the U.P. Act is a foregone conclusion, a statutory imprimatur to punish.

57. Placed in juxtaposition with a preventive detention statute, the U.P. Act fails to satisfy the judicial conscience. The trial being constituted before a Judicial Officer, wherein the predicate offence is also tried along with the status of the accused; i.e.: of a

gangster, is grossly inadequate, since on determination of status, mandatory imposition of punishment follows. However compelling and threatening the social menace, any penal enactment to curb that, it cannot lead to arbitrary and capricious actions against the one, alleged with the commission of an offence. The mere allegation of an offence under Clauses (i) to (xxv) of Section 2(b) can motivate the preparation of a gang chart which can lead to the arrest of a citizen and his remand which could be continued for one year without closing the investigation. If there are more than one offence; separate incidents, then definitely they will have to be tried separately and acquittal in one or both, will not absolve the punishment as coming out from the U.P. Act. There is no safeguard against vindictive and malicious action being taken against; 'the innocent, the righteous, the virtuous, a whistleblower or plainly put, a thorn in the flesh' (quoted from ***Thankam v. State of Kerala and Ors.***[16] *in the context of preventive detention*).

58. As we noticed the U.P. Act is stillborn and the proceedings initiated under it cannot survive. Both the appeals hereinabove are allowed and the proceedings impugned in the respective

[16] 2018 SCC OnLine Ker: 4927

appeals, being Charge Sheet No. 1 of 2025 (Annexure P-14 in Crl. A. @ SLP (Crl) No.16398 of 2025) arising from FIR No. 41 of 2024 registered at Fategarh Kotwali and Sessions Case No.73 of 2024 arising out of 'Charge Sheet-Case Crime No.01 of 2023 and FIR No.740 of 2022' (respectively Annexures P8 & P3 in Crl. A. @ SLP No. 1997 of 2026 registered at Police Station Loni Border, District Ghaziabad Rural, both under Section 2/3 of the U.P. Act of 1986 shall stand quashed and set aside. The appellants, if in custody, shall be released forthwith, if not required in any other case. If already on bail, bail bonds executed shall remain cancelled.

59. Before we leave the matter, we take a cue from the quote of George Orwell, we extracted at the outset, to find that the enactment under scrutiny on the pretext of adjuring violence, is in fact perpetuating it on un-suspecting citizens. We make it clear that we have not gone into the aspect of constitutionality as argued before the Full Bench of the Allahabad High Court, which were negated by that Court. We have found the Act to be stillborn, since there is no crime created under the Act and this would not in any manner affect the charges levelled under the other penal laws, which has to proceed on the lines demarcated

in the CrPC and the respective penal statute, which makes the objectionable act, an offence under law. We also make it clear that we have not upheld the Gujarat Act or the Maharashtra Act referred to by us and the attempt was only to draw a distinction from these; of the creation of an offence under those Acts being totally absent in the U.P. Act. We may also not be mistaken as having approved the Full Bench of the Allahabad High Court and or upheld the negation of all the contentions raised against the Act, which would be left open for consideration, especially since we have only held the Act to be stillborn on the provisions as existing now.

60. The appeals are allowed.

61. Pending application(s), if any, shall also stand disposed of.

..... J.
(J. B. PARDIWALA)

..... J.
(K. VINOD CHANDRAN)

NEW DELHI;
AUGUST 20, 2026.