



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Writ Petition No. 1070/2024

Suleman S/o Shri Mohammed Umar, Aged About 25 Years, B/c
Musalman, R/o Behind Darpan Cinema, Lane Near Haj House
Kachha Jhopra, P.s. Udaimandir, Jodhpur

-----Petitioner

Versus

1. State Of Rajasthan, Through Secretary, Department Of
Home, Govt. Of Rajasthan, Secretariat, Jaipur
2. The Divisional Commissioner, Jodhpur
3. Dy. Commissioner Of Police, Jodhpur West

-----Respondents

For Petitioner(s) : Mr. Rajesh Vyas
For Respondent(s) : Mr. Sri Ram Choudhary, AGA

HON'BLE MR. JUSTICE FARJAND ALI

Order

Reportable

06/03/2025

1. By way of filing the instant Writ Petition, a challenge is made to the order dated 31-03-2021 passed by the Court of Deputy Commissioner Of Police, Jodhpur West in Criminal Case No.37/2019, whereby the petitioner has been directed to extern from the area of Police Commissioner, Jodhpur and so also directed that for a period of one month he shall mark his weekly attendance in the office of Superintendent of Police, Barmer and that he won't enter in Police Commissionerate, Jodhpur without permission of the competent authority.



2. I have heard the counsel for the parties and gone through the order under assail dated 31-03-2021 and the other material annexed with the petition.

3. The sum and substance of the case is that a complaint came to be filed on behalf of the SHO, Police Station, Udaimandir, before the DCP Jodhpur on dated 05-11-2019 seeking initiation of proceeding against the petitioner under the provisions of Rajasthan Control of Goondas Act 1975 (herein after referred as 'Goondas Act'). The learned DCP made observance of a single fact that the petitioner was convicted on two occasions for committing offence under the penal provisions of Gambling Ordinance. As per the facts in the order under challenge, the petitioner was convicted on 31-01-2019 and sentenced with fine and at a subsequent occasion, he was sentenced to fine. Interestingly, no other conviction or list of pending cases is reported in the order under challenge.

4. After perusing the material available on record, it is necessary to first examine the provisions of the Goondas Act. It is important to understand who can be considered or called a 'Goonda' under the Act. For ready reference, the definition of 'Goonda' as provided under Section 2(b) of the Goondas Act is reproduced below:-

"(b) "Goonda" means a person who :-

(i) either by himself or as a member or leader of a gang, habitually commits, or attempts to commit, or abets the commission of, offences, punishable under Chapter XVI, Chapter XVII or Chapter XXII or the Indian Penal Code, 1860(Act XLV of 1860) or under Sections 290 to 294 of the Indian Penal Code, 1860; or



(ii) has been convicted under the Suppression of immoral Traffic in Women and Girls [Act, 1956] (Act No. 104 of 1956); or

(iii) has been convicted not less than twice under the Rajasthan Excise Act, 1950 (Rajasthan Act No. 11 of 1950); or

(iv) has been convicted not less than twice under the Opium Act, 1878 (Central Act No. 1 of 1878); or

(v) has been convicted not less than twice under Rajasthan Public Gambling Ordinance, 1949 (Rajasthan Ordinance No. 48 of 1949); or

(vi) has been found habitual passing indecent remarks to or teasing women or girls; or

(vii) has been found habitual in intimidation of law abiding people by acts of violence or by show of force; or

(viii) is habituated to commit affray or breach of peace, riot, or who is habituated to make forcible collection of subscription or threatening people for illegal pecuniary gain for himself or for others, or who is habituated to cause alarm danger, or harm to persons or property.

Explanation—The words 'habitual' or 'habituated' wherever used in relation to a person in this clause means a person, who during a period within six months immediately preceding the commencement of an action under Section 3, has been found on not less than three occasions to have committed the offences or acts, as the case may be, referred to in sub-clauses (i), (vi) or (viii)."

A bare perusal of the provision makes it evident that a person can be considered a "Goonda" if he/she fall under any of the sub-clauses mentioned above.

5. Now moving on to the externment of Goondas and how an order of externment can be passed as mentioned in the Goondas Act. For ease of reference, Section 3 of the Goondas Act is reproduced herein below:-

"3. Externment etc. of Goondas

(1) Where it appears to the District Magistrate:





- a) that any person is goonda; and
- (b) (i) that his movements or acts in the district or any part thereof are causing, or are calculated to cause alarm danger or harm to persons or property; or
- (ii) that there are reasonable grounds for believing that he is engaged or about to engage, in the district or any part thereof, in the commission or abetment of any offence or act specified in sub-clause (i) to (viii) of clause (b) of Section 2; and
- (c) that witness are not willing to come forward to give evidence against him by reason of apprehension on their part as regards the safety of their person or property; the District Magistrate shall be notice in writing inform him of the general nature of the material allegations against him in respect of above clause (a), (b) and (c) and give him a reasonable opportunity of tendering an explanation regarding them.

(2) The person against whom an order under this section is proposed to be made shall have a right to consult and be defended by a counsel of his choice and shall be given a reasonable opportunity of examining himself, if he so desires, and also of examining any other witnesses or to produce any relevant document that he may wish to produce in support of his explanation, unless for reasons to be recorded in writing, the District Magistrate is of opinion that the request is made for the purpose of vexation or delay.

(3) Thereupon the District Magistrate on being satisfied that the conditions specified in clause (a), (b) and (c) of sub-section (1) exist, may be order in writing

- (a) direct him to remove himself outside the district, or part, as the case may be, such route, if any, and within such time as may be specified in the order, and to desist from entering the district or the specified part thereof until the expiry of such period not exceeding six months as may be specified in the order.
- (b) (i) require such person to notify his movements, or to report himself, or to do both, in such manner, at such





time and to such authority or person as may be specified in the order,

(ii) prohibit or restrict possession or use by him of any such article as may be specified in the order;

(iii) direct him otherwise to conduct himself in such manner as may be specified in the order; until the expiration of such period, not exceeding six months as may be specified in the order.”

6. As per Section 3 of the Goondas Act, an order of externment etc. of a Goonda can be passed by a District Magistrate whereunder it is brought before him that all the three conditions as mentioned under the provision are fulfilled which are that a person is a “Goonda” as provided under Section 2(b) of the Goondas Act and that his movements or acts in the district or any part thereof are causing or are calculated to cause alarm, danger or harm to persons or property or that there are reasonable grounds for believing that he is engaged or about to engage, in the district or any part thereof in commission or abetment of any offence or act specified in sub-clauses (i) to (viii) of clause (b) of Section 2 of the Goondas Act and lastly, but most importantly, the District Magistrate is also required to be satisfied that the witnesses are not willing to come forward to give evidence against him perhaps due to apprehension of their safety or their property or due to fear of his infamy or involvement in nefarious activities.

7. A simple glimpse over the provision above makes it abundantly clear that in Clause (i) of Section 3 of the Goondas Act, incorporates three contingencies denoted as (a), (b) and (c). The first condition pertains to satisfaction that the person is a “Goonda”, and the use of word “and” is incorporated after this



clause indicates that not only clause (a) but also clause (b) and (c) are required to be satisfied before passing an order of externment, so, there is no need to further discuss the matter because here in this case there is no whisper about clause (b) and (c) of Section 3 (1) of the Goondas Act and the learned DCP has passed the order under challenge, simply based on one finding that the petitioner is a "Goonda".

8. A plain reading of Section 3 of the Goondas Act makes it abundantly clear that before passing an order of externment of goondas, it is imperative upon the District Magistrate to satisfy itself with regard to the facts mentioned in clause (b) and (c) also. Simply because a person is held as "Goonda", an order of ousting him from a particular area cannot be passed until the other conditions enumerated in Clause (b) & (c) of Section 3 (1) of the Goondas Act are satisfied. Since, there is no satisfaction with regard to Clause (b) & (c) of Section 3(1) of the Goondas Act, therefore, the order under challenge is bad in eyes of law, therefore, for this simple reason the same deserves to be quashed and set aside.

9. A perusal of the order under challenge revealing that the learned District Magistrate has passed an order under Section 3 of the Goondas Act simply on the ground of his conviction on two occasions under the Rajasthan Gambling Ordinance, however, he failed to notice the legal impediment that mere designation of a person is "Goonda" is not sufficient to pass an order of externment from the District or any part thereof. There must be certain conditions which are associated with the fact of his being a



Goonda and there should be a further satisfaction to this effect that the movement of the accused in the area causing alarm, danger or harm to any person and it requires a further satisfaction based on cogent material that there are reasonable grounds for believing his engagement in relation to commission of an offence under sub-clauses (i) to (viii) of clause (b) of section 2 of the Goondas Act. Immediately before passing an order of externment, the learned District Magistrate is required to further satisfy itself to the fact that the witnesses are not willing to come forward to give evidence against him because of his infamy or fear or threat. Thus, it is imperative upon the learned District Magistrate to take place on record some strong material just to satisfy the aspersion that witnesses are not coming forward against him because he is a dangerous person or giving evidence against him may led them in trouble. Dissatisfaction should not be based on bald or vague statement averred in the criminal complaint rather taking evidence in this regard is incumbent upon the learned District Magistrate before passing an order of externment.

10. In view of the above discussion, this Court deems it appropriate to allow this writ petition and is hereby allowed. The order dated 31.03.2021 passed by the respondent No.3 Dy. Commissioner of Police, Jodhpur West in Criminal Case No.37/2019 is hereby quashed and set aside.

(FARJAND ALI),J

70-Mamta/-