



Exercise of Powers under Section 20(5) of Code of Criminal Procedure vis-à-vis the Power of Attachment of Property under Section 14 of Gangsters Act: An Appraisal

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INTRODUCTION

Off-late in Uttar Pradesh, there had been stringent actions taken by the State Government against the criminals which is a welcome step as it acts as a deterrent measure to the hardcore criminals involved in heinous crimes.

In series of such actions, provisions of Gangsters Act¹ is also often invoked. More particularly, action of attachment of properties as provided in Section 14 of Gangsters Act is being resorted to quite often. Nevertheless, while taking such actions certain anomalies at the level of functionaries have cropped up on account of recent introduction of Police Commissionerate system in certain towns of Uttar Pradesh.

After introduction of Police Commissionerate system in Uttar Pradesh the Magisterial powers which were exercised by Executive Magistrates have been conferred upon the Police Commissioner and its subordinate officials like Joint Commissioner of Police, Deputy Commissioner of Police, Assistant Commissioner of Police etc.

As a matter of fact, after implementation of Police Commissionerate System in certain towns of Uttar Pradesh, certain Government Order/Executive Notification² have been issued from time to time conferring Magisterial powers of Code of Criminal Procedure, 1973 and other enactments on the Police Commissioner and its subordinates.

However, there are certain areas where there appears to be some conflict between the notifications issued under Cr.P.C. vis-à-vis provisions of Gangster Act, which is being highlighted in succeeding paragraphs.

¹ Uttar Pradesh Gangsters and Anti-social Activities (Prevention) Act, 1986

² In purported exercise of powers under Section 20(5) of the Code of Criminal Procedure

CONFLICTING STATUTORY PROVISIONS

The Gangsters Act is a Local Law³ as well as a Special Law⁴, which in Section 14 provides that if District Magistrate has reason to believe that a property has been acquired by commission of an offence under the Act s/he may attach such properties.

The apparent intention of Legislature for conferring power of attachment on District Magistrate seems to be a system of checks and Balances as the proceeding for attachment of property are initiated by Police Authorities, Hence, the power of issuance thereof has been conferred upon District Magistrate who is not a Police Official and is in a position to independently scrutinize whether or not such attachment is warranted and then to take a decision in respect thereof.

However, the state government issued a notification⁵ in exercise of its powers under Section 20(5) of the CrPC⁶ directing that the powers of District Magistrate under, *inter alia*, the Gangsters Act be invested in the Commissioner of Police which the latter may exercise. It worth pointing out that the power of Commissioner of Police to attach properties has been further concretized in Rules 36 and 37 of the Rules.⁷

The difficulty in execution of the such direction is two-fold. The first stems from Section 5 of the CrPC which mandates that Local and Special Laws shall remain unaffected from the provisions of Cr.P.C so long as there is no provision to the contrary. Since there is no provision to the contrary, it can be said that the powers under Section 20(5) of Cr.P.C cannot be invoked to meddle with the powers under the Gangsters Act which a Special as well as a Local law, as already discussed. Albeit, the counter argument would be that Sections 20(5) CrPC itself is the “specific provision to the contrary” which Section 5 CrPC speaks of and in that case the issuance of executive directions under Sections 20(5) CrPC would lawfully transfer District Magistrate’s power under Section 14 of the Gangsters Act to Commissioner of Police for metropolitan areas.

The second hurdle can be seen in Section 20 of the Gangsters Act⁸ which in no unequivocal terms mandates that the provisions of the Act overrides anything inconsistent in any other statute. The legislative intent behind the aforesaid said provisions can be easily interpreted to mean that nothing, including Section 20(5) CrPC and notifications therein, can affect or alter the provisions of the Act.

For the two aforesaid reasons, the powers of District Magistrate who is a *persona designata*, under Section 14 of the Act cannot be transferred to the Commissioner of Police by way of executive directions issued under Section 20(5) CrPC.

³ Section 1 of the Act provides that it shall be applicable to the State of UP, thus, making it applicable to a particular part of India and falling in the category of “Local Law” as defined in Section 42

⁴ The Preamble of Act provides that it is applicable to the particular subject of gangsters and anti-social activities, thus, making it fall in the category of “Special Law” as defined in Section 41

⁵ Notification bearing no.7/2020/53p/vi-pu-6-2020-01 vividh/2020 dated 13.01.2020

⁶ “Section 20. Executive Magistrates

(5) Nothing in this section shall preclude the State Government from conferring, under any law for the time being in force, on a Commissioner of Police, all or any of the powers of an Executive Magistrate in relation to a metropolitan area.”

⁷ Uttar Pradesh Gangster and Anti-social Activities (Prevention) Rules, 2021

⁸ “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.”

THE CONSTITUTIONAL MANDATE

Overriding effect of the Gangsters Act⁹ also exhorts a constitutional query. If it is assumed that Section 5 CrPC does not create any bar then too Section 20 of Gangsters Act can be pressed into service to assail the executive directions given under Section 20(5) CrPC. And, in that scenario the Gangsters Act comes in direct conflict with the CrPC to that limited extent.

Undoubtedly, the Gangsters Act as well as the CrPC encompass Entries 2 and 3 of the Concurrent List (List III) of Schedule 7 of the Constitution. Ordinarily, in event of conflict between the provisions of a state legislation and provisions of a central legislation where both are enacted with respect to entries in concurrent list, the latter is to prevail over the former to the extent of the repugnancy¹⁰. The Gangsters Act would not be covered by Article 254 (1) of the Constitution as it has been enacted after having received the assent of the President of India¹¹ and would rather be covered by Article 254 (2) of the Constitution¹². Article 254 (2) explicitly provide that such law as enacted by the State Legislature had received assent of President would prevail over the Central Law in that State.

In that situation, the provisions of State law, that is, the Gangsters Act would prevail over the provisions of Central Law, that is, the CrPC, thereby, making the powers of the State Government to issue directions under Section 20(5) CrPC ineffective insofar as the Gangsters Act is concerned. In order to strengthen this argument reference may be had to dictum of the Supreme Court in Hoechst Pharmaceuticals Ltd.¹³ Once the power to issue directions under Section 20(5) CrPC are not applicable to the Gangsters Act, the powers of attachment given to District Magistrate cannot be transferred to Commissioner of Police by state government through notifications.

CONCLUSION

The afore-expressed conflict between the provisions of the Gangsters Act and the Cr.P.C clearly signify that powers of the State Government to transfer functions and powers of District Magistrate under the Gangsters Act as a whole, much less the power of attachment under Section 14, to the Commissioner of Police are not flawless and constitute a grey area. The legal conundrum can be set to rest by the Legislature or the Judiciary. If the rule of law is to prevail, the Executive cannot be left unbridled to meddle with statutory provisions by its colorable exercise of power.

⁹ As provided under Section 20 of the Uttar Pradesh Gangsters Act and Anti-Social Activities (Prevention) Act , 1986

¹⁰ Article 254(1) of the Constitution.

¹¹ On 19.03.1986, published in the Uttar Pradesh Gazette, Extra, dated 19.03.1986, vide No. 665(2)/XVII-V-1-1(Ka)-13-1986

¹² “**Article 254 Inconsistency between laws made by Parliament and laws made by the Legislatures of States** (2)Where a law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State”

¹³ Hoechst Pharmaceuticals Ltd. v. State of Bihar, (1983) 4 SCC 45

But at present the inference that can be drawn by the scheme of Constitution as well as Statutory provisions are that, though other powers under Gangster Act can be exercised by the Police Commissioner or authorities subordinate to Police Commissioner, but the power of attachment of a property as conferred under Section 14 of Gangster Act is to be exercised by District Magistrate itself.

