
(2015) 04 AHC CK 0158
In the Allahabad High Court
Case No : Criminal M.W.P. No. 23485 of 2014

Arvind Singh

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 20-04-2015

Acts Referred:

Constitution of India, 1950 — Article 136, 14, 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 110
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323

Citation : (2015) 2 ACR 1525 : (2015) 6 ALJ 65 : (2015) 90 ALLCC 466

Hon'ble Judges : Amreshwar Pratap Sahi, J;Vijay Lakshmi, J

Bench : Division Bench

Advocate : A. Umesh Narain Sharma and Chandan Sharma, for the Appellant

Final Decision : Partly Allowed

Judgement

Amreshwar Pratap Sahi and Vijay Lakshmi, JJ.—This petition has been filed for quashing of the impugned order dated 3.2.2014 passed by the Senior Superintendent of Police, Varanasi refusing to close the history sheet of the petitioner on certain grounds. The second prayer made is for quashing of the order dated 24.7.2010 passed by the Deputy Inspector General of Police, Varanasi Range, Varanasi, whereby a representation of the petitioner for closing the history sheet of the petitioner has been rejected. At the very outset, it may be mentioned that a report was obtained from Police Station Cantt, Varanasi about the pendency of criminal cases against the petitioner that has resulted in the opening of the history sheet against him under the U.P. Police Regulations. The extract of the said Regulations under Chapter XX have been filed along with the writ petition as Annexure-19. The history sheet of the petitioner is numbered as 75A. According to Regulation 223, Registration and Surveillance of Bad Characters known as a crime note book shall be kept at every police station containing the information of the crime and criminals referred to therein. The entries have to be made in five parts and Part (V) has to be maintained in accordance with the instructions contained in paragraph 228 of the U.P. Police

Regulations. This proceeds to describe the classification of history sheets, namely, Class-A and Class-B history sheets. Class-A history sheet is for dacoits, burglars, cattle thieves, railway-goods wagon thieves and abettors thereof. Class-B history-sheets are for confirmed and professional criminals who commit crimes other than dacoity, burglary, cattle-theft as well as theft from railway goods wagons, professional cheats and other experts like poisoners, railway passenger thieves, bicycle thieves and the like mentioned in the aforesaid regulations.

2. It may be noted that the history-sheet of the petitioner was opened on 26.9.2002 when three criminal cases had been registered against the petitioner, namely, Case Crime No. 101 of 1984, under Sections 457/380, I.P.C., Police Station, Chaubepur, District Varanasi, Case Crime No. 494 of 1993, under Sections 364 and 506, I.P.C.. Police Station, Cantt, Varanasi and the third case was Case Crime No. 357 of 2000, under Sections 147, 148, 149 and 307, I.P.C.. Police Station, Cantt, Varanasi.

3. Two further cases after the opening of the history-sheet came into existence, namely. Case Crime No. 311 of 2003 where the petitioner was called upon to fill a bond for good behaviour under Section 110, Cr.P.C., Police Station, Cantt, Varanasi and the fifth case was registered against the petitioner which was tried and ultimately the petitioner was acquitted on 16.12.2009 giving him the benefit of doubt. A copy of the judgment in Case Crime No. 25 of 2009, Sessions Trial No. 415 of 2009, is Annexure-12 to the writ petition. It is in this background that the history-sheet was continuing against the petitioner.

4. The petitioner contends that because of the continuance of such history-sheet he is unable to get a character certificate for the purpose of entering into any contract with the Government or such other facilities and consequently he came up before this Court in Criminal Misc. Writ Petition No. 8794 of 2010 challenging the validity of the maintenance of the history-sheet on the strength of the aforesaid cases.

5. This Court after having noticed the decision in the case of Chaman Lal v. State of U.P., 1992 (Suppl) (2) SCC 84, disposed of the writ petition observing that the petitioner may file a representation before the Senior Superintendent of Police, Varanasi, who shall consider it and pass appropriate orders within two months. A copy of the said judgment dated 24.5.2010 is extracted hereinunder :

"The petitioner has, by means of the present petition, challenged the validity of maintaining the history-sheet of class A opened by the Police of P.S. Cantt. against the petitioner.

We have heard learned counsel for the petitioner and also learned A.G.A.

It would appear from the record that the police of Cantt. opened the history-sheet of the petitioner on the basis of four cases registered at Case Crime No. 101 of 1984, under Sections 457 and 380, I.P.C.. Case Crime No. 494 of 1993, under Sections 364 and 506, I.P.C., Case Crime No. 357 of 2000, under Sections

147, 148, 149 and 307, I.P.C.. and Case Crime No. 311 of 2003. under Section 110, Cr.P.C.

The argument of the learned counsel for the petitioner that the history-sheet of Class-A can be opened when it has been established by suspicion or conviction that a suspect is an active and prominent member of a gang of dacoits. It is further argued that mere suspects should not be starred until established that one has become dangerous and confirmed criminals and is unlikely to reform. The next contention is that the case of the petitioner is not covered by paragraph 228 of the U.P. Police Regulations. Per contra, learned A.G.A. drew attention of the court to the decision in Chaman Lal v. State of U.P., 1992 Supp. (2) SCC 84(I) and suggested that the matter should be relegated to the authority concerned for deciding whether the history-sheet should be closed or should be continued.

We are also of the view that the interest of justice would be best served if the matter is relegated to the Police authority to take appropriate decision in the matter.

In view of the above, it is directed that in case the petitioner prefers a representation before the S.S.P./S.P., Varanasi alongwith a self attested copy of the writ petition within two weeks from today, the authority concerned shall consider it according to law and make appropriate order within two months.

The petition is disposed of in terms of the above directions."

6. It appears that thereafter the Deputy Inspector General of Police, Varanasi proceeded to pass the order dated 24.7.2010, a copy whereof is Annexure-1 to the writ petition whereby it was not found feasible to close the history-sheet in view of the fact that the petitioner was involved in criminal activities even though he had been acquitted in the case that recorded in acquittal in his favour in 2009. The said order has also been challenged in the present writ petition.

7. The petitioner approached this Court by filing Criminal Misc. Writ Petition No. 17263 of 2010 questioning the correctness of the opening of the history-sheet dated 26.9.2002 as also the order of the Deputy Inspector General of Police dated 24.7.2010 indicated above. The said writ petition was disposed of with a direction that the petitioner shall move a fresh application before the Deputy Inspector General of Police for discontinuance of the history-sheet in terms of Regulation 234 disclosing the fact of his acquittal in Case Crime No. 25 of 2009 referred to hereinabove. The judgment dated 3.10.2012 is extracted hereinunder :

"Petitioner before this Court seeks quashing of the order dated 26.9.2002, whereby a history-sheet was opened in the name of the petitioner under Regulation 228 of the Police Regulations at Police Station-Cantt. District-Varanasi, as also the order dated 24.7.2010, whereby his application for closer of the history-sheet was rejected by the Deputy Inspector General of Police,

Varanasi.

The order passed by the Deputy Inspector General of Police records that for the offences the history-sheet was opened in the name of the petitioner, such action was justified. It has also been recorded that in the year 2009 the petitioner was involved in offences under Sections 452, 323, 504, 506 and 307, I.P.C., being Case Crime No. 25 of 2009, duly registered at Police Station, Sarnath.

Counsel for the petitioner submitted that on the date the order was passed he had already been acquitted of the aforesaid offences by the competent court. He further submits that against the order of acquittal neither any appeal nor revision has been filed.

In the facts and circumstances of the case, petitioner is at liberty to make a fresh application before the Deputy Inspector General of Police for discontinuance of the history-sheet, as per the provisions of Regulation 234 of the Police Regulations, disclosing the fact of his acquittal in the aforesaid Case Crime No. 25 of 2009.

Accordingly, the writ petition is disposed of by providing that the petitioner may file a fresh application before the Deputy Inspector General of Police, Varanasi within two weeks from today along with certified copy of this order. On such application being filed, the Deputy Inspector General of Police shall consider and decide the same by means of a reasoned speaking order, preferably within eight weeks thereafter."

8. The petitioner thereafter appears to have filed his representation and according to the relevant Government orders as well as the Police Regulations, the matter was to be looked into by the Superintendent of Police as also per the judgment of the Apex Court in Chaman Lal's case. At this juncture it will be appropriate to quote the order passed in the case of Chaman Lal (supra) which is as follows :

"1992 Supp (2) Supreme Court Cases 84 (I)

(BEFORE K. JAGANNATHA SHETTY, S.C. AGRAWAL AND R.C. PATNAIK, JJ.)

CHAMAN LAL....Appellant; Versus STATE OF U.P. AND OTHERS..Respondents.

Civil Appeal No. 2471 of 1982, decided on December 4, 1991.

Police - U.P. Police Regulations - Paras 228 and 240-History Sheet-Opened against appellant-Writ petition filed by appellant under Article 226 dismissed by High Court- Having regard to Paras 228 and 240, the facts and circumstances of the case, held, no interference of Supreme Court called for in appeal-Appellant could make a representation to District Superintendent of Police to close the History Sheet on the ground that nothing found against him since then - Constitution of India, Articles 136 and 226.

Appeal disposed of

ORDER

It is not in dispute that the police under the U.P. Police Regulation has opened a "History Sheet" against the appellant. Challenging the validity of maintaining the History Sheet, the appellant moved the High Court for relief. The High Court has rejected his writ petition. In this appeal, it is contended that maintaining the History Sheet against the appellant does not fall within the paragraph 228 of the U.P. Police Regulations. We have perused the said paragraph and also the provisions of paragraph 240. We have also considered the facts and circumstances of the case. We are of the opinion that no interference is called for in this case. However, it is open to the appellant to make representation to the District Superintendent of Police to close the History Sheet on the ground that nothing has been alleged or attributed against him since then. If any such representation is made, the Superintendent of Police shall consider it according to law and make appropriate order. With these observations, the appeal is disposed of."

9. Accordingly, it appears that the Senior Superintendent of Police, Varanasi entertained the representation of the petitioner in terms of the directions issued by the High Court and as per Regulation 234 of the U.P. Police Regulations. Regulation 234 is extracted hereinunder :

"234. No history-sheet of Class-A may be discontinued without the sanction of the Superintendent of Police. If it is denied to discontinue the surveillance of the subject of a history-sheet of Class B, the sanction of the Deputy Inspector General or Superintendent, Railway Police, must be obtained. Proposals from station officers for the discontinuance of history-sheets and for the "starring or unstarring" of a class suspects must be made through the circle inspector unless dealt with directly by a Gazetted Officer in the course of an inspection."

10. Sri Umesh Narain Sharma, learned senior counsel for the petitioner, submits that the impugned order passed by the Senior Superintendent of Police is absolutely tangent and based on absolutely new grounds about which the petitioner was never put to notice. He also submits that the ground now mentioned by the Senior Superintendent of Police for not closing the history-sheet is not tenable and is not in conformity with the U.P. Police Regulations. He has also invited the attention of the court to the Regulation 231 to contend that there exists no material or any element that may allow the continuance of history-sheet of Class-A.

11. In view of the aforesaid facts as on date the only case that can be stated to be pending is Case Crime No. 357 of 2000 under Sections 147, 148, 149 and 307, I.P.C. where there is neither any conviction nor any trial as proceedings in the said case have been stayed at the instance of another co-accused and not at the instance of the petitioner.

12. Sri Sharma has further relied on three judgments of the Apex Court in this regard, namely Kharak Singh Vs. The State of U.P. and Others, AIR 1963 SC

1295 : (1963) CriLJ 329 : (1964) 1 SCR 332 ; Gobind Vs. State of Madhya Pradesh and Another, AIR 1975 SC 1378 : (1975) CriLJ 1111 : (1975) 2 SCC 148 : (1975) 3 SCR 946 : and Malak Singh and Others Vs. State of P and H and Others, AIR 1981 SC 760 : (1981) CriLJ 320 : (1981) 1 SCC 420 : (1981) SCC(Cri) 169 : (1981) 2 SCR 311 : (1981) 13 UJ 35 , to contend that the fundamental rights of the petitioner are being violated by continuance of such surveillance and maintenance of history-sheet. He also contends that the principles of natural justice have been violated and the history-sheet is being continued contrary to the provisions of the U.P. Police Regulations.

13. He has then invited the attention of the court to the counter-affidavit filed on behalf of the State, particularly, paragraphs 7, 8 and 9 of the affidavit to urge that the reasons given in the counter-affidavit clearly indicate that the allegations are without any basis and secondly, if the petitioner's wife is running a licensed bar, then on a mere possibility of the association of the petitioner with criminals or criminal activities, the petitioner cannot be said to be a history-sheeter. He submits that this ground at least cannot be available for either opening a history-sheet or continuing it as no such element of mere apprehension has been defined in the U.P. Police Regulations authorizing the police to open a history-sheet or continue the same on such grounds.

14. A rejoinder-affidavit has been filed denying the allegations made in the counter-affidavit and it has been urged that a miscarriage of justice has occurred on account of a total non-application of mind by the Senior Superintendent of Police and continuing the history-sheet on a perverted misapprehension which cannot be sustained in law in view of the pronouncements of the Apex Court and the provisions of the U.P. Police Regulations, referred to hereinabove.

15. Sri Nitin Sharma has vehemently opposed the petition and he urges that the petitioner is a criminal and was habitual in indulging in criminal activities as is evident from the criminal cases against him. Even otherwise he is running a licensed bar in the name of his wife and his association with antisocial elements cannot be ruled out as has been indicated in the counter-affidavit. It is neither desirable nor feasible to close the history-sheet at this stage. He therefore, submits that the orders impugned do not require any judicial review by this Court and the petition deserves to be dismissed.

16. At the very outset, we may put on record that there is no occasion for this Court now to consider quashing of the order dated 24.7.2010 as the reasons given therein are not the reasons for continuing the history sheet as per the subsequent order dated 3.2.2014. The impact of the order dated 24.7.2010 therefore, vanishes after this Court had directed the concerned competent authority to dispose of the representation to be filed by the petitioner afresh under the judgment dated 3.10.2012 in Writ Petition No. 17263 of 2010. Since, the said order loses its efficacy after the passing of the order dated 3.2.2014 pursuant to the directions of this Court, as mentioned above, it is not necessary for us to consider the validity or otherwise of the said order which has outlived

itself.

17. Coming to the impugned order dated 3.2.2014, we find that this order merely mentions that if the petitioner has been acquitted in the criminal cases, the same cannot by itself be a ground to close the history sheet. No reason has been given as to why his involvement in the said criminal cases is being considered to be a valid ground for continuance of the history-sheet. For this, one has to fall back upon the Police Regulations which provide the conditions under which a history-sheet has to be opened or discontinued. It is correct that Regulation 240 of the U.P. Police Regulations also authorizes the continuance of a history-sheet on suspicion, but the suspicion also has to be founded on some material or else if the conclusions drawn by the authorities are vague then it would be hit by Articles 14 and 21 of the Constitution of India. This has been clearly ruled by the Apex Court and is evident from a conspectus of the decisions that have been relied upon by Sri Sharma, learned counsel for the petitioner and indicated hereinabove. History-sheets cannot be opened or continued except when the same fulfils the criteria of the Police Regulations referred to hereinabove. The impugned order except for a solitary sentence that merely because the petitioner has been acquitted, the same cannot be a ground to close the history-sheet, we find no other valid reason given for the same. There is no indication that the petitioner is a habitual offender and that he forms a class of criminals as defined in Class-A of Regulation 228. It is not the case of the respondents that the petitioner is a criminal of Class-B of Regulation 228 nor is there any such finding to that effect. The impugned order, therefore, is vitiated on this ground as it does not objectively consider the case of the petitioner in terms of the regulations as directed by the High Court in the judgment dated 3.10.2012.

18. The other ground given by the Senior Superintendent of Police is that there is a strong possibility of commission of offences by the petitioner as he is likely to be in association with anti-social elements who keep coming to the bar for which licence is owned by his wife. Firstly, the petitioner does not appear to have been put to any such notice about any such activity in which the petitioner is involved of associating himself with anti-social elements and, therefore, the order dated 3.2.2014 is in violation of principles of natural justice. Secondly, even assuming for the sake of arguments that there was any information available to the Senior Superintendent of Police about visits of anti-social elements to the bar licensed in the name of the petitioner's wife, then such information is not disclosed either in the impugned order nor is it disclosed in the counter-affidavit. There is no indication as to who are those antisocial elements who allegedly participated in the commission of offences or are habitual offenders either within Class-A or Class-B of the offences mentioned under Regulation 228. There is no indication of any offence having been abetted by the petitioner in association with any such anti-social elements after the petitioner's wife has opened the licensed bar. In such circumstances, the impugned order suffers from perversity and non-objectivity. The impugned order dated 3.2.2014, therefore, cannot be sustained

for the reasons aforesaid. We accordingly allow the petition and quash the order dated 3.2.2014 with a direction to the Senior Superintendent of Police. Varanasi to pass a fresh order keeping in view the observations made hereinabove within a period of three months.