
(1999) 12 AHC CK 0089

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 2120 of 1999

Asif Ali @ Nanhey

APPELLANT

Vs

S.S.P., Moradabad & Anr.

RESPONDENT

Date of Decision : 02-12-1999

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Uttar Pradesh Police Regulations, 1948 — Regulation 231

Citation : (1999) 12 AHC CK 0089

Hon'ble Judges : O.P.Garg, J and V.K.Chaturvedi, J

Final Decision : Allowed

Judgement

1. Continuity of historysheet opened against the petitioner as back as on 1721988 and consequential surveillance and domicilliary visits by the police at his residence, is the subjectmatter of challenge in the present writ petition under Article 226 of the Constitution of India.

2. We have heard Mr. Nasiruzzaman, learned Counsel for the petitioner and Mr. Mahendra Pratap, learned A.G.A. Since counter and rejoinder affidavits have been exchanged between the parties with the consent of learned Counsel for the parties, the present petition is being finally disposed of at the admission stage itself.

3. The petitioner has challenged the historysheet which has been opened against him in police station Mundha Pandey district Moradabad on 1721988, on the ground that he is a peace loving citizen and employed as a class IV employee in Ucha Prathmik Vidhyalay Dhamaura, Rampur. In the year 1987 his uncle Mohd. Yunus had contested the election of village Pradhan and the petitioner opposed him and on account of this election rivalry, his uncle Mohd. Yunus in connivance with the police implicated the petitioner in case crime Nos. 56/86 under Section 394, IPC, PS. Tandan, district Rampur. Subsequently, an identification parade was held in which none of the identifying witnesses could identify the petitioner with the result a report under Section 169, Cr PC was submitted against him. Since

then the petitioner has not been called in any other case. At the behest of Mohd. Yunus, the Superintendent of Police, Rampur sent a letter to the Senior Superintendent of Police, Moradabad for opening of historysheet against the petitioner.

4. In the year 1997 when the police visited petitioner's place at short intervals and demanded his photographs etc., then on enquiry by the petitioner, it was found that historysheet No. 30A has been opened in Police Station Mundha Pandey against him on 17/2/1988.

5. In the supplementary affidavit filed on behalf of the petitioner, it has been averred that there is no order of the Senior Superintendent of Police that surveillance of history sheet should continue.

6. In the counteraffidavit filed by SubInspector Beer Pal Singh, Police Station Mundha Pandey, Moradabad on behalf of the respondents, it has been admitted that except one case mentioned above, the petitioner has not been challaned in any other case and according to paragraph 228 of U.P. Police Regulation, on account of suspicion, the person discharged under Section 169, Cr PC are being kept under surveillance of the police of local police station. In the said case the place of occurrence was a place situated in district Rampur and the Superintendent of Police, Rampur had recommended to the S.S.P., Moradabad for keeping watch and surveillance on the petitioner by opening a historysheet against the petitioner and since then the petitioner has been kept in periodically watch and surveillance by the police of P.S. Mundha Pandey, district Moradabad, the purpose of which as to control over the offences as mentioned in Paragraph 228 of the Regulation. It is further averred that Paragraph 240 of the U.P. Police Regulation confers a duty on the police to keep watch and surveillance on the persons, even in case of suspicion by opening historysheet against him. It is wrong to suggest that the police of P.S. Mundha Pandey has been harassing the petitioner.

7. Learned Counsel for the petitioner in support of his contention has relied on the decisions reported in 1999 (38) Allahabad Criminal Cases, page 200 : 1999(1) JIC 229 (All) (Rajesh Kumar and another v. State of U.P. and others); 1994 JIC page 229 (Gurubux Singh Bakshi v. State of U.P.) and AIR 1963 SC 1295, (Kharak Singh v. State of U.P. and others).

8. For the purposes of the present case, Regulations 231, 236 and 237 of the U.P. Police Regulations appear to be relevant, who read as under:

"231. The subject of historysheets of class A will unless they are "starred" remain under surveillance for at least two consecutive year of which they have spent no part in jail. When the subject of a historysheet of class A whose name has not been "starred" who has never been convicted of cognizable offence and has not been in jail or suspected of any offence or absented himself in suspicious circumstances for two consecutive years, his surveillance will be discontinued unless for special reason to be recorded in the inspection book of the police

station the Superintendent decides that it should continue.

When the subject of a historysheet of class A is "starred" he will remain starred for at least two consecutive years during which he has not been in jail or been suspected of a cognizable offence or had any suspicious absence recorded against him. At the end of that period if he is believed to have reformed he will cease to be "starred" but will remain subject to surveillance will be discontinued only if during that period no complaints have been recorded against him.

In closing the history:sheets of an "unstarred" exconvicts and especially exconvict dacoits great care should be exercised.

236. Without prejudice to the right of Superintendent of Police to put into practice any legal measures, such as shadowing in cities by which they find they can keep in touch with suspects in particular local ties or social circumstances, surveillance may for most practical purpose be defined as consisting of one or more of the following measures:

- (a) secret picketing of the house or approaches to the houses of suspects;
- (b) through periodical inquires by officers not below the rank of Subinspector into reputé, habits association income expenses and occupation ;
- (c) the reporting by constable and chaukidars of movements and absence from home;
- (d) the verification of movements and absences by means of inquiry slip;
- (d) the collection and record on a historysheet of all information bearing on conduct.

237. All historysheet men or classA "starred" and "unstarred" will be subject to all these measures of surveillance. It will be for the station officer subject to the control of the Superintendent and circle inspector, to regulate the intensity with which they are applied in each particular case according to the believed temporary activity of the suspect. Thus, the movement and absence of all men of classA must be reported at the police station but they need not be verified by means of inquiry slip when they do not appear to be suspicious. Similarly while a thorough local inquiry into general reputé, habits, associations, income, expenses and occupation in the case of men, whether "starred" or "unstarred" who are believed to be quiescent, need be made only once a year by the station officer or by a subordinate subinspector under his direction, such inquires should be made half yearly or with even greater frequency in the case of men, whether "starred" or "unstarred" who are believed to be temporarily active."

9. In Kharak Singh case (supra), the Supreme Court has held that domicilliary visits under paragraph 236 (2) do not affect the fundamental rights under Article 19 (1)(d) of the Constitution but they affect personal liberty guaranteed under Article 21 of the Constitution and has declared paragraph 236 (b) of the Police Regulation as unconstitutional which permitted surveillance by domicilliary visits

at night.

10. We, therefore, had no hesitation in holding that the right to privacy is a part of the right to "life" and personal liberty enshrined in Article 21 of the Constitution. Once the facts in a given case constitute a right to privacy. Article 21 is attracted. The said right cannot be curtailed "except according to procedure established by law".

11. From a perusal of Regulation 231 quoted above it is clear that historysheet of classA shall continue for two consecutive years and thereafter surveillance will be discontinued unless some special reasons are recorded by Superintendent of Police.

12. In the present case, the respondents have not shown any special reasons for continuing historysheet which was opened on 1988 nor they have filed any document or affidavit that after opening the historysheet in 1988 there was any order for extending the period of historysheet of the petitioner beyond the period of two years.

13. Thus, in our opinion, the petitioner is entitled to the relief claimed for.

14. For the reasons mentioned above, this writ petition succeeds and is allowed. Respondent Nos.*2 and 3 are directed to close down the historysheet against the petitioner and to discontinue surveillance and domicilliary visits. Petition allowed.