

**(1998) 12 AHC CK 0101**

**In the Allahabad High Court**

**Case No :** Criminal Miscellaneous W.P. No. 2284 of 1997 and Cr. M.W.P. No. 1447 of 1996

Awadhesh Prasad Shukla

APPELLANT

Vs

S.H.O.P.S. and Others

RESPONDENT

---

**Date of Decision :** 04-12-1998

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 104, 323, 324, 392, 452  
Uttar Pradesh Goondas Act, 1932 — Section 3  
Uttar Pradesh Police Rules — Rule 223, 228

**Citation :** (1999) 3 ACR 2770

**Hon'ble Judges :** S.K. Phaujdar, J;S. Rafat Alam, J

**Bench :** Division Bench

---

## **Judgement**

S.K. Phaujdar and S. Rafat Alam, JJ.—The first mentioned writ petition has been filed by the Petitioner, Awadhesh Prasad Shukla, with a prayer for a writ of mandamus upon the Respondents so that there may not be a so-called encounter in respect of the Petitioner at the instance of the Respondents and so that the freedom of movement of the Petitioner may not be interfered with by them. When the petition was placed before the Division Bench on 17.4.1996, a counter-affidavit was called for. Subsequently, on the filing of the Second Writ Petition No. 2284 of 1997 by the same Petitioner, the first petition was linked with the second one.

2. In the second Writ Petition No. 2284 of 1997 the self-same Awadhesh Prasad Shukla prayed for a writ of certiorari quashing the history-sheet opened in respect of him, as per Annexure-I to the writ petition. It was further prayed in the writ petition that the Respondents be restrained from taking any action against him on the basis of the impugned history-sheet. On presentation of the petition on 1.10.1997, a Division Bench of this High Court directed the Respondents to come up with counter-affidavit and a counter-affidavit supplemented by another was brought on record. The two matters were heard together and are being disposed of by this single judgment.

3. In the history-sheet No. H.S./4A, it was indicated that Awadhesh Prasad Shukla came from a cultivator's family and due to extra indulgence that he had received from his parents, he went astray and started committing minor offences from the very childhood. On attaining manhood, he took up crime as a profession. In the history-sheet seven cases were indicated against him. They are all of P.S. Khiri. The cases are detailed below with year and short description:

SL Year Offence Action No. 1. 1976 Case Crime Arrested. No. 5/76 under Release Section 60 of on bail the Excise Act 2. 1977 Case Crime No. Release on 36/77 under bond. Section 3 of the U.P. Goondas Act 3. 1977 Case Crime No. Charge- 38/77 under sheet. Section 324. Acquitted. I.P.C. 4. 1984 Case Crime No. N.C.R. submitted. 37/84 under Section 452, I.P.C. 5. 1984 Case Crime No. Charge- 96/84 under sheet Section submitted. 323/506. IPC. 6. 1986 Case Crime No. Charge- 56/86 under sheet Section submitted. 392. I.P.C. 7. 1987 Case Crime No. N.C.R. sub- 56/87 under mitted. Section 104/506, I.P.C.

It was stated further that he was getting political protection and he was engaged in forming gangs for criminal offences. Accordingly, it was necessary to have a surveillance over his activities. A prayer was made to the higher authorities for confirmation of this action.

4. The learned Counsel submitted that the cases against him were all false and even if the allegations had been true, a history-sheet could not have been opened in terms of the provisions of Chapter XX, Rule 228 of the U.P. Police Regulations. A perusal of the provisions indicate that Chapter XX deals with registration and surveillance of bad characters. Rule 223 directs maintenance of village crime note-book in several parts for different nature of crimes and criminals. History-sheet" is covered in Part V of such crime note-book in terms of Rule 228. The history-sheets are the personal records of criminals in surveillance. History-sheets should be opened only for persons who are likely to become habitual criminal or abettors of such criminals and the rule dictates that there will be two classes of history-sheets. (1) Class A history-sheet is to cover dacoits, burglars, cattle thieves, railway-goods wagon thieves, and abettors thereof. (2) Class B history-sheet is to be maintained for confirmed and professional criminals who commit crimes other than dacoit, burglary, cattle-theft, and theft from railway goods wagons, e.g. professional cheats and other experts for whom criminal personal files are maintained by the Criminal Investigation Department, prisoners, cattle prisoners, railway passenger thieves, bicycle thieves, expert pickpockets, forgers, coiners, cocaine and opium smugglers, hired ruffians and goondas, telegraph wire-cutters, habitual illicit distillers and abettors thereof. The jurisdiction to start a history-sheet of a criminal arises from the stage that the particular person is considered or thought to be a confirmed or professional criminal for which there should be some basis or material and in case of complete absence of such material the action in starting a history-sheet will be illegal and without jurisdiction.

5. The Petitioner also relied on a decision of this High Court in Misc. Writ Petition

No. 7284 of 1988 Mithleshwar Pandey and Ors. v. State of U.P. and Ors.. In the matter before the High Court in the said writ petition no case was pending against the Petitioners barring one instituted in 1987 and the history-sheet was also opened in 1987 and the Hon"ble Judges were of the view that there was no good ground to continue to treat the Petitioners as history-sheeters. Accordingly, the history-sheets for the Petitioners were quashed. The Petitioners also relied on a report of the Sub-Divisional Magistrate, Meja, Allahabad, as per Annexure-II to the writ petition in which a clear finding was arrived at on the point of absence of any material for opening history-sheet in favour of the Petitioner in the year 1988. In the counter-affidavit the State had accepted that in all the cases instituted upto 1991 against the Petitioner (including the ones indicated in the history-sheet), the Petitioner stood acquitted. In a number of other cases, that were indicated in the counter-affidavit, again the Petitioner stood acquitted. Of the cases, on the basis of which the history-sheet was opened, three were for the years 1976 and 1977 and four were for the years from 1984 to 1987. The very averments indicate that at least in two cases non-cognizable offences were reported and one was a case of minor offence u/s 323/506, I.P.C. Looking to the provisions of Rule 228 of the U.P. Police Regulations, it can be opined that the offences do not indicate that the present Petitioner had been a confirmed and professional criminal committing offences, as indicated in Clause (2) of Rule 228. Under these circumstances, it is not desirable that history-sheet should have been opened in his name and on that pretext any surveillance should be kept on his movements. An act of surveillance is certainly one which affects right of freedom of movement and right of privacy of a person and the law permits encroachment upon those rights only under specific circumstances, as indicated in the rules and not at the mere wish of a police officer.

6. Both the writ petitions are allowed. The history-sheet in Annexure-I to the second mentioned writ petition stands quashed. There will be no surveillance on the movements of the present Petitioner on the basis of this history-sheet and he will be free to move subject to the provisions of law and subject to his commission of any offence for which he may be liable.