
(2000) 01 AHC CK 0056

In the Allahabad High Court

Case No : Criminal Miscellaneous W.P No. 89 of 1999

Bhupendra Tiwari @ Guddu

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 21-01-2000

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2000) 01 AHC CK 0056

Hon'ble Judges : O.P.Garg, J

Final Decision : Allowed

Judgement

1. By means of present writ petition under Article 226 of the Constitution of India, petitioners Bhupendra Tiwari alias Guddu and Harikesh Tiwari alias Chhotey, have challenged history sheet Nos. 67A and 69A of 1997 opened against them at police station Sarai Inayat. district Allahabad, mainly on the ground that there is no order of the Senior Superintendent of Police to the effect that surveillance of the history sheet opened against them on 2751997 should continue.

2. We have heard Mr. Daya Shanker Misra, learned Counsel for the petitioners as well as learned A. G. A.

3. Mr. Dinesh Tripathi, Station Officer, RS. Beckanganj, district Kanpur has filed his counter affidavit. In the said counter affidavit, there is no averment to the effect that after opening the history sheet on 2751997, the same is being continued under any orders of the Senior Superintendent of Police, Allahabad or any other higher officer of Police.

4. Learned Counsel for the petitioners in support of his contention has relied on the decisions reported in 1999(38) Allahabad Criminal Cases 200 (Rajesh Kumar and another. State of U. P. and others), 1994 JIC Page 229 (Gurubux Singh Bakshi v. State of U.P and AIR 1963 SCI 295 (Kharak Singh v. State of U. P. and others).

5. For the purposes of the present" case, Regulations 231, 236 and 237 of the U.P. Police Regulation appears to be relevant, which read as under:

"231. The subject of history sheets 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 history sheet 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 reasons to be recorded in the inspection book of the police station the Superintendent decides that it should continue.

When the subject of a history sheet 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" exconvict and especially exconvict dacoits great care should be exercised.

236. Without prejudice to the right of Superintendent of Police to put into practice any illegal measures such as shadowing in cities by which they find they can keep in touch with suspects in particular local ties or special circumstances surveillance may for most practical purposes 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 inquiries by officers not below the rank of SubInspector into reputation, habits, association, income, expenses and occupation;
- (c) the reporting by constables and chaukidars of movements and absences from home;
- (d) the verification of movements and absences by means of inquiry slip;
- (e) the collection and record on a history sheet of all information bearing on conduct.

237. All history sheet mean or class A "starred" and "unstarred" will be subject to all these measures of surveillance. Will be for the Station Officer subject to the control, of the Superintendent and CircleInspector to regulate the intensity with which they are applied in each particular case (sic) to the believed temporary activity of the suspect/ Thus (the movement and absences of all men of class A 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 reputation, 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 Sub Inspector under his direction. Such inquiries 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."

6. In Kharak Singh case (supra), the Supreme Court has held that domiciliary visits under paragraph 236(b) of the U.R Police Regulations affect personal liberty guaranteed under Article 21 of the Constitution and has declared paragraph 236(b) of the U.P. Police Regulations as unconstitutional.

7. We, therefore, have 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 the procedure established by law".

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

9. In the present case, the respondents have not shown any special reasons for continuing history sheet which was Opened in 1997 nor they have filed any document or affidavit that after opening the history sheet in 1997, there was any order for extending the period of history sheet of the petitioner beyond the period of two years.

10. Thus, in our opinion, the petitioners are entitled to the relief claimed for.

11. For the reasons mentioned above, this writ petition succeeds and is allowed. Respondent Nos. 2 and 3 are directed to close down the history sheet against the petitioners and to discontinue surveillance and domiciliary visits.