

(2016) 12 AHC CK 0042

In the Allahabad High Court

Case No : Criminal Misc. Writ Petition No. 19317 of 2016

Jai Kumar @ Bachchu Upadhyay

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 07-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Police Regulations — Regulation 228

Citation : (2017) 98 ACrC 511 : (2017) 2 ADJ 468 : (2017) 1 AllCrLRulings 413

Hon'ble Judges : Ramesh Sinha and Mrs. Rekha Dixit, JJ.

Bench : Division Bench

Advocate : P.K. Upadhyay, Advocate, for the Petitioner; G.A, for the Respondent

Final Decision : Allowed

Judgement

Ramesh Sinha, J. - This writ petition has been filed with a prayer to quash the impugned order dated 8.6.2016 passed by respondent No.4 and delete the name of the petitioner from Register No.8 of the history sheet, Police Station Kachhwan, District Mirzapur.

2. Heard Sri P.K. Upadhyay, learned counsel for the petitioner, Sri Imran Sayeed, learned A.G.A for the State and perused the record.

3. Learned counsel for the petitioner submitted that three criminal cases were registered against the petitioner due to dispute of his father with one Ram Avlamb Upadhyay while they were living in village Alauddinpur, with regard to some agricultural land in Newasa. Due to said dispute two cases i.e Case Crime No.332 of 1997, registered under sections 302 I.P.C and Case Crime No.333 of 1997, under section 352,504 and 506 I.P.C were registered against him. The petitioner was also challaned in the year 1998 under section 3(1) U.P. Gangsters and Prevention of Anti social Activities Act, Police Rohaniya, District Varanasi on the basis of the said two cases. In all the three cases including the cases registered under the Gangsters Act the petitioner has been acquitted from the

competent court. He submitted that in spite of the fact that he was acquitted in the aforesaid three criminal cases, the name of the petitioner was entered in the Register No.8 which is meant for keeping surveillance over people whose name find place in Register at police station Lohta and police station Kachhwan, District Mirzapur against which the petitioner moved two representations dated 20.7.2016 and dated 16.8.2016 to respondent Nos.4 and 5. for deleting his name from Register No.8 of police station Lohta, District Varanasi and police station Kachhwan, District Mirzapur. When the said representations were not decided by the competent authority, the petitioner preferred Civil Misc. Writ Petition No.548 of 2011 before this Court in which an order was passed by this Court on 24.11.2015 directing the respondent Nos.4 and 5 to consider and decide the representations of the petitioner. In spite of the said order, the said representations were not decided by the authority concerned. Hence, the petitioner filed Contempt Application (Civil) No.7839 of 2015 before this Court which was disposed of on 5.1.2016 directing the authority concerned to decide the representation of the petitioner. In pursuance of which the S.S.P. Varanasi vide his order dated 25.2.2016 has stated that the name of the petitioner has not been entered into registered No.8 for surveillance at present nor the police have surveillance over the petitioner. It was further stated that the name of the petitioner has been entered in the Register No.8 of Police station Kachhawa, District Mirzapur. In pursuance of the order dated 25.2.2016 the petitioner approached S.P. Mirzapur by moving application dated 18.-3.2016 serving the copy of the order dated 25.2.2016 passed by the S.S.P. Varanasi on which S.P. Mirzapur-respondent No.4 passed the impugned order dated 8.6.2016 rejecting the application of the petitioner observing that the name of the petitioner has been entered into Register No.8 as H.S No. 31-A with the police station Kachhawa, District Mirzapur and the petitioner is residing at his house and as such the surveillance of the petitioner is necessary. It has been argued that the impugned order dated 8.6.2016 passed by S.P. Mirzapur is not in consonance with Regulation 228 of U.P. Police Regulation as no reason has been given for entering the name of the petitioner in the Register No.8 keeping for surveillance of history sheet, police station Kachhwa, district Varanasi, hence the impugned order dated 8.6.2016 is liable to be quashed. In support of his contention he has placed reliance on the judgement in the case of Krishana Chandra Singh v. State of U.P. and others, reported in 2015(11) ADJ 219 (DB).

4. Sri Imran Sayeed, learned A.G.A for the State has opposed the prayer for quashing of the history sheet of the petitioner but he could not dispute the fact that there is no case pending against the petitioner and the order passed by S.P. Mirzapur does not disclose any reason nor it is in accordance with Regulation 228 of U.P. Police Regulation, Act.

5. Considering the rival submission of the learned counsel for the parties and perused the record.

6. Regulation 228 of the U.P. Police Regulation provides as under:-

"228 Part V consists of History Sheets. These are the personal records of criminal under surveillance. History sheets should be opened only for persons who are or likely to become habitual criminal or abettors of such criminals. There will be two classes of history-sheets:-

1. Class A history-sheets for dacoits, burglars, cattle-thieves, railway goods wagon thieves and abettors thereof.

2. Class B history sheets for confirmed and professional criminals who commit crimes other than dacoity, burglary, cattle theft and theft from Railway goods wagons, e.g. professional cheats and other experts for who criminal personal files are maintained by the criminal investigations Department, poisoners, cattle poisoners, railway passenger thieves, bicycle thieves, experts pick-pockets, forgers, coiners, cocaine, and opium smugglers, hired ruffians and goondas, telegraph wirecutters, habitual illicit distillers and abettors thereof. History-sheets of both classes will be maintained in similar form, but those for class B will be distinguished by a red bar marked at the top of the first page. No history-sheet of Class B may be converted into a history-sheet of class A, though should be the subject of a history sheet of class B be found to be also addicted to dacoity, burglary, cattle-theft or theft from railway goods wagons. A class, as well as B class, surveillance may under paragraph 238 be applied to him. In the even of a class A history-sheet man becoming addicted to miscellaneous crime his history-sheet may be converted into class B history-sheet with the sanction of the Superintendent. "

7. It is admitted to the parties that there is no criminal case pending against the petitioner. The impugned order passed by the S.P. Mirzapur does not disclose any reason for entering the name of petitioner in Register No.8 of history sheet of Police station Kachhwa, District Mirzapur and it is wholly illegal and cryptic order. Moreover the impugned order is also not in accordance with the Regulation 228 of the U.P. Police Regulation. The case of the petitioner is also squarely covered by the judgement of this Court in the case of Krishana Chandra Singh v. State of U.P. and others (Supra).

8. In view of the foregoing discussion the impugned order dated 8.6.2016 passed by respondent No.4 is hereby quashed. The respondent No.4 is directed to delete the name of the petitioner from the aforesaid Register.

9. The petition stands allowed. No order as to costs.