

(2015) 10 AHC CK 0125

In the Allahabad High Court

Case No : Criminal Misc. Writ Petition No. 4720 of 2013

Krishna Chandra Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-10-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 30, 307

Citation : (2015) 3 ACR 3044 : (2015) 11 ADJ 219 : (2015) 91 ALLCC 771

Hon'ble Judges : B.K. Narayana and Vijay Lakshmi, JJ.

Bench : Division Bench

Advocate : Uma Nath Pandey, Rajiv Gupta and Dileep Kumar, for the Appellant

Final Decision : Allowed

Judgement

1. Heard Sri Dileep Kumar, learned counsel for the petitioner and Sri J.K. Upadhyay, learned A.G.A. for the State. Petitioner, Krishna Chandra Singh has filed this writ petition assailing the order dated 1.9.2012 passed by S.S.P., Basti (Annexure 1 to the writ petition) rejecting the representation filed by the petitioner before him with the prayer for closing the History sheet No. 78A opened against the petitioner at P.S. Nagar, District-Basti.

Brief facts of the case are that history sheet No. 78-A was opened against the petitioner at P.S.-Nagar, district-Basti by the concerned police authority on the basis of registration of four cases namely Case Crime No. 425-A/92 under Sections 147, 323, 325, 366 and 355 I.P.C., Case Crime No. 193A/92, under Sections 147, 37, 452, 325, 336, 504 and 506 I.P.C., Case Crime No. 239 of 1993, under Sections-147, 148, 149, 30, 323, 504 and 506 I.P.C., Case Crime No. 3 of 1982, under Sections 147, 323, 352 and 506 I.P.C. and Beat Information No. 7 dated 28.9.2007 through S.O. Kallicharan.

2. The petitioner had earlier challenged the history sheet No. 78-A opened against him at P.S. Nagar, district-Basti before this Court by means of Criminal Misc. Writ Petition No. 8030 of 2010 which was finally disposed of by another

Division Bench of this Court on 13.5.2010 by the following order:

"The petitioner by means of the present petition challenged the validity of maintaining the history sheet No. 78-A opened by the police of P.S. Nagar District Basti 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 Sector 58 Noida opened the history sheet of the petitioner on the basis of five cases registered at case crime No. 425-A/76 under Sections 147, 323, 325, 366, 452 I.P.C., Case crime No. 193-A/92 under Section 147, 307, 452, 323, 336, 504, 506 I.P.C., Case crime No. 239 of 1993 under Sections 147, 148, 149, 30, 323, 504, 506 I.P.C., Case crime No. 3/82 under Sections 147, 323, 352, 504 I.P.C. and Beat Information No. 7 dated 20.9.2007 through S.O. Kalicharan.

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 (1) and suggested that the matter should be relegated to authority concerned for deciding whether the history 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 concerned S.S.P./S.P. alongwith a self attested copy of the writ petition within two weeks from today, the authority concerned shall consider it according to law and pass appropriate order within two months.

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

3. The representation preferred by the petitioner before the S.S.P. Basti, respondent No. 2 in pursuance of the order of this Court dated 13.5.2010 against the impugned history sheet was decided by him by his impugned order dated 1.9.2012 only after this Court vide order dated 14.8.2012 passed in Contempt Application (Civil) No. 3424 of 2012, which the petitioner was compelled to file when the respondent No. 2 failed to decide the petitioner's representation within the time stipulated in this Court's order dated 13.5.2010, directed the respondent No. 2 to decide the petitioner's representation within a period of six weeks from the date of receipt of certified copy of the Court's order dated 14.8.2012. The respondent No. 2 instead of closing the impugned history-sheet, by the impugned order dated 1.9.2012 converted the category of the history-

sheet opened against the petitioner from Class A to Class B.

4. Learned counsel for the petitioner submitted that the opening of the impugned history-sheet No. 78-A against the petitioner on 22.9.2007 on the basis of registration of four criminal cases which relate to the period prior to 1996, in which the petitioner had either been acquitted after trial or exonerated during investigation, the Beat information dated 28.9.2007 recorded at P.S.-Nagar, district-Basti (Annexure 2 to the writ petition), which also refers to the aforesaid cases, is per se illegal and product of malice.

5. Learned counsel for the petitioner next submitted that the respondent No. 2 has totally misconstrued the provisions of Regulation 228 of Chapter XX of U.P. Police Regulations while converting the category of the history-sheet opened against the petitioner from Class A to Class B as history-sheet against a person in class B can be opened only where a 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.

6. Learned counsel for the petitioner also submitted that history-sheet can only be opened against a person who is a habitual offender or addicted to committing crimes specified under the Regulations and in the present case history-sheet was opened against the petitioner although there were no grounds before the concerned authority for such belief.

7. Learned counsel for the petitioner has also submitted that the respondent No. 3 has endeavoured to justify his refusal to close the impugned history-sheet and to convert it from Class A to Class B by the impugned order on the ground that the petitioner had been arrayed as an accused in a criminal case in the year 2012 also namely, Case Crime No. 324 of 2012, under Sections 147, 148, 149, 342, 323 and 504 I.P.C. at P.S.-Nagar, district-Basti without bothering to scan the F.I.R. on the basis of which the aforesaid case was registered. Advancing his submissions further in this regard, learned counsel for the petitioner submitted that Case Crime No. 324 of 2012 was registered on the basis of the F.I.R. lodged by the son of the petitioner and in which the petitioner is not an accused. In fact, the case which was registered against the petitioner was Case Crime No. 324-A of 2012, which was cross case of Case Crime No. 324 of 2012.

8. Learned counsel for the petitioner lastly submitted that the impugned order suffers from the vice of non-application of mind by the respondent No. 2 to the facts of the case, material on record and the relevant legal provisions which do not at all justify opening of history-sheet against the petitioner and hence the impugned order as well as the history-sheet No. 78-A opened against the petitioner and converted to class B are liable to be quashed.

9. Per contra, Sri J.K. Upadhyay, learned A.G.A. made his submissions in support of the impugned order and made an attempt to justify the action of opening of history-sheet against the petitioner. He submitted that there was ample material

on record warranting opening of history-sheet against the petitioner.

10. We have very carefully considered the submissions made by the learned counsel for the parties and perused the pleadings exchanged between the parties.

11. Facts of the case are broadly admitted to the parties. History-sheet No. 78-A was opened against the petitioner on 23.9.2007 on account of his being accused in four criminal cases which are all of prior to the year, 1993 and the Beat information was registered at P.S.-Nagar, district-Basti on 28.9.2007. The petitioner was either acquitted after trial or exonerated during investigation in all the cases. Respondents do not dispute the aforesaid fact but have come with a case that the petitioner was acquitted or exonerated as no-one dared to give evidence against him. The aforesaid allegation however does not stand substantiated by any material on record. As far as the Beat Information dated 23.9.2007 is concerned, same also refers only to the aforementioned case.

12. As far as the recital contained in the impugned order that petitioner had committed another offence in the year 2012, which was registered as Case Crime No. 324 of 2012 is concerned, the same appears to be incorrect on the face on record. A copy of the F.I.R. on the basis of which Case Crime No. 324 of 2012 was registered at P.S.-Nagar, district-Basti has been filed as Annexure No. 10 to the writ petition and a perusal thereof shows that the same was lodged by one Manoj Kumar Singh, son of Krishna Chandra Singh (petitioner) against Chandan Singh and seven others. The petitioner has not been named as an accused in the aforesaid F.I.R. The petitioner has disclosed in the writ petition that the case which was registered against him in the year 2012 was Case Crime No. 324A of 2012 which was cross case of Case Crime No. 324 of 2012, was instituted against the petitioner at the behest of the accused in Case Crime No. 324 of 2012, copy of the F.I.R. on the basis of which Case Crime No. 324A of 2012 was registered against the petitioner has been brought on record by the petitioner as Annexure 11 to the writ petition. The aforesaid reflects that there was no proper application of mind by the respondent No. 2 while passing the impugned order to the material on record.

Regulation 228 of U.P. Police Regulations which is relevant for our purpose, is reproduced below:

228. Part V consists of history sheets. These are the personal records of criminals under surveillance. History-sheet 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 whom criminal personal

files are maintained by the Criminal Investigation Department, poisoners, cattle poisoners, railway passenger thieves, bicycle thieves, expert pick-pockets, forgers, coiners cocaine and opium smugglers, hired ruffians and goondas, telegraph wire-cutters, 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 event of a class A history-sheet man becoming addicted to miscellaneous crime his history-sheet may be converted into a class B history-sheet with the sanction of the Superintendent.

13. From a bare reading of the Regulation 228 of the U.P. Police Regulations it transpires that class B history-sheet can be opened for confirmed and professional criminals who committed crimes other than those enumerated under Regulation 228 Part V sub-clause (1). Thus the necessary pre-requisite for starting class B history-sheet against a person is that he should be a confirmed and professional criminal.

We have very carefully gone through the impugned order as well as the pleadings of the parties but we have not come across any material which may even remotely indicate that the petitioner is either a professional or confirmed criminal. In fact, the petitioner was either acquitted or exonerated during investigation in all the cases which were registered against him and on the basis of which, the impugned history-sheet was opened against him at P.S.-Nagar, district-Basti initially in class A and later converted into class-B. Moreover, the cases on the basis of which action was taken for starting class A history-sheet against the petitioner in the year, 2004 related to the years 1982, 1992 and 1993, which in our opinion, could not have been made the basis for starting class A history-sheet against the petitioner or even subsequently converting it into class B history-sheet. The material relied upon by the respondents for opening history-sheet against the petitioner in our opinion, did not justify the action of the respondents in this regard. The only other case which was registered against the petitioner after opening of the impugned history-sheet and upon which the respondent No. 2 has relied for refusing to close the impugned history-sheet, is Case Crime No. 324A of 2012 which has wrongly been described in the impugned order as Case Crime No. 324 of 2012. Case Crime No. 324 of 2012 was registered on the basis of First Information Report lodged by the petitioner's son and in the said cases, the petitioner is not an accused as is evident from the perusal of the First Information Report of the aforesaid case, copy whereof has been brought on record as Annexure No. 10 to the writ petition. Case Crime No. 324A of 2012, in which the petitioner has been made an accused, is cross case of Case Crime No. 324 of 2012. From the aforesaid fact it is apparent that the

respondent No. 2 has totally failed to apply his mind to the facts of the case and material on record while converting the impugned class A history-sheet against the petitioner into class B history-sheet.

14. For the aforesaid reasons, the refusal of the respondent No. 2 to close the history-sheet opened against the petitioner at P.S.-Nagar, district-Basti in class A and later convert it into class B history-sheet by the impugned order, cannot be sustained. The writ petition, accordingly, succeeds and is allowed. The impugned order dated 1.9.2012 passed by the respondent No. 2 and the history-sheet No. 78-A opened at P.S.-Nagar, district-Basti and later converted to class B by the impugned order dated 1.9.2012 are hereby quashed.