

(2015) 12 AHC CK 0104

In the Allahabad High Court

Case No : Criminal Misc. Writ Petition No. 1323 of 2013

Mohammad Naeem

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-12-2015

Acts Referred:

Constitution of India, 1950 — Article 19(1)(a), 21, 226
Penal Code, 1860 (IPC) — Section 120, 120B, 147, 148, 149
Uttar Pradesh Control of Goondas Act, 1970 — Section 2, 3, 3(1), 4

Citation : (2016) 92 ALLCC 855 : (2016) 92 ALLCC 386

Hon'ble Judges : B.K. Narayana and Naheed Ara Moonis, JJ.

Bench : Division Bench

Advocate : Sharfuddin Ahmad, for the Appellant

Final Decision : Allowed

Judgement

Naheed Ara Moonis, J.—Heard learned counsel for the petitioner and the learned AGA and have been taken through the record.

2. By means of the present writ petition, the petitioner has invoked extra ordinary writ jurisdiction of this Court under Article 226 of the Constitution of India seeking relief in the nature of writ of certiorari to quash the order of the Senior Superintendent of Police/Deputy Inspector General, Kanpur Nagar dated 2.5.2011 whereby the representation made by the petitioner against the history sheet No. 2008-A-2046A, Police Station Colonelganj District Kanpur. Further relief has also been sought in the nature of mandamus to command the respondent authorities to discontinue surveillance on the petitioner and also efface his name from Board of History sheet registered at Police Station Colonelganj Kanpur Nagar.

3. Prior to delving into controversy involved in the present case, it is opportune to analysis the root of the matter. The petitioner had earlier approached before another Bench of this Court by means of Criminal Misc. Writ Petition No. 16688 of 2009 (Mohammad Naeem alias Naeem Babu Vs. State of U.P. and others)

agitating the similar grievance for quashing the above noted History Sheet registered at Police Station Colonelganj District Kanpur Nagar. The Hon"ble Bench was pleased to dispose of the aforesaid writ petition vide order dated 18.8.2009 with direction to the petitioner to move representation before the Senior Superintendent of Police Kanpur Nagar for setting aside the history sheet. Pursuant to the order of this Court dated 18.8.2009, the petitioner moved an application before the Senior Superintendent of Police Kanpur Nagar (respondent No. 2) ventilating his grievance against the opening of History sheet No. 2008-A-2046. The respondent No. 2 rejected the representation of the petitioner vide impugned order dated 2.5.2011. Peeved by the order passed by the respondent No. 2, the petitioner has invoked the extra ordinary jurisdiction of this Court by means of the present writ petition. It is submitted by the learned counsel for the petitioner that the representation of the petitioner has been rejected by the respondent No. 2 in a very pedantic and flimsy manner without adverting his mind to the nature of the allegations. In the absence of any substantial material on record as to whether the petitioner is still active in criminal activities, he cannot be deprived of fundamental rights enshrined under Article 19(1)(a) and the Personal Liberty under Article 21 of the Constitution of India. The petitioner is a man of status and is leading respectable life. Due to continuation of the history sheet as well as surveillance, the image of the petitioner in the society is being sullied causing effect on his personality as well as adversely affecting the career of his tender age children. The history sheet No. 2008-A-2046 opened at the police station Colonelganj Kanpur Nagar against the petitioner demonstrating seven cases is delineated here to below:-

1. Case Crime No. 213 of 1993 under section 380 /323 /506 IPC, Police Station Colonelganj.
 2. Case Crime No. 24 of 2005 under section 323 /504 /506 IPC, Police Station Colonelganj.
 3. Case Crime No. 48 of 2006 under section 147 /148 /149 /307 IPC, Police Station Colonelganj.
 4. Case Crime No. 35 of 2007 under section 3(1) of U.P. Control of Goondas Act, Police Station Colonelganj.
 5. Case Crime No. 287 of 2008 under section 356 /392 IPC, Police Station Gwaltoli.
 6. Case Crime No. 191 of 2008 under section 356 /392 /411 IPC, Police Station Kohna,
 7. Case Crime No. 232 of 2008 under section 2 /3 U.P. Control of Goondas Act, Police Station Colonelganj.
4. The aforementioned cases have been registered against the petitioner stigmatizing him as a hardcore and ill-reputed criminal while the petitioner is not involved at all in any of those cases. The Case Crime No. 213 of 1993 under

section 380 /323 /506 IPC, Police Station Colonelganj was registered against the petitioner when he was immature attaining the age of 14 years. His name surfaced in the aforesaid case at the instance of the neighbours who were already rearing animus and grudge against the petitioner as well as his family members. During investigation, the investigating officer did not collect any clinching and credible material showing complicity of the petitioner hence the name of the petitioner was expunged and only the credible material was collected against Baboo who was charge sheeted under section 380 IPC vide Case Crime No. 213 of 1992. The petitioner was neither summoned nor prosecuted, thus the opening of the history sheet against the petitioner on the dint of Case Crime No. 213 of 1992 under section 380 /323 /506 IPC, Police Station Colonelganj is only a subterfuge of causing undue harassment and persecution. The petitioner was neither named nor any prosecution was done and even the named accused persons were acquitted by the Vth Addl. Sessions Judge Kanpur Nagar vide judgment and order dated 24.2.2006.

5. Further significant feature of the case is that a henchman of the locality Saleem so as to teach lesson to the petitioner got a case containing false and fabricated grounds registered on 22.10.2005 vide Case Crime No. 24 of 2005 under sections 323 /504 /506 IPC Police Station Colonelganj District Kanpur Nagar. The aforesaid case culminated into acquittal by the learned Sessions Judge vide order dated 9.4.2008 exculpating the petitioner and the co-accused. The petitioner was also prosecuted under the U.P. Gangster Act vide Case Crime No. 38 of 200 under section 3 ,4 on the basis of a case registered under the Goonda Act by the Addl. District Magistrate Kanpur Nagar on 4.4.2007 in order to elongate the criminal history of the petitioner. Reply to the notice under section 3 , 4 Goonda Act was given by the petitioner on 25.9.2009 stating that a murder was committed of a hardcore criminal in respect to which FIR was lodged on 8.4.2006 in which the petitioner was not named and he was made co-accused along with other accused persons including his brother and cousin which was registered as Case Crime No. 48 of 2006 under sections 147 /148 /149 /307 & 302 IPC. The notice was served upon the petitioner under section 3 /4 Goonda Act by the Addl. District Magistrate Kanpur Nagar on 4.4.2007 showing Case Crime No. 89 of 2002 under section 147 /148 /149 /120B /120 IPC read with section 7 Criminal Amendment Act in which the petitioner was neither an accused nor was prosecuted. The second case shown as Case Crime No. 24 of 2005 under section 323 /504 /506 IPC, the petitioner was acquitted by the learned trial judge. The third case shown as Case Crime No. 48 of 2006 under sections 147 /148 /149 /307 IPC. No other case was mentioned against the petitioner. The validity of the notice was challenged by the petitioner supported by the affidavit given by the respectable persons of the locality verifying good conduct & character of the petitioner before the Addl. District Magistrate Kanpur Nagar. The District Magistrate in a very arbitrary and capricious manner passed the order dated 17.12.2007 externing the petitioner for six months. The petitioner approached before another Bench of this Court by means of Criminal Misc. Writ

Petition No. 4601 of 2008 (Naim Babu Vs. State of U.P. and others). The Hon'ble Single Judge disposed of the writ petition vide order dated 19.3.2008 directing the Commissioner Kanpur Nagar to decide the appeal preferred by the petitioner and during the pendency of the appeal the operation of the order dated 17.12.2008 was stayed. In Case Crime No. 48 of 2008 in which Javed Akhtar was murdered, the petitioner was added as co-accused whose trial proceeded as Sessions Trial No. 214 of 2007. The petitioner was acquitted by the learned trial judge vide order dated 4.6.2008.

6. It is further submitted by the learned counsel for the petitioner that a case crime No. 191 of 2008 under section 356 /411 IPC was registered on 12.12.2008 and on the same day registered another Case Crime No. 287 of 2008 under section 356 IPC at Police Station Gwaltoli with the similar allegations of snatching of gold chain by a pillion rider of the motor cycle. The said case was highlighted in the newspaper and case pertaining to chain snatching was solved on the same day by arresting a person namely Gufran. As the motor cycle was previously belonging to the petitioner and it was transferred to Gufran, merely because of this reason, the petitioner was roped in the case of snatching on the connivance and inkling of partisan persons who were already nurturing animus and grudge against the petitioner. All the cases shown in the chart show that the police authorities are bent upon to harass the petitioner stigmatizing the petitioner as hardcore criminal. The image of the petitioner has been tarnished in the society on account of his false and malicious implications in a number of cases. The petitioner is belonging to middle class and is earning his livelihood by sewing clothes. The petitioner has been agitating his grievance before the authorities but the authorities did not pay any heed on his grievance and the petitioner is leading hellish and sleepless days of his life on account of his false accusations. The sword of history sheet which is hanging upon the petitioner putting him under surveillance is absolutely in derogation of para 28 of U.P. Police Regulation as it does not unravel the correct history sheet and the petitioner has been subjected to constant harassment in the name of surveillance. Section 28 of the U.P. Police Regulation contemplates that history should be opened or is to be continued for two consecutive years subject to not having been in jail for any part of the said two years. There should be some basis or material for opening of the history sheet and in the absence of any material opening of the history sheet against the petitioner is per se illegal and does not deserve to be sustained. Chapter XX Rule 231 of U.P. Police Regulations envisages that the subjects of history sheets of class A will unless they are "starred" will 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 convicted of cognizable offence or absented himself in suspicion 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 but in the present case, there was no material to show that the

petitioner is a hardcore and habitual criminal since 2008 and great care should be exercised to keep him under surveillance. The representation of the petitioner remained pending and without considering the ground with regard to false cases demonstrated against the petitioner in which he has already been acquitted, the order impugned has been passed by the Superintendent of Police Kanpur Nagar to keep him under surveillance hence the order dated 2.5.2011 is ex-facie erroneous and deserves to be nullified.

7. The next contention advanced by the learned counsel for the petitioner is that the petitioner has been acquitted in Case Crime No. 191 of 2008 under sections 392 /411 IPC by the Addl. Chief Metropolitan Magistrate Kanpur Nagar vide order dated 24.5.2012. Similarly the petitioner has also been acquitted in Case Crime No. 287 of 2011 under section 392 IPC by the learned Addl. Chief Metropolitan Magistrate Court No. 7 Kanpur Nagar vide order dated 29.9.2012. Since no criminal case has been registered against the petitioner from the year 2008 and in the pending cases also, the petitioner has been acquitted. There is no material evidence available against the petitioner for continuance of surveillance in the backdrop of the history sheet. Considerable period has passed away and no case has been registered and the maintaining of the history sheet against the petitioner being per-se a tacit act on the part of the respondent authorities to harass him in the name of the surveillance deserves to be vitiated in terms of Chapter XX Rule 231 of U.P. Police Regulations as the petitioner does not come within the precinct of hardcore and habitual criminal. The word "habitual offender" connotes a person who has been sentenced or convicted not less than three and more cases. The petitioner has not been sentenced or convicted in a single offence therefore, he does not fall within the definition of habitual offender as delineated in para 228 of the said Regulation consequently he cannot be declared as history sheetee. There is no special reasons recorded on the basis of which the history sheet of the petitioner may be continued hence the impugned order may be quashed closing the history sheet of the petitioner. The learned counsel for the petitioner has placed reliance upon a decision of this court in Faiyaz Ahmad Vs. State of Bihar and Others, where the history sheet was opened against the petitioner in the year 1996 and no case was lodged thereafter, it was held by Division Bench of this Court while discontinuing the history sheet as follows:-

"The intention of the Regulation 231 is not that history sheet should remain open against anyone for all times to come. Once the person maintains good conduct and he is not convicted in any cognizable offence or has been in jail during that period and also he was not suspected of any offence or absented himself in suspicious circumstances for the said two consecutive years, his surveillance is to be discontinued except under orders of Superintendent on the basis of reasons recorded at Police Station during inspection. No such eventuality has happened to occur in the matter of petitioner during the said two consecutive years, therefore, his sheet ought to have been closed.

8. Per contra learned AGA opposed the contention of the learned counsel for the petitioner stressing that looking into his criminal activities, to keep surveillance on his conduct and nature of activities, is necessary. History sheet has been opened against the petitioner taking into account a number of cases registered against him. Learned AGA however, has conceded that after opening the history sheet in 2008, the petitioner has not been found involved in any other case but contended that the petitioner has not exhausted the remedy to approach before the competent authority who had opened the history sheet under the Police Regulation for redressal of his grievance and the same cannot be dropped in the manner once the remedy available to the petitioner has not been exhausted thus the writ petition does not deserve to be sustained on the ground of alternative remedy and may be dismissed in limine.

9. After weighing the rival submissions advanced by the learned counsel for the parties, this Court has given anxious consideration on the issues on the basis of which history sheet has been opened against the petitioner in the year 2008. The petitioner has been exculpated in a number of cases after the opening of the history sheet. Section 231 of the Police Regulation contemplates that history should continue for at least two consecutive years. The petitioner has neither been convicted nor has been found involved in any heinous offence. Even he has not been suspected of any offence or absented himself in suspicious circumstances for two consecutive years hence his surveillance should be discontinued unless for special reasons to be recorded in the inspection note of the police station. The order impugned whereby the representation of the petitioner has been rejected way back in the year 2011, clearly demonstrates that the order has been passed without verifying about the habit, reputation and image from the inhabitants of neighbouring village of the petitioner as to whether he is still in the habit of committing crime or is leading peaceful life by earning his livelihood doing hard work. The maintaining of the history sheet of the petitioner beyond two consecutive period is absolutely a wrongful retention so as to protract surveillance ignoring generality of his class. The order impugned has been passed by the respondent authority adversely affecting the image, reputation and liberty. Reputation is a part of right to life enshrined in Article 21 of the Constitution which cannot be taken away or abridged by the State without applying the principles and procedure established by law. The reputation of the petitioner is being sullied in defiance of the procedure established by law hence the opening of the history sheet against the petitioner and the continuance of surveillance by the respondents being violative of article 21 of the Constitution of India does not deserve to be protracted rather it may be rendered nugatory closing the same. Learned AGA who has justified the declaration of the petitioner as history sheetee, has not put forth any material on the basis of which history sheet of the petitioner should remain opened and he may remain under surveillance. A person can only be declared as habitual offender if conviction has been recorded against him and has been in jail for two consecutive years. In the present case, the petitioner has not even remained in jail for a period of two

consecutive years and the cases shown in the history sheet have also culminated into acquittal thus the petitioner cannot be subjected to surveillance as the petitioner has not been declared as hardcore and habitual offender. Moreover, there is nothing on record to corroborate that any criminal act was committed by him for the last seven years on the basis of which he should remain under surveillance until death. Once a person maintains good conduct and has not been convicted in any cognizable offence or has not absented himself in any mysterious and cryptic circumstances, his surveillance is not justified being clear violation of Article 21 of the Constitution of India curtailing his right to life and liberty.

10. For the reasons enumerated here to above, this Court does not see any ground to uphold the order dated 2.5.2011 passed by the respondent No. 2. The history sheet No. 2008-A-2046A opened against the petitioner is hereby closed. The writ petition is allowed. The respondent authorities are directed to wipe out the name of the petitioner from the surveillance register and the Board of History Sheeter maintained at Police Station Colonelganj Kanpur forthwith. No order as to costs.