

(2013) 12 UK CK 0021

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Writ Petition No. 1177 of 2012

Mohd. Safi

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 04-12-2013

Acts Referred:

Citation : (2014) 2 ALJ 322 : (2014) CriLJ 665 : (2014) 2 RCR(Criminal) 546

Hon'ble Judges : Umesh Chandra Dhyani, J;Sudhanshu Dhulia, J;B.S. Verma, J

Bench : Full Bench

Advocate : M.C. Kandpal and S.S. Chaudhary, for the Appellant; A.S. Gill, Learned Govt. Advocate, for the Respondent

Judgement

Sudhanshu Dhulia, J.—This matter is before this Full Bench on a reference by a Division Bench of this Court, headed by Hon"ble the Chief Justice and another Hon"ble Judge of this Court. The reference relates to a provision in the U.P. Police Regulations (hereinafter referred to as "Police Regulations"), which is also presently in force in the State of Uttarakhand. The provision of law relates to a "history-sheet" and as to how a history-sheet is to be opened in a particular given case. Whereas the earlier Division Bench of this Court had held that the opening of a history-sheet was wrong in that particular case, as the Division Bench was of the opinion that the concerned person (i.e. petitioner) was not a habitual criminal or abettors of such criminals, as there were no criminal case against him, the present Division Bench headed by Hon"ble the Chief Justice, has referred to a provision in the Police Regulations i.e. Regulation 228 of the U.P. Police Regulations, which says that history-sheet can be opened not only when a person who is a habitual criminal or abettors of such criminal, but also in a case where he is "likely to become" such. This aspect has not been considered by the earlier bench. For the ready reference of this Court Regulation 228 of the U.P. Police Regulation is quoted hereunder:

228. Part V consists of history-sheets. These are the personal records of criminals 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) Criminal 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-pocket, 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 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.

The reference made by the Division Bench is as follows:-

Mr. M.C. Kandpal, Senior Advocate assisted by Mr. S.S. Chaudhary, Advocate for the petitioner.

Mr. A.S. Gill, Government Advocate assisted by Mr. V.P. Bahuguna, Brief Holder for the State of Uttarakhand/respondents.

Learned counsel for the petitioner has brought to our notice judgment of a Division Bench, where, amongst others, it has been held, after considering Regulation 228 of U.P. Police Regulations contained in Chapter XX, that a history-sheet can be opened only against persons, who were involved in dacoity, burglary, theft or relating to abetment thereof; whereas a plain reading of Regulation shows that the same can also be opened against persons, who are likely to become habitual criminal or abettors of such criminals.

We, accordingly, feel that the matter requires to be considered by a larger Bench.

We, accordingly, refer the matter to the larger Bench.

2. Hence what has now fallen for our determination is whether in the light of the observations made by the Division Bench and in the light of the provision contained in the Regulation 228 and other provisions of the U.P. Police Regulations, where a history-sheet can be opened not only in a case where a person is considered to be a confirmed criminal but also where he is "likely to become" one, what are the considerations before the Police Authorities before

they come to the determination that a person is "likely to become" a habitual criminal or abettors of such criminal, as this particular aspect i.e. the likelihood of a person becoming a habitual criminal an abettor was not determined earlier by this Court. What are the parameters and what are the considerations thereupon to be followed in such cases by the police?

3. Before we come to this determination an appreciation of the facts of the present case would be in order. The petitioner before this Court is a 71 years old Muslim "Guzzar," who stays in "Jai Nagar" No. 3, Police Station Dineshpur, District Udham Singh Nagar. He has never been convicted, in fact, he has never been charged in a criminal case of any nature. A history-sheet was, however, opened in his case of "Class - A" "history sheet" by an order of the S.S.P., Nainital way back in the year 1993. Since then he is under surveillance by the police, as that is the necessary purpose of opening a "history-sheet" i.e. putting that person under a surveillance. The petitioner reports undue harassment by the police authorities due to the surveillance and an invasion of his rights and seeks protection from this Court. Clearly his case is that when there is nothing on record with the police against him, as he has never been charged in a criminal case of any nature then what are the "objective criterion" before the Police Authorities to have put him under surveillance in the first class place and open a history-sheet in his case. In their counter affidavit the State Government admits the factual position that no criminal case was ever registered against the petitioner. It only asserts that the authorities "suspect" the petitioner to be involved in miscellaneous criminal activities and hence his history-sheet was opened on 01.06.1993. The precise averment to this effect confers in para 6 of the counter affidavit, which is as follows:--

That in reply to the contents of paragraph No. 5 of the writ petition it is submitted that although no any criminal case was registered against the petitioner at the time of opening his history-sheet i.e. on 1-6-1993. In spite of that the petitioner was suspect in an active miscellaneous crime of a professional type hence on the recommendation of In-charge Inspector, Kotwali Rudrapur in the year 1993; S.S.P., Nainital directed to open history sheet against the petitioner, accordingly the history sheet was opened on History Sheet (H.S.) No. 110/A on 1-6-1993 at P.S. Kotwali Rudrapur, District Udham Singh Nagar.

4. For abundant precaution this Court had summoned the original police records pertaining to the petitioner and there was nothing in the record as well which could show that there were valid reasons for the authorities to have put the petitioner under surveillance by opening his history sheet.

5. There is a whole chapter in the U.P. Police Regulation, namely, Chapter XX with a Heading called "REGISTRATION AND SURVEILLANCE OF BAD CHARACTERS".

6. The entire Chapter consists of Regulation 223 to Regulation 276. Relevant Regulations for our purpose would be Regulations 223 to 252. The entire tone

and tenor of these regulations reflect the then colonial state of mind as it speaks of "Criminal Tribe Act", (an Act, which has already been repealed in the year 1956) and further provisions are also reflective of a bygone colonial era where a group or individuals or castes were recorded as "criminal tribes" and put under surveillance. It speaks of "habitual criminals" and not only this it goes on to say that there are certain types of criminals, who are "incapable of reform"

7. But be that as it may, the challenge here is limited and we are not to see the legality of the various provisions of the "Police Regulations", but we have to examine on a limited aspect, as already referred above. A fleeting reference to the seemingly repulsive provisions of the Police Regulations is only to give an idea of the time and era when such Regulations were framed under the Police Act, 1861.

8. As we have already referred Regulation 228 of the Police Regulations speaks about two classes of history-sheets "Class-A" and "Class-B". Class A is a history-sheet for dacoits, burglars, cattle-thieves railway-goods wagon thieves, and abettors thereof and Class B is history-sheet 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 pickpocket, forgers, coiners, cocaine and opium smugglers, hired ruffians and goondas, telegraph wire-cutters, habitual illicit distillers and abettors thereof.

9. For the authors of this Police Regulations, the two set of crimes (i.e. Class "A" and Class "B") are of entirely different nature. Regulation 228 of the U.P. Police Regulations further states that though the manner in which the records of surveillance and manner in which the history-sheet is to be opened in Class "A" or in Class "B" is the same, yet where a Class "B" history-sheet is opened it has to be opened with a red bar mark at the top of the first page and never can Class "B" history-sheeter be converted into a Class "A" history-sheeter, though in case, a person, who is under Class "B" is also seen of indulging in crime relating to history Class "A" then surveillance of both types of criminals have to be opened against him. However, it is possible that the history-sheeter of Class "A" is converted into a history-sheeter of Class "B".

10. Normally one has to assume that since history-sheet of Class "A" carries with it crimes of greater magnitude such as dacoity, burglary etc. the history-sheet opened in such cases is of a more serious nature. But this is not true, in fact reverse is the truth. As per Regulation 229 of the U.P. Police Regulations the classification of history-sheet as "Class A" and "Class B" are based on the principle that whereas there is always hope of a dacoit, burglars, or cattle thieves or railway-goods wagons thief mending his ways, the expert miscellaneous criminal (of Class "B" history-sheet) is as a general rule "incapable of reform". The classification, therefore, is solely on the kind of crime to which suspects are addicted to and it is designed to regulate. Regulation 229 of the Police

Regulations reads as under:

229. This classification of history-sheets as A and B is based on the principle that, whereas there is always hope of a dacoit, burglar, or cattle thief or railway goods wagons thief mending his ways, the expert miscellaneous criminal is as a general rule incapable of reform. The classification, therefore, solely on the kind of crime to which suspects are addicted and is designed to regulate only--

(1) the length of time for which a suspect should ordinarily remain, under surveillance in the absence of complaints against him.

(2) the kind of surveillance which his activities require.

The degree of surveillance of the appropriate kind to be exercised over a suspect will depend not on his classification, but on the extent to which he is believed to be active at any particular time.

11. There is a further classification of history-sheets of Class "A". The more serious nature of the persons under surveillance is the "starred" category. Their surveillance is more vigorous and have a greater length of time whereas since a history-sheet of Class "B" is "incapable of reform", as per the authors of the Police Regulations. The Regulations 232 of the Police Regulations says that it is not necessary to star suspects of Class "B". Regulation 232 of the Police Regulations reads as under:--

232. History-sheet of B class will be continuously open records and the subjects of these sheets will, except for every special reasons remain under surveillance until death. This being so it is unnecessary to star suspects of this class.

12. In a present case, history-sheet of Class "A" has been opened against the petitioner. But was there any relevant material before the Police Authorities to have done so? That is the precise question.

13. No criminal case was ever filed against the petitioner. Leave aside a criminal case pending against him or he being convicted in one. Consequently, the question would be whether the Police Authorities are justified in opening the history-sheet of Class "A" criminal? The Police Authorities have justified their stand and have stated that the petitioner agitates for the cause of the "Muslim Guzzar" community and has illegally established some Muslim Guzzars on a Forest land. That is the only material against the petitioner. This activity of the petitioner even if true does not bring it within the ambit of the activity as contemplated under Regulation 228 of the Police Regulations pertaining to Class "A" history-sheet i.e. dacoits, burglars, cattle-thieves railway-goods wagon thieves, and abettors. But even then the Police Authorities are empowered if they come to the conclusion, that not only a person is indulging in such activities, but if he is also "likely" to indulge in that activity. What then? The answer to this precise question lies in Regulation 240(1) of the Police Regulation, which reads as under:--

240. History-sheets of both classes may be opened (1) on suspicion or (2) on conviction, or acquittal. No history-sheet may be opened without the orders of the Superintendent of Police.

(1) On suspicion.-- Whenever as a result of investigation into a case of dacoity, burglary, cattle theft, from railway goods wagons or into a case of miscellaneous crime of a professional type, the officer-in-charge of a police station applies for the name of any person to be entered in the crime register as reasonably suspected, he must at the same time report whether the suspect is under surveillance, and if not, whether a history-sheet should in his opinion be opened for him. Should the gazetted officer-in-charge of a subdivision on receiving such a report and after such further inquiry as he may think necessary consider that a history-sheet is required he will forward the report to the Superintendent who if he accepts the proposal will define the class of history-sheet to be opened and pass orders as to whether the suspect should be "starred". Similarly whenever an officer-in-charge of a police station finds reason to believe, otherwise than in the course of an investigation, that any resident of his circle is addicted to crime, or whenever a gazetted officer or circle inspector for any reason believes that a history-sheet for any person is necessary a report must be submitted to the Superintendent, who will pass orders on it as laid down above.

14. Regulation 240(1) shows that history-sheet can be opened on suspicion in two cases. The first situation is in a case where as a result of investigation into a case of dacoity, burglary, cattle theft, theft from railway goods wagons or into a case of miscellaneous crime of a professional type, the officer-in-charge of a police station applies for the name of any person to be entered in the crime register on reasonable suspect, he must at the same time report whether the suspect is under surveillance, and if not, whether a history-sheet should in his opinion be opened for him. Should the gazetted officer-in-charge of a subdivision on receiving such a report and after such further inquiry as he may think necessary consider that a history-sheet is required he will then forward the report to the Superintendent of Police who if he accepts such proposal will define the class of history-sheet to be opened and pass orders as to whether the suspect should be "starred".

15. Second situation is where an officer-in-charge of a police station finds reason to believe, otherwise than in the course of an investigation, that any resident of his circle is addicted to crime, or whenever a gazetted officer or circle inspector for any reason believes that a history-sheet for a person is necessary a report must be submitted to the Superintendent of Police, who will pass orders on it, as laid down above.

16. In both the cases, the common factor in both the situations is that, some inquiry is necessary to ascertain whether the report submitted by the station officer requires opening of history-sheet or not.

17. In the first case, history-sheet can only be opened when an officer comes to

such a conclusion "after such further inquiry as he may think necessary" comes to such a conclusion and in the second case (i.e. a case where the suspicion is for any other reason i.e. for reasons other than during investigation), again it must be done if he has "a reason to believe", and further the orders must be passed as laid down in the first situation, which would again mean after "an enquiry". In both cases there has to be an inquiry and an application of mind. In the present case we find that there has been no application of mind leave aside any enquiry on the nature of activity being done by the petitioner. The only reason assigned for opening of history sheet against him is that he is a leader of a community of Van Gujjars and agitates on their behalf and in their interest. This cannot be a ground for opening a history sheet against a person.

18. Similar is the view given by a Division Bench of Allahabad High Court in case of Sunil Kumar Singh Vs. Superintendant of Police and Others, wherein it has been said that even where under Regulation 240(1) history sheet has to be opened merely on the basis of suspicion comparing the two cases of suspicion as referred to above, the Division Bench says as under:--

18. It is thus apparent from comparative study of these situations that even in case where as a result of investigation in a case it is thought necessary to open history-sheet against a person, a report should be given and after receiving such report and after further inquiry as he may think necessary the competent authority may forward the report to the Superintendent of police. In both the situations, some inquiry is necessary to ascertain whether the report submitted by the Station Officer required opening of history-sheet or not. It is not enough to put a blanket-seal on the report of the Station Officer.

19. The words and after further enquiry as he may think as laid down above equally apply in the second category of cases contemplated under regulation-240(1). It is thus clear that inquiry is to be conducted as may be found necessary by the competent authority.

19. Opening of history-sheet whether of Class "A" or Class "B" would mean, putting such a man under police surveillance. Consequently, it would mean an invasion of his right to privacy. It is by now well settled that at least in some cases, right to privacy has been held to be a part of Fundamental Right enshrined under Article 19(1)(d) as well as Article 21 of the Constitution of India. Since we are not on the validity of the laws themselves under which a person is put under surveillance, we have only examined whether the surveillance as well as the opening of the history-sheet is in accordance with the existing laws i.e. the Police Regulations. Since the present matter involved "personal liberty" of an individual, it had drawn both the concern and the anxiety of this Court in great measure.

20. The majority view of the Constitution Bench decision of the Hon"ble Supreme Court in Kharak Singh Vs. The State of U.P. and Others, it was held that surveillance being done by the police under the Police Regulations, and it per se

is not violative of either Article 19(1)(d) or Article 21 of the Constitution of India, yet it is true that these police surveillance and the opening of the history-sheet must strictly comply with the procedure and the parameters under the Police Regulations. In the present case it has failed to do that.

21. Consequently, this Court is of the considered view, after going through the provisions of Police Regulation and another provision of law that though in a given case a history-sheet can be opened against a person who is likely to become a criminal such as one contemplated under Regulation 228, yet before a history-sheet is opened in such a case, the police authorities must have "objective criteria" before them, in order to reach that conclusion, some perceptible material on which such a conclusion could be based, such as given in Regulation 240(1) of the Police Regulations. These "objective criteria" must be reflected in the reports which should be as a result of an inquiry or finding of the police and not just based on the conjectures and surmises of the police authorities. In view of the above discussion, the writ petition succeeds. History-sheet No. 100-A of 1993 dated 01.06.1993 opened against the petitioner is hereby quashed.