
(2014) 02 AHC CK 0126

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 7120 of 2014

Mohd. Sultan and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 14-02-2014

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2014) 3 ADJ 274 : (2014) 103 ALR 538 : (2014) 3 AWC 2280

Hon'ble Judges : Tarun Agarwala, J;Rajan Roy, J

Bench : Division Bench

Advocate : Anand Mohan Pandey, Advocate for the Appellant

Final Decision : Allowed

Judgement

1. Heard the learned counsel for the parties. The petitioners have filed the present petition praying for a writ of mandamus commanding the respondents not to interfere in the peaceful life and liberty of the petitioners and have further prayed that they should not be harassed and humiliated by the police at odd hours of the night without any just and cogent reason. The petitioners have also prayed that an enquiry be instituted in the matter relating to the nocturnal visits made by the police at the residence of the petitioners.

2. The petitioners contend that on account of some inter se dispute with respondent Nos. 6 and 7 several First Information Reports had been lodged against the petitioners and cross First Information Reports have also been lodged by the petitioners against respondent Nos. 6 and 7. Pursuant to the investigation, charge-sheets against the petitioners as well as against respondent Nos. 6 and 7 have been filed before the appropriate Court of law.

3. The petitioners contend that in spite of the charge-sheets being filed, the petitioners are being harassed by the police in collusion with respondent Nos. 6 and 7. Various First Information Reports have been lodged in various police stations in the city of Allahabad and the petitioners have gone to all the police

stations and have produced the relevant documents inspite of which the respondents continue to harass the petitioners by visiting their residence at odd hours of the night without any cogent reasons.

4. This Court called for a counter-affidavit. Respondent No. 3, Senior Superintendents of Police, Allahabad has filed a counter-affidavit indicating that the petitioner No. 1 is a notorious criminal and a land mafia. The police is not harassing nor humiliating the petitioners nor are they in collusion with private respondent Nos. 6 and 7. Pursuant to the First Information Reports lodged by various parties, including the petitioners, fair investigation was made and without being influenced by any person or authority, charge-sheets were filed which are pending in a Court of law.

5. Having heard the learned counsel for the parties at some length and having perused the record, the Court finds that a categorical assertion was made by the petitioners in paragraph 12 of the writ petition, namely, that the police are harassing the petitioners by visiting them at odd hours and also lifting them at odd hours. This specific assertion has not been denied by the Senior Superintendent of Police in paragraph 6 of his counter-affidavit.

6. Personal liberty is a fundamental right of the petitioners, guaranteed under Article 21 of the Constitution of India. Such right which is given under the Constitution cannot be infringed by the police by carrying out investigation in such a nefarious manner. There is no allegation in the counter-affidavit that the petitioners are not participating in the investigation or are absconding.

7. On the other hand, they admit the assertions made by the petitioners in the writ petition that all relevant documents have been produced by them to the police authorities. Consequently, the Court does not find any justification in the action of the police in visiting the residence of the petitioners at odd hours of the night in the absence of any cogent or sufficient reason.

8. In Ramlila Maidan Incident, Ramlila Maidan Incident Vs. Home Secretary, Union of India (UOI) and Others, , the Supreme Court held that right to sleep is a biological necessity and interfering with the person's sleep is prohibited by the Constitution. The Supreme Court held that the right to sleep is associated with sound health, which is an inseparable facet of Article 21 of the Constitution. The Supreme Court held that the knock at the door by the police without authority of law amounts to an incursion into privacy and violation of the fundamental rights of a citizen. The right to privacy has also been held to be a fundamental right being an integral part of the Constitution. The Supreme Court further held that the legitimate intrusion into the privacy of a person is not permissible as right to privacy is inclusive in the right to life and liberty guaranteed under the Constitution.

9. The primary task of the State is to provide security to all citizens without violating human dignity. Privacy and dignity of human life is a fundamental right of every human being and any action which offends or impairs human dignity

tantamounts to deprivation of a right to live.

10. In the instant case, the respondents contend that petitioner No. 1 is a notorious criminal. The mere fact that a charge-sheet has been filed against him does not make him a notorious criminal. The respondents have not said anything about the antecedents of the other petitioners nor has stated anything about the antecedents of the respondents against whom a First Information Report had also been lodged. The State authorities have to take action which is reasonable and fair and just procedure established by law has to be followed. Even though the petitioners have been charge-sheeted, they still have their right under the Constitution. The action of the respondents in making such nocturnal visits is wholly illegal and without any sufficient cause.

11. In the light of the aforesaid, a writ of mandamus is issued to the police authorities not to harass the petitioners by visiting them at odd hours in the night unless the police authority has sufficient and cogent reasons for making such visit which would be recorded prior to their visit. Accordingly, the writ petition is allowed with cost of Rs. 10,000/-, which shall be paid to the petitioners within three weeks from today.