

(2016) 02 AHC CK 0168

In the Allahabad High Court

Case No : Criminal Misc. Writ Petition No. 21141 of 2015.

Munna Lal Gupta

APPELLANT

Vs

State of U.P. Thru Secy. and others

RESPONDENT

Date of Decision : 18-02-2016

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Citation : (2016) 94 ACrC 130 : (2016) 4 ADJ 13 : (2016) 162 AIC 889

Hon'ble Judges : Amreshwar Pratap Sahi; Pramod Kumar Srivastava, JJ.

Bench : Division Bench

Advocate : N.L. Srivastava, Advocate, for the Appellant

Final Decision : Allowed

Judgement

Pramod Kumar Srivastava, J. - Heard learned counsel for the petitioner, learned AGA and perused the records.

2. It is admitted that the police station Manikpur, District Chitrakoot had opened Class-B history-sheet of the petitioner Munna Lal Gupta in the year 1979 under the provisions of paragraph 228(2) of the UP Police Regulations. It is also admitted that said history-sheet was created with following cases:

- (1) case crime no. 39 of 1982 under Section 353/332/394/504/341/323/34 P.S. Majhali, Sidhi (M.P.),
- (2) case crime no. 28 of 1987 under Section 302 IPC, P.S. Manikpur, District Banda,
- (3) case crime no. 2 of 1988 under Section 506 IPC, P.S. Manikpur, District Banda and
- (4) case crime no. 36 of 1988 under Sections 323/504/506 IPC, P.S. Manikpur, District Banda.

3. It is also admitted that the petitioner was never arrested or challaned in any

of the above mentioned cases and no criminal trial had ever been carried out against him.

4. When the petitioner applied for visa for visiting abroad, then he could not get it due to aforesaid opened Class-B history-sheet against him. Then he came to know, for the first time, about the said history-sheet. So he had filed present writ petition for the following reliefs.

a. Issue a writ, order or direction in the nature of certiorari calling for the record and quash the impugned order dated 27.05.2015 passed by the Superintendent of Police, Chitrakoot.

b. Issue a writ, order or direction in the nature of mandamus directing the respondent no. 2 to close down the name of the petitioner in the list of the history-sheets 3-B against the petitioner of Police Station Manikpur, District Chitrakoot.

c. Issue a writ, order or direction in the nature of mandamus and requested that Regulation 232 of U.P. Police Regulations may be declared ultra-virus because it is discriminatory and against the Article 21 of the Constitution of India.

d. Any other writ, order or direction which this Hon"ble Court may deem fit and proper in the circumstances of the case.

e. To award the cost of the petitioner to be paid to the petitioner.

5. The history-sheet is opened in accordance with the provision of Paragraph 228 of the U.P. Police Regulations, which reads as under:

"Para 228 :- History sheet and surveillance : "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 are likely to become habitual criminals or abettors of such criminals. There will be two classes of history sheets.

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

02 - 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 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 history sheet A though should the subject of a history 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 para 238 be applied to him. In the event of a Class A, history sheet men becoming addicted to miscellaneous crime, his history sheet may be converted into a Class B history sheet with the sanction of the Superintendent."

6. This paragraph 228 of U.P. Police Regulations provide that Class-B history-sheet can be opened only against the confirmed and professional criminal, who had committed a crime of dacoity, burglary, cattle theft or theft from railway goods, wagons etc. or who is expert or habitual offender in other crimes as mentioned in this paragraph.

7. Admittedly, the petitioner cannot be bracketed as confirmed or professional criminal because neither he was ever arrested or tried for any criminal offence nor was ever convicted in any matter. The only allegation against him is that there is mention of above noted four cases in his history-sheet.

8. In the present case counter affidavit filed on behalf of the State does not disclose as to how and why this Class-B history-sheet was opened, especially in year 1979 when cases mentioned in it are of year 1982 and afterwards. It is not stated that how the Superintendent of Police had reasonable belief that the petitioner was confirmed or professional criminal or habitual offender who had been indulging in such criminal activities. It was not stated in counter affidavit of State that in fact petitioner was found guilty on any offence. Last of the criminal case allegedly registered against the petitioner, as evident from the crime number, was of the year 1998; and since then for about 27 years, no criminal antecedents or activity of the petitioner was ever reported. Even there is no allegation in counter affidavit filed on behalf of State that petitioner has been taking interest or involved in any unlawful or anti-social activities for last 27 years. There is no averment in the counter affidavit of State that any charge-sheet was filed or any action was taken against the petitioner for the crime numbers are mentioned in history-sheet, or in any other case.

9. It is apparent that there exists no justification for continuance of his name being mentioned in history-sheet. It is also pertinent to know that four cases mentioned in history-sheet relate to year 1982, 1987 and 1988, but according to the counter affidavit, this Class-B history-sheet was opened in year 1979. None of the contentions of affidavit of petitioner filed along with the writ petition was denied in counter affidavit and only this much was mentioned that :

"However it is submitted that the history-sheet was opened by the Superintendent of Police on the basis of report submitted before him regarding involvement of petitioner in criminal case."

10. Thus it is apparent that without being involved in overt-act or any criminal activity, the Class-B history-sheet was opened for the petitioner in year 1979. It is evident that this history-sheet was opened without verifying the facts and without application of mind. Therefore, we are satisfied that there were no sufficient grounds for the Superintendent of Police to entertain a reasonable

belief that the surveillance was required in the case of petitioner and there existed no evidence to support the fact that surveillance of the petitioner was necessary.

11. Article 19(1)(a) of the Constitution of India protects the fundamental right of a citizen when it provides that "all citizens shall have the right to freedom of speech and expression." Article 19(1)(d) of the Constitution provides that "all citizens shall have the right to move freely throughout the territory of India." Article 21 of the Constitution protects the fundamental right of a citizen regarding his life and personal liberty when it reads that "no person shall be deprived of his life or personal liberty except according to procedure established by law". These fundamental rights are subject to reasonable restrictions.

12. This leads us to the question as to whether the petitioner's fundamental right under Article 19 (1) (d) is also infringed by history sheet and surveillance. What is the content of the said fundamental right ? It is argued for the State that it means only that a person can move physically from one point to another without any restraint. This argument ignores the adverb "Freely" in clause (d). If that adverb is not in the clause there may be some justification for this contention; but the adverb "freely" gives a larger content to the freedom. Mere movement unobstructed by physical restrictions cannot in itself be the object of a person's travel. A person travels ordinarily in quest of some objective. He goes to a place to enjoy, to do business, to meet friends, to have secret and intimate consultations with others and to do many other such things. If a man is shadowed, his movements are obviously constricted. He can move physically, but it can only be a movement of an automaton. How could a movement under the scrutinising gaze of the policemen be described as a free movement? The whole country is his jail. The freedom of movement in clause (d) therefore must be a movement in a free country, i.e., in a country where he can do whatever he likes, speak to whomsoever he wants, meet people of his own choice without any apprehension, subject of course to the law of social control. The petitioner under the shadow of surveillance is certainly deprived of this freedom. He can move physically, but he cannot do so freely, for all his activities are watched and noted. The shroud of surveillance cast upon him perforce engender inhibitions in him and he cannot act freely as he would like to do.

13. Assuming that Article 19(1)(d) of the Constitution must be confined only to physical movements, its combination with the freedom of speech and expression leads to the conclusion we have arrived at. The act of surveillance is certainly a restriction on the said freedom? It cannot be suggested that the said freedom is also bereft of its subjective or psychological content, but will sustain only the mechanics of speech and expression. An illustration will make our point clear. A visitor, whether a wife, son or friend, is allowed to be received by a prisoner in the presence of a guard. The prisoner can speak with the visitor; but, can it be suggested that he is fully enjoying the said freedom. It is possible for him to express his real and intimate thoughts to the visitor as fully as he would like. But

the restrictions on the said freedom are supported by valid law. To extend the analogy to the present case is to treat the man under surveillance as a prisoner within the confines of our country and the authorises enforcing surveillance as guards, without any low of reasonable restrictions sustaining or protecting their action. So understood, it must be held that the petitioner's freedom under Article 19(1)(a) of the constitution is also infringed.

14. In A.K. Gopalan v. State of Madras, AIR 1950 SC 27 Hon"ble Apex Cpurt had held :

"If a man's person is free, it is then and then only that he can exercise a variety of other auxiliary rights, that is to say, he can within certain limits, speak what he likes, assemble where he likes, form any associations or unions, move about freely as his "own inclination may direct", reside and settle anywhere he likes and practise any profession or carry on any occupation, trade or business. These are attributes of the freedom of the person and are consequently attached to the person"

15. The petitioner under the shadow of surveillance is certainly deprived of this freedom. Due to presence of such history-sheet, the petitioner is deprived of his freedom of movement as well as right of privacy under the shadow of surveillance by police. He can move physically, but he could not do so freely for all his activities because he is watched and noted. After knowledge of this history-sheet he could not act as freely as he would like to do in absence of such history-sheet.

16. Where the police officer has not given any reason for his belief that the petitioner was a desperate character, and a habitual offender, the history-sheet opened against him is not in accordance with the mandate of the relevant rules, and as such it would be just to order closure of such history-sheet. The exercise of the power by the police under the cover of surveillance which invades into personal liberty of the petitioner as regards his free movement in day to day life, when there is no material to continue the history-sheet for him, is violative of Article 21 of the Constitution of India.

17. For the reasons discussed above, we hold that Class-B history-sheet for the petitioner Munna Lal Gupta was an erroneous act done without the facts being verified and without reasonable satisfaction being reached or mind being applied by the then Superintendent of Police. This history-sheet was never reviewed because rules provided that Class-B history-sheet shall continue till death.

18. Although right of privacy stands declared as fundamental right and a person cannot be deprived of freedom of movement guaranteed by the Article 19 (1)(d) of the Constitution of India as well as personal liberty granted under Article 21 and it cannot be said that rights are absolutely rights because they subjected to reasonable restrictions, but in present matter restrictions imposed on aforesaid fundamental rights of the petitioner are unwarranted erroneous and unreasonable. This history-sheet is violative of constitutional guarantee and

fundamental rights of the petitioner guaranteed under the Constitution of India.

19. We are satisfied that there were no sufficient grounds for Superintendent of Police to entertain a reasonable belief that a surveillance was required in the case of the petitioner and there existed no offence to support the fact that surveillance of the petitioner was necessary. Hence the order passed by the Superintendent of Police Chitrakoot to open Class-B history-sheet of the petitioner at Police Station Manikpur, District Chitrakoot deserves to be quashed.

20. In the result, the writ petition is allowed. Class-B history-sheet opened under order of the Superintendent of Police, Chitrakoot in Police Station Manikpur is hereby quashed. The opposite parties are directed to close present history-sheet of the petitioner and not to keep surveillance on the petitioner in pursuance of the said history-sheet.