

(2021) 09 UK CK 0243

In the Uttarakhand High Court

Case No : Criminal Writ Petition No. 1383 Of 2021

Naresh Pandey

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 24-09-2021

Acts Referred:

Indian Penal Code, 1860 — Section 147, 188, 269, 270, 323, 326, 341, 504, 506
Uttar Pradesh Control Of Goondas Act, 1970 — Sections 3, 4
Disaster Of Management Act, 2005 — Section 51B

Citation : (2021) 09 UK CK 0243

Hon'ble Judges : N.S. Dhanik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.S. Dhanik, J

1. The writ petitioner has filed the present writ petition praying for quashing of history-sheet No. 7A, dated 14.7.2020, issued/opened by the Officer-in-charge, Police Station Bhowali, District Nainital, under Regulation 228 of the U.P. Police Regulations, as applicable in the State of Uttarakhand.

2. The petitioner contends that he is Vyapar Mandal Adhyaksha, Bhowali and is a reputed person and also contested the election of Chairman of Nagar Palika Parishad, Bhowali. The petitioner keeps on espousing the public causes and for this reason, the rival people, in collusion with the local police station, are instrumental in implicating the petitioner in false cases.

3. As per the information furnished by the police department, the petitioner was implicated in eight criminal cases, details of which are given herein below:

- (i) FIR No. 17/2013, under Sections 341, 147 IPC, PS Bhowali, District Nainital.
- (ii) FIR No. 21/2017, under Sections 504, 506 IPC, PS Bhowali, District Nainital.
- (iii) FIR No. 01/2018, under Sections 323, 504, 506 IPC, PS Bhowali, District

Nainital.

(iv) FIR No. 71/2018, under Sections 323, 326, 504, 506 IPC, PS Bhowali, District Nainital.

(v) FIR No. 72/2018, under Sections 323, 504, 506 IPC, PS Bhowali, District Nainital.

(vi) FIR No. 1837/2019, under Sections 3/4 of Gunda Act, PS Bhowali, District Nainital.

(vii) FIR No. 47/2020, under Sections 323, 504, 506 IPC, PS Bhowali, District Nainital.

(viii) FIR No. 48/2020, under Sections 269, 270, 188 IPC and Section 51-B of the Disaster Management Act, PS Bhowali, District Nainital.

4. On the basis of the aforesaid criminal cases lodged against the writ petitioner, a history-sheet was opened against him under Regulation 228 of the Police Regulations. In the writ affidavit, the petitioner has averred that he has not been found guilty in any of such offences. In FIR No. 17/2013 and FIR No. 72/2018, the petitioner has been acquitted by the trial court. In FIR No. 21/2017 and FIR No. 1/2018, the police filed the final report. FIR No. 71/2018 was quashed by this Court. In FIR No. 1837/2019, stay has been granted in WPCRL No. 1184/2020 and the same is still pending. In FIR No. 47/2020, cognizance/summoning order has been kept in abeyance by order of this Court passed in C482 No. 299/2021, which has been filed challenging the summoning order and the chargesheet. In FIR No. 48/2020, the petitioner is on regular bail.

5. In a nutshell, the writ petitioner has not been found guilty of commission of any offence. There is no other criminal case or complaint of any kind against him either in police station Bhowali or anywhere else.

6. In view of the above factual matrix of the case, the question which comes for consideration before the Court is whether the respondents were justified in continuing with the surveillance and opening the history-sheet under Regulation 228 of the Police Regulations. For convenience, Regulation 228 of the Police Regulations is extracted 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) 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."

7. A perusal of the aforesaid Regulation indicates that a history sheet should be opened only for persons who are or likely to become habitual criminal or abettors of such criminals and that history sheets should only be opened for criminals under surveillance. The history sheets has been divided into two classes and, for class A, the history sheets is for dacoits, burglars, cattle-thieves, railway-goods wagon thieves, and abettors thereof.

8. In the instant case, the history sheet has been opened by the police under class A.

However, the Court finds that the petitioner has been not been found guilty in any of the offence (as discussed above). There is no case of any kind registered against the petitioner anywhere else.

9. In paragraph 17 of the writ affidavit, the petitioner has explicitly stated that no inquiry was contemplated before seeking approval/sanction of the Senior Superintendent of Police for opening the history-sheet of Class A against the petitioner. Respondents have neither replied to this averment in their short counter affidavit nor it has been disputed during the course of argument.

10. Learned Counsel for the petitioner place reliance on a larger Bench judgment of this Court rendered in Criminal Misc. Writ Petition No. 1177 of 2012, decided on 4.12.2013. In the said judgment, it has been observed that some inquiry is necessary to ascertain whether the report submitted by the Station Officer requires opening of history-sheet or not.

11. No plausible reason for opening the history-sheet has been indicated by the respondents in the short counter affidavit filed on behalf of the State/respondents.

12. The Regulation 242 of the Police Regulations is also very relevant which provides guidelines to the Superintendent of Police in deciding whether a history-sheet should be opened or not and in what category it should be placed. This Regulation provides that "it is more important to open history sheet on conviction

than on mere suspicion."

13. In view of what has been set forth above, the Court is of the opinion that the ingredients required for opening the history-sheet against the petitioner are not existing. There is no justification for the respondents to continue with the surveillance and keeping the history-sheet alive against the petitioner.

14. For the reasons recorded above, the writ petition succeeds. Consequently, the history-sheet no. 7A, dated 14.7.2020, issued/opened by the Officer-in-charge, Police Station Bhowali, District Nainital, is quashed.