
(1989) 08 AHC CK 0029
In the Allahabad High Court
Case No : Writ Petition No. 425 of 1988

Ram Lal

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 01-08-1989

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (1989) 08 AHC CK 0029

Hon'ble Judges : S.S.Ahmed, J and Virendra Kumar, J

Final Decision : Disposed Of

Judgement

S. S. Ahmad J.

1. By means of this petition filed under Article 226 of the Constitution the petitioner has prayed that the opposite parties may be directed to restore his personal liberty and not to keep him in Police surveillance.

2. From the facts set out in the petition, it appears that the petitioner was involved in a case under Section 302, I. P. C. (Crime Case No. 2194 of 1974) of Police Station Qaiser Bagh, Lucknow as a result of which he was prosecuted in S.T. No. 109A of '75 and was acquitted on 19776 by II Additional Sessions Judge, Lucknow. The petitioner was also proceeded against under the provisions of the Goonda Act but judgment and order, dated 211 1978 passed by Additional District Magistrate (City), Lucknow the proceedings were dropped. The petitioner was involved in another case under Section 302, I. P. C. and Section 25 of the Arms Act which ended in acquittal on 1251978.

3. Proceedings under Rule 37/169 of the Defence of India Rules were also initiated against the petitioner on the basis of which Criminal Case No. 287 of 1976 was registered against him but these proceeding were withdrawn cm 181177. The petitioner was also involved in Crime Case No. 1945 of 1976 of Police Station Hasaratganj, Lucknow under Rule 43(5) read with Rule 37 of the Defence of India Rules but this case was also withdrawn. Other relevant facts

have been set out in Paragraphs 7, 8, and 9 of the petition which are reproduced below :

"7. That the petitioner's house required substantial repairs and for that purpose the petitioner came from Kanpur on 7/8/86. On 8/8/86 at about 10.30 p. m. Bhanu Pratap Singh, SubInspector of Police of P. S. Qaiserbagh, Lucknow came to the petitioner's house along with constable Shiv Prasad and Brijesh. The petitioner who was wearing a lungi only was going to buy a match, ball when he was stopped and taken to Out Post Khandhari Bazar despite protest by the mohalla people where he was beaten by the said SubInspector and constables and was sent to P. S. Qaiserbagh, Lucknow. At P. S. Qaiserbagh, Lucknow the petitioner was tortured for 2 days and was ultimately sent to the court on 10/8/86 falsely implicating him under Section 4/25 Arms Act.

8. That the petitioner's wife sent a telegram at about 12 in the night on 8/8/86 to the Station Officer, P. S. Qaiserbagh, Lucknow about his wrongful arrest and detention. The petitioner's wife has also filed a complaint against SubInspector Bhanu Pratap Singh and constable Brijesh Singh and Shiv Prasad for offences under Section 323/325/342/211, I. P. C. which is still pending. A copy of the telegram, dated 8/8/86 is Annexure No. 3 and a true copy of the complaint is Annexure No. 4. The petitioner was released on bail on 11/8/86.

9. That, thereafter, the petitioner again went to Kanpur due to fear of being implicated in any false case. The police of P. S. Qaiserbagh started visiting the petitioner's house almost daily and in the month of November, 1987, the petitioner's family was constantly harassed and the petitioner's wife moved an application in the court of Judicial Magistrate, Lucknow on 22/11/1987 praying that a report from the police station be sent for with respect to the allegations against the petitioner. The police of P. S. Qaiserbagh submitted a report on 21/2/87 stating that the petitioner was under police surveillance as a history sheet has been opened at P. S. Qaiserbagh, Lucknow and that policemen visit his house accordingly to mark his movement. A true copy of the application, dated 23/11/87 is Annexure No. 5 and a true copy of the police report, dated 21/2/87 Annexure No. 6."

4. Under these circumstances the petitioner challenged the police surveillance and opening of the history sheet at Police Station Qaiserbagh, Lucknow on the ground that fundamental right guaranteed to him under Article 21 of the Constitution was violated.

5. Counter affidavit of S. I. Bhanu Pratap Singh regarding whom allegations have been made in Paragraphs 7 and 8 of the writ petition, has been filed, in which it has been stated as under :

"3. That it is submitted that allegations as alleged in Paragraph 7 of the petition against the deponent are totally false and incorrect hence denied. It is submitted that the petitioner was arrested by SubInspector Chavi Narain Singh under Section 4/2 Arms Act at about 3.30 p.m. and a case on Crime No. 424/86 was

registered against him. A photo copy of the F. 1. R. of Case Crime No. 424/86 under Section 4/25 Arms Act, is enclosed as Annexure MCA1 to this counteraffidavit.

4. That in reply to the contents of Paragraph 8 of the petition it is submitted that the deponent has got no concerned so far a serial of telegram is concerned. Regarding tiling of the complaint against the deponent and two other constables, the deponent has no knowledge of the same for the reason that up till date the deponent has not received any notice from the court concerned."

6. No other counteraffidavit has been filed on behalf of the opposite parties and the fact that the petitioner is under police surveillance and that a historysheet has been opened against him at P. S. Quisherbagh, has jot bsea denied by the opposite parties.

7. Opening of historysheet and police surveillance against a person is provided for in Crispier XX of the U. P. Police Regulations which indicates that the historyshe can be opened a the police station even on suspicion and not necessarily on the, basis of conviction or acquittal. Guidelines on the basis of which historysheet can be opened have been set out in paragraph 236 real with Paragraph 240 of the Police Regulations which empower the police authorities to open historysheet or to keep a person under police surveillance.

8. Obviously, therefore, opposite parties are fully justified in opening the historysheet against the petitioner and in arranging the police surveillance.

9. In Kharak Singh v. State of U. P., AIR 1963 SG 12J5, it was held that the police would be justified in opening historysheet and arrangement for surveillance as it would not infringe any of the fundamental rights guaranteed to a citizen under Part III of the Constitution. Their Lordships, however struck down a part of Paragraph 236 of the Police Regulations which provided that the police can make domiciliary visits as they wore of the opinion that to infringed fundamental rights guaranteed ... a citizen under Article LI of the Constitution. Making of visit in the dead of night and making injuries about the petitioner at his house in that case was held to be disruptive of the right to live.

10. It may be pointed out that Article 21of th; Constitution guarantees the right to live and the personal liberty to a citizen which would inluck in its ambit the right to live in undisturbed peace as the word "life" does not mean mere physical existence or "Doing but the right to enjoy all the physic bodily facilities without any outside disturbance or interference.

11. While, therefore, maintaining the action of opposite parties in opening the historysheets and in arranging surveillance of the petitioner's movement we, being of the opinion, that the opposite parties cannot knock at the door of the petitioner at odd hours, direct that the opposite parties snail not make any domiciliary visit at the petitioner's house in the night at odd hours.

12. No further point was specifically mentioned by Shri B. Solomar counsel for

the petitioner that he does not wait any thing now than to the opposite parties not to make domiciliary visits at the petitioner's house in the night which we have allowed in view of the law laid down by their Lordships of Supreme Court in Kharak Singh case (supra).

13. The writ petition is disposed of finally in the manner indicated above.

Decided accordingly.