
(2011) 05 UK CK 0045

In the Uttarakhand High Court

Case No : Criminal Writ Petition No. 1030 of 2010

Ram Prakash

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 21-05-2011

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 233
Penal Code, 1860 (IPC) — Section 147, 148, 307, 323, 393
Uttar Pradesh Control of Goondas Act, 1970 — Section 3
Uttar Pradesh Police Regulations, 1948 — Regulation 228, 229, 230, 236

Citation : (2011) 05 UK CK 0045

Hon'ble Judges : Servesch Kumar Gupta, J; Prafulla C. Pant, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Prafulla C. Pant, J.—By means of this petition moved under Article 226 of Constitution of India, the Petitioner has sought direction in the nature of mandamus commanding Respondents to close the history sheet of the Petitioner opened at Police Station Rudrapur, District Udham Singh Nagar.

2. Heard learned Counsel for the parties, and perused the affidavit, counter affidavit, and rejoinder affidavit.

3. Brief facts, of the case, as pleaded in the writ petition are that the Petitioner is permanent resident of Rudrapur (District Udham Singh Nagar), and he has four children. His eldest daughter is studying in Uttaranchal Dental Medical College, Dehradun. His son is studying B. Tech from Dehradun, another daughter is studying in B.B.A. (Bachelor of Business Administration) from Srinnagar, Garhwal, and youngest daughter is in the intermediate class. The Petitioner at present is member of Jawahar Lal Nehru Hospital, Rudrapur. Between years 1992 to 2000, six cases were registered against the Petitioner, and all stood terminated in his favor. In crime No. 187 of 1992, at Police Station Kichha, which

was related to offences punishable u/s 395 and 397 Indian Penal Code, the Petitioner was acquitted, vide order dated 25.03.1996, passed by Additional Sessions Judge, Nainital, in Sessions Trial No. 205 of 1994. Another case which relates to crime No. 242 of 1992, relating to offence punishable under 393 Indian Penal Code, at Police Station Kichha, was investigated, and no offence was made out against the Petitioner as such, final report was submitted. The third case was relating to crime No. 262 of 1992, in respect of offences punishable u/s 147, 148, and 307 Indian Penal Code, in which the Petitioner was acquitted vide judgment and order dated 03.04.2000, passed by III Additional Sessions Judge. In the year 2000, crime No. 6 of 2000, was registered relating to offences punishable u/s 420, 467, 468 Indian Penal Code at Police Station Rudrapur, against the Petitioner but in said case also the Petitioner was acquitted vide order dated 27.11.2011, passed by Chief Judicial Magistrate, Udham Singh Nagar, in criminal case No. 846 of 2000. Meanwhile, in the year 1997, a case No. 59 of 159 was registered u/s 3 U.P. Control of Gundas Act, against the Petitioner but notices issued were cancelled vide order dated 23.03.1998, passed by District Magistrate, Udham Singh Nagar. As such, in all the six cases the Petitioner stands discharged, and for last ten years there is not a single criminal case was registered against the Petitioner. As such, it is pleaded in the writ petition that the continuance of history sheet opened by the Respondents against the Petitioner is violative of his fundamental rights, and liable to be quashed.

4. A counter affidavit has been filed on behalf of the Respondent No. 2 in which the six criminal cases mentioned in the writ petition are said to have been registered against the Petitioner, and there were two NC Rs (non cognizable reports) i.e. NCR No. 101 of 1997, relating to offences punishable u/s 323, 504 Indian Penal Code, and another NCR No. 102 of 1997, relating to offence punishable u/s 504 Indian Penal Code. It is not denied by the Respondents that the accused is acquitted from the charge in respect of the offences were registered against him. As such, the stand taken by the writ Petitioner that all the six cases registered against him between 1992 till 2000, terminated in his favor, and he was acquitted. It is nowhere stated in the counter affidavit that NC Rs were investigated upon. It is also not denied in the counter affidavit that since 2000, no criminal case was ever registered against the Petitioner.

5. Police Regulations 228 of U.P. Police Regulations (applicable in the state of Uttarakhand) reads as under:

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.

6. Regulation 229 and 230 provides relating to the period of surveillance in respect of the person whose history sheet has been opened. History sheet does not entail closing of the same as provided u/s 233 of Code of Criminal Procedure , though the same may be discontinued with the approval of the authority concerned. Regulation 236 provides that secret picketing can be done of the house or approaches of the person kept under surveillance. In *Kharak Singh Vs. The State of U.P. and Others*, , the Apex Court held that all the provisions contained in Police Regulations are administrative instructions. It is further held in said case that Regulation 236 encroaches upon the fundamental rights of citizen enshrined in Article 21 of the Constitution. In *Malak Singh v. State of Punjab and Haryana* AIR 1981 1 SSC 420, it is held that though inclusion of name of a person in a surveillance Register is a administrative function but the same is subject to judicial review. Keeping in mind the principle of law laid down by the Apex Court in aforesaid cases, and considering the fact that for ten years there is no criminal case registered against the Petitioner. As such, there is no justification for the Respondents to encroach upon the fundamental rights of the Petitioner after the period of ten years particularly when he has been acquitted from all the criminal cases registered against him long back.

7. For the reasons, as discussed above, this writ petition is allowed, and the continuance of history-sheet against the Petitioner Ram Prakash at Police Station Rudrapur, is hereby declared illegal. (Interim Relief Application 10281 of 2010, stands disposed of).