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**(2004) 09 AHC CK 0255**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 39215 of 2003**

Smt. Nargis and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision :** 28-09-2004

**Acts Referred:**

Constitution of India, 1950 — Article 21

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

**Citation :** (2004) 5 AWC 5166

**Hon'ble Judges :** M. Katju, Acting C.J.; Sunil Ambwani, J

**Bench :** Division Bench

**Advocate :** J.J. Munir, for the Appellant;

**Final Decision :** Allowed

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## Judgement

M. Katju, A.C.J.

1. This writ petition has been filed for a mandamus restraining the police authorities from harassing, humiliating, or paying domiciliary visits to the premises of the Petitioners or to effect forcible closure of the Petitioners' business under the garb of apprehending Shakir, son of Petitioner Nos. 1 and 6 in a criminal case. The Petitioners have also prayed for a direction to the Respondent to pay compensation to them for the harassment caused.

2. Heard learned Counsel for the parties.

3. It appears that Shakir, son of Petitioner Nos. 1 and 6 is involved in a criminal case being Crime No. 570 of 2001 under Sections 147/148/149/307/302/435, I.P.C. P.S. Civil Lines, district Aligarh and is facing trial being S.T. No. 220 of 2002 pending before the Additional Sessions Judge, Aligarh. The said Shakir is related to the Petitioners and their relationship is stated in paragraph 3 of the writ petition.

4. It appears that Shakir and some other under trials escaped from police

custody while they were being brought from the District Jail to the District Court on 24.2.2003. In this connection, an F.I.R. has been lodged vide Annexure-1 to the writ petition. In paragraphs 10 to 22 of the writ petition, it is alleged that the police is harassing the Petitioners and paying domiciliary visits in the night, hurling filthy abuses to the entire family, and asking them to produce Shakir. They have even misbehaved with the ladies and they have told the Petitioners not to open their shops, which are their only source of livelihood and in case the Petitioners open their shops, their shops would be damaged and their goods carried away. This is causing serious business loss to them. It is alleged that the police are at liberty to proceed in accordance with law, but they have no right to pay domiciliary visits to the Petitioners' residence at unearthly hours, harassing, humiliating the Petitioners and forcing the Petitioners to close down their shops. Details have been given in paragraphs 10, 11, 12, 13, 14, 16, 17, 19 and 22 to the writ petition. It is alleged that the Petitioners have been reduced to penury on account of closure of their business over the past 6 months by the police.

5. A counter-affidavit has been filed on behalf of the Respondent Nos. 1 to 3 and we have perused the same. It appears that out of 11 criminal accused in the criminal case No. 7 were arrested but four have not yet been arrested. It is alleged in paragraph 5 of the counter-affidavit that on four occasions Shakir has runaway from the police lock-up, but the police authorities have not visited either the Petitioners' house or shop. It is alleged in paragraph 11 of the counter-affidavit that the Petitioners were in close league and conspiracy with the accused, who escaped. It is alleged that the Petitioner No. 6, father of Shakir, is doing pairvi on his behalf. It is alleged in paragraph 15 of the counter-affidavit that the police authorities have never harassed any person after the four visits mentioned above to search Shakir. It is denied that the authorities have used abusive language. It is also denied that they threatened the Petitioners to falsely implicate them.

6. Since there is a factual dispute, it is not necessary for us to go into the same in detail. However, it is well known in this country how the police behave and hence we are inclined to accept the version of the Petitioners.

7. In *Kharak Singh Vs. The State of U.P. and Others*, , a Constitution Bench of the Supreme Court has held that domiciliary visits by the police are violative of Article 21 of the Constitution.

8. We, therefore, dispose of this petition with the direction to the Respondent to stop harassing the Petitioners in the manner they have been doing, and stop domiciliary visits, and act only in accordance with law, failing which strong action may have to be taken against them. This country is governed by the rule of law, and all police personnel must understand this.

9. This writ petition is allowed. No order as to costs.