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(1997) 02 AHC CK 0046

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 31 159 of 1994

Sunil Kumar Singh APPELLANT

Vs

Superintendant of Police and Others RESPONDENT

Date of Decision : 18-02-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 307, 329, 379, 411, 419
Police Regulations — Regulation 228, 228(1), 240, 240(1)

Citation : (1997) 1 ALT(Cri) 18 : (1997) CriLJ 3201

Hon'ble Judges : G.P. Mathur, J;D.C. Srivastava, J

Bench : Division Bench

Advocate : Rakesh Pande, for the Appellant;

Final Decision : Allowed

Judgement

D.C. Srivastava, J.—The petitioner in the petition under Article 226 of the Constitution of India has prayed for a writ of certiorari quashing the report of respondent No. 2 given on 14-8-1994 as contained in annexure-1 of the writ petition and recommendation of respondent No. 4 dated 16-8-1994 for opening of Hisotry sheet and also order of respondent No. 1 permitting opening of the History Sheet against the petitioner and for a writ of mandamus directing the respondents to close the History Sheet of the petitioner.

2. The case of the petitioner is that the petitioner a young man of 22 years is politically active and had actively participated in the election to the U.P. Legislative Assembly and his family members had supported the candidature of one Gaud Bhaiya. The supporters of Ambika Chaudhary, on the other hand, made several attempts to prevail upon the petitioner to support the candidature of Ambika Chaudhary in the said election who was contesting on the Samajwadi Party ticket. Ambika Chaudhary was declared elected and was a member of ruling party at the relevant time. He is also related to A.P. Yadav-respondent No. 3 who was Station Officer of police Station-Phephna Dislrict-Ballia. He was posted

at the said police station at the behest of the sitting M.L.A. Ambika Chaudhary. It is alleged that the said Ambika Chaudhary in collusion with respondent No. 3 in the capacity of respondent No. 2 had managed opening of History Sheet-A against the petitioner under Regulation 228 of Police Regulations of fictitious and cooked up police report prepared by the respondent No. 3 in his capacity as respondent No. 2 which cannot be justified by any material on record and which has been opened for extraneous consideration only to harass and victimise the petitioner and his family. Annexure-1 is the photostat copy of History Sheet. It reveals that a report dated 14-8-1994 was given by the respondent No. 3 for permission to open History Shcet-A against the petitioner on one sided and biased report. Only two cases were shown against the petitioner. One was case crime No. 159 of 1994 u/s 379, 411, 468, 467, 419, 420, 474, I.P.C. on the basis of first information report of Shiv Shankar Singh dated 23-6-1974 and the second is case crime No. 61 of 1993 u/s 307, I.P.C. in respect of incident which occured in the year 1993. In the report submitted by the respondent No. 3 it was also alleged that the petitioner is habitual thief involved in vehicle lifting and also a narcotic smuggler, cattle thief, smuggler and house trespasser which offences have not come to light due to political pressure of the petitioner. The aforesaid report was forwarded to Circle Officer, Ballia on 18-8-1994 and the same was recommended by Additional Superintendent of police-respondent No. 4 on 16-8-1994 and whereafter the superintendent of Police-respondent No. I ordered for opening of History Sheet-A. It has been averred that the aforesaid direction is arbitrary without application of mind and in contravention of direction given in Regulation 228 of the police Regulations (in short Regulation). Regarding car lifting case it is stated that the petitioner is neither named in the F.I.R. nor recovery of stolen car was made from him and he has been falsely implicated and involved in the said theft on belated statement of certain witnesses during investigation. Regarding case u/s 307, I.P.C. it is slated that in this ease also the petitioner had been falsely implicated and the victim of the said case is the son of police sub Inspector and the respondents are trying to victimise the petitioner.

3. Affidavits have been exchanged. In the counter affidavit it has been stated that the History Sheet was not opened only on the basis of two cases mentioned in the writ petition but also because the petitioner has the company of influential persons and hardened criminals on account of which no independent witness due to fear is willing and ready to lodge reports against the petitioner or to give evidence against him. Reports have been received against the petitioner at the police station from time to time about his involvement in criminal activities due to which report was submitted and this History Sheet was rightly opened in accordance with Regulation 228(I) of the Regulations read with Regulation 240.

4. In para 28 of the counter affidavit it has further been stated that the petitioner has got political influence and pressure and that his reputation is of a leader of gang of criminals which is involved in theft of Vehicles, committing theft of altaichies from vehicles etc. and he was kept under surveillance since 27-7-1994. Still it had no effect upon the petitioner hence ultimately on 17-8-1994 order for

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opening History Sheet was obtained and the petitioner is still under surveillance.

5. Rejoinder affidavit has been filed and according to annexure-RA-1, the petitioner was discharged in criminal case No. 2693 of 1994 Under Sections 329, 411, 419, 420, 467, 468, 474, I.P.C.

6. In the supplementary affidavit the petitioner has stated that History Sheet is still continuing and the petitioner is under surveillance till date.

7. In order to test the legality of the order directing opening of the History Shcet-A against the petitioner Regulations 228 and 240 of U.P. Police Regulations have to be kept in mind.

8. Regulation 228 provides for history-sheets. These are the personal records of criminals under surveillance. History-sheet should be opened only for persons who are or likely to become habitual criminals or abettors of such criminals. There will be two categories of history-sheet, one is Class-A history-sheets which are meant for dacoits. burglers, cattle-thieves, railway-goods wagon thieves and abettors thereof. Second is 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.

9. The jurisdiction to start a history-sheet of a criminal arises from the stage that the particular person is considered or thought to be a confirmed or professional criminal for which there should be some basis or material and in case of complete absence of such material, the action in starting a history-sheet will be illegal and without jurisdiction. It is not mere subjective satisfaction of the authority to direct opening of a history-sheet. There should be some material before such authority on the basis of which order for opening history-sheet can be justified. If, however, there is no material then on mere subjective satisfaction there could be no order of opening history-sheet.

10. In addition to what is directed under Regulation 228, history-sheet can further be opened on suspicion and also on conviction or acquittal within the ambit of Rule 240.

11. In the instant ease before us history-sheet was opened against the petitioner classified as Class-A history-sheet. In terms of Regulation 228(1) Class-A history-sheet can be opened for dacoits, burglars, cattle thieves, railway-goods wagon thieves and abettors thereof. The report annexure-1 of the writ petition reveals that the allegation against the petitioner is that criminals are frequently visiting the house of the petitioner on account of which the petitioner has fallen in the company of criminals and that the petitioner is also involved in small theft and also in theft of vehicles. The next allegation is that on 23-6-1994 car of one

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Shiv Shanker Singh was stolen and the petitioner''s complicity in that case crime No. 159 of 1994 Under Ss. 379, 411, 468, 467, 419, 420, 474. IPC. was disclosed. Besides this it is said that the petitioner is also involved in case crime No. 61 of 1993 Under S. 307, I.P.C. The next allegation is that the petitioner is smuggler of heroine. ganja and opium and that because of political pressure no police official can lay hand over the petitioner who is openly involved in vehicle theft, cattle-theft, burglary and smuggling of heroine, opium and ganja. Surveillance was suggested in report dated 14-8-1994. The Additional Superintendent of police recommended for opening history-sheet-A against the petitioner on 16-8-1994 and the Superintendent of police directed opening of history-sheet on 17-8-1994.

12. If from the above report opening of history-sheet-A is tested in the light of Regulation 228(1) it can be said that there is no allegation that the petitioner is a dacoit or railway goods wagon-thief or abettor in such crime. There is allegation in the report regarding burglary and cattle-theft against the petitioner but no case has been indicated in which the petitioner is involved for the commission of aforesaid offences. Lifting of vehicle like Ambassador Car docs not justify opening of history-sheet of Class-A. It may justify opening of history-sheet of class-B but that has not been done. Likcwisp involvement of the petitioner in a case u/s 307, I.P.C. also does not justify opening of the history-sheet of Class-A. Recommendation of Additional Superintendent of Police shows that just after passage of one day on the report submitted by the Station Officer that he recommended for opening of history-sheet without ascertaining what is the material against the petitioner.

13. In the counter affidavit it has been stated that reports have been received at the police station against the petitioner but not a single report was registered nor its copy has been filed along with the counter affidavit. Mere assertion that the petitioner has political influence and on account of that influence no police officer is daring to lay hands over the petitioner can hardly be accepted. If against such hardened criminal the police is not willing to lay its hand it shows inefficiency of the police to maintain law and order and such an inefficiency can hardly be expected. It is also difficult to accept the statement in the counter affidavit that because of the fear of the petitioner no person is coming forward to lodge first information report against the petitioner or to give evidence against him. If the petitioner is involved in smuggling of opium or heroine, history-sheet of class-B should have been opened. Moreover, if the petitioner is habitual in smuggling of these narotic drugs it is again sad commentary that the police officers could never lay their hand over the petitioner. Not a single instance has been shown in which the petitioner was apprehended by the police while indulging in smuggling activities of opium etc.

14. Opening of history-sheet on the basis of alleged involvement of the petitioner in a case for theft of ambassador car is also hardly justified. As indicated above history-sheet-A would not be opened for such offences. Moreover, the rejoinder

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affidavit anncxurc-RA-1 shows that the petitioner was discharged on 17-11-1994 in case crime No. 159. The order granting bail to the petitioner in that case also reveals that there was no reliable evidence against the petitioner in the aforesaid case crime number as is evident from anncxure-3 to the writ petition. Not a single incident has been shown in which the petitioner was found involved in a case of lifting attaches from vehicles. Except one case there is no instance that the petitioner was involved in theft of motor vehicles. The petitioner''s activities were put under surveillance weft. 27-7-1994 as stated in para 28 of the counter affidavit while till 14-8-1994 when the report was submitted for opening history-sheet neither a single specific case was in the knowledge of the police nor the same has been disclosed in the counter affidavit. The police report is, therefore, without any material and is based on suspicion. The two cases cited in the police report are hardly sufficient foray direction to open history-sheet of class-A against the petitioner. No instance of burglary, cattle theft etc. has been shown against the petitioner.

15. Another stand taken in the counter affidavit is that history-sheets can be opened on the suspicion also. For this compliance of Regulation 240(1) is necessary. It reads as under:

(1) On suspicion-whenever as a result of investigation into a case of dacoity, burglary, cattle theft from railway goods wagons or into a case of miscellaneous crime of a professional type, the officer-incharge of a police station applies for the name of any person to be entered in the crime register as reasonably suspected, he must at the same time report whether the suspect is under surveillance and if not, whether a history-sheet should in his opinion be opened for him. Should the gazetted officer-in-charge of a sub-division on receiving such a report and after such further inquiry as he may think necessary consider that a history-sheet is required he will forward the report to the Superintendent who if he accepts the proposal will define the class of history-sheet to be opened and pass orders as to whether the suspect should be "starred". Similarly whenever an officer-in-charge of a police sassion finds reason to believe, otherwise than in the course of an investigation, that any resident of his circle is addicted to crime, or whenever a gazetted officer or circle inspector for any reason believes that a history-sheet for any person is necessary a report must be submitted to the superintendent, who will pass orders on it as laid down above.

16. A plain reading of Regulation 240(1) shows that history-sheet can be opened on suspicion in two cases. The first is that whenever as a result of investigation into a case of dacoity, burglary, cattle-theft theft from railway goods wagons or into a case of miscellaneous crime of a professional type, the officer-in-charge of a police Station applies for the name of any person to be entered in the crime register as reasonably suspected, he must at the same time report whether the suspect is under surveillance and if not, whether the history-sheet should in his opinion be opened for him. Should the gazetted officer-in-charge of a sub-division on receiving such a report and after such further inquiry as he may think

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necessary considers that a history-sheet is required he will forward the report to the Superintendent of police who if he accepts the proposal will define the class of history-sheet to be opened and pass orders as to whether the suspect should be "starred.

17. The second situation is that when an officer-in-charge of a police station finds reason to believe, otherwise than in the course of an investigation, that any resident of his circle is addicted to crime, or whenever a gazetted officer or circle inspector for any reason believes that a history-sheet for any person is necessary a report must be submitted to the Superintendent who will pass orders on it as laid down above.

18. It is thus apparent from comparative study of these situations that even in ease where as a result of investigation in a case it is thought necessary to open history-sheet against a person, a report should be given and after receiving such report and after further inquiry as he may think necessary the competent authority may forward the report to the Superintendent of police. In both the situations, some inquiry is necessary to ascertain whether the report submitted by the Station Officer required opening of history-sheet or not. It is not enough to put a blanket-seal on the report of the Station Officer.

19. The words and after further enquiry as he may think as laid down above equally apply in the second category of cases contemplated under regulation-240(1). It is thus clear that inquiry is to be conducted as may be found necessary by the competent authority.

20. The competent authority in this case was Additional Superintendent of Police who did not conduct any inquiry nor ordered for any inquiry. On the other hand, in a hasty manner he accepted the report of the Station Officer dated 14-8-1994 just on 16-8-1994. There is thus apparent non-compliance of Regulation-240 (1) of the Regulation.

21. For the reason given above, order opening history-sheet-A against the petitioner cannot be sustained. The writ petition, therefore, succeeds and is allowed. The impugned reports of the respondents and the impugned reports of the respondents 2 to 4 and the order of respondent No. I opening history-sheet are quashed. It is directed that the respondents shall close the history-sheet-A opened against the petitioner forthwith.

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