
(2010) 07 AHC CK 0111

Allahabad High Court

Case No: None

Sanjay Karnwal

APPELLANT

Vs

State of U.P. and
Others

RESPONDENT

Date of Decision: July 9, 2010

Acts Referred:

- Constitution of India, 1950 - Article 19, 21
- Mines and Minerals (Development and Regulation) Act, 1957 - Section 21, 22, 3

Hon'ble Judges: S.C. Agarwal, J; Poonam Srivastav, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Poonam Srivastav, J.

Heard Sri K.D. Tiwari, learned Counsel for the petitioner and Sri Sudhir Mehrotra A.G.A. on behalf of the State.

2. The prayer in the instant writ petition is for a writ of certiorari to quash History Sheet No. 60-A declaring the petitioner as History sheeteer dated 12.10.2007 and the order dated 24.5.2008 passed by respondent No. 2, Senior Superintendent of Police, Saharanpur rejecting petitioner"s representation against opening of history sheet.

3. The facts giving rise to the dispute are that an F.I.R. was lodged against the petitioner alleging that mining work was carried out in contravention of provisions of the Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter referred to as the Act) as well as U.P. Minor Minerals (Concession) Rules, 1963. The petitioner was alleged to have indulged in illegal mining of 5,000 cubic meters in mining area known as Yamuna River Dikka Kala, Tehsil Nakud and Tehsil Sadar, District Saharanpur. Similar allegations were levelled in the three F.I.Rs. registered at case crime Nos. 177 of 2007 dated 26.5.2007, 176 of 2007 dated 27.5.2007 and 139 of 2007 dated 28.5.2007. The three reports are

annexed with the writ petition as Annexures 1, 2 and 3 respectively. The petitioner moved an application before the Secretary Mines and Minerals U.P. Government, Lucknow after he came to know about the F.I.Rs. lodged against him along with others. On the basis of said application, an inquiry was conducted constituting an inquiry committee of three members. Annexure-5 to the writ petition is a letter dated 19.10.2007 along with report of inquiry committee wherein the Director, Geology Mining U.P., Lucknow stated that the petitioner and others were not found involved in theft or illegal mining. It appears that there were other complaints as well regarding illegal mining and the Station House Officer, Police Station Kotwali Nagar, Saharanpur issued a circular on 15.9.2007 pursuant to an order dated 12.8.2007 of the Inspector General of Police and Additional Director General of Police, State of U.P. to all the Senior Superintendent of Police/Superintendent of Police calling for a report of history sheet in a computerized C.D. excluding name of such persons in respect of whom a false history sheet has been opened pertaining to minor offence. This Circular is Annexure-6 to the writ petition. However, the Station House Officer respondent No. 3 submitted a report against the petitioner and his brother Dr. Naveen Karnwal and consequent thereon, History sheet No. 60-A was opened. Representations were given by the petitioner and his brother.

4. Sri K.D. Tiwari has specifically brought to our notice that only cases on the basis of which History sheet has been opened, are the F.I.R. u/s 3/57/21 of the Act. Grievance of the petitioner is that proceedings have been initiated at the instance of rival competitors who were also involved in mining work and in collusion with the concerned authorities. Besides, opening of History sheet using term "Mafia" for the petitioner is a blatant misuse of the powers by the police authorities. The petitioner had approached this Court and challenged the History Sheet No. 60-A in a Writ Petition No. 21086 of 2007 - Sanjay Karnwal v. State of U.P. and Ors. The ground of challenge was that offences mentioned in Regulation 228(1) of the Police Regulations do not include the offence alleged to have been committed by the petitioner. The writ petition was disposed of with a direction to the concerned officer to decide the representation within two months from the date on which certified copy of the order along with self attested copy of the writ petition is presented. Pursuant to the aforesaid direction, the petitioner had moved a representation before the Senior Superintendent of Police, Saharanpur and the same was rejected on 24.5.2008. A copy of the order is annexed as Annexure-10 to the writ petition.

5. Sri K.D. Tiwari has brought to our notice Annexure-5, which is a letter issued by Director Bhutatva Evam Khanikarm, Uttar Pradesh to the Special Secretary State of U.P. Audyogik Vikas Anubhag-5, Lucknow dated 18.10.2007. This letter was sent along with a report submitted by Mining Department after making a detailed enquiry. Emphasis is that a bare perusal of the report, makes it evident that the petitioner was completely exonerated from the charges. There was no mining theft whatsoever and witnesses mentioned in the F.I.R. stated before the inquiry committee that they had given statement before the police only on the basis of rumours spread in the area but they have no personal knowledge and inquiry committee also did not find violation of any of the

provisions of the said Act as well as U.P. Minor Minerals (Concession) Rules, 1963.

6. A.G.A. has countered the arguments of Sri K.D. Tiwari and tried to highlight that the petitioner is a Mafia and has misappropriated the government properties in the garb of mining and contravened specific directions provided under the Act and Rules framed under the Act and, therefore, he is not liable to carry out mining work. It is also stated that on account of History sheet, licence of the petitioner has been suspended and in the event, History sheet is quashed, he will again indulge in the activities which is detrimental to the State.

7. We have heard learned Counsels and gone through writ petition, supplementary affidavit, counter affidavit, supplementary counter affidavit and rejoinder affidavit. Opening of history sheet by the police is provided in Police Regulations 228. Opening of history sheets are intended to maintain personal records of criminals under surveillance and is liable to be opened only in respect of such persons who are or likely to become habitual criminal or abettors of such crime. There are 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.

8. Thus it is evident that jurisdiction to open a history-sheet of an individual arises only at a stage when a particular person is considered or thought to be a confirmed or professional criminal for which there has to be some basis for such an opinion.

9. In the instant case, the basis for opening history-sheet is the three F.I.Rs. alone. Before we proceed to examine that whether history-sheet opened in respect of the petitioner could be quashed or not, we have to examine certain provisions of the Act and Rules framed under the Act. Penalties are provided u/s 21 of the Act but Section 22 of the said Act states that no court shall take cognizance of any offence punishable under this Act or any rules made thereunder except upon complaint in writing made by a person authorized in this behalf by the Central Government or State Government.

10. Similarly Rule 74 of U.P. Minor Minerals (Concession) Rules, 1963 prohibits any court to take cognizance of an offence punishable under the rules except on a complaint in writing of the facts constituting such offences by the District Officer or by any officer authorized by him in this behalf.

11. In the circumstances, we fail to understand that how the F.I.Rs. were registered at different case crime numbers at the first place as well as learned A.G.A. has not been able to apprise us if any other offence has been registered against the petitioner which resulted in opening of the history-sheet. It is also admitted by Counsel appearing on behalf of respondents that no offence under the Indian Penal Code is alleged so far against the petitioner. The three reports are in quick succession in the year 2007. Admittedly, there is not a single offence under the Indian Penal Code pending against the petitioner in which the petitioner was ever involved and, therefore, the argument of learned Counsel for the petitioner has substance that he has been deprived of only source of livelihood whereby fundamental rights have been eroded in a highhanded manner which could not be done.

12. We have looked into a catena of decisions by this Court as well as Apex Court where encroachment by police on the privacy of an individual making "domiciliary visits" was depreciated but in the case of [Kharak Singh Vs. The State of U.P. and Others](#), majority judgment held that Article 19(1)(d) is not infringed by a watch being kept over the movements of the suspect and, therefore, Article 21 has no relevance in that context. Majority judgment ruled that right of privacy is not a guaranteed right under the Constitution, and therefore, surveillance by the police will not amount to infringement of any fundamental right. The Apex Court in the case of [Gobind Vs. State of Madhya Pradesh and Another](#), observed that a person subjected to surveillance, the object and limitation of such surveillance depends upon character and antecedents of the person concerned. The Police Regulation has force of law and, therefore, it can not be said to be infringement of fundamental right. Nevertheless Article 21 of the Constitution is a right of an individual to be free from restriction or encroachment directly imposed or indirectly approached by calculated measures.

13. Thus, we have to examine each and every case on the basis of facts and circumstances. We are of the considered view that Regulation 228 and 240 does not give an unbridled, uncanalised power to the police to use it in such a way which has necessary consequence of squeezing out the fundamental freedom of the citizen. A note of caution was given in the case of [Malak Singh and Others Vs. State of P and H and Others](#). Thus evidently the police does not possess a licence to enter the names of whoever they like or dislike in the surveillance register. Ordinarily the names of persons with previous criminal record alone are entered in the surveillance register. They must be proclaimed offenders, previous convicts, or persons who have already been placed on security for good behaviour. In addition, names of persons who are reasonably believed to be habitual offenders or receivers of stolen property whether they have been convicted or not, can be categorized and entered in the surveillance register under the Police Regulation.

14. The facts and circumstances detailed in the writ petition, counter and rejoinder affidavits as well as the specific denial by learned A.G.A. that save for three F.I.Rs. in quick succession, no other offence is alleged against the petitioner under any criminal Act

whatsoever. This is sufficient for us to arrive at a conclusion that the petitioner can not be bracketed as confirmed or professional criminal or habitual offender. Only allegation against him is that he indulged in some wrongful mining work which again stands nullified by report of Geologist annexed along with letter of the Director on behalf of the petitioner. Besides the conviction or prosecution of the petitioner can not proceed on the basis of F.I.R. or charge sheet.

15. We have also noticed that the representation pursuant to a direction of this Court has very casually been rejected by the Senior Superintendent of Police, Saharanpur stating therein that the provisions in Police Regulation 228 and 240 authorises police to open a history sheet. However, we have noticed that there is nothing to substantiate that the petitioner is involved in the nature of offence envisaged by Regulation 228(A) & B of Police Regulation, there is not even a suspicion by any of the authorities. Admittedly, petitioner has no criminal antecedent and, therefore, rejection of the representation as well as opening of the history sheet without even looking into requirement of Regulation 228 and 240 of the U.P. Police Regulation, the order dated 24.5.2008 can not be left to stand.

16. A close perusal of the order of the Senior Superintendent of Police, Saharanpur, it transpires that while rejecting representation of the petitioner and justifying opening of the history sheet, he has referred Police Regulation 228(1) as well as Police Regulation 240 which are enabling provisions for opening history sheet of a person. We are conscious of the Police Regulations but the said provisions provide that history sheet can be opened only against such persons who are dacoits, burglars, cattle thieves, railway goods wagon thieves and abettors of such offence as well as certain other offences classified in Police Regulation 228(2). Regulation 240 enables the Police to open a history sheet also on the basis of suspicion or on conviction or acquittal. In the instant case, the only offence alleged is under the Mines and Minerals (Regulation and Development) Act, 1957, which is once again only three instances pertaining to the year 2007 which was found to be baseless by inquiry committee and Director, Mines and Minerals had accordingly informed the Special Secretary. There is no other offence mentioned whatsoever till date even after lapse of almost three years. Admittedly the F.I.R. is the only basis which is beyond the scope of the Act, since only a complaint by the competent authority can be registered and on its basis cognizance of an offence under the Act can be taken, therefore, we are of the opinion that the impugned order as well as history sheet opened against the petitioner is without any basis, without any satisfaction of the concerned authority and amounts to violation of a valuable right of the petitioner besides being only a highhanded act on the part of the respondents.

17. We are satisfied that there was no sufficient ground to entertain a reasonable belief that surveillance was required in the case of the petitioner. There exists no evidence to support the act of opening of the history sheet No. 60-A of the petitioner at Police Station Kotwali Nagar, District Saharanpur and, therefore, it deserves to be quashed.

18. In the result, the writ petition, is allowed. The order dated 24.5.2008 passed by respondent No. 2, Senior Superintendent of Police, Saharanpur is quashed. The respondents are directed to close the present history sheet No. 60-A of the petitioner and not to keep surveillance on the petitioner, in pursuance of the said history sheet.