

(1962) 08 AHC CK 0007

Allahabad High Court

Case No: Civil Miscellaneous Writ No. 143 of 1958

Rameshwar Prasad and Another

APPELLANT

Vs

Superintendent of Police

RESPONDENT

Moradabad and Another

Date of Decision: Aug. 16, 1962

Acts Referred:

- Constitution of India, 1950 - Article 19, 226, 227

Citation: AIR 1963 All 408 : (1963) CriLJ 241

Hon'ble Judges: S.C. Manchanda, J; B. Mukerji, J

Bench: Division Bench

Advocate: Shanti Bhushan and N. Kumar, for the Appellant; Standing Counsel, for the Respondent

Final Decision: Allowed

Judgement

Mukerji, J.

This is a petition under Article 226 of the Constitution, praying for a writ of certiorari to quash an alleged order made by the Superintendent of Police, Moradabad, directing the opening of a "History Sheet", "class B", in respect of the petitioner.

2. The case of the petitioner was that his history sheet had been wrongly opened. It was further alleged by him that he had been wrongly put in a class E History Sheet as the petitioner was not a professional or a habitual criminal nor had he been convicted for any of those offences for which a History sheet of Class B could be opened.

3. The petitioner's, case was that the police acted maliciously, inasmuch as, they had not acted in the public interest, but action had been taken because certain rich persons maneuvered with the police to have them take action against the petitioner. The petitioner set out several little incidents which took place between the petitioner on the one hand, and the police on the other, to substantiate his plea of mala fides

of the police.

4. Two questions were raised for consideration by counsel appearing in the case. First, whether the action taken by the police in this particular case was mala fide. The second question that was raised was, unlike the first question, a question of law and the question that was raised was whether the police had any right to open a History Sheet of a citizen and further whether the police had a right to classify History Sheets into two categories A and B as indicated in the Police Regulations.

5. We shall first take up the question of fact: The police, in opposition to the assertion of the petitioner that he had no conviction against him, maintained that he had. On the affidavits, filed by the parties in the case we have no hesitation in holding that the police were, if nothing else, guilty of suppression vary as also suggestion false in regard to the fact of the petitioner having been a previous convict. The counter affidavit put in by the sub-inspector, Harpal Singh, who was the Station Officer-in-charge of Police Station Amroha, where the petitioner resided, as also the affidavit put in by the Circle Inspector, Girraj Singh, in our opinion did not fairly put the facts before the Court for these affidavits were open to the criticism that the police officers, who verified these affidavits attempted to prevaricate in regard to allegations made by the petitioner, allegation which should have been dealt with in their counter affidavits in a straightforward and direct manner. A scrutiny by us of the affidavits on the record drives us to the conclusion that action by the police, in opening a history sheet of the petitioner, was not bona fide.

6. The question which we next proceed to consider is whether the police had the right in law, to open a History sheet of a citizen and further whether the police could lawfully classify History Sheets into two categories A and B. The determination of this question may appear unnecessary because of our finding on the question of fact. We, however, have thought it necessary to consider these questions also inasmuch as these questions keep cropping up constantly and also because this case was referred by the learned single Judge for our consideration.

7. The Police Regulations provide for the opening of history sheets and for surveillance of citizens who, in the public interest, needed being watched.

8. Paragraph 228 prescribes that history sheets were to be opened for such citizens only who were or were likely to become habitual criminals or abettors of such criminals. The power of the police, if what was provided for in the aforementioned paragraph of the Police Regulations was in the nature of a power, could only be exercised as against a citizen if he either was a habitual criminal or a habitual abettor of such a criminal. The power which appears to have been vested in the police under paragraph 228 of the Police Regulations was a power which, in our opinion, could easily be justified on the ground that the exercise of such a power was necessary in the interest of society. It appeared necessary for the preservation and protection of law abiding citizens to keep a watch on such individuals as were

likely to prove dangerous to society. The power which appears to have been conferred could not be said to be un-chartered or an unregulated power which was capable of being used chimerically by the police.

9. The contention of learned counsel was that this power conferred on the police was in breach of the guarantee contained in Article 19 of the Constitution. Personal freedoms guaranteed by Article 19 were subject to reasonable restrictions and it could not be said on what we have already noticed earlier, that action by the police in opening history sheets and having surveillance of citizens could not justly fall under the category of reasonable restrictions. The reasonableness of a restriction imposed on the freedoms of a citizen was justifiable and, therefore, a Court could go into the question as to whether or not a restriction placed on the freedoms guaranteed to a citizen was reasonable but this investigation could only be in respect of a restriction imposed on the freedoms guaranteed and not in regard to such actions as did not touch the freedoms even though the action taken was irksome. The question which we, therefore, have to consider is whether in opening a history sheet or in placing a citizen under surveillance the police infringed any of the freedoms guaranteed to a citizen.

10. Personal freedoms are guaranteed under Article 19 of the Constitution which says:-

- "(i) All citizens shall have the right -
 - (a) to freedom of speech and expression;
 - (b) to assemble peaceably and without arms;
 - (c) to form associations or unions;
 - (d) to move freely throughout the territory of India;
 - (e) to reside and settle in any part of the territory of India;
 - (f) to acquire, hold and dispose of property; and
 - (g) to practise any profession or to carry on any occupation, trade or business."

Article 19, therefore, assures the citizen freedom of speech and expression, peaceful assembly without arms, formation of associations and unions, free movement throughout the territory of India, right to reside and settle in any part of the country, to possess and dispose of property and to practise any profession, trade or carry on any occupation. The action of the police in maintaining a history sheet of a citizen or in placing a citizen under surveillance could only be struck down if the act of opening a history sheet and carrying on surveillance, in any manner, affected the citizen's freedom. *Prima facie* neither the opening of any history sheet, nor having surveillance of a citizen could affect the freedom of speech and expression, nor could it touch the citizen's right to acquire, hold and dispose of property, nor even

his right to practice any profession or to carry on any occupation, trade or business unless, provided the business which the citizen wanted to carry on was such as did not endanger public safety or put the well-being of the community in jeopardy.

11. "History sheet" is a technical term used in relation to the composition of a "book" which under the Police Regulations, the police are enjoined to maintain. Paragraph 223 of the Police Regulations says this: -

"The village crime note-book is a confidential record kept at every police station and contains information about the crime and criminals of each village in the circle. The officer-in-charge of the police station is responsible for its safe custody and contents. In cities and towns which are too large for a single note-book there should be a separate note-book for each muhalla or other division.

Entries in Parts I, II and III may be made by a subordinate under the supervision of the officer-in-charge of the police station.

Entries in Part IV will be made by the officer-in-charge.

Entries in Part V will be made in accordance with the instructions in paragraph 228 below."

Paragraph 228 provides this:-

"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 are likely to become habitual criminals 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 the subject of a history-sheet of class E 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."

The Police Regulations indicate that the degree of surveillance of the appropriate kind was to be exercised over a suspect in accordance with the extent of his activity in respect of criminal acts and attempts at committing such acts.

12. Paragraph 236 provides for the nature of surveillance which may be carried on by the police. The paragraph says that Superintendents of Police may, apart from putting into effect the measures indicated in that paragraph direct any other legal course to be adopted for keeping in touch with suspects in particular localities or shadowing suspects in cities and towns. The normal course of action indicated by this paragraph, however, was: -

- (a) secret picketing of the house or approaches to the houses of suspects;
- (b) domiciliary visits at night;
- (c) through periodical inquiries by officers not below the rank of sub-inspector into repute, habits, associations, income, expenses and occupation;
- (d) the reporting by constables and choukidars of movements and absences from home;
- (e) the verification of movements and absences by means of inquiry slips;
- (f) the collection and record on a history-sheet of all information bearing on conduct.

No action provided for under paragraph 236 of the Police Regulations, *prima facie* put in jeopardy any of the citizen's freedoms. It is important to notice that whenever there is a picketing to be resorted to it has to be secret, so that not only the suspect may not know that his house was being picketed but more important than that, the neighbourhood was not to know that any particular person in the neighbourhood was being suspected by the police. The domiciliary visits, the collection of reports in regard to movements and absences, the verification of movements of the suspect were all to be done by the police and the intention obviously was that these should be done by the police confidentially.

13. In Ram Swarup Vs. Ram Narain Sharma and Another, Beg, J., expressed the view that "the opening of the history sheet is a serious matter in view of the fact that it is likely to cast a grave reflection on the conduct of the person concerned." We find ourselves in respectful agreement with the above-quoted view of Beg, J. We, however, wish to clearly point out that a bona fide opening of a history sheet in accordance with the provisions of the Police Regulations was no *per se* invasion on the freedoms guaranteed to a citizen. Even so, the desirability and the importance of the Courts jealously guarding the freedoms and the reputation of a citizen could not be overemphasized. We may in this context state that in a case where the police publicised the fact that they had opened a history sheet of a certain citizen or had put a certain citizen under surveillance the citizen should have an adequate remedy,

but where the police maintained a history sheet in accordance with the provisions of the Police Regulations then such maintenance of a history sheet could not be said to affect that reputation of the citizen which the law thought just and proper to protect.

14. We think it necessary to point out that even if the bona fide opening of a history sheet and having surveillance of a citizen could not ordinarily be made the subject of scrutiny by this Court, yet if the action of the police in opening a history sheet and having surveillance of a citizen appeared to the Court to be mala fide, then it would always be open to this Court to interfere by an appropriate writ, order or direction. There could, in our view, be little doubt that when this Court found that any executive authority, under the garb of some power conferred on it, either under statutory rules or other similar rules, had taken action which was mala fide, then it became the duty of this Court to exercise the powers conferred on it under Article 226, for in our view, it was fundamental to the powers conferred on this Court both under Articles 226 and 227 of the Constitution to see that "the rule of law" was strictly adhered to in respect of executive actions which touched either a citizen's way of life or in any other way put his liberty and reputation in jeopardy.

We may in this connection point out that it is not unknown that, very often, when the police opened a history sheet, they insidiously if not, openly publicised that fact. In cases in which the police do so the citizen should and would have his remedy. In all those cases, where under the garb of maintaining a history sheet and having surveillance of a citizen the police take action which in any manner affects the citizen's liberties then such action would be struck down. The police, for example, have no power to direct a citizen to report his movements at the police station, nor have they the right to direct a citizen to seek permission of the police before he left his usual place of residence nor would the police be justified in waking a citizen while he is asleep in order to check whether or not he was at his house, for all these acts would touch a citizen's freedoms and the police cannot have the right under cover of statutory or other authority to infringe any of the citizen's freedoms guaranteed under Article 19 of the Constitution.

15. At this stage we wish to notice the argument which was raised on behalf of the petitioners, namely, that even if there was a power to maintain history sheets and to have surveillance of citizens in the interest of public security and well being, the police had no power to classify such suspect citizens while opening their history sheets into two categories A and B. If there was power to open a history sheet and to have surveillance of a citizen for certain purposes and to subserve a certain need, then the right to classify could not be taken exception to and the classification struck down as unreasonable or unconstitutional. The classification permitted by the Police Regulations appears to us to be perfectly reasonable, for the basis of that classification was the gravity of the danger foreshadowed from the undesirable activities of a suspect citizen. It could not, in our opinion be reasonably contended

that there could not be for purposes of vigilance or surveillance a classification of suspects, for obviously those suspects who have had a darker history than those who have not had such a past history must require a different degree of surveillance. We have had, therefore, no hesitation in holding that the classification permitted by the Police Regulations in regard to history sheeters was not an unreasonable classification and could not be declared void.

16. We now turn to the consideration of the question as to what relief the petitioners were entitled to. The petitioners prayed for a writ of certiorari, even though the petitioners did not refer to any particular order nor exhibit any order which could be quashed. A writ of certiorari issues to quash an order and that too under certain circumstances. In the instant case there was no order to quash and no circumstances were made to appear on which we could issue a direction to the respondents to exhibit any order which deserved being quashed, even though such an order had not been exhibited by the petitioners. The question that, therefore, needs consideration is whether the fact that the petitioners asked for an inappropriate relief would disentitle them to any relief.

We earlier came to the conclusion that the action of the police in opening a history sheet and having surveillance of the petitioners was mala fide. Should we, therefore, even after that finding, let the mala fide of the police subsist, or should we issue a direction which would put an end to them ? We have had no hesitation in holding that this Court is not impotent to give relief to a petitioner in a case where mala fide action is taken against the petitioner by some executive authority under the garb of some power, statutory or otherwise, by striking down that action. We have already pointed out that not only is this Court not impotent but it is the duty of this Court to exercise its powers under Article 226 of the Constitution to see that the executive authority under the garb of statutory powers or other similar powers does not overstep its bounds and smother the rule of law.

17. We accordingly issue a direction under Article 226 of the Constitution to the respondents to close the history sheets and to stop the surveillance of the petitioners. The petitioners will have their costs of this petition.