Om Parklash Vs The Assistant Commissioner of Police, Police Station Seelampur

Criminal Writ Appeal No. 30 of 1985

Court: Delhi High Court

Date of Decision: March 5, 1987

Citation: (1987) 2 Crimes 87 : (1987) 32 DLT 94

Hon'ble Judges: M. Sharief-ud-din, J

Bench: Single Bench

Advocate: S.T. Singh, for the Appellant;

Judgement

Malik Sharief-ud-Din, J.

(1) The petitioner is aggrieved of a history sheet opened against him by police station Seelampur on 5-4-1982.

(2) The case of the petitioner is that because of this history sheet, which according to him, has been opened at the behest of one Gaje Singh, a

Congress (1) worker, he is being continuously harassed by the police and, very often he is being involved in useless prosecutions and is tortured

into submission. There are a large number of allegations made by him but it is not possible to go into those details and conduct an inquiry in respect

of such matters in this writ petition. This, in fact, was observed by the Division Bench also when the petition was admitted ''restricted to the

question of justification for opening of the history sheet. The petitioner has given a list of seven cases in which he was made to face the prosecution

and has also stated that there were two other cases against him in which he has been acquitted.

(3) It is apparently these cases which have been made the basis for opening of the history sheet and subjecting the petitioner to surveillance. In their

counter affidavit, the respondents have admitted that a history sheet was opened 5-4-1982 after a proposal was floated by the S.H.O. Police

Station, Seelampur and was approved by the Deputy Commissioner of Police, Shahdara after being fully satisfied. It is further added that five

cases of penal nature and four proceedings for maintaining peace were registered against the petitioner. Out of four quasi judicial proceedings, in

three the petitioner has been discharged, in one of the cases the parties have entered into a compromise while in one case under the Arms Act,

petitioner was convicted but was granted probation and was released conditionally. All other cases are stated to be pending. The cases mostly

relate to 1979 and 1981 while proceedings u/s 107 Cr. P.C. all relate to 1984.

(4) The short point that arises for consideration is as to whether there was any justification for opening of the history sheet. As stated earlier the

cases referred to above have been made the basis for opening of the history sheet. The history sheet can be opened under para 23.9 of the Punjab

Police Rules, 1934. Obviously the history sheet opened against the petitioner has not been opened under para, 23.9(i) as it could not be done

because the only case in which the petitioner was convicted, he had been admittedly released conditionally. The history sheet, Therefore seems to

have been opened under para 23.9(2) on the basis of reasonable belief that the petitioner is habitually addicted to crime. I must point out at once

that nowhere in the affidavit of the respondent has it been pointed out that she history sheet was opened because of the satisfaction that the

petitioner was habitually addicted to crime. All that is stated is that on the basis of these cases a proposal was floated by the S.H.O. and it was

approved by the Deputy Commissioner of Police after being fully satisfied. What was that satisfaction has not been spelled out.

(5) Unfortunately for the respondents in this case the affidavit has been submitted by Shri Mohinder Singh Sapra, S.H.O. He is not the approving

authority. The proposal has been approved, in fact, by the Deputy Commissioner of Police. Mr. Mohinder Singh does not say that this affidavit he

is filing on the basis of his personal knowledge. It is stated, however, that it is based on the information derived from the record. It is obvious that

he is in difficulty because there is nothing in the history sheet to indicate that the concerned D.C.P. while approving the proposal has applied his

mind. The fact of the matter is that a proposal has been floated and somebody has endorsed that it may be approved and the Deputy

Commissioner of police has written the words "approved". Why he was approving it has not been spelled out in the history sheet which was

submitted before me today in original.

(6) I must state that the opening of history sheet against a citizen is a matter of-grave concern for him. The requirement of law is that opening of

history sheet or before approving a proposal in this regard authority must apply its mind and satisfy itself that there are reasonable grounds for

believing that the petitioner is a habitual offender. If that requirement of law is missing than livery basis for opening the history sheet will be deemed

to be lacking. Strangely in the present petition the officer approving the proposal or his successor has not submitted any affidavit to justify the

opening of the history sheet.

(7) That apart the first offence attributed to the petitioner in which he was bound down for good behavior is of 1979. The remaining offences have

been allegedly committed by him in the year 1981. Right from 1981 till today excepting for these four quasi execution proceedings, there is no

legation of the petitioner''s having indulged in any crime. The requirement of law infact is that the history sheet of a person who is no longer

addicted to crime shall be transferred to his personal file. This is so prescribed by para 23 12 of the Punjab Police Rules. Unfortunately the police

officers seem to be only interested in opening the history sheet and have never cared to review the cases of history sheeters with a view to find out

if they continue to be addicted be crime and if there is any further need to maintain the history sheet or to transfer it to his personal file. This is a

very sad state of affairs which should be remedied The proper course as envisaged by the scheme of the Punjab police Rules is that the cases of

the history sheeters should be reviewed periodically by the competent authorities and orders as required by para 23.12 passed, it-it is so justified.

(8) In my view the history sheet in the case of the petitioner, for the aforesaid reasons has been passed mechanically, without application of mind

and there is no justification for maintaining the same. The petition is allowed and the history sheet opened against the petitioner on 5-4-1982 is

quashed and it is directed that it be closed. The petitioner''s name from the surveillance register shall be struck off.