

Badri Nath Vs. State and ors.

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Court : Jammu and Kashmir

Decided On : Nov-12-2008

Reported in : 2008(3)JKJ605

Judge : Nirmal Singh, J.

Appellant : Badri Nath

Respondent : State and ors.

Advocate for Pet/Ap. : Mr. K.S. Johl, Mr. Johl

Disposition : Petition allowed

Judgement :

Nirmal Singh, J.

1. At the very outset, learned Counsel for the petitioner made a statement that he is dropping his challenge so far as the validity of Rule 698(3) of the Jammu and Kashmir Rules, 1960, is concerned and is confining his submission only with regard to the entering the name of the petitioner in Surveillance Register No. 10.

2. The case of the petitioner is that he being a businessman applied to the Tehsildar, Executive Magistrate (1st Class), Jammu, in the month of Feb 04, for issuance of a character certificate. As the petitioner earlier was residing in Mohalla Talab Khatikan, Jammu, the aforesaid officer after getting a report from SHO

Police Station, Pir Mitha, Jammu, issued a character certificate dt. 20th of Feb 04, in favour of the petitioner mentioning therein that the petitioner bears a good moral character. The petitioner thereafter applied before the Senior Superintendent of Police, Jammu, for issuance of character certificate which was issued in his favour vide No. PHS/CV/08/199 dt. 15th of Sept 08, wherein it has been mentioned as under:

As reported by SHO Police Station Trikuta Nagar, Jammu, Badri Nath S/o Late Sh. Garib Dass R/o H. No. 28/5 Trikuta Nagar, Jammu, was involved in case FIR No. 20/83 Under Section 382 RPC (2) FIR No. 172/83 Under Section 457/380 RPC (3) FIR No. 10/86 Under Section 341/307/34 RPC registered at P/S City. All challaned of the cases produced in the court of law wherein the applicant was acquitted from all the cases. Moreover, the applicant is History sheeter. His History sheet was opened at P/S city in 1983. His History sheet vide SP City South Jammu letter No. 7259-60/SPCJ dated 24.08.2005 has been kept in personal file. The applicant is silent now, and he is the leader of BSP. He running a stone crusher at Bantalab, Jammu.

3. It is the above certificate issued by the Senior Superintendent of Police, Jammu, which is the subject matter of challenge in the present petition.

4. Mr. K.S. Johl, learned Counsel for the petitioner submitted that there was no material available with the respondents on the basis of which they could entertain a reasonable belief that the petitioner is a habitual offender or receiver of stolen property or that he is a threat to the security of the State, and thus, there was no justification for inclusion of the name of the petitioner in the Surveillance Register 10. It is further submitted that order of surveillance is a serious encroachment on the fundamental freedom guaranteed to a citizen, and therefore, before entering the name of the petitioner in the Surveillance register No. 10, it was necessary on the part of the respondents to issue a show cause notice to the petitioner and to provide him an opportunity of hearing.

5. This matter was taken up on 29th of Oct 08. Mr. S.C. Gupta, learned AAG, sought time to file reply. Needful, however, has not been done. Admit. With the consent of the learned Counsel for the parties, the petition is taken up for final

disposal.

6. Let me first deal with the contention raised by Mr. Johl, learned Counsel for the petitioner that before entering the name of the petitioner in the Surveillance Register No. 10, the petitioner should have been issued a show cause notice. I am of the opinion that the said contention is not sustainable. The surveillance cannot be such which obstructs the free exercise and enjoyment of the fundamental freedoms guaranteed to a citizen but at the same time, it be seen that the prevention of crime is one of the prime duty of the Police force. In connection with these duties, it is necessary to keep a discreet surveillance over the suspects, habitual and other potential offenders. Therefore, the surveillance registers have to be kept confidential and a person whose name has been entered in the surveillance register or any other member of the public should not have an access to the same. In case, a notice is given to the person before entering his name in the surveillance register, as is the submission made by the learned Counsel for the petitioner, then the very purpose of keeping a person in surveillance will be defeated. The contention, thus, raised by the counsel for the petitioner in this regard, as indicated above, cannot be sustained. However, when an entry is made in the Surveillance register, the court has the power to see whether there was sufficient material before the authority concerned for making such an entry.

7. In the present case, the name of the petitioner has been entered in the surveillance register on the basis of FIRs, referred to above. These FIRs pertain to the cases registered against the petitioner in the year 1983 and 1986. A perusal of the character certificate which is impugned in this case, shows that the petitioner has been acquitted in these two cases and at present no case is pending against him. The name of a person can be entered in the Surveillance register as per Rule 698(3) of the J&K; Police Rules, 1960, (here-in-after called the Rules). The procedure has been laid down in Rule 702 of the Rules. These Rules are relevant and are being reproduced below:

8. Sub-rule 3 of R.698 of the Rules reads as under:

(3): In part II of such register may be entered at the discretion of the Superintendent:

- (a) persons who have been convicted thrice, or more than three times, of offences mentioned in rule 681;
- (b) persons who are reasonably believed to be habitual offenders or receivers of stolen property whether they have been convicted or not;
- (c) persons under security under Section 109 and 110 Code of Criminal Procedure....'

702. Preparation of history sheets: The initial preparation of a history sheet requires great care, and should invariably be done by the officer incharge of the police station himself or by a thoroughly experienced Assistant Sub Inspector under specific orders.

(1) The description of the criminal should be such as will enable the person reading it to form for himself a picture of the individual described, special attention being given to peculiarities of appearance, gait, speech, etc., by means of which the man may be distinguished.

(2) The space for 'relations and connections' should be filled in with a view to affording clues to those persons with whom the criminal is likely to harbour when wanted by the police, including relations or friends living at a distance from his home and his associates in crime, abettors and receivers, The particular nature of each person's connection should be noted against each, and, when persons shown as connections themselves have history sheets, a cross reference with those sheets should be given.

(3) Under property, an mode of earning livelihood, such particulars should be entered as will facilitate a judgment as to whether the criminal is at any time living beyond his means; whether he is capable or furnishing a personal recognizance of any value; whether he is an owner of property, a tenant or a wage-earner, and so on.

(4) The description of crime to which addicted should be in some detail, showing not merely the class of crime, but the particular type of that crime, methods followed, localities oftenly frequented, weapons or instruments used, etc.

When these particulars have been carefully and concisely entered, the initial entry on the reverse side of the form should be made in the form of a summary of the individual's criminal career up to the date of his history sheets being prepared, and should include the particular reasons and authority for its being prepared. Copies of history sheets prepared and published by the Criminal Investigation Department and published in the Criminal Intelligence Gazette shall be filed with the history sheets of the persons concerned in their home police stations. The police station history sheets in all such cases shall be endorsed with the letters C.I.D and the criminal provincial numbers in red ink. The activities of all such criminals subsequent to the publication of their provincial history sheets must be communicated promptly to the Criminal Investigation Department.

9. A perusal of sub-rule 3 referred to above, shows that name of a person can be entered in the surveillance register if he has been convicted thrice or more than three times of the offences mentioned in Rule 681, if he is a habitual offender or receiver of stolen property whether he is convicted or not and if he is under security under Sections 109 and 110 of the Code of Criminal Procedure. The procedure which is to be adopted in preparing the history sheets, as indicated, is laid down in Rule 702, noticed above. In the present case, the petitioner is not covered under any of the clauses mentioned in sub Rule 3, referred to above. The criminal cases against the petitioner were registered in the year 1983 and 1986 but in these two cases, petitioner has been acquitted. It has not come on record that any other case is pending against the petitioner. Even the respondents have failed to show that before entering the name of the petitioner in the surveillance register and declaring him as a history sheetee, the procedure as prescribed in Rule 702 of the Rules has been followed, The impugned certificate issued in favour of the petitioner, is thus, in violation of the Rules afore noticed.

10. As noticed above, the Executive Magistrate (1st Class), Jammu, on the verification done by the SHO, Police Station, Pir Mitha, Jammu, issued a certificate in favour of the petitioner on 20th of Feb 04, mentioning therein that petitioner bears a good moral character but subsequently on the report of SHO, Police Station, Trikuta Nagar, Jammu, the Sr. Superintendent of Police, Jammu, issued the impugned certificate after taking note that two FIRs were registered against the

petitioner which pertain to the year 1983 and 1986, in which the petitioner, as indicated above, already stands acquitted. Except these two cases, no other case has been shown to be pending against the petitioner. Even the petitioner has not been involved in security proceedings from the last about 22 years. The respondents have failed to show any material on the basis of which, the name of the petitioner can be directed to be kept in the Surveillance Register No. 10.

11. For the reasons mentioned above, this petition is allowed. The entry of the name of the petitioner in Surveillance Register No. 10, and further action, if any, taken on the basis of said entry shall stand quashed.

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