

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on:- 06.09.2023

Pronounced on:- 15.09.2023

WP(Crl) No. 37/2023

CM No. 2738/2023

Bashir-Ud-Din, Age 32 Years, S/O Abdul Aziz,Petitioner/Appellant(s)
Caste Kumher, R/O Jamsalan, Tehsil Mahore,
District Reasi.

Through :- Mr. C.M. Koul, Sr. Advocate with
Mr. A.R. Bhat, Advocate.

V/s

- 1. UT of J&K Th. Additional Principal Secretary**Respondent(s)
to Govt. for the Deptt. of Home, Govt. of J&K,
Civil Secretariat, Jammu/Srinagar.
- 2. Director General of Police, Govt. of J&K,**
Jammu/Srinagar.
- 3. Senior Superintendent of Police, District Reasi.**
- 4. Sub-Divisional Police Officer, Mahore.**

Through :- Mr. Mohd. Irfan Inqlabi, GA.

Coram: HON'BLE MR. JUSTICE MA CHOWDHARY, JUDGE

JUDGMENT

1. The petitioner through the medium of this petition filed under Article 226 of the Constitution of India seeks a direction to the respondents in the nature of Writ of Certiorari to quash the “**Verification of Character and Antecedents Certificate**” issued by the respondent No. 4-Sub-Divisional Police Officer, Mahore with regard to him, which, *inter-alia*, describes him as history sheeter as on 19.11.2022, besides being under surveillance.

2. It has been pleaded that the petitioner is a responsible and dignified person, who always leads his life in accordance with law, besides abiding by all

the norms/requirements that a citizen is required to abide by; that he is a known politician and had contested the State Legislative Assembly Elections in the year 2014 from 56-Gulabgarh Constituency in District Reasi; that he enjoys respect and reverence in his society in particular and in the political circles of the UT of Jammu and Kashmir in general.

3. It has been alleged that out of political vendetta, various imaginary, baseless and manipulated cases were registered against the petitioner, vide following FIRs:-

- (i) FIR No. 45/2009; U/Ss 341, 323 and 148 RPC;
- (ii) FIR No. 45/2013; U/Ss 452, 427, 336, 323 and 506 RPC;
- (iii) FIR No. 07/2017; U/Ss 447, 147 and 323 RPC;
- (iv) FIR No. 26/2013; U/Ss 452, 323, and 379 RPC; and
- (v) FIR No. 08/2018; U/Ss 376 and 458 RPC.

It has been further pleaded that in most of the cases, petitioner was acquitted of the charges and in one case registered vide FIR No. 08/2018 under Sections 376 and 458 RPC, the investigation was concluded as closed. It has been finally prayed by the petitioner that as per “**Verification of Character and antecedents Certificate**” issued by the respondent No. 4-Sub Divisional Police Officer, Mahore has been shown as a history sheeter on 19.11.2022 and surveillance besides certifying that he has been acquitted in all the cases registered vide FIR Nos. 45/2009, 45/2013, 07/2017 & 26/2013 by the Court of Magistrate, whereas the case registered vide FIR No. 08/2018 had been concluded as not proved, as such, his declaration as history sheeter by the respondents on 19.11.2022 is bad and is required to be quashed.

4. Pursuant to notice, the respondents have filed **objections** to the writ petition, asserting therein that the petitioner has been involved in a large number

of cases registered against him at Police Station, Mahore, District Reasi and on the basis of his involvement in those cases, a history sheet was opened on 19.11.2022 against him in terms of Rule 703 of the Police Rules, 1960 (*hereinafter referred to as the "Rules of 1960"*), which govern the subject. It has been further pleaded that the petitioner is a notorious criminal and is continuously involved in a number of criminal activities and, as such, is a threat to the life and liberty of the people of Mahore area in Reasi District, whose motive is not only to create terror among the peaceful and law abiding citizens of the town, but also to establish big criminal gang by encouraging the criminal minded people like him to join him and commit criminal activities in the area and to become a grang/mafia leader; that the petitioner has become main impediment for the people in enjoying their right of living peacefully, as guaranteed under Constitution of India. It has also been pleaded that the history sheet of the petitioner has been opened in accordance with Rule 703 of the Rules of 1960 under the orders from the competent authority after observing the rules and law on the subject. It has been further pleaded that the petitioner at the time of his acquittal had been given benefit of doubt.

5. Learned Senior counsel appearing for the petitioner has argued that to describe a person as history sheeter, has severe and preposterous consequences, subjecting him/her to various restrictions and police surveillance, in order to ensure that further criminal activities do not occur. As such, the history sheeters are treated as social outcasts and are referred as habitual offenders, subjecting such a person to profiling and discrimination, making him a lifetime suspicious person. He has further argued that describing a person as a history sheeter cannot be taken lightly or a routine affair. The issue of a history sheeter certificate with regard to a person cannot be taken resort to without

availability of sufficient material on record, as in the present case, all the cases have already paled into insignificance by their dismissal. He has further argued that the petitioner had made a representation to the respondent No. 3-Senior Superintendent of Police, Reasi that he cannot be treated as history sheet, as there was no case pending against him. However, till now, the said representation has not been dealt with or disposed of to the disadvantage or detriment of the petitioner. He has further argued that given to the fact situation of the cases against the petitioner, as all the cases have been dismissed, the police cannot describe him as a history sheet and keep him under surveillance, as such a recourse, is not available to them to the disadvantage and detrimental to the interests of the petitioner and his fundamental rights.

6. Mr. Koul, learned Senior counsel for the petitioner has further argued that the initial preparation of a history sheet requires great care, and should invariably be done by the officer in-charge of the Police Station in terms of Rule 702 of the Rules of 1960, which, inter-alia, provides that *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.* He has further argued that the history sheet of the petitioner has been opened at the police station concerned in a mechanical manner without application of mind to the facts required before taking any such action in the matter and prayed that the history sheet dated 19.11.2022 opened at Police Station, Mahore against the petitioner be quashed.

7. Learned counsel for the respondents, *ex-adverso*, has argued that it is immaterial as to whether a person is acquitted or convicted for opening of a history sheet at the Police Station due to involvement of any person in various criminal activities. He has also argued that the petitioner has been involved in

about five cases registered at Police Station, Mahore from the year 2009 to 2018 and that there is sufficient material against him to be described as a history sheeter, as he had been involved continuously in different crimes within the jurisdiction of Police Station, Mahore and the said crimes are not only the ordinary offences, but including that of theft and rape as well. He has further argued that involvement of the petitioner in many criminal cases was sufficient justification with the local police to open the history sheet against the petitioner at the Police Station and this action on the part of the respondents has not, in any manner, offended any fundamental right of the petitioner. As such, an exercise was necessary for having a control over the criminal activities in the area, as it is just a profiling of a person about his criminal track record. It has been finally prayed that the petition being misconceived be dismissed with costs.

8. Heard, perused and considered.

9. Before appreciating the rival submissions made by the learned counsel for both the sides, it will be convenient for reference to extract Rule 702 of the Rules of 1960, which reads as under:-

“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, and 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 of 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.”

10. A perusal of the aforementioned rule shows that the preparation of a history sheet is not expected to be a mechanical exercise. The description of the crime to which person is addicted, should be set out in detail in particular. The Police Rules also do not leave the matters at the sole discretion of any one police officer, as the same is required to be dealt with by the senior officers as well. All materials have to be considered and no relevant material should be excluded from consideration. There has to be a deliberated decision taken, giving reasons which should reflect application of mind to such materials, after all being leveled a history sheet as grave and adverse consequence for a person and, therefore, such a power should be exercised with caution and responsibility.

11. The record produced by the respondents reveals that vide Communication dated Nil addressed to Senior Superintendent of Police, Reasi, the SHO, Police Station, Mahore informed him that based on the cases registered against the petitioner at Police Station and to prevent him from spreading, expanding, continuing his criminal activities and from disturbing public order, he had opened history sheet in terms of Rule 703 of the Rules of 1960 so as to monitor his activities. Besides, the respondents have produced copies of the FIRs and the charge-sheets produced in the Court of law.

12. So long as surveillance is for the purpose of preventing crime, there cannot be any complaint about inclusion of a name in the surveillance register, however, the entry has to be made on the basis of the material provided by history sheet, whose contents by their very nature have to be confidential. There must be sufficient material to justify inclusion of the name in the surveillance

register. Ordinarily, the names of the 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, the names of the persons, who are reasonably believed to be habitual offenders or receivers of the stolen property whether they are convicted or not, may also be entered in the surveillance register. It is only in the case of this category of persons that there may be occasion of use of power by the police to make entry in the surveillance register.

13. The criteria for opening a history sheet is the subjective satisfaction of the authority and it has to be arrived at, on the reasonable belief or knowledge that the person, for whom the history is opened or retained is habitually addicted or aid or abet, the commission of crime, whether convicted or not etc. While arriving at the subjective satisfaction, the activities of such persons which are informative and useful, based on the facts ascertained by the police from the date of last entry shall be made month-wise for close watch of characters and quarterly for non-close watch of characters. The discretion of the authorities has to be exercised, according to the rules of reason and justice and not according to private opinion, according to law and not humour. It is to be not arbitrarily vague, fanciful, but legal and regular and it must be exercised within the limit to which an honest man competent to discharge of his office or to confine himself.

14. Branding a person as a history sheeted has a tainted image in the society as compared to others. Needless to say that his relationship with others and the prospects of personal development may not remain the same. Characterization of a person is stigmatic, if any photographs is displayed in some conspicuous places in the area, where he resides, or in public places, and it affects not only his personal life, but there is every likelihood of damage being

caused to his family and it cannot be lost sight of. Innocent children of such persons could be even looked down. If the officer, mechanically under the guise of prevention of crime and to protect others, open or extend history sheets, which has an impact on the right of privacy of not only the individual against whom the order is passed, but also causes harm to other person's rights. Therefore, a fair and reasonable decision should be taken, taking into consideration the constitutional rights under Article 21 of the Constitution of India and the interests of the State. It should be noted that at the time of opening a history sheet, the individual is not informed of a decision taken by the authorities behind his back and that the information collected is discreet. Needless to say that every person wants to live with dignity and he/she cannot be condemned arbitrarily. It is also to be borne in mind that estrangement of the members of the history sheeted person in social gathering etc., is not uncommon in order in our society. Therefore, opening or retention of history sheets, which interferes with the right of privacy of a person, should be done strictly, adhering to parameters inbuilt in the police rules, keeping in mind the object sought to be achieved.

15. The contention of the respondents that the petitioner is a notorious criminal, having many cases registered against him and is a habitual offender, has to be seen as to whether registration of five cases against him, in which four cases were dismissed after trial recording his acquittal and one case was concluded as not proved during investigation, the recourse to open a history sheet against the petitioner was justified in any manner the petitioner being a habitual offender. The Apex Court in a case titled "*Dhanji Ram Sharma Vs. Superintendent of Police, North*", reported as AIR 1966 (SC) 1766" considered the matter with regard to habitual offenders. For facility of reference, para-7 of the said judgment reads as under:-

“7. A habitual offender or a person habitually addicted to crime is one who is a criminal by habit or by disposition formed by repetition of crimes. Reasonable belief of the police officer that the suspect is a habitual offender or is a person habitually addicted to crime is sufficient to justify action under Rules 23.4 (3) (b) and 23.9 (2). Mere belief is not sufficient. The belief must be reasonable, it must be based on reasonable grounds. The suspect may or may not have been convicted of any crime. Even apart from any conviction, there may be reasonable grounds for believing that he is a habitual offender.”

16. Having regard to five cases having been registered against the petitioner from the year 2009 to 2018, out of which four cases resulted into his acquittal and one of the case was concluded as not proved during investigation, the petitioner cannot be said to be addicted to certain patterns of crime or a habitual offender. It has not been reported that the petitioner had absconded or did not subject him to investigation or face the trial and also except bald assertion on the part of the respondents that he was in the process of being a gang/mafia leader, involving others in the crimes, is not evident from any of the material. It appears that the local police just on the basis of registration of five cases for a period of over eight years against the petitioner, had concluded that he is a habitual offender and is required to be kept in surveillance, as such, the history sheet was opened at Police Station, Mahore. It also appears that the history sheet of the petitioner has been opened not in accordance with the relevant police rules and the opening of the history sheet against the petitioner offends his fundamental right enshrined in Article 21 of the constitution of India.

17. For the foregoing reasons and observations made hereinabove, the instant petition is **allowed**. The history sheet of the petitioner opened at Police Station, Mahore on 19.11.2022 and its periodical extensions, is found to be not in accordance with the rules on the subject. The history sheet of the petitioner alongwith all extensions is, thus, ordered to be removed from the record of the concerned police station.

18. The record of the case be returned to the learned counsel for the respondents.

(MA Chowdhary)
Judge

Jammu:
15.09.2023
Ram Krishan

Whether the judgment is speaking? Yes
Whether the judgment is reportable? Yes

