

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU.**

OWP No. 741/2010

Date of decision: 28.07.2011

Sumant Singh Jamwal. v. State of J&K and ors.

CORAM:

MR. JUSTICE J.P. SINGH.

Appearing Counsel:

For Petitioner(s) : Mr. Virender Bhat, Advocate.

For Respondent(s) : Mr. Gagan Basotra, AAG.

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| i) | Whether approved for reporting in Press/Journal/Media | : Yes |
| ii) | Whether to be reported in Digest/Journal | : Yes |
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The petitioner has approached this Court seeking a Command to the State-respondents to remove his name from Register No. 10 maintained under the Surveillance of Bad Characters Circular issued vide Notification No. 13 pursuant to State Council Resolution No. 29 of January 2, 1892, urging that there being no criminal case pending against him either with the Police or in any Court of law, the inclusion of his name in Register No.10 maintained by the State-respondents, was unjustified and even otherwise illegal as the Rules governing the field had not been followed by the respondents before entering the petitioner's name in the Register.

The State-respondents justify the inclusion of petitioner's name in the Register saying that he was a bad character and had clinched to riches by resorting to land grabbing and other White Collar Crimes, which warranted inclusion of his name in the Register. He is stated to have been involved in FIR Nos. 8/88, 361/92 and 176/95 registered at Police Station, City under Sections 307/148,149 RPC, 341 /323 RPC and 452/148/307 RPC respectively, besides in FIR No.100/93 registered at Police Station, Bakshi Nagar under Sections 302/149 RPC, 3/25 Arms Act, 3/4 TADA and FIR No. 50/97 registered at Police Station, Satwari under Sections 302/148/149 RPC and 4/25 Arms Act.

The specific plea raised by the petitioner that he stands acquitted in all the cases registered against him by the Police, however, remains un-controverted.

I have heard learned counsel for the parties and considered their submissions.

It is true that in exercise of the powers vested in the Police in terms of the Jammu and Kashmir Police Rules, 1960 and the Surveillance of Bad Characters

Circular, the Police may keep discreet surveillance over bad characters, habitual offenders and other potential offenders, and for that purpose enter their names in Register Nos.9 & 10 for prevention of offences; but before entering the names in the Registers, it is required to follow the Rules framed under the Surveillance of Bad Characters Circulars and the Police Rules, which, *inter alia*, contemplate opportunity of hearing to the indicted persons.

Rules 698 and 699 besides other Rules of the Police Rules dealing with Surveillance of Bad Characters, reiterate the provisions of the Rules framed under the Surveillance of Bad Characters Circular.

The Rules framed to determine the circumstances under which a person's name be entered in Register Nos. 9 & 10, authorize the Superintendent of Police to enter the names of Bad characters in these Registers. According to Rule 1 of the Rules framed under the Surveillance of Bad Characters Circular, a person shall not be entered in Register No. 10 unless it was satisfactorily proved:

- (a) that he is in the habit of committing cognizable offences;
- (b) that there is apprehension of commission of offences on his part if there is no check on his movements and he is not subjected to surveillance;
- (c) that he has no ostensible means of subsistence and is released on security for good behaviour.

In terms of Rule 2 of the Rules, the Superintendent of Police may, on his own accord or on the report of any officer subordinate to him, on being satisfied about the existence of one or the other conditions contemplated by Rule 1, may enter a person's name in Register No. 10, only after hearing that person and thereafter fully satisfying himself that the name of such person needs to be entered in the Register, on such condition(s) as he may consider proper so to impose.

During the course of hearing of the Writ Petition, it was conceded by the learned State counsel that the petitioner was not heard before his name was entered in Register No. 10. It was also not disputed, and rightly so, in presence of the copies of the judgments of the Courts, placed on records by the petitioner, that the

petitioner stands acquitted in all the cases referred to by the State-respondents in their Objections.

The State-respondents have not placed on records any material of any type whatsoever to substantiate their plea that the petitioner was a Bad Character and had accumulated wealth by resorting to land grabbing and indulging in White Collar Crimes.

In these circumstances, when there was no case pending against the petitioner in any Police Station and neither had the Superintendent of Police recorded any satisfaction as to the existence of one or the other contingencies contemplated by Rule 1 of the Rules framed under the Surveillance of Bad Characters Circular nor heard the petitioner in the matter, after recording requisite satisfaction in terms of Rule 2, the inclusion of petitioner's name in Register No. 10, cannot be justified.

Even otherwise, entry in the Register cannot be made on mere *ipsi dixit* of a Police Officer indicating any one as a Bad Character in the absence of any material in support thereof.

The entry of petitioner's name in Register No. 10 by the Police, without following the Rules framed under the Surveillance of Bad Characters Circular, and in the absence of any sustainable material justifying inclusion of his name in the Register, therefore, offends the petitioner's right to Personal Liberty guaranteed under Article 21 of the Constitution of India. The State-respondents are, therefore, required to delete the petitioner's name from the Register.

For all what has been said above, this Writ Petition, therefore, succeeds and is, accordingly, allowed. A direction shall issue to the State-respondents to remove forthwith, the petitioner's name from Register No. 10.

(J.P. Singh)
Judge

Jammu :
28.07.2011.
Tilak, Secy.