

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

Reserved on: 16.12.2023

Pronounced on: 30.12.2023

WP(Crl) No. 38/2023

1. Arshad HussainAppellant(s)/Petitioner(s)
S/O Abdul Rashid,
R/O Village Tukson, Tehsil
Mahore, District Reasi.

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

Vs

1. UT of J&K Respondent(s)
Th. Commissioner Secretary Home Civil
Secretariat, Jammu/Srinagar.
2. Senior Superintendent of Police,
District Reasi.
3. SHO
Police Station, Mahore, District Reasi.

Through: Mr. Mohd. Irfan, GA.

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE
JUDGMENT

1. The petitioner has filed the present petition for quashing of the history sheet and for removal of his name from the surveillance register No. 10 of Police Station, Mahore.
2. It is stated that the petitioner had applied for the issuance of the character certificate with the SDPO, Mahore, which was issued in favour of the petitioner and it was mentioned in the certificate that the petitioner was declared as a history sheeter on 19.11.2022 and was under surveillance. The petitioner claims to have filed an application with Superintendent of Police, Reasi for removal of his name from history sheet, but no action was taken pursuant to his application. It is stated by the petitioner that

three FIRs were registered against him. In FIR No. 87/2011, registered against the petitioner for commission of offences under Sections 467/468/471 RPC, the investigation was closed as 'Not Admitted' in terms of final report dated 19.12.2017. In other two FIRs i.e. FIR No. 10/2019 registered for commission of offences under Sections 323/341/506 RPC and FIR No. 5/2020 registered for commission of offences under Sections 354/341/323 IPC, charge-sheets were filed and the petitioner was acquitted on 26.09.2022 in both these charge-sheets. The contention of the petitioner is that once the petitioner had been acquitted, the respondents could not have opened history sheet of the petitioner.

3. Response stands filed by the respondents stating therein that the petitioner was involved in number of cases in Police Station, Mahore and taking into consideration his illegal activities, the history sheet was opened on 19.11.2022 in terms of Rule 703 of the Police Rules. It is further stated that the respondents have followed the rules prescribed under law.
4. Mr. C. M. Koul, learned Senior Counsel appearing on behalf of the petitioner argued that great care and caution is required for the purpose of declaring any person as a history-sheeter as it affects the dignity and reputation of the person. He laid stress that no investigation was pending against the petitioner in any FIR and the trial in charge sheets arising out of aforementioned two FIRs resulted in to acquittal of the petitioner. He placed reliance upon the judgments, titled, **Badri Nath Vs. State and others, 2008 (1) JKJ 605, Bashir-Ud-din Vs. UT of J&K and others,**

MANU/JK/1045/2023 and Jagar Singh Vs. UT of J&K and others,
MANU/JK/1295/2023

5. *Per contra*, Mr. Mohd. Irfan, learned GA appearing on behalf of the respondents argued that the petitioner was found to be a habitual offender and because of that reason only, history-sheet in the name of the petitioner was opened. He further submitted that acquittal of the petitioner would not mean that he cannot be declared as history sheeter.
6. Heard and perused the record.
7. A perusal of the record reveals that the history sheet was opened on 19.11.2022 by the SHO, Police Station, Mahore and intimation to that effect was made to the SDPO, Mahore. A perusal of the record further reveals that reference has been made to three FIRs i.e. FIR No. 87/2011 registered with Police Station, Mahore for commission of offences under Sections 420/467/468/471 RPC, FIR No. 10/2019 registered with Police Station, Mahore for commission of offences under Section 382/323//506 RPC and FIR No. 5/2020 registered with Police Station, Mahore for commission of offences under Sections 354/341/323 IPC. Record further depicts that while opening the history sheet against the petitioner, it was mentioned that the FIR No. 87/2011 registered with Police Station, Mahore for commission of offences under Sections 420/467/468/471 RPC was closed as “Not Admitted” whereas in other two FIRs i.e. FIR No. 10/2019 registered with Police Station, Mahore for commission of offences under Section 382/323//506 RPC and FIR No. 5/2020 registered with Police Station, Mahore for commission of offences under Sections 354/341/323 IPC, charge-sheets were filed against the

petitioner on 16.02.2019 and 28.01.2020 respectively. Further a note has been appended that in FIR No. 83/2022 registered at Police Station, Mahore some civilians had apprehended two terrorists and informed the Police. The petitioner wanted to file a false and frivolous writ petition before the High Court in Jammu and wanted to change the original apprehenders for his own benefit. Except these activities, no other illegal activity has been mentioned. In fact, the history sheet has been opened on the basis of vague allegations that the petitioner was a habitual criminal and his activities were prejudicial to the maintenance of law and order and if he was not checked at that stage, he would continue his criminal activities. The history sheet has been opened oblivious to the fact that the petitioner was acquitted in the two FIRs mentioned above. It assumes significance as the history sheet was opened on 19.11.2022, whereas the judgments of acquittal were recorded by the learned JMIC, Mahore on 26.09.2022.

8. The opening of history sheet is a serious issue, which has potential of damaging the reputation of an individual in the society. The history sheet cannot be opened in a routine manner but due care and caution has to be taken for opening the same. Rules 702 and 703 of the Police Rules, 1960, which pertain to preparation and opening of the history sheet are contained in Chapter XXII of the Police Rules 1960 with the heading “Prevention of Offences” and both the Rules (supra) are reproduced 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 in charge 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 harbor 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 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 sheet 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 CID 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.

703. History Sheets when opened

(1) A history sheet, if one does not already exist, shall be opened in Form 183 for every person whose name is entered in the surveillance register, except conditionally released convicts.

(2) A history sheet may be opened by, or under the written orders of, a Police Officer not below the rank of Inspector for any person not entered in the surveillance register who is reasonably believed to be habitually addicted to crime or to be an aider or abettor of such person."

9. Thus, the sole purpose of opening a history sheet is the prevention of offences by persons who are addicted to the crimes. In terms of Rule 702 of the Police Rules (Supra), the initial preparation of history sheet requires great care and because of that reason only it has been provided that the same should be prepared by an officer in charge of the police station himself or by a thoroughly experienced Assistant Sub-Inspector under specific orders.

10. The Hon'ble Supreme Court of India in case, titled, **Dhanji Ram Sharma Vs. Superintendent of Police, North Dist. Delhi Police** reported as **AIR 1966 SC 1766**, has held 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 Rr. 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.”

11. In terms of Rule 703 of the Police Rules (Supra), history sheet shall be opened for every person whose name is entered in the surveillance register, except conditionally released convicts. History sheet may be opened in respect of any person not entered in the surveillance register by or under the written orders of Police Officer not below the rank of Inspector but on the basis of reasonable belief that he is habitually addicted to crime or to be an aider or abettor of such person.

12. So far as the present case is concerned, the record demonstrates that history sheet of the petitioner has been opened and his name has not been

entered into the surveillance register No. 10. The concerned SHO has not at all demonstrated anywhere that the petitioner was acquitted by the learned JMIC, Mahore in two FIRs i.e. case FIR No. 10/2019 registered with Police Station, Mahore for commission of offences under Section 382/323//506 RPC and case FIR No. 5/2020 registered with Police Station, Mahore for commission of offences under Sections 354/341/323 IPC. In fact, it appears that history sheet has been opened only when the petitioner was contemplating to file writ petition.

13. This Court is of the considered view that the expressions “great care” and “reasonable belief” used in Rules 702 and 703 of the Police Rules (Supra) enjoins upon the officer opening the history sheet to apply his mind to whole of the facts and circumstances of the case, thereby recording his satisfaction that the person against whom history sheet is to be opened is habitually addicted to crime. Belief must be reasonable and based on reasonable grounds. The officer opening the history sheet is expected to peruse whole of the material for the purpose of forming an opinion and not on the basis of selective record justifying his opinion. In the present case, the history sheet has been opened by the respondents without showing any awareness about the acquittals earned by the petitioner and once the relevant material i.e. the judgments of acquittal in the present case is not taken note of by the officer while opening the history sheet, then the belief of the officer cannot be termed as reasonable.
14. In view of the above, this Court is of the considered view that opening of history sheet suffers from the vice of non-application of mind on part of the officer opening the history sheet. Accordingly, the present petition is

allowed to the extent that the history sheet opened in the name of the petitioner is quashed.

15. Disposed of.

16. Record be returned back to the learned counsel for the respondents forthwith.

**(RAJNESH OSWAL)
JUDGE**

Jammu

30.12.2023

Sahil Padha

Whether the order is speaking: Yes/No.

Whether the order is reportable: Yes/No.

