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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRWP-6660-2024
Date of Decision:- 13.09.2024

COLONEL AKSHAYA KUMAR SHUKLAPetitioner

Vs.

UT OF CHANDIGARH AND OTHERS ...Respondents

CORAM:-HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. Rishav Jain, Advocate for petitioner.

Mr. Anupam Bansal, APP, UT, Chandigarh for respondent
Nos.1 to 5.
(Through V.C.)

AMARJOT BHATTI, J. (Oral)

1. Petitioner – Colonel Akshaya Kumar Shukla has filed instant petition under Article 226 of Constitution of India praying for issuance of writ in the nature of mandamus directing respondent Nos.2 to 5 to ensure security of life and liberty of the petitioner from the hands of private respondents with further direction to respondents No.2 to 5 to dispose of complaints dated 03.06.2024 (Annexure P-6 to P-8) against respondent Nos.6 to 11 expeditiously and prayer for taking appropriate action against said respondents or any other appropriate order or direction which the Court may deem fit and proper in the given facts and circumstances of the case.

2. Learned counsel for petitioner argued that petitioner is a



decorated Military Officer in the rank of Colonel posted at 509 Army Base Workshop and currently serving a temporary duty at Headquarters North Area, Chandigarh. Petitioner is aggrieved by the treatment meted out to him at the behest of private respondent Nos.6 to 9. Petitioner has recently discovered that respondent Nos.6 to 8 in the course of inquiry pending against him with active connivance of respondent Nos.9 to 11 have requisitioned private data qua petitioner's mobile phone Nos.9660571800 (Airtel) and 9453014691 (BSNL) and in this way infringed the fundamental right of life and liberty guaranteed to petitioner by virtue of Article 21 of Constitution of India. They have also committed mischief as per Sections 43, 72, 72A of Information Technology Act. Petitioner has clean antecedents. He joined Indian Army on 10.12.2002 and into the Corps of EME and joined 21 Para SF for Infantry attachment. He also cleared course of Staff College in 2013. He has annexed his marksheet Annexure P-1. Petitioner has been falsely implicated in Court of Inquiry on the basis of false and frivolous complaint dated 20.09.2022 levelling concocted allegations of 'stealing brother officer's wife affection'. Petitioner is victim of data theft and privacy violations. His sensitive call data record has been unlawfully assessed by private respondent Nos.6 to 9 with active connivance of private respondent Nos.10 and 11. Regarding incident of 31.07.2023, he filed complaint addressed to respondent No.4 - SSP (Annexure P-2). He also filed one complaint under Section 156 (3) Cr.P.C. before learned CJM, Chandigarh (Annexure P-3). Respondent No.9 has levelled false allegations against him. A Court of enquiry was convened on 09.10.2022. Later-on said inquiry was abruptly disbanded and a new Court of Inquiry constituted by respondent Nos.6 to 8 was illegally



formulated on 29.12.2022. Petitioner has placed on record copies of representation addressed to SHO, Police Station Sector-31, Chandigarh (Annexure P-4) as well as complaints dated 03.06.2024 filed to DGP, SSP, Chandigarh Police and SHO Police Station Sector-31, Chandigarh (Annexures P-6 to P-8) respectively. In the aforesaid facts and circumstances, it is argued that life and liberty of the petitioner be protected from the hands of respondent No.6 to 11 and for taking appropriate action on the representation (s) referred above (Annexure P-6 to P-8) and to initiate action against respondent Nos.6 to 11 for interfering in his privacy by obtaining call detail record or any other appropriate order or direction in the given facts and circumstances of the case.

3. Status report was called from respondent Nos.1 to 5. As per status report, it is submitted that Court of Inquiry was constituted on the basis of complaint filed by Colonel Gaurav Singh Gosain respondent No.9 with the allegations 'stealing brother officer's wife affection' against present petitioner. Various complaints/representations were filed by petitioner against members of the Court of Inquiry. Said complaints/representations have been dealt with and after inquiry, same was "filed". During said inquiry response was sought from respondent No.6, who vide his letter dated 26.09.2023 stated that call detail record of petitioner was obtained following proper channel as per Army Act and Rules. Considering the entire case and the earlier complaints filed by petitioner of similar nature, were dealt with and no cognizable offence was made out. Report on complaint dated 03.06.2024 has been approved by respondent No.4 on 26.06.2024. Petitioner has already availed remedy by filing complaint under Section 156 (3) Cr.P.C. before learned Chief



Judicial Magistrate, Chandigarh. It is further detailed that regarding threat to the life and liberty of petitioner there is no complaint or any untoward incident reported by the petitioner to the Police Station. Threat perception has been considered and as such there is no danger to the life and liberty of petitioner warranting any security. It is further mentioned that petitioner is always at liberty to approach the Police Authority at any time in case of any emergency. It is argued that petition filed by petitioner deserves dismissal.

4. I have considered the arguments advanced by learned counsel representing petitioner and learned counsel representing respondent Nos.1 to 5 and have gone through the record annexed with petition. Considering the factual position, no purpose would be served by issuing notice to respondent Nos.6 to 11.

5. Admittedly, present petitioner is Army Officer bestowed with the rank of Colonel. As per his version, he joined Indian Army on 10.12.2002 into Corps of EME and joined 21 Para SF for infantry attachment. He cleared course of Staff College in 2013. At present he is serving on a temporary duty at Headquarters North Area, Chandigarh. Petitioner further admitted that he is facing Court of Inquiry on the allegations "stealing brother officer's wife affection". It is alleged that Court of Inquiry was convened on 09.10.2022 and again reconstituted on 29.12.2022 headed by respondents No.6 to 8. Contents of petition further show that respondents No.6 to 8 have procured call detail record of present petitioner from respondents No.10 and 11 service provider. On account of this, petitioner has alleged that respondent Nos.6 to 8 in connivance with respondent Nos.9 to 11 have infringed his fundamental right to privacy guaranteed



under Article 21 of the Constitution of India. Status report filed by respondent Nos.1 to 5 shows that respondent No.6 vide letter dated 26.09.2023 confirmed that call detail record was obtained by following proper channel as per Army Act and Rules.

It cannot be ignored that present petitioner is an Army Officer. There are instructions in place to regulate Cell-phone usage to ensure security and discipline. Army personnel are bound to adhere to the said instructions. Article 33 of Constitution of India empowers Parliament to make laws that would restrict the application of Fundamental Rights to a specific category of people including Members of Indian Army and Intelligence Organization. Petitioner is thus bound by Army Act and rules thereunder. As referred above, petitioner is facing Court of Inquiry with the allegation "stealing brother officer's wife affection". We cannot lose sight of nature of allegations and the manner in which they are to be proved. Therefore, it is the prerogative of respondent Nos.6 to 8 who are holding said Court of Inquiry to record evidence and petitioner can raise objections regarding evidence led in the Court of Inquiry at relevant time. Therefore, stand taken by learned counsel for petitioner that respondent Nos.6 to 8 in connivance with respondent Nos.9 to 11 interfered in his privacy does not hold any ground and no direction is required from this Court.

6. So far as complaints dated 03.06.2024 filed by petitioner (Annexure P-6 to P-8) are concerned, those have been disposed of and filed as per status report. Complaint filed by petitioner under Section 156 (3) Cr.P.C. is pending before learned Chief Judicial Magistrate, Chandigarh and same will be decided by the Court concerned on its own merits.

7. As per status report, there is no threat to life and liberty of



petitioner from the hands of respondent Nos.6 to 9 out of which respondent Nos.6 to 8 are Members of Court of Inquiry whereas respondent No.9 is the complainant in the said Court of Inquiry. However, respondent Nos.1 to 5 in their status report categorically stated that petitioner is always at liberty to approach the Police Authority at any time in case of emergency.

8. In view of aforesaid factual position, no further direction is required and present petition is, accordingly, disposed of.

9. Pending miscellaneous application(s), if any, stand disposed of accordingly as well.

13.09.2024

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(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned: Yes/No.

Whether reportable: Yes/No