

Kailash Chand Vs. the State and Others

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Court : Delhi

Decided On : Sep-02-1985

Reported in : 1986CriLJ1703; ILR1985Delhi807; 1986RLR81

Judge : Malik Sharief Ud Din and; R.N. Aggarwal, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 324 and 325; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 107 and 151; Arms Act - Sections 25 and 27

Appeal No. : Criminal Writ No. 148 of 1985

Appellant : Kailash Chand

Respondent : The State and Others

Advocate for Def. : Mr. Sodhi Teja Singh

Judgement :

Sharief-Ud-Din, J.

1. By this petition under Art. 226 of the Constitution of India, the petitioner has sought a writ quashing the order by which history sheet of the petitioner has been opened by the respondents and his name entered in Register No. 10 of Police Station Sarai Rohilla and directing the respondents to destroy his history sheet, finger prints, foot prints and his photographs illegally taken and kept on the records of Police Station Sarai Rohilla, Delhi and also for a direction to the respondents

not to call the petitioner to Police Station Sarai Rohilla, Delhi, without lawful reasons,

2. The case of the petitioner is that after opening the history sheet and putting his name in Register No. 10 the officers of the aforesaid police station started treating the petitioner as a criminal and harassing him almost every day by calling him to the police station. The petitioner states that by putting his name in the Register and opening history sheet, he has been lowered in the estimation of his relatives and friends and has been humiliated. The petitioner also alleges that due to this act of the respondents he is suffering greatly and it has become difficult for him either to live at his house or to pursue his avocation. A notice was issued to the respondents and the petitioner was directed on 13th August, 1985 to give further and proper details regarding the allegation made in Para No. 10 of the plaint. The petitioner submitted an Additional Affidavit in which he has given details in respect of the Police officials who have been visiting his place on various dates and calling him to police station.

3. An affidavit has been submitted by Shri R. N. Singh, S.H.O. Police Station Sarai Rohilla in which he has stated that the petitioner is a man of desperate character and was involved in various cases, namely, FIR No. 347/73 under S. 325, IPC, P.S. Sarai Rohilla, FIR No. 932/75 under S. 324, IPC, P.S. Sarai Rohilla, FIR No. 302/76 under Ss. 25/54/59, Arms Act, P.S. Sarai Rohilla, FIR No. 68/79 under Ss. 27/54/59, Arms Act, P.S. Sarai Rohilla, FIR 182/79 under Ss. 27/54/59, Arms Act, P.S. Sarai Rohilla, FIR 562/79 under Ss. 25/54/59, Arms Act, P.S. Sarai Rohilla and DD No. 13-A under Ss. 107/151, Cr.P.C., dated 12-11-84, police station, Sarai Rohilla. It would be seen that the case under S. 324, IPC, was compromised and case under Ss. 107/151 was dismissed and the petitioner was discharged. In all other cases the petitioner has been acquitted.

4. Shri R. N. Singh, respondent in his affidavit further says that history sheet of the petitioner was opened on 17-6-76 by the then SHO Police Station Sarai Rohilla, Delhi, because of the involvement of the petitioner in the first three cases and the opening of history sheet was approved by the Sub Divisional Police Officer on 21-6-76 and his name was kept in Bundle 'B' with a view to keep trace of his record of

criminal activity. It is further stated that this record of his is a private and confidential document and that he was involved in cases of violence and he being a man of desperate and dangerous character was also involved in some cases of breach of peace. He has, however, denied that the petitioner is being harassed or that he is being called to the police station. Putting the name of the petitioner in Register No. 10 is also denied. It is also denied that the petitioner is being kept under surveillance.

5. We have heard the learned counsel for the petitioner, Shri N. S. Bhatnagar and also Mr. Sodhi Teja Singh appearing for the respondents. History sheet is opened under the Punjab Police Rules 1934, Chapter XXIII under the Heading, Prevention of Offences, R. 23.9. The relevant portion which applies to the case of the accused is sub-rule (2) which reads as under :-

'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 persons.'

Under Rules history sheet can also be opened against persons who have been convicted twice or more than twice of offences mentioned in R. 27.29. We need not make a reference to R. 27.29 as admittedly the case of the petitioner is not covered by that Rule and his case straightway falls under R. 23.9 sub-rule (2).

6. The admitted position is that the petitioner was involved up to date in even cases, one of them being under Ss. 107/151 Cr.P.C., in which he was discharged, two of them being under Ss. 25/54/59 of Arms Act, and two of them being under Ss. 27/54/59 Arms Act, and two of them being under Ss. 325 and 324, IPC, all ending in the acquittal of the petitioner. The opening of history sheet was approved on 21-6-76 when the only cases in which the petitioner was involved were under S. 325 I.P.C. the next being under S. 324 IPC and the third being under Ss. 25/54/59 Arms Act.

7. After giving our anxious consideration to the facts we are of the view that it is not possible for any person with normal thinking to say that this can lead to a

reasonable belief that the petitioner is a habitual offender or is habitually addicted to crime which in fact is the basic requirement before the name of a person is put in the surveillance register. These provisions of the Punjab Police Rules are to be strictly construed as they do have effect of maligning the person and lowering him down in the estimation of his friends, relatives and neighbours as also in the estimation of the people in general. The least that can be said is that putting a person on surveillance would definitely impair his reputation and restrict his freedom and this would also interfere with the dignity of the person.

8. We may also at this stage refer to the Identification of Prisoners Act, 1920 which entitles the police officers to take finger impression and photographs etc., of criminals and suspected criminals. Section 4 of the said Act gives powers to police officers to take finger prints and photographs etc. of unconvicted person if the offence with which he is charged is punishable with rigorous imprisonment for a term of one year or upwards. Section 7 of the said Act, however, lays down as under :-

'Where any person who, not having been previously convicted of an offence punishable with rigorous imprisonment for a term of one year or upwards, has had his measurements taken or has been photographed in accordance with the provisions of this Act is released without trial or discharged or acquitted by any Court, all measurements and all photographs (both negatives and copies) so taken shall, unless the Court or (in a case where such person is released without trial) the District Magistrate or Sub-Divisional Officer for reasons to be recorded in writing otherwise directs, be destroyed or made over to him.'

9. This would clearly go to show that after the acquittal of the petitioner there is no justification for the respondents to retain his finger prints and photographs as he has been acquitted by a court of law. This would make it abundantly clear that under such circumstances there was no justification for the respondents to open history sheet of the petitioner. We are thus very clear in our minds that there is neither any material nor any justification for the belief that the petitioner is a habitual offender or is a person who can reasonably be believed to be an addict to crime.

10. In that view of the matter we hold that the history sheet opened against the petitioner at police station Sarai Rohilla Delhi is illegal, unconstitutional and against rules and we accordingly quash the same. We also direct the respondents to destroy the said history sheet, finger prints, foot prints and photographs of the petitioner and further direct that the petitioner shall not be called to the police station without lawful reasons. Since the respondents have specifically stated that the petitioner's name is not kept in Register No. 10, no direction with that regard is warranted. The petition is accordingly allowed.

11. Petition allowed.

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