

Peter Samual Wallace Vs. Inspector General of Police, New Delhi and Others

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Court : Delhi

Decided On : Apr-10-1981

Reported in : 1981CriLJ1195; 20(1981)DLT333

Judge : Avadh Behari Rohatgi and; Charanjit Talwar, JJ.

Acts : [Constitution of India](#) - Articles 19(1), 19(2) and 21; [Indian Penal Code \(IPC\), 1860](#) - Sections 420; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 87, 109, 119 and 401

Appeal No. : Criminal Writ No. 37 of 1978

Appellant : Peter Samual Wallace

Respondent : inspector General of Police, New Delhi and Others

Advocate for Pet/Ap. : Mr. Arvind Kumar

Judgement :

Charanjit Talwar, J.

1. The petitioner, Peter Samual Wallace, an Indian Citizen, by this petition seeks removal of his name from the surveillance register maintained by the Delhi Police. According to him, the orders of his surveillance and opening of history sheet against him by the Delhi Police pursuant to the provisions of the Punjab Police Rules as applicable to Delhi, constitute an infraction of his fundamental right

guaranteed to him under Articles 19(1)(a), 19(1)(d) and 21 of the [Constitution of India](#). The impugned orders passed in the year 1964 are also challenged on the ground that those were made mala fide and were based on no material.

2. The petitioner claims to be a respectable person. He states that he is the General Manager of M/s. Watson Manufacturing Co. (India), New Delhi, a firm carrying on export business. According to him, he is also the Regional Manager in India of two American Companies. His case is that he is a social worker of repute being President of two organisations, namely (1) All India Council of Indian Christians and (2) Indian Christian Association, Delhi.

3. His allegations in the writ petition are that in the year 1975 he was detained under the Maintenance of Internal Security Act because of his political activities. His grievance is that the police personnel are hostile to him as in his capacity as a member of the Public Relations Committee, which has been constituted by the Delhi Administration, Delhi, he had been criticising the police authorities whenever he found it necessary to do so. According to him, although he is not a habitual offender yet orders had been passed to open his history sheet under Rule 23.9 of the Punjab Police Rules and further to keep him under illegal surveillance his name has been entered in Part II of the Surveillance Register. He alleges that the said orders are based on no material and are not justified.

4. He further alleges in his petition that because of those two orders, 'he is virtually condemned in the official records as an undesirable person and these entries cause him mental agony and anguish, and affect the right of privacy'. The complaint is that the entries in the history sheet and in the Surveillance Register have been made known by the police to the people of the locality in which he is residing with the result that he has become a person of disrepute. The petitioner further submits that with a motive to harm his reputation the information regarding his being a bad character has been leaked out by the police to the press who have published it in newspapers.

5. The respondents have opposed this petition. To justify the impugned action, they have relied on the antecedents of the petitioner. They have annexed with the counter-affidavit a list of cases in which the petitioner was involved at the relevant

time. It is admitted that he has never been convicted in any one of those cases. The case of the respondents is that the appropriate authorities were objectively satisfied that the petitioner is a cheat and his history sheet be opened and his name be brought on the Surveillance Register. The impugned action was taken in accordance with the provisions of the Rules.

6. The first legal submission made by Mr. Arvind Kumar, learned counsel for the petitioner, is that the Punjab Police Rules as applicable to Delhi which authorise opening of history sheets and provide for entry of the names in the Surveillance Register and mode of surveillance have no legal force. The second submission of counsel is that the said Punjab Police Rules (hereinafter called 'the Rules') 23.4, 23.5, 23.7 and 23.9 are unconstitutional.

7. Let me deal with the first contention.

8. The Rules were issued by and with the authority of the provincial Government under Sections 7 and 12 of the Police Act, 1861. Section 7 of the Act provides for appointment, dismissal, etc. of inferior officers. Under Section 12 of the Act the State Government is empowered to approve rules consistent with the provisions of the Act. Under Section 149 of the Delhi Police Act 1978, the Punjab Police Rules, 1934, in so far as they are consistent with the provisions of that Act, continue to be in force. Chapter 23 of the Rules deals with the prevention of offences. Rule 23.4 provides for the maintenance of a surveillance register in every police station in terms of the said Rule. There is no provision in the Delhi Police Act providing for the opening of the history sheet or of the surveillance. Prima facie it cannot be said that Chapter 23 of the Rules is inconsistent with the Delhi Police Act, 1978. That Chapter deals with the prevention of offences which is the primary function of the police force. One of the objects of the Act is to make the police force an efficient instrument for the prevention and detection of crime.

9. There is a catena of authorities of the Punjab High Court laying down that the Punjab Police Rules are law. This Court in *Ram Chander Sagar v. Delhi Administration*, 2nd (1975) 1 Del HI 284, has held these Rules to be a special law. In another case, *Roco Lal Makkar v. Thakur Jagdish Singh*, 2nd (1978) 1 Del HI 40 : AIR 1978 NOC 255 a Division Bench of this Court has held that these Rules

have a statutory genesis.

10. The Supreme Court in *Govind v. State of Madhya Pradesh*, AIR 1975 SC State of Madhya Pradesh : 1975 CriLJ1111 has held similar police regulations framed by the Government of Madhya Pradesh under Section 46(2)(c) of the Police Act, permitting surveillance, opening of history sheets and other actions by the police intended to prevent the commission of offences, to have the force of law.

11. Section 149 of the Delhi Police Act specifically saves the operation, amongst others, of the Punjab Police Rules to the Union Territory of Delhi. A bare reading of that Section shows that on coming into force of the Delhi Police Act the Rules including Chapter 23 thereof (prevention of offences) have not ceased to be in force in Delhi. These provisions thus continue to have the force of law. The first contention is, therefore, rejected.

12. At this stage it will be advantageous to note the relevant provisions of the Punjab Police Rules.

13. Before a person's name can be entered in the surveillance register, his history sheet is to be opened. Rule 23.4 provides for maintenance of a surveillance register. This register is in two parts. In Part I of that register names of the following classes of persons have to be entered :

'(a) All persons who have been proclaimed under Section 87, Code of Criminal Procedure.

(b) All released convicts in regard to whom an order under Section 565, Criminal Procedure Code, has been made.

(c) All convicts the execution of whose sentence is suspended in the whole, or any part of whose punishment has been remitted conditionally under Section 401, Criminal Procedure Code.

(d) All persons restricted under Rules of Government made under Section 16 of the Restriction of Habitual Offenders (Punjab) Act, 1918'.

In Part II, at the discretion of the Superintendent of Police, the names of four other classes of persons are to be entered :

'(a) persons who have been convicted twice, or more than twice, of offences mentioned in Rule 27.29.

(b) persons who are reasonably believed to be habitual offenders or receivers of stolen property whether they have been convicted or not;

(c) persons under security under Section 109 or 119, Code of Criminal Procedure;

(d) convicts released before the expiration of their sentences under the Prisons Act and Remission Rules without the imposition of any conditions'.

14. Rule 23.5 providing, inter alia, for opening of history sheet prior to a person's name being put on the surveillance register, and authorising only the concerned S.P. to direct that that person's name be entered into Part II of the surveillance register, reads as follows :

'23.5. (1) The surveillance register shall be written up by the officer in charge of the police station personally or by an assistant sub-inspector in a clear and net script. No entry shall be made in Part II except by the order of the Superintendent, who is strictly prohibited from delegating this authority. No entry shall be made in Part I except by the order of a gazetted officer. Entries shall be made either under the personal direction of, or on receipt of a written order from, an officer authorised by this rule to make them. In the latter case original orders shall be attached to the register until the entry has been attested and dated by a gazetted officer.

(2) Ordinarily, before the name of any person is entered in Part II of the surveillance register, a history sheet shall be opened for such person.

If, from the entries in the history sheet, the Superintendent is of opinion that such person should be subjected to surveillance he shall enter his name in Part II of the surveillance register, provided that the names of persons who have never been convicted or placed on security for good behavior shall not be entered until the Superintendent has recorded definite reasons for doing so. The record of such

reasons shall be treated as confidential and the person concerned shall not be entitled to a copy thereof.'

15. Rule 23.7 which provides for the mode of surveillance by the police officers etc. reads as follows :

'23.7. (1) Police surveillance shall comprise such close watch over the movements of the persons under surveillance, by police officers village headman and village watchman, as may be practicable without any illegal interference.

(2) Care shall be taken not to have under surveillance in any police station more persons than the police station staff can reasonably be expected to watch efficiently.'

16. Rule 23.9 requires opening of history sheet in a particular form under the orders of a police officer not below the rank of Inspector. It is as follows :

'23.9. (1) A history sheet, if one does not already exist, shall be opened in Form 23.9 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 persons.

(3) The Government Railway Police will maintain the history sheets of criminals known or suspected to operate on the railway in accordance with Police Rule 23.8. They will open history sheets themselves for criminals living in railway premises, who have been absent from their original homes so long that the railway premises may be regarded as their permanent residence. They may also open history sheets for wandering strangers reasonably believed to be habitually addicted to crime on the railway, whose original homes cannot be traced.'

17. The learned counsel for the petitioner contended that the above provisions of the Punjab Police Rules permitting the opening of history sheet and vesting

discretion with the Superintendent of Police for directing the placing of the name of a person whom he considered to be habitual offender in the surveillance register and also the mode of surveillance are unconstitutional as those Rules not only unreasonably curtail that person's right to move freely throughout the territory of India but also infringe his right to privacy which is an essential ingredient of fundamental right of personal liberty. He relied on the decision of the Supreme court in *Kharak Singh v. State of U.P.*, : 1963 CriLJ329 . He urged that minority view in that case laying down that surveillance by the police was unconstitutional, having been approved as the correct law in *Maneka Gandhi v. Union of India*, : [1978]2SCR621 , the provisions authorising surveillance have now to be held as unconstitutional.

18. It is true that in *Maneka Gandhi's* case. Bhagwati, J. speaking for the majority approved the minority view in *Kharak Singh's* case. In paragraph 54 of that judgment it has been held -

'There can be no doubt that in view of the decision of this Court in *R.C. of the decision of this Court in R. C. Cooper v. Union of India* : [1970]3SCR530 , the minority view must be regarded as correct and the majority view must be held to have been overruled.'

19. Mr. Arvind Kumar's submission, therefore, is that Punjab Police Rules have now to be held ultra virus as those Rules impose unreasonable restrictions in the enjoyment of fundamental right guaranteed under Article 19(1) and 19(1)(d), and Article 21 of the Constitution.

20. The contention raised needs a closer examination and appreciation of the minority view in *Kharak Singh's* case (1963) 2 Cri LJ 32 (supra).

21. The facts of that case were that the petitioner, *Kharak Singh*, had challenged the constitutional validity of Chapter XX of the U.P. Police Regulations and the powers conferred upon the police officers under those provisions. In accordance with those regulations, the police had opened the 'history sheet' of the petitioner. The Regulations defined 'history sheets' as 'the personal records of criminals under surveillance'. The history sheets were of two classes. Class (a) in which the

petitioner's name was put, was for dacoits, burglars, cattle thieves and railway-goods-wagon thieves, and class (b) was meant for confirmed and professional criminals other than dacoits, burglars, etc. The surveillance to which the petitioner was subjected was that frequently the Chowkidar of his village and sometimes police constables used to enter his house, knock and shout at his door and wake him up during night, Kharak Singh's complaint was that on a number of occasions at night he had been compelled to report his presence at the police station. When leaving his village he was also required to report his departure to the Chowkidar of the village. He had to give information regarding his destination and the period within which he would return. On furnishing this information, the police authorities contacted the police station of his destination where he was also put under surveillance.

22. The particular regulation which was sought to be declared invalid was Regulation 236 defining surveillance. It is in these terms -

'Without prejudice to the rights of Superintendent of Police to put into practice any legal measures, such as shadowing in cities, by which they find they can keep in touch with suspects in particular localities or special circumstances, surveillance may for most practical purposes be defined as consisting of one or more of the following measures :

'(a) secret picketing of the house or approaches to the houses of suspects,

(b) domiciliary visits at nights;

(c) through periodical inquiries by officers not below the rank of Sub-Inspector into repute, habits, associations income, expenses and occupation;

(d) the reporting by constables and chaukidars of movements and absences from home,

(e) the verification of movements and absences by means of inquiry slips;

(f) the collection and record on a history sheet of all information bearing on conduct'.

The validity of this provision was challenged on the ground that sub-clauses (a) to (f) of the above Regulations impair the freedom guaranteed by Article 19(1)(d) 'to move freely throughout the territory of India' and also infringe the freedom guaranteeing personal liberty under Article 21 of the Constitution.

23. Ayyangar, J., speaking for the majority, struck down clause (b) of Regulation 236 which authorised 'domiciliary visits at night' as unconstitutional, but upheld the validity of the other sub-clauses of the said Regulation. In brief their reasons were, firstly, that the act authorising the police (excepting for the domiciliary visits at night) did not impede the free movement of Kharak Singh guaranteed to him under Article 19(1)(d) of the Constitution. On this aspect it was held, 'the freedom guaranteed by Article 19(1)(d) has reference to something tangible and physical rather and not to the imponderable effect on the mind of a person which might guide his action in the matter of his movement of locomotion'. Secondly, it was held that the scope and content of the expression 'personal liberty' in Article 21 comprises the residue of the species or attributes of the freedom covered by Article 19(1)(d). Thus, the other impugned sub-clauses of the Regulation were held not to infringe the personal liberty as postulated in Article 21.

24. The minority view was expressed by Subba Rao, J., who spoke for himself and Shah, J. They declared the said Regulation as a whole to be unconstitutional. After analysing the decision in A. K. Gopalan's case : 1950 CriLJ1383 they gave a wider meaning to the expression 'liberty' occurring in Article 21. It was held :-

'No doubt the expression 'personal liberty' is a comprehensive one and the right to move freely is an attribute of personal liberty. It is said that the freedom to move freely is carved out of personal liberty and, therefore, the expression 'personal liberty' in Article 21 excludes that attribute. In our view, this is not a correct approach. Both are independent fundamental rights, though there is overlapping. There is no question of one being carved out of another. The fundamental right of life and personal liberty has many attributes and some of them are found in Article 19. If a person's fundamental right under Article 21 is infringed, the State can rely upon a law to sustain the action, but that cannot be a complete answer unless the said law satisfies the test laid down in Article 19(2) so far as the attributes covered

by Article 19(1) are concerned.' After declaring that right to privacy was an essential ingredient of personal liberty, it was further observed that 'we would, therefore, define the right of personal liberty in Article 21 as a right of an individual to be free from restrictions or encroachments on his person, whether these restrictions or encroachments are directly imposed or indirectly brought about by calculated measures. If so understood, all the acts of surveillance under Regulation 236 in fringe the fundamental right of the petitioner under Article 21 of the Constitution'.

25. On the second question, whether the petitioner's fundamental right under Article 19(1)(d) was also infringed, the learned Judges were of the view that the shroud of surveillance cast upon the petitioner 'perforce engender inhibitions in him and he cannot act freely as he would like to do. We would, therefore, hold that the entire Regulation 236 offends also Article 19(1)(d) of the Constitution'.

26. It must, however, be borne in mind that Regn. 236 in Kharak Singh's case 1963 2 Cri LJ 329 was not law. This was the admitted position. The majority as well as the minority view in that case proceed on that basis. In paragraph 24 of the minority judgment Subba Rao, J. held so at the outset in these words :

'Let us at the outset clear the ground. We are not concerned here with a law imposing restrictions on a bad character, for 'admittedly there is no such law. therefore, the petitioner's fundamental right, if any has to be judged on the basis that there is no such law. To state it differently, what fundamental right of the petitioner has been infringed by the acts of the police If he has any fundamental right which has been infringed by such acts, he would be entitled to a relief straightway, for the State could not justify it on the basis of any law made by the appropriate Legislature or the rules made there under'.

27. In view of the fact that the police surveillance was authorised only by the Regulation 236, which was admittedly not law, the surveillance by the police infringing personal liberty and free movement of a citizen was held to be bad. In the present case the legal position is entirely different. The right to personal liberty and freedom to move freely is being denied according to procedure established by law which law, as per the contention of the State, satisfies the test laid down in

Article 19(2) of the Constitution.

28. The question that falls for determination, therefore, is whether those provisions of law enumerated in Chap. 23 of the Rules providing for mode of surveillance, for maintenance of a surveillance register and opening of history sheet, amount to unreasonable restriction on the said fundamental rights of the petitioner.

29. As noticed in an earlier part of this judgment similar provisions of law came up for consideration before the Supreme Court in Govind's case (supra). The Madhya Pradesh Regulation 236, inter alia providing for opening of history sheet and for surveillance of a person whose conduct showed a determination to lead a life of crime, was challenged on the ground that this provision was unreasonable restriction on the fundamental rights to the petitioner Govind guaranteed to him under Arts. 19(1)(d) and 21 of the Constitution.

30. After noticing the minority view in Kharak Singh's case 1963 2 Cri LJ 329 and after reviewing the American case law, Mathew, J. speaking for the Court held thus :-

'The right to privacy in any event will necessarily have to go through a process of case-by-case development. Thereafter, even assuming that the right to personal liberty, the right to move freely throughout the territory of India and the freedom of speech create an independent right of privacy as an emanation from them which one can characterise as a fundamental right, we do not think that the right is absolute.'

31. The minority view in Kharak Singh's case having been held to be correct law it is no longer necessary to assume that the right to privacy is not a fundamental right. It is now to be presumed that right of privacy is a right which emanates from the three rights namely the freedom of speech, the right to personal liberty and the right to move freely throughout India. That appears to be the settled law. The right of privacy, however, is not absolute as no fundamental right is absolute as no fundamental right is absolute. For compelling interests of the State, in Govind's case : 1975 CriLJ1111 (supra) the provisions of law, authorising surveillance

including the domiciliary visits at night were held to be valid. The principle laid down was :

'As regulation 856 has the force of law it cannot be said that the fundamental right of the petitioner under Article 21 has been violated by the provisions contained in it; for, what is guaranteed under that Article is that no person shall be deprived of his life or personal liberty except by the procedure established by 'law'. We think that the procedure is reasonable having regard to the provisions of Regulations 853(c) and 857. Even if we hold that Article 19(1)(d) guarantees to a citizen a right to privacy in his movement as an emanation from that Article and is itself a fundamental right, the question will arise whether Regulation 856 is a law imposing reasonable restriction in public interest on the freedom of movement falling within Article 19(5), or, even if it be assumed that Article 19(5) does not apply in terms as the right to privacy of movement cannot be absolute. A law imposing reasonable restriction upon it for compelling interest of State must be upheld as valid'.

32. Keeping that principle in view the restrictions if any imposed by the present Rules on the fundamental rights of the petitioner may be seen.

33. Rule 23.4(1) (providing for maintenance of surveillance register No. X) and R. 23.5(2) (Providing for opening of history sheets) do not provide for any physical restraint on the persons whose names are borne on the register/history sheets. These Rules do not provide for any domiciliary visits during night or day or for any secret picketing of the house or on the approaches to the house of suspects. Under these Rules the individual concerned is not to report to the police or Chaukidar of the village for absence from his home.

34. The Rules although framed in the year 1934, have been extended to Delhi by a post-constitutional enactment (Delhi Police Act 1978). As notice in an earlier part of this judgment Chapter 23 of the Rules dealing with prevention of offences is consistent with the primary function of the police force. A person who has not been convicted in any offence can be brought under surveillance only if the Superintendent of Police has recorded definite reasons for doing so vide Rule 23.5(2). Apart from this safeguard the mode of surveillance (Rule 23.7) does not permit illegal interference in the day-to-day life of the suspect. The mandate of the

law is clear. The allegation that most of the law is clear. The allegation that most of the time the police does not adhere to the mode provided but act beyond it, does not make the law bad. The abuse of the provisions, if any, can be challenged and those acts of the police are liable to be set aside.

35. There is no doubt that strict compliance of the mode of surveillance imposes restriction on the right of privacy of a person whose name is entered in the surveillance register. He is all the time conscious that his house is being watched, his movements are reported thus his family and social life is bound to be affected. However, this interference with the fundamental rights of the petitioner being in the interest of public order is permissible.

36. In a recent judgment of the Supreme Court in *Malak Singh v. The State of Punjab and Haryana*, : 1981 CriLJ320 Rules 23.4 and 23.7 of the Rules were considered and it was held :-

'Rule 23.7 which prescribes the mode of surveillance, permits the close watch over the movements of the person under surveillance but without any illegal interference. Permissible surveillance is only to the extent of a close watch over the movements of the person under surveillance and no more. So long as surveillance is for the purpose of preventing crime and is confined to the limits prescribed by Rules 23.7 we do not think a person whose name is included in the surveillance register can have a genuine cause for complaint. We may notice here that interference in accordance with law and for the prevention of disorder and crime is an exception recognised even by European Convention of Human Rights to the right to respect for a person's private and family life.'

37. The second contention of Mr. Arvind Kumar that Rules 23.4, 23.5, 23.7 and 23.9 are to be held unconstitutional on the basis of the minority judgment in *Kharak Singh's case* 1963 2 Cri LJ 329 is thus untenable in view of the decisions of their Lordships in *Govind's* and *Malak Singh's cases* : 1975 CriLJ1111 (supra).

38. On merits, however, I am not satisfied that the name of the petitioner is liable to remain on the surveillance register. Admittedly, he had not been convicted of any offence twin or more than twice. According to the respondents his name was

entered in the surveillance register No. X as he was reasonably believed to be a habitual offender as per the provisions of sub-clause (b) of sub-rule (3) of Rule 23.4 of the Rules. The return filed by the respondents shows that the petitioner, although challaned in a number of cases was not found guilty in any of them. To keep him under surveillance, a history/sheet was opened on 1st September, 1964, by the Station House Officer, Karol Bagh Police Station and the petitioner's name thereafter was entered into register No. X, Part II by the order of the Superintendent of Police, Central District on 14th September, 1964. It is apparent from the record (Annexure R-1) filed by the respondents that at the relevant time the following first information reports had been registered against him :

Offence	under	Section	Police Station	Sr. No.	FIR No.	Date
325, 506, I P C	Rajinder Nagar	2. 594 7-5-57 420	594 7-5-57 420	I P C	Kotwali	3. 353 8-9-57 420
353 8-9-57 420	353 8-9-57 420	I P C	Kotwali	4. 481 20-12-57	29, Telegraph Act	Kashmere Gate
5. 432 21-11-59	324 I P C	Kashmere Gate	6. 64 21/22-11-59	107, 151, Cr.P.C.	Kashmere Gate	7. 211 18-7-61
506 I P C	Original Road	8. 274 4-10-61	506, 323, I P C	Original Road	9. 452 20-12-62	420 I P C
Kamla Market	10. 6 4-1-64	420 I P C	Kashmere Gate	11. 7A 3-2-64	107, 151, Cr.P.C.	Karol Bagh

39. The allegations of the respondents are that the petitioner is a cheat, who was in the habit of issuing cheques which were dishonoured. Out of those cases four cases which were registered under Section 420, Indian Penal Code, presumably relate to the issuing of those cheques.

40. It is the further case of the respondents that the petitioner is a quarrelsome person and keeps on picking up fights with persons of the locality wherever he had been staying, particularly with the landlords. In none of these cases, however, has the petitioner been convicted.

41. Who are the persons whose names can be entered in the surveillance register as per the Rules This is the question which arises for consideration in this case. A bare reading of Rules 23.4(1), quoted above, shows that a person must be a

proclaimed offender, or a previous convict or a person who is already placed under surveillance for good behavior or proved to be a habitual offender. Admittedly, the petitioner does not come in this category. His name, therefore, has been ordered to be placed in Part II of the register on the 'reasonable belief' that he is a habitual offender. The case of the respondent is that as number of cases, shown above, were registered against him, he comes into that category of habitual offender. Can he be for all times classified as such It was for the respondents to satisfy the court that there were sufficient grounds for the Superintendent of Police to entertain the 'reasonable belief'. In support of their contention, the respondents have shown us the police file wherein the orders passed on 14th September, 1964, by the Superintendent of Police are recorded. A perusal of the file shows that after the 16th entry in history-sheet a note by one H. Singh is in the following words, 'He is a very notorious and dangerous cheat. His name may be entered in Register No. X(II). H.S. to bundle 'A'.' On that note Superintendent of Police, Central District, on 14th September, 1964, stated thus, 'H.S. to bundle A. Name be entered in register No. X Part II.'

42. The Superintendent of Police was required to record definite reasons for his 'reasonable belief' that the petitioner was a habitual offender, while directing that his name be entered in Part II of the register as envisaged by Rules 23.4(3)(b) and 23.5(2). The above noted direction by the Superintendent of Police, Central District, merely approves the recommendation of his subordinate officers. No reasons, much less definite reasons, have been recorded by him. This infirmity itself is a good ground for accepting the contention of the petitioner that his name was entered in Part II of the register illegally and without any justification.

43. History-sheet produced before us shows that the last first information report against the petitioner was registered on 15th August, 1972. It appears that the grievance of the police officers thereafter against the petitioner was that he was maintaining a high standard of living and number of people keep on visiting him at odd hours. There is a further complaint that the petitioner is in the habit of filing false complains against the local police.

44. On the basis of the return-affidavit filed by the respondents and the material in the history sheet, it is difficult to hold that the petitioner is determined to lead a life of crime.

45. In Govind's case : 1975 CriLJ1111 the Supreme Court has held that the law empowering surveillance of persons against whom 'reasonable materials exist to induce the opinion that they show 'a determination, to lead a life of crime' - crime in this context being confined to such as involve public peace or security only and if they are dangerous security risks. Mere convictions in criminal cases where nothing gravely imperils safety of society can (cannot ?) be regarded as warranting surveillance under this regulation. Similarly, domiciliary visits and picketing by the police should be reduced to the clearest cases of danger to community security and not routine follow-up at the end of a conviction or release from prison or at the whim of a police officer. In truth, legality apart, these regulations ill-accord with the essence of personal freedoms and the State will do well to revise these old police regulations verging perilously near unconstitutionality'.

46. In a case decided by a Division bench of this Court on 16th July, 1975 (Makhan Singh Sandhu v. S.H.O. Police Station, Lodhi, Colony, Criminal Writ No. 18 of 1973), the petitioner was found not to have been convicted in any of the cases registered against him or even bound down for keeping the peace or maintaining good behaviors. In that view of the matter it was held that it was for the respondents to show in the return that it was necessary to continue keeping the name of that person in the surveillance register. It was held that in the absence of any reasonable ground for the belief that the petitioner continued to be habitually addicted to crime or was an aider or abettor of such a person or that he was habitual offender or receiver of stolen property, his name should not be entered in the surveillance register.

47. Following the ratio of the Division Bench decision in Makhan Singh Sandhu's case (supra) and the law laid down in Govind's case 1975 Cri LJ 111 (supra) held that it has not been shown that there was any reasonable ground to believe that the petitioner was determined to lead a life of crime. The complain of the petitioner that the police has leaked out the information of his being a bad character which

has also been published by the press (vide news-item, Annexure 'A') which allegation is unrebutted, leads me to the conclusion that continuation of petitioner's history sheet is also improper. For the reasons stated above, I see no justification in permitting his name to remain on the surveillance register or for continuance of his history sheet. I, therefore, direct that his name be struck off from Part II of the surveillance register forthwith and further that his history sheet be closed.

48. Accordingly, the petition is allowed but with no order as to costs.

Avadh Behari Rohatgi, J.

1. I agree.

49. Petition allowed.

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