

inder Singh Malik Vs. State and ors.

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Court : Delhi

Decided On : Feb-26-1986

Reported in : 1986(3)Crimes191; 30(1986)DLT92; 1986(10)DRJ317; 1986RLR244

Judge : Charanjit Talwar, J.

Acts : Punjab Police Rules, 1934 - Rule 23; [Indian Penal Code \(IPC\), 1860](#) - Sections 102, 109, 327, 400, 406, 409, 498A and 506; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 244, 245 and 246; Prevention of Corruption Act - Sections 5(2)

Appeal No. : Criminal Writ Appeal No. 48 of 1985

Appellant : inder Singh Malik

Respondent : State and ors.

Advocate for Def. : Mr. Sodhi

Advocate for Pet/Ap. : O.N. Vohra, Adv

Judgement :

Charanjit Talwar, J.

(1) By this petition Inder Singh malik seeks issuances of an appropriate writ under Article 226 of e Constitution of India for quashing the history sheet opened by the police authorities in accordance with the Punjab Police Rules 1934 (hereinafter referred to as the Rules) and further quashing of the entry made in the Surveillance Register as per Rule 23.9.

(2) Petitioner has averred that he is a youngman of 26 years of age. He has passed his higher-secondary examination and is at present Pradhan of Gaon Sabha, village Masudpur, Delhi. It is his case that the Station House Officer of Police Station Mehrauli respondent No. 4 (herein) has got opened history-sheet illegally and malafide and had the recommendation approved for opening the same and keeping his name on the Surveillance Register from respondent no. 3, the Deputy Commissioner of Police Hauz Khas New Delhi in violation of the provisions of rules in Chapter 23 of the Rules. The respondents have filed an affidavit of Shri Jaipal Singh, Station House Officer, Police Station Mehrauli in opposition to the writ petition. The opening of the history-sheet on 6th September 1984 has been admitted. It is further admitted that the name of the petitioner was brought on the Surveillance Register by the orders of the Deputy Commissioner of Police. South District New Delhi. The grounds on which this action had been taken have been enumerated in the return. In nut-shell the case of the respondents is that there arc 5 criminal cases pending against the petitioner. In the 6th case he has been acquitted and in the 7th he has been discharged. According to them 'he is a very active criminal of the area and needs constant watch. It will be needless to say that he is a person who forcibly lifted an innocent and poor girl namely Miss Siromani Barala from the market Along with his associates in his car and thereafter committed rape on her and this attracted a lot of publicity in the press and otherwise.' I may note at the outset that according to the petitioner the prosecutrix namely Miss Siromani Barala has not identified him (the petitioner) in the identification parade. That averment of the petitioner has however not been denied in the return.

(3) I have noticed the rival factual contentions of the parties only for the purpose of appreciating the legal submissions. I am not assessing the facts as indeed I cannot, while exercising the jurisdiction of this Court under Article 226 of the

Constitution. It is not necessary to notice all the legal pleas raised in the petition and also urged before me by Mr. O.N. Vohra learned counsel for the petitioner as in my view the petition can be disposed of on a very short ground. On my asking Mr. Sodhi, learned counsel for the respondents produced the officials records maintained by the police authorities in respect of the petitioner herein. It was for the first time that it was suggested on September 6 1984 by the Station House Officer, Police Station Mehrauli that the History-Sheet of the petitioner be opened. In that note after enumerating certain cases against the petitioner which are pending trial it was said 'He is continuously involved in the commission of crime since 1976. It has been very essential to keep close watch over his activities. Keeping in view the above facts, it is proposed that his name be entered in Surveillance Register and bil name may be kept on history-sheet bundle A The Assistant Commissioner of Police Hauz Khas to whom this note had been marked agreed with the suggestion by saying 'He deserves to be kept under Surveillance by the Police. Approval may please be accorded to enter his name in Register No. 10 Part li and H.S. to bundle 'A'.

(4) This file was then referred to the Deputy Commissioner of Police who said 'Approved' and signed it. Mr. Vohra says that this approval granted by the Deputy Commissioner of Police who is admittedly of the rank of Superintendent of Police cannot be equated with his 'reasonable belief' as envisaged by Rule 23,4 (3) (b) and 23.5 (2). The submission is that merely approving the recommendations of the Station House Officer can in no case be laid to mean that the Superintendent of Police has given definite reasons for permitting either the opening of the History sheet or of putting the name of the petitioner on the Surveillance Register. In support of this submission Mr. Vohra relies on a division bench judgment of this Court in Peter Samuel Wallace v. Inspector General of Police, New Delhi, 1981 Criminal Law Journal-1195. In paragraph 42 of that judgment it was held that non-giving of reasons is an infirmity which can lead to a conclusion that name of a person was entered on A Surveillance Register without any justification. It was observed:

'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 li 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 li of the register illegally and without any justification.'

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The learned counsel also refers to the judgment in Criminal writ No. 66 of 1977 decided on 14th April 1980 entitled Dev Raj Dewan v. Chander Badan Singh and others in which a similar view was taken as had been taken by me earlier. I may notice that one of the earlier cases of this Court in which the provisions of Chapter 23 of the Rules which deal with prevention of offences came up for consideration was Makhan Singh Sandhu v. Station Home Officer, Lodhi Colony New delhi, Criminal Writ petition no. 18 of 1973 decided on 16th July 1975. In both the above said cases that decision has been referred to and approved. In the said case it was observed:

'AS laid down by the Supreme Court when action of police officers .under Rules 2.3.9(2) and 23.4(3)(b) of the Punjab Police Rules is challenged, it is for the police-officers to justify their action and to show that the condition precedent to the opening of history sheet is that the suspect is a person reasonably believed to be habitually addicted to crime or to be an aider or abettor of such a person. The condition precedent for entry of the name of the . suspect in part li of the Surveillance register ii that he should be reasonably believed to be habitual offender or receiver of stolen property irrespective of the fact whether he has been convicted or not. The question, therefore, which arises in this case is whether the police-officers who had taken action had reasonable grounds for believing that the petitioner was a habitual offender or a person habitually addicted to crime.'

In Dev Raj Dewan (supra) it was observed while following the rule laid down in Roop Lal Makkar v. Thakur Jagdish Singh, Sho Police Station, Lahori Gate & others, 11p (1978) 1 Del 40 that the High Court under Article 226 of the Constitution can examine the impugned record to satisfy itself that the reasonable belief of the

police-officer was based on some material which was germane and relevant to the question, although the court would not be concerned with the sufficiency of the material. As noticed above in the present case the Superintendent of Police who is termed as Deputy Commissioner of Police in Delhi has not even given reasons for his belief. He has merely approved the recommendations of a subordinate officer. The mandate of the Rules is that he has to give definite reasons for his reasonable belief. In present case, therefore, the question of examination or analysing the definite reasons of the Deputy Commissioner of Police concerned does not arise. On this short ground alone while agreeing with Mr. Vohra I allow the writ petition. In this view of the matter I do not propose to deal with other questions raised. Before parting with the case however I cannot help but notice the observations of the Supreme Court in Govind v. State of Madhya Pradesh, : 1975 CriLJ1111 wherein it was held that :

'IN truth legality apart, these regulations, ill-accord with the essence of personal freedom and the State will do well to revise these old police regulations verging perilously near unconstitutionality.'

The result is that I see no justification in permitting the respondents to keep the petitioner's name on the Surveillance Register. I therefore direct that his name be struck off from Register No. 10 part II forthwith. I further see no justification in permitting the respondents to continue the history-sheet of the petitioner. I direct that the said history-sheet be closed.

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