

Mangtu Ram Vs. Union of India and ors.

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Court : Delhi

Decided On : Apr-08-1987

Reported in : 1988CriLJ1133; 32(1987)DLT56

Judge : M.K. Chawla, J.

Acts : Punjab Police Rule, 1918 - Rule 23.4(3) and 23.5(2)

Appeal No. : Criminal Writ Appeal No. 423 of 1986

Appellant : Mangtu Ram

Respondent : Union of India and ors.

Advocate for Pet/Ap. : Moduli Bhatill and; S.T. Singh, Advs

Judgement :

M.K. Chawla, J.

(1) On 19.5.1982, the S.H.O. of Police Station Sadar Bazar, Delhi recommended the name of the petitioner for opening of the history sheet on the averments that the suspect Mangtu Ram was arrested in case Fir No. 205 dated 26.6.1976 of Police Station Najafgarh, Delhi, for having found in possession of the entire stock of aluminium wire stolen by Banwari Lal wire cutting gang. After sometime in case Fir No. 130 dated 14.3.1981, of Police Station Sonapat, arrested the accused for the commission of theft of car radiators. In the opinion of the Sho, Mangtu Ram is

in the habit of purchasing stolen goods and this fact has also been confirmed by a secret enquiry from the people of the area. He suggested that history sheet of the suspect be prepared and a surveillance be kept on his activities. His recommendation was approved to the extent that the history sheet of the suspect be prepared and kept on bundle 'A' by the order of the D.C.P. dated 22.5.1982.

(2) This very order is under challenge and the petitioner seeks the issuance of a writ, order or direction in the nature of mandamus commanding the respondents to remove the entry from the Police Surveillance Register and to close the history sheet.

(3) The first and foremost submission of the learned counsel for the petitioner is that the Deputy Commissioner of Police, while approving the recommendation of the SHO of the Police Station concerned has not complied with the mandatory requirements of the Punjab Police Rules, which envisage the recording of definite reasons for permitting either to open the history sheet or bring the name of the petitioner on the Surveillance Register. The mere words 'The history sheet of the suspect be prepared and kept on bundle 'A' 'cannot be equated with his 'reasonable belief' that the petitioner is 'habitual offender' or a receiver of a stolen property. Further more, he was also required to form an independent opinion that the petitioner is a desperate character, a terror in the vicinity and his activities are required to be kept under observation.

(4) I have carefully perused the record of the petitioner as maintained at the concerned police station and I find that the D.C.P. in fact has written the words 'The history sheet of the suspect be prepared and kept on bundle 'A' ', and signed it. This is not the requirement of the Punjab Police Rules as well as the law laid down on this aspect.

(5) The well-settled rule is that the mere approving of the recommendations of the Station House Officer can in no case be said 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. Non-giving of reasons is an infirmity and thus the order is without any justification. Useful reference can be made to the dictum laid down in the Judgment reported

as Peter Samuel Wallace v. Inspector General of Police, New Delhi, Cr.L.J. 1196, and followed in the case of Inder Singh Malik v. State, : 30(1986)DLT92 , and the two criminal writ petitions decided by this Court bearing Criminal Writ no. 109/85-Baleshwar v. Sho Police Station Delhi Cantt. and Shri Amrik Singh v. Commissioner of Police, CrL. Writ no. 300/85. The above said rule fairly and squarely applies to the facts of the present case and on this short ground, I have no hesitation to quash the order of the respondents whereby the name of the petitioner was entered in bundle 'A' and on the Police Surveillance Register.

(6) Even on merits, the respondents have not been able to justify either the opening of the history sheet of the petitioner or placing him in part li of Register no. X. The condition precedent to the opening of the history sheet under Rule 23.5(2) is that the suspect must be a person 'reasonably believed to be habitually addicted to crime or to be an aider or a better of such person.' Similarly, the condition precedent to the entry of the names of the suspects in part li of the Surveillance Register No. X is that he is a 'person who is reasonably believed to be habitual offender of receiver of stolen property whether he has been convicted or not.'

(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 Rules 34.4 (3) (b) and 23.2(2). However, mere belief is not sufficient. The belief must be reasonable and based on reasonable grounds. (Dhanji Ram Sharma v. Superintendent of Police, North District, Delhi Police and others, : 1966 CriLJ1486 .

(8) In the present case, the petitioner is alleged to be involved in two cases of theft/receiving of stolen goods between the year 1976 and 1981. It is not disputed that in both the cases the petitioner was acquitted. Since then, he has never been arrested nor convicted in any criminal case. He is dealing in copper and brass business at his shop no. 6028, Nala Road, Sadar Bazar, Delhi. Since 1981, he is lying low and no adverse reports of his working have come to the knowledge of police authorities.

(9) The question, therefore, that arises for consideration in this case is whether the Police officer who had taken action had reasonable ground for believing that the petitioner was a habitual offender or a person habitually addicted to crime.

(10) It is well settled rule of precedence that if the action of the Police officers to open the history sheet of a person or to bring his name in the Surveillance Register is challenged, they must justify their action and must show that the conditions precedent have been satisfied.

(11) I have carefully perused the official record maintained by the police authorities in respect of the petitioner herein. Except the two cases referred to above, the petitioner has never been arrested or convicted. In such a situation, it is just not possible for any person what to talk of a reasonable Police officer to infer that the petitioner is a habitual offender or he is habitually addicted to crime and cannot be prevented unless and until his history sheet is opened and his name is brought on the Surveillance Register. Prima facie, I am not satisfied that the respondents took an objective view of the matter in making out a case for the opening of a history sheet and bringing the name of petitioner on the Surveillance Register.

(12) In the result, I allow the petition and quash the orders dated 19.5-82 passed by the SHO, and orders dated 22.5.1982 of the D.C.P. The name of the petitioner be removed from the Register No. 10 Part 11, and his history sheet be closed forthwith.