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Court : Delhi

Decided On : May-19-2008

Reported in : 150(2008)DLT753; 2008(105)DRJ551

Judge : S.L. Bhayana, J.

Acts : Habitual Offenders (Punjab) Act, 1918 - Sections 16; Prisons Act; Remission Rules; Punjab Police Rules - Rule 23.1, 23.4, 23.5 and 27.29; Code of Criminal Procedure (CrPC) - Sections 87, 109, 110, 401 and 565; Indian Penal Code (IPC) - Sections 34, 307, 323, 341, 354, 379 and 506

Appeal No. : WP (Crl.) No. 1195 of 2004

Appellant : Rajiv Sharma @ Hari Kishan Sharma

Respondent : State (Nct of Delhi)

Advocate for Def. : Rajdipa Behura, Adv.

Advocate for Pet/Ap. : Bankim Kulshrestha and; Deepak Vohra, Advs

Disposition : Petition dismissed

Judgement :

S.L. Bhayana, J.

1. The petitioner, by virtue of the present petition, seeks the removal of his name from the area surveillance register and for a direction to the respondent to destroy his history sheet which has been kept in their records.

2. The facts leading to the filing of the present petition are that there were certain cases registered against the petitioner at Police Stations Shahdara and Pratap Nagar. He has never been convicted by the Court and some of the cases out of those, which have been registered against him, are pending. According to the petitioner, he has been falsely implicated in these cases by the local police at the behest of the local people, who have some grudge against him. As a result of these cases, the petitioner's name has been entered in the register of history-sheeters. On the strength of these facts, learned Counsel for the petitioner had urged that in most of the cases the petitioner has either been discharged or acquitted and there are few cases that are pending trial. Hence, his name should be removed from the area surveillance register.

3. On behalf of the respondent on the other hand, it is denied that the petitioner was falsely implicated in FIR No. 300/99, and submitted that the petitioner was acquitted because the witnesses in the case had turned hostile. Learned Counsel for the State contends that it is not necessary that the petitioner must be convicted in order to enter his name in the history sheet. The petitioner during the year 1997 was found involved in 5 criminal cases and keeping in view the petitioner's criminal activities, the S.H.O, PS-Shahdara, Delhi ordered for the opening of a history sheet in his name. Thereafter, the petitioner was required to keep good behavior for a period of one year from the date of the said order, i.e., 14.11.2000. Consequently, the petitioner's history sheet was converted from 'Bundle A' to 'Bundle B'. After the conversion of the history sheet from 'Bundle A' to 'Bundle B' yet another FIR was lodged against the petitioner. The respondent also filed a status report dated 25.04.2007, according to which, the petitioner was involved in two criminal cases after his history sheet was shifted from 'Bundle B' to 'Bundle A', and hence, the name of the petitioner should continue to be on the surveillance register maintained for history sheeters. It is stated that keeping in view the track record of the petitioner, the order in question is justified.

4. I have heard learned Counsel for the petitioner as well as the State.

5. Before coming to a conclusion it is necessary to discuss the relevant provisions of the Punjab Police Rules as applicable to the National Capital Territory of Delhi. Chapter 23 of the said Rules has been framed for prevention of offences. Under Rule 23.1 the officer-in-charge of the police station have to pay special attention to villages and have to move in any case in the area where crime has occurred or registered bad characters and suspects whose history sheets are on record and are alive. Under Rule 23.4 a surveillance register can be maintained and names of persons commonly residing within the area of certain categories can be entered therein. This can include all convicts, the execution of whose sentence is suspended and also persons who have been convicted twice or more than twice or who are reasonably believed to be habitual offenders. The names have to be entered in Part I and Part II as the case may be. Rule 23.4 reads as under:

23.4 Surveillance Register No. X- (1) In every Police Station, other than those of the railway police, a Surveillance Register shall be maintained in Form 23.4 (1).

(2) In Part I of such register shall be entered the names of persons commonly resident within or commonly frequenting the local jurisdiction of the police station concerned, who belong to one or more of the following cases;-

(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 of Criminal Procedure Code, is 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.

(3) In Part II of such register may be entered at the discretion of the Superintendent.

(a) person who have been convicted twice, or more than twice, or 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 110, Criminal Procedure Code.

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

6. Similarly Rule 23.5 refers to the entries and cancellation in the surveillance register and the relevant provisions of the said rules reads as under:

23.5 Entries in and cancellation from surveillance register - (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 neat script. No entry shall be made in Part II except by the orders of the Superintendent, who is strictly prohibited from delegating his 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 authorized by this rule to make them. In the later case, original orders shall be attached to the register until the entry has been attested and dated by a gazette 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 the 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 in 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.

7. It is patent from the aforesaid that surveillance register has to be written by the officer-in-charge of the police station and entry in Part-I can only be made by the order of a Gazetted Officer. The Superintendent has to further record reasons for doing so before entering the name of the person in Part II of the register.

8. This Court in *Sarjeet Singh v. Commissioner of Police and Ors.* : 97(2002)DLT851 laid down certain guidelines, which are to be followed in the maintenance of a surveillance register. The Court held as under:

From the aforesaid the conclusions can conveniently drawn to be (a) before the name of a person is entered in the register of a history sheets and surveillance register, it is not necessary to give him an opportunity of being heard, (b) it is not necessary that persons concerned must be, convicted of certain offences but in that event reason must be recorded specifically to bring the name of such a person on the registers referred above, (c) it is the satisfaction of the concerned officer and unless the order so passed is mala fide is without application of mind or is contrary to the strict provisions of Rules and the Act, the High Court would not interfere, (d) however the High Court in cases where ingredients of, (c) above is not satisfied would be within its powers to quash such orders, (e) if the name of a person is entered in any of the said registers and the entry is to be used against him he must be informed of it, (f) the concerned person will have the right to represent and even show that he has since improved his conduct and that his name be deleted from the concerned register, (g) in any case there should be a periodical review of the entries every six months from the date the entry is made.

9. Reverting back to the facts of the present case I can conveniently refer to the list of criminal cases that have been stated to be registered against the petitioner.

Sl. No FIR No. Under Section P.S Status
1. 60/1997 379 IPC Shahdara Discharged
2. 171/1997 379 IPC Pratap Ngr Discharged
3. 179/1997 379 IPC Shahdara Discharged
4. 249/1997 379 IPC Shahdara Discharged
5. 324/1997 379 IPC Shahdara Acquitted
6. 300/1999 307/34 IPC Shahdara Acquitted
7. 101/2005 341/323/506 Shahdara Released//34 IPC Discharged
8. 114/2007 323/354/506 Shahdara Pending Trail/34 IPC

10. The petitioner's name was transferred from 'Bundle A' to Bundle 'B', as the petitioner was not involved in any criminal case since 08.07.1999. However, on 27.03.2005 FIR No. 101 was registered against the petitioner under Sections 341/323/506/34 IPC at PS. Shahdara on the statement of one Ravi Joshi. Another criminal case has been registered against the petitioner on the statement of Geeta Sharma vide FIR No. 114 dated 09.03.2007 under Sections 323/354/506/34 IPC. Keeping in view, the latest involvement of the petitioner and subsequent registration of FIRs against him, the history sheet of the petitioner was again upgraded from Bundle B to Bundle A by the DCP (NE) on 02.04.2007.

11. The above list clearly reveals that out of 8 cases that were pending, the petitioner has been discharged in 5 cases and acquitted in 2. One matter is pending trial, and till date no conviction has been recorded against the petitioner. However, it is not necessary for the Court to consider whether the person as such has been convicted or not but there necessarily has to be a proper satisfaction of the concerned officer before the name of a person is to be removed from the history sheet.

12. In the case of *Malak Singh v. State of Punjab* : 1981 CriLJ320 , the Hon'ble Supreme Court has laid down the guidelines for opening the history sheet and review of the same by the Police. The following paragraphs from the said judgment can usefully be referred at this stage:

7. As we said discreet surveillance of suspects, habitual and potential offenders, may be necessary and so the maintenance of history sheet and surveillance register may be necessary too, for the purpose of prevention of crime. History sheets and surveillance registers have to be and are confidential document. Neither the person whose name is entered in the register nor any other member of the public can have access to the surveillance register. The nature and character of the function involved in the making of an entry in the surveillance register is so utterly administrative and non-judicial that it is difficult to conceive of the application of the rule of *audi alteram partem*. Such enquiry as may be made has necessarily to be confidential and it appears to us to necessarily exclude the application of that principle. In fact observance of the principles of natural justice

may defeat the very object of the rule providing for surveillance. There is every possibility of the ends of justice being defeated instead of being served. It was well observed in *Re. K (Infants)*, 1965 AC 201 :

But a principle of judicial inquiry whether fundamental or not, is only, a means to an end. If it can be shown in any particular class of case that the observance of a principle of this sort does not serve the ends of justice, it must be dismissed; otherwise it would become the master instead of the servant of justice.⁸ The entry in the surveillance register is to be made on the basis of the material provided by the history sheet whose contents, by their very nature have to be confidential. It would be contrary to the public interest to reveal the information in the history sheet, particularly the source of information. Revelation of the source of information may put the informant in jeopardy. The observance of the principle of natural justice, apart from not serving the ends of justice may thus lead to undesirable results. We accordingly hold that the rule *audi alteram partem* is not attracted.

10. Ordinarily the names of persons with previous criminal record alone are entered in the surveillance register. They must be proclaimed offenders, previous convicts, or persons who have already been placed on security for good behaviour. In addition, names of persons who are reasonably believed to be habitual offenders or receivers of stolen property whether they have been convicted or not may be entered. It is only in the case of this category of persons that there may be occasion for abuse of the power of the police officer to make entries in the surveillance register. But, here, the entry can only be made by the order of the Superintendent of Police who is prohibited from delegating his authority under Rule 23.5. Further it is necessary that the Superintendent of Police must entertain a reasonable belief that persons whose names are to be entered in part II are habitual offenders or receivers of stolen property. While it may not be necessary to supply the grounds of belief to the persons whose names are entered in the surveillance register it may become necessary in some cases to satisfy the Court when an entry is challenged that there are grounds to entertain such reasonable belief. In fact in the present case we sent for the relevant records and we have satisfied ourselves that there were sufficient grounds for the

Superintendent of Police to entertain a reasonable belief. In the result we reject both the appeals subject to our observations regarding the mode of surveillance. There is no order as to costs.

13. It has been further mentioned in the status report that the case of the petitioner was considered again and his history sheet was downgraded from Bundle 'A' to Bundle 'B' and again from Bundle 'B' to his personal file as he was not found to be involved in any criminal activities in the recent past.

14. The history sheet is the creation of the petitioner himself as in the past he was found to be involved in number of criminal activities and it was necessary for the Police to keep his name in the history sheet which has now been downgraded to his personal file. It is stated on behalf of the State that surveillance is required to be kept on the petitioner as he was found to be involved in number of cases in the past.

15. In view of the above and in light of the guidelines laid down by the Supreme Court in Malak Singh's case (supra) and by this Court in Sarjeet Singh's case (supra), I am of the considered view that the present petition has no merits and the name of the petitioner cannot be removed from the area of the surveillance register maintained by the Police.

16. Dismissed.