

Court on its own motion *v.* Sukhvinder Singh and others
(S. S. Kang, J.)

FULL BENCH

Before S. S. Sandhawalia C.J., A. S. Bains and S. S. Kang, JJ.

COURT ON ITS OWN MOTION,—*Petitioner.*

versus

SUKHVINDER SINGH and others,—*Respondents.*

Criminal Original Contempt No. 14/Crl. of 1980.

June 2, 1981.

Constitution of India 1950—Article 226—Punjab Police Rules 1934 (Volume III)—Rules 22.48 and 22.49—Petition for the issuance of a writ of habeas corpus—Warrant Officer appointed by the High Court to recover the detenu allegedly detained in a police station—Such officer—Whether competent to examine the police records.

Held, that the functions of the Warrant Officer do not come to an end with the detection or recovery of a detenu in the Police Station or even with the service of a notice on the detaining authority. The public records have to reflect the custody of a citizen brought to the police station. The object of the issue of a writ of habeas corpus is to see that no person is deprived of his liberty except in compliance with the authority of law and if the custody is not in accordance with law, then to release him. The Warrant Officer is, therefore, entitled to examine the contemporaneous record of the police station which the Police Officers are enjoined by the Punjab Police Rules to prepare when a person is kept in custody at the police station. That information is imperative for the just decision of the writ petition. Thus, the search for the detenu does not only mean to find out the physical presence of the detenu but it entails the search of the material regarding the justification for the custody. It is true that it is not for the Warrant Officer to decide about the legality or otherwise of the custody. However, the visit of the Warrant Officer can discover the presence or absence of the information regarding the custody of the detenu in the public record, as the Police Officers are obliged by law to make these entries in the Daily Diary. If this function is not considered to be integral part of the search, it, surely, will be incidental and consequential of the search and the process of service of the writ or notice on the detaining authority. Thus, the Warrant Officer

has the power and is rather under a duty to examine and inspect the daily Diary of the Police Station. (Paras 10 and 13).

Court on its own motion vs. Gurmit Singh and others, Cr.O.(C)

30—Crl. of 1979 decided on October 18, 1979. OVERRULED.

Case referred by Division Bench consisting Hon'ble Mr. Justice Ajit Singh Bhains and Hon'ble Mr. Justice S. S. Kang on 9th December, 1980 to the larger Bench for the decision of important question of law involved in the case.

The full Bench consisting the Hon'ble the Chief Justice Mr. S. S. Sandhwalia, Hon'ble Mr. Justice A. S. Bains and Hon'ble Mr. Justice S. S. Kang, finally decided the case on 2nd June, 1981.

Proceedings taken up by the Court on its own Motion in Criminal Writ Petition No. 136 of 1980 against Sukhvinder Singh, Assistant Moharrir Constable, Inderjit Singh, Muharrir Head Constable and Jaswant Singh, S.H.O., to show cause why contempt proceedings be not initiated against them for committing the contempt of this Hon'ble Court by refusing to allow Shri Gurdev Singh Warrant Officer of this Hon'ble Court to inspect the roznamcha unless the Station House Officer came to the Police Station.

H. S. Bhullar, Advocate, for the Petitioner.

K. P. Singh Sandhu, Advocate, for the Respondent.

S. S. Kang, J.

(1) Whether a Warrant Officer appointed by the High Court in a Habeas Corpus Petition can inspect the Daily Diary Register of a Police Station, is the meaningful question which falls for decision in this case ?

FACTUAL MATRIX FIRST :

(2) Shrimati Jito filed Criminal Writ Petition No. 136 of 1980 (Habeas Corpus) in the High Court alleging that her husband Gokal Ram had been illegally detained by Station House Officer Jaswant Singh in Police Station, Bhogpur, District Jullundur; that he had not committed any crime; that he had not been produced before any Magistrate, and that he had been beaten and tortured. She prayed for the issuance of a writ in the nature of Habeas Corpus, directing the respondent to produce Gokal Ram detenu in the High Court. She also made a request that a Warrant Officer be appointed to go to search the premises of the Police Station and the near-about quarters. The writ petition came up for motion hearing

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before Sidhu, J. on October 15, 1980 who passed the following order :

“Rule *nisi* to respondent No. 2 for 17th October, 1980. S.I. Jaswant Singh, Station House Officer, Police Station, Bhogpur (respondent No. 2) shall produce Gokal Ram, the alleged detenu, in this Court on the said date. Search warrant be also issued for making search for Gokal Ram within the premises of the said Police Station and the same shall be executed by the Warrant Officer appointed for the purpose. The Warrant Officer shall record the statement of Gokal Ram, if found there, and submit the same along with his report to this Court on or before 17th October, 1980. To come up on 17 October, 1980.”

(3) It is clear from the order that Sub-Inspector Jaswant Singh, Station House Officer, Police Station, Bhogpur had been directed to produce Gokal Chand in Court on October 17, 1980. Warrants were issued for making a search for Gokal Ram. The Warrant Officer was directed to execute the warrants.

(4) Shri Gurdev Singh, an official of this Court was appointed Warrant Officer. He reached the Police Station, Bhogpur at about 12.30 a.m. on October 16, 1980. He knocked at the door of the Police Station. Constable Ranjit Singh opened the door. Shri Gurdev Singh disclosed his identity to him and entered the premises of the Police Station. Assistant Moharrar Constable Sukhwinder Singh came to the main door and told Gurdev Singh not to enter the premises of the Police Station. When the latter disclosed his identity to him the former allowed him to enter the premises. Moharrar Head-constable Inderjit Singh was lying asleep. Shri Gurdev Singh shouted loudly and Gokal Ram responded to the call. Gokal Ram told Shri Gurdev Singh that he was beaten mercilessly by Sub-Inspector Jaswant Singh without any rhyme or reason. Shri Gurdev Singh entered the room of the Moharrar Head Constable. He found the Daily Diary (*rozenamcha*) lying on the table. He took that into possession. Shri Sukhwinder Singh forcibly snatched the *rozenamcha* and told Shri Gurdev Singh that he could not see the *rozenamcha* unless the Station House Officer came to the Police Station. Thereafter, Sukhwinder Singh went

outside the Police Station and took the *rozenamcha* along with him. Shri Gurdev Singh continued sitting at the Police Station. At about 2.10 a.m., Sukhwinder Singh returned to the Police Station followed by Sub-Inspector Jaswant Singh. Shri Gurdev Singh asked for the *rozenamcha* from the Station House Officer. He directed Sukhwinder Singh to produce the *rozenamcha* which was lying in the adjoining room. Sukhwinder Singh brought the same. The Station House Officer told Shri Gurdev Singh that Gokal Chand was taken into custody by Assistant Sub-Inspector Harbans Singh on October 15, 1980 at 8.55 p.m. in a case under sections 107 and 151 of the Code of Criminal Procedure. A report to that effect was made at serial number 25 under date October 15, 1980 in the Daily Diary. This entry was shown to Shri Gurdev Singh. Shri Gurdev Singh recorded the statement of Gokal Ram. Thereafter, Shri Gurdev Singh handed over the Notice and Production Warrant issued by this Court to Sub-Inspector Jaswant Singh and left the Police Station at about 10 a.m. Shri Gurdev Singh submitted a report containing the above mentioned facts.

(5) The case came up for hearing before Sidhu, J. on October 17, 1980. Sub-Inspector Jaswant Singh produced Gokal Ram in custody. It was stated by Sub-Inspector Jaswant Singh that Gokal Ram was arrested on October 15, 1980 at 8.55 p.m. by Assistant Sub-Inspector Harbans Singh under sections 107 and 151 of the Code of Criminal Procedure. He had been produced before a Magistrate and had been remanded to custody till October 18, 1980. Since at the time of filing the return to the writ petition by the respondent, Gokal Ram was in legal custody, the writ petition became infructuous and was dismissed. However, the learned Single Judge came to the conclusion that from the facts a *prima facie* case of commission of contempt of this Court was made out against Assistant Moharrir Constable Sukhwinder Singh, Moharrir Head Constable Inderjit Singh and Sub-Inspector Jaswant Singh. Consequently, notices were issued against them. All the contemners appeared before a Division Bench, consisting of my brother Bains, J. and myself. The respondent-contemners put in their returns.

(6) The facts alleged by Shri Gurdev Singh were broadly admitted by the respondents. Sukhwinder Singh in particular has stated that the Warrants Officer had asked him to show the *rozenamcha*, but he took the *rozenamcha* and placed the same

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in the adjoining room as he had been instructed by the high Officers not to show the *rozenamcha* to anybody without prior permission of the Station House Officer. When the Station House Officer came and asked him to show the *rozenamcha* to the Warrant Officer, he immediately placed the same before the Warrant Officer.

(7) Shri Karampal Singh Sandhu, Advocate, appearing for the contemners, argued that the conduct of the respondents did not in any way, amount to 'contempt of Court'. He contended that Gurdev Singh has not alleged anything against Inderjit Singh and Sub-Inspector Jaswant Singh. So far as Sukhwinder Singh is concerned, he argued that he was perfectly justified in not showing the daily diary to the Warrant Officer. According to him, the Warrant Officer had no authority whatsoever to see the *rozenamcha*. He had been authorised only to search the premises and serve the notices on the Station House Officer, the respondent in the Writ Petition. He strongly relied upon a Division Bench judgment of this Court in Court on its own motion, *v.* Gurmeet Singh, A.S.I. and others, (1) wherein it has been held:

"When the Warrant Officer on entering the premises of the Police Station finds the detenus there, he has to serve notice on the Station House Officer of that Police Station to produce the detenus in the Court, as is the direction of the Court. With the recovery of the detenus and the service of the notice, unless the orders direct some other thing to be done, the functions of a Warrant Officer appointed by this Court under the Writ, Jurisdiction (Punjab and Haryana) Rules, 1976 come to an end. He does not, under the garb of that order of the Court, acquire a right to investigate the legality or propriety of the detention of alleged detenus from the record of the Police Station including the Daily Diary."

It was further observed:—

"In the absence of any specific request for this purpose, in our view, the Officers on whom notices have been issued,

(1) Cr. O(c)30-Crl. of 1979, decided on 18-10-79.

did not in any way either interfere or obstruct the warrant Officer in execution of his duties as such and did not commit any contempt of this Court. The Warrant Officer is appointed only with a specific purpose of the recovery of detenues and the rest is the function of this Court to enquire in the allegations about the custody. These functions cannot be delegated to a Warrant Officer nor the Writ Jurisdiction (Punjab and Haryana) Rules, 1976 permit any such delegation. There is nothing in rule 10 sub-rule 2 and 3 of these rules, under which the writ is issued and Warrant Officer is appointed, justifying such an enquiry, by a Warrant Officer, as suggested by Mr. Prashar. The Court does not abdicate the function in favour of the Warrant Officer to conduct an enquiry of this nature at the spot."

Despite highest esteem with which we hold the views of our learned brothers, constituting the Division Bench, we were not able to persuade ourselves to concur in the reasonings and conclusions given by the learned Judges. Apart from that, since the matter was, in our opinion, of considerable importance which was likely to arise in many cases, we were of the view that it requires determination by a larger Bench. It is, under these circumstances, that the case has been placed for decision by a Full Bench.

(8) Article 21 of the Constitution of India guarantees that no person shall be deprived of his life or personal liberty, except according to the procedure established by law. Only a free citizen can exercise his fundamental rights like rights of freedom of speech, expression, to assemble peaceably, form associations, to move throughout the territory of India, to reside and settle in any part of the country and to practice any profession or to carry on any occupation, trade or business as guaranteed by Article 19. A person in custody cannot exercise these rights. To enforce and translate this freedom of the individual, the High Courts have been invested with the powers of issuing writs in the nature of Habeas Corpus. The importance of personal liberty cannot be overemphasised in a democratic society governed by rule of law. So that these sacred rights may not remain pious ideals, a machinery has been devised to enforce these rights. It is not only the prerogative of this Court to issue the writ of Habeas Corpus whenever any complaint

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regarding transgression of any right of personal liberty without the authority of law is brought to its notice, it is the sacred duty to see that no person is detained without the authority of law. In order to effectuate this purpose, the High Court usually issues writs in the nature of Habeas Corpus so that the detaining authority may be directed to produce the detenu and to prove to the satisfaction of the Court that the detention or custody of the person is in accordance with and under the authority of some law. If it is not so, then the Court is to order the release of the detenu forthwith. This Court has framed the Writ Jurisdiction (Punjab and Haryana) Rules, 1976 in exercise of powers conferred on it by virtue of Article 225 of the Constitution of India for the determination and decision of the writs of Habeas Corpus.

(9) In order to effectively exercise this jurisdiction, the Court has the power to appoint any person as Warrant Officer to effect service of the notice on the respondent, the detaining authority, requiring him to produce the detenu in this Court, to search the premises of any institution to find out if the person alleged to be detained is, in fact, being kept in custody in those premises and to do any other thing which may be necessary to do to achieve that objective and to do justice in the case. In the case of allegation of detention of a person by the Police Officer in a Police Station, the Warrant Officer can be appointed to serve the notice of the writ-petition on the detaining Officer/Officers and to search the premises of the Police Station or other buildings to find out if the detenu is being kept there. In order to serve the writ of this Court on the detaining authority, the Warrant Officer is to find out the whereabouts of that person. Whenever a person is brought in custody to a Police Station, an entry regarding that is made in the Daily Diary Register. Similarly, entry is made regarding the arrival and departure of the Police Officers in and from the Police Station in the Daily Diary. The Warrant Officer can from the Daily Diary Register know as to who are the persons being detained in the Police Station. This can facilitate him in the search for the detenu. Similarly, from the Daily Diary he can know as to whether the Police Officer on whom he wants to effect service is present in the Police Station. If he has left the Police Station, he can know from this register his destination. Thus, the examination of the Daily Diary——is very essential for the purpose of effecting

the purposeful search of the premises of a Police Station and for serving the notice on the respondent-Police Officers. Daily Diary is maintained in accordance with Rule 22.48(1) of the Punjab Police Rules, 1934 (Volume III). The relevant extract thereof is reproduced below:—

“The Daily Diary shall be maintained in accordance with section 44 of the ‘Police Act. It shall be in form 22.48(1) and shall be maintained by means of carbon copying process. There shall be two copies. One will remain in the police station register and the other shall be despatched to a Gazttted Officer to be designated by the Superintendent of Police or to the Superintendent of Police himself every day at the hour fixed in this behalf.

Shortly before the close of each quarter, books containing the proper number of pages for the ensuing three months shall be issued to police stations by the Superintendent. The Superintendent shall fix the hours at which station diaries shall be daily closed with reference to the hour of despatch of the post or messenger.”

The matters that have to be recorded in the Daily Diary have been enumerated in Rule 22.49. The relevant provisions thereof are quoted below:—

“The following matters shall, amongst others be entered:—

(a) * * * *

(b) * * * *

(c) The hour of arrival and departure on duty at or from a police station of all enrolled police officers of whatever rank, whether posted at the police station or elsewhere, with a statement of the nature of their duty. The entry shall be made immediately on arrival or prior to the departure of the officer concerned and shall be attested by the latter personally by signature or seal.

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(d) Every police Officer of or above the rank of head constable, when returning from duty other than an investigation in which case diaries are submitted, shall have an entry made in the daily diary by station clerk or his assistant showing the places he has visited and the duties performed by him during his absence from the police station.

* * * * *

(h) All arrivals, at and despatches from, the police station of persons in custody, and all admissions to, and removals from, the police station lock-ups, whether temporary or otherwise, the exact hour being given in every case.

* * * * *

(n) A reference to every information relating to the commission of a cognizable offence, and action is taken under section 157, Code of Criminal Procedure, the number and date of the first information report submitted.

* * * * *

It is implicit in the very appointment of a Warrant Officer that he can search the premises and he has to serve the writ of the Court on the detaining authority. To know whether the detenu is confined within the precincts sought to be searched is an integral part of the search. In the very nature of things, a Warrant Officer cannot be familiar with the topography of a Police Station or other premises to be searched. The premises to be searched may be so vast and of a type where the search by a single person may be very difficult but the record of the Police Station can be of great help to know whether a person is present, or not. Similarly, the Police Officers present, in a given case, may choose not to cooperate with the Warrant Officer. They may not like to divulge the true facts regarding the whereabouts of the detaining authority on whom service has to be effected. If the Warrant Officer is not even permitted to have a look at the rozenamcha in many cases the whole object of the issuance of a search warrant and even the filing of the writ petition may be frustrated by the conduct of certain unscrupulous Police Officials or Officers, this cannot be the approach of this Court to its sacred duty for preserving individual liberty from the excesses of errant Police Officials.

(10) The functions of the Warrant Officer do not come to an end with the detection or recovery of a detenu in the Police Station or even with the service of a notice on the detaining authority. The public records have to reflect the custody of a citizen brought to the police station. The object of the issue of a writ of Habeas Corpus is to see that no person is deprived of his liberty except in compliance with the authority of law and if the custody is not in accordance with law then to release him. The Warrant Officer is, therefore, entitled to examine the contemporaneous record of the Police Station which the Police Officers are enjoined by the Punjab Police Rules to prepare when a person is kept in custody at the Police Station. That information is imperative for the just decision of the writ petition. Thus, the search for the detenu does not only mean to find out the physical presence of the detenu but it entails the search of the material regarding the justification for the custody. It is true that it is not for the Warrant Officer to decide about the legality or otherwise of the custody. However, the visit of the Warrant Officer can discover the presence or absence of the information regarding the custody of the detenu in the public record, as the Police Officers are obliged by law to make these entries in the Daily Diary. If this function is not considered to be integral part of the search, it, surely, will be incidental and consequential of the search and the process of service of the writ or notice on the detaining authority.

(11) The Warrant Officer examines the *rozenamcha* only to find out if there is any report regarding the custody of the detenu. He does not investigate any matter and he does not go into the question as to whether the detenu is being detained illegally, validly and under the authority of law. He does not do such thing. He can at best report to the Court that the detenu was present in the premises, but there was no report regarding his custody in the Daily Diary. It is for the Court to draw any conclusion from that. But, while appointing the Warrant Officer to search the premises for the presence of the detenu and to serve a notice on the detaining authority, this Court does not abdicate its powers. The Warrant Officer performs only the ministerial function in connection with proceedings pending in this Court. In fact, Shri Karampal Singh Sandhu, learned counsel did not argue that this Court should not authorise the Warrant Officer to go and examine and take into

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possession the daily diary. He only argued that by his very appointment as Warrant Officer, the Warrant Officer does not get the authority to inspect the daily diary.

(12) In the light of the aforesaid discussion, we are inclined to hold that the view taken by the Division Bench in *Court on Its Own Motion v. Gurmit Singh and others* (1 supra) is not in consonance with the provisions of the law. An analysis of the judgment therein would disclose that the matter was not adequately agitated before the Bench on principle as also in the light of the relevant statutory provisions. In the larger prospective, it appears that the view taken by the Bench would not tend to advance the ends of justice and would rather render the process of the writ of *habeas corpus* ineffective and sterile. With the greatest respect, therefore, we held that *Gurmit Singh's case* (supra), does not lay down the law correctly and is consequently over-ruled.

(13) To conclude, it is held that the Warrant Officer had the power and was rather under a duty to examine and inspect the daily diary of the Police Station.

(14) Coming to the facts of the present case there are no allegations that Sub-Inspector Jaswant Singh or Inderjit Singh, in any manner interfered with the performance of the duties of the Warrant Officer. They did not do any over-act. They have, therefore, not committed any contempt of this Court.

(15) So far as Sukhwinder Singh is concerned, Shri K. P. S. Sandhu has argued that at the relevant time, the interpretation of the law as given by the Division Bench in *Gurmit Singh's case* (supra), was that the Warrant Officer cannot inspect the *roznamcha*. That being the position, Sukhwinder Singh, on the presumption, that he knew the law as laid, might well be justified to follow the orders of his superiors not to show the *roznamcha* to anybody including the Warrant Officer without the permission of the Station House Officer. There was thus no guilty intent on his part to flout the orders of this Court or to abstract the rightful purpose of his duties by the Warrant Officer. Consequently, he also cannot be held guilty of any contempt of this Court.

(16) We, therefore, hold that the three respondents are not guilty of the offence of the contempt of Court and the rule against them is discharged.

S. S. Sandhawalia, J.—I agree.

A. S. Bains, J.—I also agree.

N. K. S.

FULL BENCH

Before *S. S. Sandhawalia, C.J., P. C. Jain and M. R. Sharma, JJ.*

ANAND PARKASH,—Petitioner.

versus

BHARAT BHUSHAN RAI and another,—Respondents.

Civil Revision No. 1878 of 1978.

June 3, 1981.

Code of Civil Procedure (V of 1908)—Sections 35-B and 148—Party to a suit granted adjournment subject to payment of costs—Such party refusing to pay costs on the adjourned date of hearing but waiving the right to take the step for which adjournment was granted—Refusal to pay costs—Court—Whether bound to disallow prosecution of the suit or the defence—Power under section 148—Whether could still be exercised.

Held, (per majority S. S. Sandhawalia, C.J. and P. C. Jain, J; M. R. Sharma, J. contra.) that a bare scrutiny of the provisions of section 35-B of the Code of Civil Procedure, 1908 would show that the legislature has made its intention absolutely clear and beyond the pale of any doubt that the provisions are mandatory in nature and any non-compliance with the same would result in penal consequences as envisaged therein. In the event of the party failing to pay the costs on the date next following the date of the order imposing costs, it is mandatory on the Court to disallow the prosecution of the suit or the defence, as the case may be, and that no other extraneous consideration would weigh with the court in exercising its jurisdiction against the delinquent party. The Court would not go into the question whether the party who sought adjournment has or has not been guilty of delaying the suit or that