

REVISIONAL CRIMINAL

*Before S. S. Sandhawalia, J.*THE STATE,—*Petitioner**versus*HARI RAM,—*Respondent***Criminal Revision No. 56-R of 1967**

August 30, 1968

Evidence Act (1 of 1872)—Ss. 123—Punjab Police Rules—Rules 23.4 and 27.24(2)—Surveillance Registered No. X—Whether a privileged document—Maintenance of such register—Whether falls within the ambit of 'affairs' of state—Possible injury to public thereby—Courts—Whether to hold enquiry into.

Held, that the surveillance register No. X is maintained under the Punjab Police Rules which are statutory. The Rules lay down that the register shall be confidential and in specific terms provide that it is privileged under section 123 of the Evidence Act.

(Para 11)

Held, that the surveillance register is a document which necessarily pertains to public security or public peace which is a settled category falling within the ambit of the term "affairs of State". Once this test is satisfied, it is not for the Courts of law to hold an enquiry into the possible injury to public interest which may result from the disclosure of the document relating to the affairs of State. This would be a matter entirely for the authority concerned and the head of the department concerned to decide. In fact such a person would be the sole judge to determine whether the disclosure thereof is or is not in public interest.

(Para 12)

Case reported under Section 438/439 of the Criminal Procedure Code by Shri S. C. Mittal, Sessions Judge, Karnal, for revision of the order of Shri P. L. Sanghi, Chief Judicial Magistrate, Karnal, dated 22nd June, 1966, directing the petitioner that the inspection of the register will only be confined to the entry regarding the name of the complainant.

R. A. SAINI, ADVOCATE, FOR ADVOCATE-GENERAL (HARYANA), for the Petitioner.

RAM RANG, ADVOCATE, for the Respondent.

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ORDER OF THE HIGH COURT.

SANDAWALIA. J.—This criminal revision has been reported by the Sessions Judge, Karnal, with the recommendation that the order of Shri P. L. Sanghi, Chief Judicial Magistrate, Karnal, dated the 22nd June, 1966, be set aside.

(2) The facts giving rise to the revision petition are that one Hari Ram had filed a complaint under sections 167/217-218, Indian Penal Code, against Sub-Inspector Atal Bihari Mathur, formerly Station House Officer, Karnal City Police Station, and Moharrir Head Constable Hukam Chand. The allegations made in the complaint are that the above-said two accused persons had made interpolations in the register No. 10 (surveillance register) of the Police Station, Karnal City, by adding the name of the complainant in the said register without any orders from any competent authority. It was further alleged that this was done against the statute and the police rules and with the ulterior object of screening one Tarlochan Singh, who had published a defamatory article against the complainant. The complainant had, therefore, made an application in the trial Court for the summoning of the surveillance register No. 10 and the Chief Judicial Magistrate allowed the same. However, on the date of the hearing the relevant register was produced in Court in a sealed cover and at the same time an affidavit of Shri S. K. Chhibber, Home Secretary, claiming that the said register was privileged under the provisions of section 123 of the Indian Evidence Act was filed. In the said affidavit the Home Secretary, had averred that the surveillance register No. 10 was an unpublished official record relating to the affairs of the State and that its disclosure would be prejudicial to the public interest. Specific reasons, apart from others, for claiming privilege were also stated in the following terms:—

“Keeping of register No. 10 (surveillance register) as secret is absolutely necessary for the proper functioning of the police department and the disclosure of the document would frustrate the purpose of secret surveillance of bad characters and criminals.”

(3) The Chief Judicial Magistrate, after hearing arguments and considering the authorities cited rejected the claim of privilege regarding the production of the register in question and directed

that the inspection of the register be allowed but should be confined to the entry therein regarding the name of the complainant. Against the order above-said the State preferred a revision petition in the Court of the Sessions Judge, Karnal, which has now been forwarded to this Court with the recommendation above-mentioned.

(4) The point which, therefore, falls for determination in this petition is whether the claim of privilege regarding entries in the surveillance register No. X maintained under the provisions of the Punjab Police Rules, 1934, is sustainable.

(5) Mr. Ram Rang, learned counsel for Hari Ram respondent, who has very strenuously presented the case for his client against the reference made by the learned Sessions Judge, has placed strong reliance primarily on the following observations of the Supreme Court in *The State of Punjab v. Sodhi Sukhdev Singh*, (1) :—

“Thus our conclusion is that reading sections 123 and 162 together the Court cannot hold an enquiry into the possible injury to public interest which may result from the disclosure of the document in question. That is a matter for the authority concerned to decide; but the Court is competent, and indeed is bound, to hold a preliminary enquiry and determine the validity of the objections to its production, and that necessarily involves an enquiry into the question as to whether the evidence relates to an affair of State under Section 123 or not.”

(6) Relying on the above, Mr. Ram Rang has submitted that the trial Court was entitled to hold a preliminary enquiry and determine the validity of the claim of privilege, and that the decision of the trial Court was entitled to hold a preliminary enquiry and determine law and should be upheld. Mr. Ram Rang has also placed reliance on *Niranjan Dass Sehgal v. The State of Punjab and others*, (2), *The Union of India and others v. Raj Kumar Gujral*, (3), and *A. Ramachandran v. A. Alagiriswami and another*, (4). As the law on the subject has been succinctly laid down in *The State of Punjab, v. Sodhi*

(1) A.I.R. 1961 S.C. 493.

(2) I.L.R. (1968) 2 Pb. and Hry. 171.

(3) A.I.R. 1967 Punjab 387.

(4) A.I.R. 1961 Mad. 450.

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Sukhdev Singh, (1), *Amar Chand Butail*, v. *Union of India and others*, (5), and *The Sub-divisional Office, Mirzapur, and others*, v. *Raja Srinivasa Prasad Singh*, (6), it is no longer necessary to analyse the string of authorities cited by the learned counsel which broadly only follow the law laid down in the abovesaid authorities of the Supreme Court. The second contention of Mr. Ram Rang was regarding the contents of the affidavit filed by Mr. S. K. Chhibber, the Home Secretary, whereby he had claimed privilege for the surveillance register, the production of which was in issue. The contention of Mr. Ram Rang, who read extensively from the said affidavit, was that though it had been expressly averred therein that the deponent had very carefully considered the document in question, yet he had not specifically used the word "read". Mr. Ram Rang's contention was that his failure or omission to use the word "read" would vitiate the affidavit filed by the Home Secretary. Another contention in this very context was that because in the body of the affidavit he had not used the words "*bona fide*" and had not stated that he had "*bona fide* come to the conclusion," therefore, also the affidavit filed should be rejected. This contention of Mr. Ram Rang obviously has only to be noticed and then to be rejected. There is no magic incantation or a formula which must necessarily be repeated in the filing of the affidavits for claiming the privilege under sections 123 and 162 of the Indian Evidence Act. When it has been, expressly averred that the officer concerned has very carefully considered the document in issue and also given detailed reasons for his conclusion that the disclosure thereof would be against public interest, the mere absence of the word "read" or words "*bona fide*," would in no way detract from the validity of such an affidavit.

(7) Mr. R. A. Saini has relied on the provisions of the Punjab, Police Rules and on the observations of the Supreme Court in *State of Uttar Pradesh and others v. Babu Ram Upadhyaya*, (7), and on *Tirlok Singh-Gurdit Singh Rajput v. The Superintendent of Police, Ferozepur*, (8). He has also sought support from and relied on the authorities cited by Mr. Ram Rang and referred to in *Sodhi*

(5) A.I.R. 1964 S.C. 1658.

(6) A.I.R. 1966 S.C. 1164.

(7) A.I.R. 1961 S.C. 751.

(8) A.I.R. 1959 Punjab 323.

Sukhdev Sing's case, (1). The relevant provisions of the Punjab Police Rules, 1934, which fall for determination, may be set down here *in extenso*.

"23.4 (1) In every police-station, other than those of the railway police, a Surveillance Register shall be maintained in Form 23.4(1).

23.31. All records connected with police surveillance are confidential; nothing contained in them may be communicated to any person nor may inspection be allowed or copies given, save as provided in police Rules. The rights of district and ilaqa magistrates to examine such records are governed by rules 1.15 and 1.21, and the rules regarding their production in court are contained in Chapter XXVII.

27.24. (2) The following police records are privileged under section 123, Evidence Act. If their production is demanded, a certificate in form 27.24(2) must be obtained from the Inspector-General by the police-officer called upon to produce them. The Inspector-General may at his discretion allow evidence derived from such documents to be given and in order to enable him to exercise this discretion it is important that a police-officer claiming privilege in respect of any document, should submit either the original document, a copy, or a full translation if it is in vernacular, together with a report indicating why it is necessary to claim privilege and also that his claim is justified.

(1) The Surveillance Register [Rule 23.4(1)].

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(8) The clear provisions noted above leave one in no manner of doubt that by the statutory rules the contents of the surveillance register No. X are to be treated as strictly confidential. The last sub-para of rule 23.5(2) is in the following terms:—

"The record of such reasons shall be treated as confidential and the person concerned shall not be entitled to a copy thereof."

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Again, in rule 23.31 it has been expressly laid down that all records connected with police surveillance are confidential. Particularly specific on this point are the provisions of rule 27.24(2) which categorically lay down that the surveillance register maintained under rule 23.4(1) is privileged under section 123 of the Indian Evidence Act.

(9) The Punjab Police Rules, are statutory rules framed under the Police Act; and undoubtedly have the force of law. Construing a similar provision of the U.P Police Regulations the Supreme Court in *State of Uttar Pradesh and others v. Babu Ram Upadhya*; (7), has approved the rule of construction laid down by Maxwell in the following terms:—

“Rules made under a statute must be treated for all purposes of construction or obligation exactly as if they were in the Act and are to be of the same effect as if contained in the Act, and are to be judicially noticed for all purposes of construction or obligation. The statutory rules

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cannot be described as, or equated with, administrative directions. If so, the Police Act, and the rules made thereunder constitute a self-contained code providing for the appointment of police-officers and prescribing the procedure for their removal.”

(10) In *Tirlok Singh, Gurdit Singh, Rajput, v. The Superintendent of Police, Ferozepur*, (8), a Division Bench authority of this Court, while pronouncing upon the constitutionality of Punjab Police Rule, 23.4, under which Surveillance Register No. X is directed to be maintained, it was observed as follows:—

“The rules quite clearly lay down that the surveillance register is a confidential document and an entry made in it does not affect the personal liberty of the individual in any way. * * * ** * *

* * * It is clear that the maintaining of this register is, in no way, illegal and is, in fact, an absolute necessity for the better performance of police duties.”

It is thus patent that the surveillance register No. X is maintained under statutory rules, which further lay down that the same shall be confidential and in specific terms provide that the said register is privileged under section 123 of the Evidence Act.

(11) To determine the issue of privilege the two relevant provisions of the Indian Evidence Act, are sections 123 and 162 which are in the following terms:—

“123. No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or with-ho'ld such permission as he thinks fit.

162. A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court. The Court, if it sees fit, may inspect the document, unless it refers to matters of State or take other evidence to enable it to determine on its admissibility. If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence; and if the interpreter disobeys such direction, he shall be held to have committed an offence under section 166 of the Indian Penal Code.”

The term “affairs of State” has not been precisely defined in any statute. However, certain well known categories have always been considered within the ambit of these words. Construing these the Supreme Court in *Sodhi Sukhdev Singh's case* has clearly laid down as follows:—

“What are the affairs of State under section 123? In the latter half of the nineteenth century affairs of State may have had a comparatively narrow content. Having regard to the notion about governmental functions and duties which then obtained, affairs of State would have meant

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matters of political or administrative character relating, for instance, to national defence, public peace and security and good neighbourly relations. Thus, if the contents of the documents were such that their disclosure would affect either the national defence or public security or good neighbourly relations they could claim the character of a document relating to affairs of State."

(12) Applying the above test, it admits of no manner of doubt that the surveillance register is a document which necessarily pertains to public peace and security which is a settled category falling within the ambit of the term "affairs of State." Once this test is satisfied, it is not for the Courts of law to hold an enquiry into the possible injury to public interest which may result from the disclosure of the document relating to the affairs of State. It is by now settled law that this would be a matter entirely for the authority concerned and the head of the department concerned to decide. In fact such a person would be the sole judge to determine whether the disclosure thereof is or is not in public interest. This view of the law first enunciated in *Sodhi Sukhdev Singh's case* has been reaffirmed in *Amar Chand Butail's case* and again in *The Sub-divisional Officer, Mirzapur and others v. Raja Srindvasa Prasad Singh* (6).

(13) The mode of claiming privilege has also been laid down both by the statute and by the authorities interpreting the same. In the present case the mode of claiming the privilege has also been complied with in conformity with the law. Privilege has been claimed on behalf of the State by the Government, duly supported by an affidavit of the Home Secretary, which is in detail and has specified the reasons for claiming privilege in the following terms :—

"The keeping of Register No. 10 (Surveillance Register) as secret is absolutely necessary for the proper functioning of Police Department and disclosure of the document would frustrate the purpose of secret surveillance of bad characters and criminals."

(14) In *Duncan and another v. Cammell, Laird and Company, Limited* (9), a decision of the House of Lords, it has also been laid

(9) 1942 A.C. 624.

down that where the practice of keeping a class of documents secret is necessary for the proper functioning of the public service, the State would be perfectly within its rights to claim privilege regarding such documents pertaining to the affairs of the State. Mr. Ram Rang has also placed strong reliance on two decisions, namely, *Chiragh Din Muhammad Bakhsh v. The Crown* (10), and *Teja Singh v. Emperor* (11), (which have also been relied upon by the trial Court) in support of the proposition which he had canvassed. In *Chiragh Din Muhammad Bakhsh's case* it is noticeable that the privilege had not been claimed by the Head of the Department as required by law. The witness alone whilst deposing had claimed privilege and as such he was not a competent person to do so. The learned Judge had found that the Inspector-General of Police was the person entitled in law to claim privilege and he had not in fact done so. It is particularly noticeable that this case does not relate to the surveillance register at all. Further in this case the attention of the learned Judge was not drawn to the relevant provisions of the Punjab Police Rules which have been adverted to in the earlier part of this judgment. This authority, therefore, is clearly distinguishable on the facts and does not advance the case of the petitioner. Similarly in *Teja Singh's case* it was held that the record kept at the police station about the activities of a particular person and the reports about him made by the Sub-Inspector to the Inspector from time to time or even by the Inspector to the Superintendent of Police cannot be regarded as privileged under sections 123 and 124 of the Indian Evidence Act. In this decision also the learned Single Judge had particularly observed that the claim regarding the privilege had not been made by a competent person and a Sub-Inspector or even the Inspector of Police could not possibly claim the same. This authority also does not pertain to the surveillance register which is particularly in issue in the present case. The trial Court's reasoning, therefore, based on these authorities for the determination of the issue of privilege regarding the surveillance register, is thus not tenable.

(15) Mr. Ram Rang has then strenuously contended that the case of his client is likely to fail if the claim of privilege by the State is upheld, and that this would cause great and acute hardship to him and may also result in a failure to bring the charge home

(10) (1951) 52 CrL. Law Journal 161.

(11) A.I.R. 1945 Lah. 293.

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to the accused persons. This, however, is hardly a ground for denying the valid claim of privilege made by the State. It is settled law that where private interest and public weal clash with each other, private interest must make way for the latter. It was such a situation which the Supreme Court had in mind when they observed in *Sodhi Sukhdev Singh's* case as follows:—

“No doubt the litigant whose claim may not succeed as a result of the non-production of the relevant and material document may feel aggrieved by the result, and, the Court, in reaching the said decision, may feel dissatisfied; but that will not affect the validity of the basic principle that public good and interest must override consideration of private good and private interest.”

(16) I would, therefore, while agreeing with the recommendation of the Sessions Judge, Karnal, set aside the order of the learned Chief Judicial Magistrate, dated the 22nd of June, 1966, and uphold the claim of privilege regarding the surveillance register made by the State. In the result this criminal revision is allowed.

R.N.M.

FULL BENCH

*Before Mehar Singh, C.J., Harbans Singh, D. K. Mahajan, Ranjit Singh Sarkaria
and Bal Raj Tuli, JJ.*

THE STATE OF PUNJAB,—*Appellant*

versus

BHAGAT RAM PATANGA,—*Respondent*

Letters Patent Appeal No. 70 of 1964

April 10, 1969

Punjab Municipal Act (III of 1911)—S. 16(1)(e)—Order of removal of a member of a Municipality under—Whether quasi-judicial—State Government—Whether required by law to state reasons for its decision to pass such order.