

MISCELLANEOUS CIVIL

Before A. S. Bains, J.

MOHINDER SINGH,—Petitioner

versus

THE INSPECTOR-GENERAL OF POLICE, PUNJAB AND
OTHERS,—Respondents.

Civil Writ No. 1551 of 1966.

March 26, 1975.

*Punjab Police Rules, 1934 Volume III—Rules 23.4 and 23.5—
Scope of—Stated—Writ petition challenging inclusion of name in
surveillance register No. X—Police authorities—Whether should
show material justifying such inclusion.*

Held, that a bare reading of sub-rule (3) of Rule 23.4 of the Punjab Police Rules, 1934, shows that the Superintendent of Police can enter the name of any person who has been convicted twice or more than twice of offences mentioned in rule 27.29 or a person who is reasonably believed to be a habitual offender or receiver of stolen property whether he has been convicted or not; or persons under security under section 109 or 110 of the Code of Criminal Procedure; or convicts released before the expiration of their sentences under the Prisons Act and Remission Rules without the imposition of any conditions. The note to this sub-rule clearly shows that the rule must be strictly construed and entries must be confined to the names of persons falling in the four classes named therein. Under rule 23.5(2), if the Superintendent of Police, after the perusal of the entries in the history sheet, is of the opinion that a person should be subjected to surveillance, he shall enter his name in Part II of the surveillance register, provided that the names of such persons who have never been convicted or placed on security for good behaviour shall not be entered until the Superintendent has recorded definite reasons for doing so.

(Paras 4 & 6)

Held, that in the Constitution of India, the liberty of a person is given a place of pride. It is one of the fundamental rights given to a citizen and it is not to be tampered with except in accordance with strict provisions of the Constitution or any special law made by the competent authority. No doubt, under rule 23.4, a person's name can be entered in the surveillance register No. X but it has to be done in consonance with the provisions of the rule. Although the record of persons subjected to surveillance is to be treated as confidential but since it is an encroachment on the individual liberty

of a citizen, some material justifying the inclusion of a name in the surveillance register will have to be shown by the authorities in reply to the writ petition challenging such inclusion.

(Para 6)

Petition under Article 226 of the Constitution of India praying that an appropriate writ, order or direction be issued directing the respondents to remove the petitioner's name from the register No. 10 kept under the Police Act or from any other register kept for entering the names of the bad characters if any and restraining the respondents from ordering the petitioner to supply them with a copy of the petitioner's photograph and further ordering them not to call the petitioner at their sweet will without due process of law.

T. S. Mangat, Advocate, for the petitioner.

Sarjit Singh, Advocate, for Advocate-General (Punjab), for respondents Nos. 1 to 6.

JUDGMENT

BAINS, J.—(1) The petitioner, who is a resident of village Ram Nagar *alias* Kasaiwala, Police Station Maur, tahsil and district Bhatinda, has filed this petition under Article 226 of the Constitution for directing the respondents to remove the name of the petitioner from Register No. X or any other register maintained for entering the names of bad characters in the Police Station Maur and further restraining the respondents from demanding a photograph of the petitioner or calling him in the police station.

(2) Briefly, the facts are that the petitioner was sentenced in the year 1948 to pay a fine of Rs. 60 under section 379 of the Indian Penal Code and on the basis of this conviction, his name was entered in the surveillance register Part II in the Police Station Maur under rule 23.4 of the Punjab Police Rules. This entry was cancelled on 1st May, 1956, by the order of the Deputy Superintendent of Police. The petitioner was subsequently tried under section 307 of the Indian Penal Code, but was acquitted in the year 1952. Again he was challaned under the Indian Arms Act and was acquitted. Subsequently, his personal history-sheet was started by the respondents. It is, in these circumstances, that the petitioner has come to this Court under Article 226 of the Constitution of India.

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(3) Under Chapter XXIII, Volume III of Punjab Police Rules, 1934, rule 23.4 deals with the surveillance register No. X. It is necessary first to notice the rule which is in the following terms:—

“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 classes:—
 - (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, Criminal Procedure Code, has been 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) persons, who have been convicted twice, or more than twice, of 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 sections 109 or 110, Code of Criminal Procedure;
- (d) convicts released before the expiration of their sentences under the Prisons Act and Remission Rules without the imposition of any conditions.

Note.—This rule must be strictly construed, and entries must be confined to the names of persons falling in the four classes named therein.”

(4) A bare reading of sub-rule (3) of rule 23.4 shows that the Superintendent of Police can enter the name of any person who has been convicted twice or more than twice of offences mentioned in rule 27.29; or a person who is reasonably believed to be a habitual offender or receiver of stolen property whether he has been convicted or not, or persons under security under section 109 or 110 of the Code of Criminal Procedure; or convicts released before the expiration of their sentences under the Prisons Act and Remission Rules without the imposition of any conditions. Then there is a Note which clearly shows that this rule must be strictly construed and entries must be confined to the names of the persons falling in the four classes named therein.

(5) Rule 23.5 deals with entries in and cancellations from surveillance register and is reproduced as under:—

“23.5. *Entries in and cancellations 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 order of the Superintendent, who is strictly prohibited from delegating this 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 authorised by this rule to make them. In the latter case original orders shall be attached to the register until the entry has been attested and dated by a gazetted officer.

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- (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 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 on security for good behaviour 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."

(6) Except that the petitioner was convicted once, there is no other material on the record to show that the petitioner was ever convicted for second time or he was under security under section 109 or 110 of the Code of Criminal Procedure. There is also nothing to show that the petitioner is in any way habitual offender or receiver of stolen property. Para 25 of the return filed by the Superintendent of Police, Bhatinda, is as follows:—

"25. besides the conviction of the petitioner, it was reasonably believed that he was a habitual offender. Under the circumstances, there was sufficient material and cogent ground for the opening of the History Sheet of the petitioner."

It is also pertinent to reproduce para 29 of the return:—

"..... there was sufficient material to start the personal file and History Sheet of the petitioner. Besides the convict, there was reasonable belief that he was a habitual offender. The History Sheet of the petitioner had no doubt been ordered to be transferred to his personal file by Shri Jodh Singh, the then D.S.P., but later on the petitioner became desperate. Under these circumstances, the then Superintendent of Police ordered that the name of the petitioner be entered in the surveillance register."

Except these averments in the return, no material is mentioned as to how the petitioner was a habitual offender or how he later on became desperate and once his history-sheet was ordered to be transferred to his personal file how his case was subsequently entered in the surveillance register. In our Constitution, the liberty of a person is given a place of pride. It is one of the fundamental rights given to a citizen and it is not to be tampered with except in accordance with strict provisions of the Constitution or any special law made by the competent authority. No doubt, under rule 23.4 *ibid*, a person's name can be entered in the surveillance register No. X, but it has to be done in consonance with the provisions of the rule. It is a well settled law that if a certain matter is to be dealt with in a certain manner, then it has to be dealt with in that manner alone and not in any other manner. The Note to rule 23.4 also shows that the rule is to be strictly construed. Under rule 23.5(2), if Superintendent of Police, after the perusal of the entries in the history sheet, is of the opinion that a person should be subjected to surveillance, he shall enter his name in Part II of the surveillance register, provided that the names of such persons who have never been convicted or placed on security for good behaviour shall not be entered until the Superintendent has recorded definite reasons for doing so. Although the record of such persons is to be treated as confidential but since it is an encroachment on the individual liberty of a citizen, some material should have been shown in the return filed by the Superintendent of Police as to how the petitioner became desperate and as to how he was a habitual offender. In the absence of such material, I must hold that the respondents have committed a grave illegality and injustice to the petitioner in entering his name in surveillance register No. X. Moreover, rules 23.4 and 23.5, *ibid* are to be strictly construed.

(7) In this view of the matter, this petition is allowed and the respondents are directed to remove the name of the petitioner from surveillance register No. X as it is against the mandatory provisions of rules 23.4 and 23.6 of Punjab Police Rules. The respondents are further directed not to harass the petitioner in calling him to the police station time and again without assigning any reason. Of course, if the petitioner is wanted in any particular case, then he can be joined in the investigation of that case. In the circumstances of this case, there will be no order as to costs.

N. K. S.