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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(CRL) 311/2011

% Decided on: 19th October, 2011

VIRENDER SINGH BIDHURI Petitioner
Through Mr. Wills Mathews, Mr. D.K. Tiwari,
Adv.

versus

STATE OF DELHI Respondent
Through Mr. Saleem Ahmed, ASC for State
with SI Kulbir Singh PS Govind Puri.

Coram:
HON'BLE MS. JUSTICE MUKTA GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Not Necessary |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MUKTA GUPTA, J. (ORAL)

1. By this petition the Petitioner seeks quashing of his name kept as “Bad Character” in Bundle ‘B’. The Petitioner had earlier filed a writ petition seeking quashing of the history sheet wherein this Court had

directed the Petitioner to make a representation to the DCP concerned who would consider the matter on merits. In pursuance to the orders passed in W.P.(CRL) 1122/2010, the DCP (South East) District after considering the facts and circumstances of the case and in view of the fact that the Petitioner was not involved in any offence after the year 2005, downgraded the history sheet of the Petitioner from Bundle 'A' to Bundle 'B'. The Petitioner is not satisfied with the same and states that it should be converted to a personal file.

2. Learned counsel for the Petitioner contends that under Section 47 and 50 of the Delhi Police Act (in short D.P. Act) the maximum period for which a history sheet can be maintained is for a period of two years. He further states that in view of the Explanation to Section 47 D.P. Act since the Petitioner is not involved in three offences of the kind mentioned in the Act in the preceding year, he is not a habitual offender. The Petitioner has been convicted only for two offences and both those offences do not come within the purview of Section 47 of the D.P. Act. Only three cases are pending trial against the Petitioner and in view of the delay in the trials, the case of the Petitioner cannot be jeopardized. In fact, it is the duty of the State to ensure a speedy trial. He further states that the maintenance of the history sheet is hit by Article 20 of the Constitution as on the one hand the Petitioner is

facing trial and on the other hand history sheet has been maintained against him and thus the same amounts to double jeopardy.

3. I have heard learned counsel for the parties. The contentions raised by the learned counsel for the Petitioner are wholly fallacious. The provisions under Section 47 to 50 of the D.P. Act relate to externment proceedings wherein if a person is either a habitual offender i.e. comes within the explanation of Section 47, that is, within the last one year he has committed three offences of the kind mentioned in the Act or if he is so desperate and dangerous as to render his being at large in Delhi or in any part thereof hazardous to the community or he habitually intimidates persons by acts of violence or habitually commits affray or breach of peace or passes indecent remarks and in the opinion of the Commissioner of Police the witnesses are not willing to come forward to give evidence against him in public, the Commissioner of the Police after giving show cause notice to the person can pass an order of externment. The power of Commissioner of Police has been delegated to the Deputy Commissioner of Police in Delhi by virtue of a notification. Against an order under Section 47 of the D.P. Act the aggrieved person has the remedy of filing an appeal to the Appellate Authority under Section 51 of the D.P. Act.

4. Maintenance of history sheet is a totally different aspect of

maintenance of law and order. The history sheet is permitted to be maintained under Rule 23.4 of the Punjab Police Rules. As per the said Rules in case the person is convicted for two offences or in case the Superintendent of Police deems fit that surveillance is required to be kept on a particular person, for the reasons to be recorded in writing he can direct opening of the history sheet of that person. While opening the history sheet it is the satisfaction of the concerned officer. No challenge has been laid to the said satisfaction in the present petition. As per Rule 23.12 (1) of the Punjab Police Rules when a person is no longer addicted to crime, and is maintaining good behavior, the history sheet is brought down to personal file.

5. In *Malak Singh etc. Vs. State of Punjab & Haryana and Ors.* AIR 1981 SC 760 it was held:

“4. Chapter 23 of the Punjab Police rules deals with prevention of offences. Rule 23.4 which provides for the maintenance of a surveillance register in every Police Station is in the following terms :

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).

(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, CrPC (Section 82 of the Criminal Procedure Code of 1973).

(b) All released convicts in regard to whom an order under Section 565, Criminal Procedure Code, has been made (Section 356 of the Criminal Procedure Code of 1973).

(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 (Section 432 of the Criminal Procedure Code of 1973)

(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, CrPC;

(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.

Rule 23.5 provides that the surveillance register shall be written up by the officer incharge of the Police Station personally or by an Assistant Sub Inspector. No entry in Part II is to be made except by the order of the Superintendent of Police and no entry in Part I is to be made except by the order of a Gazetted Officer. It is also provided that ordinarily a history sheet shall be opened for a person before his name is entered in Part II of the Surveillance Register. 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 register. In the case of persons who have never been convicted or placed on security for good behavior their names shall not be entered until the Superintendent has recorded definite reasons for doing so. The recording of reasons is to be treated as confidential. Rule 23.7 prescribes that Police surveillance shall comprise such close watch over the movements of the person under surveillance, by Police Officers, Village headmen and village watchmen as may be applicable without any illegal interference. Rule 23.8 provides that the initial preparation of a history sheet is to be done with great care and invariably, by the officer incharge of the Police Station or by a thoroughly experienced Sub Inspector. Detailed provision is made in the Rules with regard to the preparation, maintenance and custody of history sheets. Rule 23.31 provides that all records connected with Police surveillance are confidential and nothing contained in them may be communicated to any person and that inspection may not be allowed or copies given. The District Magistrate and the Illaqa Magistrate are, however, entitled to examine the records in accordance with Rules 1.15 and 1.21.

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 held that the rule *audi altrem partem* is not attracted.

9. But all this does not mean that the police have a licence to enter the names of whoever they like (dislike?) in the surveillance register; nor can the surveillance be such as to squeeze the fundamental freedoms guaranteed to all citizens or to obstruct the free exercise and enjoyment of those freedoms; nor can the surveillance so intrude as to offend the dignity of the individual. Surveillance of persons who do not fall within the categories mentioned in Rule 23.4 or for reasons unconnected with the

prevention of crime, or excessive surveillance falling beyond the limits prescribed by the rules, will entitle a citizen to the Court's protection which the court will not hesitate to give. The very rules which prescribe the conditions for making entries in the surveillance register and the mode of surveillance appear to recognise the caution and care with which the police officers are required to proceed. The note following Rule 23.4 is instructive. It enjoins a duty upon the police officer to construe the rule strictly and confine the entries in the surveillance register to the class of persons mentioned in the rule. Similarly Rule 23.7 demands that there should be no illegal interference in the guise of surveillance. Surveillance, therefore, has to be unobtrusive and within bounds.

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 behavior. 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.”

6. The Petitioner was found involved in the following cases, including cases of extortion.

S.No.	FIR No. & Date	U/S	Police Station	Present Position
1	75/89, 05.04.89	33 Indian Forest Act	OIA	Convicted on 27.02.92
2	140/90, 17.06.90	147/148/149/307/323 IPC & 25/24/59 A. Act.	OIA	Acquitted on 12.08.94
3	583/97, 26.08.97	452/323/506 IPC	OIA	Acquitted on 20.07.05
4	326/99, 06.07.99	366/506 IPC	Badarpur	Cancelled 31.03.2000
5	469/99, 23.08.99	336 IPC	OIA	Untraced on 22.05.07
6	07/2000, 03.01.2000	365/342/506/323/34 IPC	OIA	Acquitted on 11.09.09
7	78/01, 07.02.01	307 IPC	OIA	Acquitted on 13.02.03
8	198/01, 15.04.01	147/148/149/186 IPC	OIA	PT NDOH – 08.08.11
9	199/01, 15.04.01	307 IPC	OIA	Acquitted on 08.04.03
10	73/04, 06.02.04	279/341/506 IPC	Sangam Vihar	Acquitted on 12.05.09
11	909/04, 13.12.04	279/341/506 IPC	OIA	Convicted on 13.08.10
12	40/05, 25.01.05	382 IPC	Sarita Vihar	PT NDOH 06.09.11
13	102/05, 06.02.05	386/387/34 IPC	Sangam Vihar	PT NDOH 21.07.11

7. The Hon'ble Supreme Court in *Dhanji Ram Sharma vs. Superintendent of Police, North District, Delhi Police and others, 1966 Cri.L.J 1486 SC* held:

“6. Under Section 23 of the Police Act, 1861, the police is under a duty to prevent commission of offences and to collect intelligence affecting the public peace. For the efficient discharge of their duties, the police officers are empowered by

the Punjab Police Rules, 1934 to open the history sheets of suspects and to enter their names in police register No. 10. These powers must be exercised with caution and in strict conformity with the rules. The condition precedent to the opening of history sheet under Rule 23.9 (2) is that the suspect is a person "reasonably believed to be habitually addicted to crime or to be an aider or abettor of such person". Similarly, the condition precedent to the entry of the names of the suspects in Part II of police register No. 10 under Rule 23.4 (3) (b) is that they are "persons who are reasonably believed to be habitual offenders or receivers of stolen property whether they have been convicted or not". If the action of the police officers is challenged, they must justify their action and must show that the condition precedent has been satisfied.

7. A habitual offender or a person I 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 23.4 (3) (b) and 23.9 (2). Mere belief is not sufficient. The belief must be reasonable, it must be based on reasonable grounds. The suspect may or may not have been convicted of any crime. Even apart from any conviction, there may be reasonable grounds for believing that he is a habitual offender.”

8. The word “habitual offender” used in Rule 23.4 (3) (b) of the Punjab Police Rules need not necessarily be a “habitual offender” as per the Explanation to Section 47 of the DP Act which requires that the person should be involved in at least three offences of the kind mentioned in the preceding year. Suffice it is to hold that a person involved in a number of offences would be termed as a habitual offender as per Rule 23.4 (3) (b).

9. In view of the orders passed by this Court in W.P.(CRL) 1122/2010 the DCP (South East) District has already downgraded the history sheet of the Petitioner to Bundle B in view of the fact that the Petitioner has no involvement after the year 2005. It may be noted that the Petitioner is facing trials in three cases including FIR relating to extortion. Maintenance of history sheet in Bundle "B" is only maintaining of records of the involvement of the person with no surveillance.

9. Maintenance of history sheet does not amount to double jeopardy. The Petitioner is facing trials in three cases which are pending against him. The said action is punitive in nature whereas maintenance of history sheet is purely preventive to maintain law and order in the society. Hence, I find no merit in the present petition. The Petition is dismissed.

10. It is, however, clarified that the history sheet of the Petitioner will be reviewed periodically and action thereon will be taken in accordance with law, keeping in view the behavior of the Petitioner.

(MUKTA GUPTA)
JUDGE

OCTOBER 19, 2011
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