

## **Dhanji Ram Sharma vs Superintendent Of Police, North Dist, ... on 17 March, 1966**

**Equivalent citations: AIR1966SC1766, 1966CRILJ1486, AIR 1966 SUPREME COURT 1766, 1967 2 SCJ 124, 1966 CURLJ 802, 1967 MADLJ(CRI) 547, (1966) 2 SCWR 554, 1966 SCD 1098, 196 CURLJ 802, 1966 68 PUN LR 229 (D)**

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**Bench: A.K. Sarkar, S.M. Sikri, R.S. Bachawat**

### **JUDGMENT**

R.S. Bachawat, J.

1. The appellant is an employee of the Northern Railway. The first respondent is the Superintendent of Police, North District, Delhi. The second respondent is the Station House Officer, Police Station Kotwali, Delhi. The second respondent opened a history sheet for the appellant, and the first respondent directed the entry of his name in Part II of the surveillance register, commonly known as police register No. 10. The history sheet and the register are kept under the Punjab Police Rules, 1934 framed under the Indian Police Act, 1861. The appellant filed a writ petition in the Punjab High Court challenging the legality of these and other actions of the respondents and asking for the issue of appropriate writs. The High Court dismissed the petition. The appellant now appeals to this Court by special leave.

2. Rules 23.4 to 23.7 of the Punjab Police Rules, 1934 deal with police register No. 10, Rule 23.4 (3) (b) empowers the Superintendent of Police to enter in his discretion in Part II of the register the names of "persons who are reasonably believed to be habitual offenders or receivers of stolen property whether they have been convicted or not." Rule 23.5 provides that the names of persons who have never been convicted or placed on security for good behaviour shall not be so entered until the Superintendent has recorded definite reasons for doing so. The records of such reasons are treated as confidential. Under Rule 23.7, the suspect is subjected to police surveillance comprising such close watch over his movements by police officers, village headmen, village watchmen as may be practicable without any illegal interference. Rules 23.8 to 23.12 and 23.14 deal with history sheets. Under Rule 23.9 (2), a history sheet may be "opened by or under the written orders of a police officer not below the rank of inspector for any person not entered in police register No. 10 "who is reasonably believed to be habitually addicted to crime or to be an aider or abettor of such persons". The history sheet is in Form No. 23.9 and contains the description of the suspect, particulars of his property and mode of earning livelihood, his relations, connections and associates, the crimes to which he is believed to be addicted, his convictions, if any, and his movements, and

details of the written and oral suspicions including the names and residences of the complainants. Under Rule 23.10, history sheets are kept in three separate bundles. Bundle 'A' contains the history sheets of persons whose names are entered in police register No. 10. The validity of the rules is not challenged before us.

3. The appellant is involved in a number of litigations, civil and criminal, with several railway officials. He complains that the respondents subjected him to numerous harassments and in opening his history sheet and placing his name in the police register No. 10, they acted mala fide and in collusion with the railway officials. The charges of harassment and collusion with the railway officials are not proved. It is not shown that the respondents had any personal enmity with the appellant. The High Court rightly found that the charge of mala fides is not proved.

4. Counsel for the appellant contended that the order directing the entry of the appellant's name in police register No. 10 did not disclose on the face of it either the belief of the first respondent that the appellant was a habitual offender or the grounds of such belief and the order was therefore, invalid. We are unable to accept this contention. It appears that the history sheet of the appellant was submitted by the second respondent to Sri Mukat Dhari Singh, Deputy Superintendent of Police, who placed his recommendation before the first respondent. On a perusal of the history sheet and the recommendations, the first respondent by an order dated May 17, 1963 directed the entry of the appellant's name in Part II of police register No. 10. The relevant recommendations and order are in these terms:

"A notorious cheat who forges Railway tickets. History sheet may please be ordered to be kept in bundle 'A' and name be entered in Register No. 10, Part II. (Sd.)/- Mukat Dhari Singh, D. S. P. Kotwali. 15-5-1963.

History sheet on Bundle 'A' and enter in Part II of Register No. 10. (Sd.)/- R. N. Agarwala, S. P. North. 17-5-1963."

Fairly read, this order means that the first respondent agreed with the recommendations of his subordinate and was of the opinion that the appellant was a notorious cheat who was in the habit of forging railway tickets. For this reason he directed the entry of the appellant's name in Part II of police register No. 10. He was required by Rule 23.5 to record definite reasons for the entry. He recorded the reasons briefly in the form of a definite finding. He was not required by Rules 23.4 and 23.5 to disclose the grounds upon which he arrived at this finding, or to say that he reasonably believed in the finding.

5. Counsel for the appellant next contended that there were no reasonable grounds for believing that the appellant was habitually addicted to crime or was a habitual offender and therefore the respondents had no power to open his history sheet under Rule 23.9 or to enter his name in Part II of police register No. 10 under Rule 23.4 (3) (b). This contention requires careful examination.

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 question, therefore, is whether the respondents had reasonable grounds for believing that the appellant was a habitual offender or a person habitually addicted to crime. The appellant was charged with crime on three occasions for the offence of forging railway tickets and receipts. In the first case, he was discharged for want of evidence. In the second case, he was convicted by the trial Court, but the conviction was set aside by the High Court. In the third case, the appellant was discharged by the Court on the ground that the Court had no jurisdiction to try the case. So far, the appellant has not been convicted of any crime. But the second respondent filed an affidavit stating that the police administration has definite information about the unlawful activities of the appellant and on such information the respondents reasonably believed that he was a habitual offender indulging in the nefarious trade of forging railway tickets and receipts. The first respondent filed a supporting affidavit adopting this statement. The grounds of this belief are to be found in the information collected in the history sheet of the appellant. The history sheet was referred to in the affidavits, and the respondents swore that from the information at their disposal they reasonably believed the appellant to be a habitual offender. On the special facts of this case, the High Court accepted this statement and did not think it necessary to call upon the respondents to supply the details of their information or to produce the history sheet. We are unable to say that the High Court erred in the appreciation of evidence, or that its judgment should be reversed.

9. The appeal is dismissed.