

**(1998) 12 AHC CK 0004**  
**In the Allahabad High Court**  
**Case No : Crl M.W.P. No. 1422 of 1995**

|                          |    |            |
|--------------------------|----|------------|
| Rajesh Kumar and Another | Vs | APPELLANT  |
| State of U.P. and Others |    | RESPONDENT |

**Date of Decision :** 11-12-1998

**Acts Referred:**

Constitution of India, 1950 — Article 21  
Penal Code, 1860 (IPC) — Section 395  
Uttar Pradesh Police Regulations, 1948 — Regulation 228, 229, 230, 231, 236

**Citation :** (1999) 1 ACR 479 : (1999) 3 RCR(Criminal) 57

**Hon'ble Judges :** R.K. Singh, J; Binod Kumar Roy, J

**Bench :** Division Bench

**Advocate :** K.K. Sriuastava, for the Appellant; Sudhir Mehrotra and A.G.A., for the Respondent

## Judgement

Binod Kumar Roy and R.K. Singh, JJ.—The Petitioners have come up with a prayer to command Respondent Nos. 2 and 3 (the Senior Superintendent of Police, Meerut and the Station House Officer, Brahmpuri, district Meerut respectively) to close down the history-sheet which was opened in 1983 against them, and to discontinue surveillance and domiciliary visits to them and their family.

2. They assert, inter alia, that Petitioner No. 1 is B.A., aged about 32 years and is presently serving as Storekeeper in Venus Cement Factory Ltd., Dehradun and Petitioner No. 2 is B. Sc, aged about 28 years and is presently serving as an Accountant in the same Venus Cement Factory Ltd. Dehradun ; that they hail from a well-to-do", cultured and respectable Thakur family of district Meerut, whose antecedents have been all along above board ; that the members of their family reside at Brahmpuri, Meerut ; that in the year 1983 both of them were falsely implicated in a criminal case u/s 395. I.P.C. and their Criminal Appeal is pending before this Court ; that on the basis of the aforesaid solitary case the police of police station Brahmpuri opened a history-sheet in 1983, which "is in operation since then ; that more than 11 years have passed yet the history-sheet

has not been closed ; that Narendra Kumar Agarwal and Abdul Fahim-Corporators of Municipal Corporation of Brahmpuri, along with other respectable persons of the locality, on 5.7.1992 .submitted a memorandum (copy appended as Annexure-1) before Respondent No. 3 recommending closure of the history-sheet in question certifying that the Petitioners are leading their life like other law abiding persons against whom after 1984 no complaint or F.I.R. was lodged ; that Respondent No. 2, however, paid no heed rather continued with the surveillance ; that Regulation 228 of t-he Police Regulation provides that a history-sheet should be opened only for persons who are likely to become habitual criminal or abettors of such criminals ; that having regard to fair antecedents after 1983 the history -sheet ought to have been closed by Respondent Nos. 2 and 3 and the surveillance discontinued altogether ; that Regulation 229 read with Regulation 230 makes it clear that protracted surveillance shall be exercised only if the subject of an A class history-sheet is thought to be so dangerous or incorrigible: that in the garb of keeping surveillance Respondent No. 3 has been harassing and humiliating the Petitioners and other inmates of the family day in and day out ; that the police have so far realized illegally quite a large sum of money by way of gratification and when resisted they were given threats of dire consequences ; that the entire family of the Petitioners has been, thus, greatly fear stricken ; that police has no authority of law to pay domiciliary visits even at the dead of nights and awaken the family members of the Petitioners when they are fast asleep and ruthlessly disturb their peace and tranquility ; that these are clearly volatile of their fundamental right guaranteed under Article 21 of the Constitution of India ; and that, thus, the desired writ or interim mandamus be issued.

3. From the order-sheet it appears that on 18.10.1995 an opportunity was granted to the Respondents for filing counter-affidavit before 24.11.1995 and "that even though on 3.4.1996 three weeks, time and no more further was .granted for filing counter-affidavit and no counter-affidavit has been filed fill to date.

4. Sri K.K. Srivastava, learned Counsel appearing on behalf of the Petitioners after reading out Regulation Nos. 228, 229, -230 and 231 of the Police Regulations and two Division Bench decisions of the Court in Jugla Sharan v. Superintendent of Police, Gonda 1989 LLJ 345 and Guru Bux Singh Bakshi v. State of U.P. 1994 JTC 299 (LB), contended that in view of the un rebutted facts and circumstances mentioned in the writ petition the continuance of surveillance is bad and the history-sheet be directed to be closed.

5. Sri Sudhir Mehrotra, learned Additional Government Advocate, on the other hand, contended that since the Petitioners were convicted of an offence of dacoit u/s 395, I.P.C., and it is not their case that they have been acquitted, there was necessity to keep surveillance on them and the members of their family and accordingly this writ petition is liable to be dismissed.

6. Regulations 228 to 231 of the Police Regulations reads as follows:

228. Part v. consists of history-sheets. These are the personal records of criminals under surveillance. History-sheets should be opened only for persons who are or likely to become habitual criminal or abettors of such criminals, there will be two classes of history" sheets:

(i) Class A history-sheet for dacoits, burglars, cattle thieves, railway goods wagon thieves, and abettors thereof.

(ii) Class B history-sheet for confirmed and professional criminals who commit crime other than dacoit, burglary, cattle theft, and theft from railway goods wagons, e.g., professional cheats and other experts for whom criminal persons files are maintained by the Criminal Investigation Department, prisoners, cattle prisoners, railway passenger thieves, bicycle thieves, expert pick-pockets, forgers, coiners, cocaine and opium smugglers hired ruffians and goondas, Telegraph wire cutters, habitual illicit distillers and abettors thereof A.Cr.R 31 History-sheets of both classes will be maintained in similar form, but those for class B will be distinguished by a red bar marked at the top of the first page. No history-sheet of Class B may be converted into a history-sheet of Class A though should be the subject of a history-sheet of Class B found to be also addicted to dacoit, burglary, cattle theft or theft from railway goods wagons. A class as well as B Class surveillant may under paragraphs 238 be applied to him. In the event of a Class A history-sheet man becoming addicted to miscellaneous crime his history-sheet may be converted into a Class B history-sheet with the sanction of the Superintendent."

229. This classification of history-sheet as A and B is based on the principle, that whereas there is always hope of a dacoit, burglar, or cattle thief or railway goods wagon thief mending his ways the expert miscellaneous criminal is as a general rule incapable of reform. The classification therefore solely on the kind of crime to which suspects are addicted and is designed to regular ate only:

a) the length of time for which a suspect should ordinarily remain, under surveillance in the absence of complaints against him,

b) the kind of surveillant which is his activities require.

The degree of surveillance of the appropriate kind to be exercised over a suspect will depend not on his classification but on the extent to which he is believed to be active at any particular time.

230. If the subject of an A Class history-sheet is thought to be so dangerous or incorrigible as to require more protracted surveillance than the generality of his class, he may be starred by the order of the Superintendent. Here again the fact that a history-sheet man is starred will necessarily indicate only that he is to be kept under continuous surveillance for a longer period. It will not necessarily indicate that his surveillance while it lasts is to be more intense. The aim is to concentrate the most intense surveillance on the criminal whether starred or unstirred who is believed to be temporarily active.

Superintendent of District Police may not give orders for the starring of or discontinuance of surveillant over any history-sheeted of a railways police suspect without the concurrence of the superintendent of Government Railway Police."

"231. The subjects of history-sheet of Class A will unless they are starred remain under surveillance for at least two consecutive years of which they have spent no part in Jail. When the subject of a history-sheet of Class A whose name has not been starred who has never been convicted of cognizable offence and has not been in Jail or suspected of any offence or absented himself in suspicious circumstances for two consecutive years his surveillance will be discontinued, unless for special reasons to be recorded in the inspection book of the police station the Superintendent decides that it should continue.

When the subject of a history-sheet of Class A is starred he will remain starred for at least two consecutive years during which he has not been in Jail or been suspected of a cognizable offence or had any suspicious absence recorded against him. At the end of that period if he is believed to have reformed he will ceased to be starred but will remain subject to surveillance will be discontinued only if during that period no complaints have been recorded against him.

In closing the history-sheets of an unstaring ex-convicts and especially ex-convict dacoits great care should be exercised."

6.1 In this context it is also relevant to notice Regulation 236 which reads thus:

Without prejudice to the right of Superintendents of Police to put into practice any legal measures, such as shadowing in cities, by which they find they can keep in touch with suspects in particular localities or special circumstances, surveillance may for most practical purposes be defined as consisting of one or more of the following measures:

- a) secret picketing of the house of approaches to the house of suspects ;
- b) domiciliary visits at night ;
- c) through periodical inquiries by officers not below the rank of Sub-Inspector into repute, habits, associations, income, expenses and occupation ;
- d) the reporting by constables and chaukidars of movements and absence from home ;
- e) the verification of movements and absences by means of inquiry slips ;
- If) the collection and record on a history-sheet of all information bearing on conduct.

6.2. Regulation 237 provides that all "history-sheet men" of Class A "starred" and "unstarred" would be subject to all these measures of surveillance.

7. Article 21 of the Constitution of India reads thus:

"21. Protection of life and personal liberty.-No person shall be deprived of his life or personal liberty except according to procedure established by law."

7.1. In *Kharak Singh Vs. The State of U.P. and Others*, . the Supreme Court through its majority judgment observed/held as follows:

"Regulation 228 which occurs in Chapter XX of the Police Regulations defines "history- sheets" as "the personal records of criminals under surveillance". That regulation further directs that a "history-sheet" should be opened only for persons who are or are likely to become habitual criminals or the aiders or abettors of such terminals. These history-sheets are of two classes: Class A for dacoits, burglars, cattle thieves, and railway goods wagon thieves, and Class B for those who are confirmed and professional criminals who commit crimes other than dacoit, burglary, etc. like professional cheats."

the regulations contained in Chapter XX had no such statutory basis but were merely executive or departmental instructions framed for the guidance of the police officers. They would not therefore be "a law" which the State is entitled to make under the relevant Clauses 2 to 6 of Article 19 in order to regulate or curtail fundamental rights guaranteed by the several sub-clauses of Article 19(1); nor would the same be "a procedure established by law" within Article 21. The position therefore is that if the action of the police which is the arm of the executive of the State is found to infringe any of the freedoms guaranteed to the Petitioner the Petitioner would be entitled to the relief of mandamus which he seeks to restrain the State from taking action under the Regulations."

"Regulation 236 (b) which authorizes "domiciliary visits" is struck down as unconstitutional."

7.2. In *People's Union for Civil Liberties v. Union of India*, AIR 1997 SC 568, it was observed and held as follows:

13. Both sides have relied upon the seven Judges Bench judgment of this Court in *Kharak Singh Vs. The State of U.P. and Others*, . The question for consideration before this Court was whether "surveillance" under Chapter XX of the U.P. Police Regulations constituted an infringement of any of the fundamental rights guaranteed by Part III of the Constitution. Regulation 236 (b) which permitted surveillance by "domiciliary visits at night" was held to be violative of Article 21 on the ground that there was no "law" under which the said regulation could be justified.

14. The word "life" and the expression "personal liberty" in Article 21 were elaborately considered by this Court in *Kharak Singh Vs. The State of U.P. and Others*, . The majority read "right to privacy" as part of the right to life under Article 21 of the Constitution on the following reasoning (at pp. 1302-1303):

"We have already extracted a passage from the judgment of Field, J. in *Munn v. Illinois* (1876) 94 US 113, 142, where the learned Judge pointed out that "life" in the 5th and 14th Amendments of the U.S. Constitution corresponding to Article

21, means not merely the right to the continuance of a person's animal existence, but a right to the possession of each of his organs-his arms and legs etc. We do not entertain any doubt that the word "life" in Article 21 bears the same signification. Is then the word "personal liberty" to be construed as excluding from its purview an invasion on the part of the police of the sanctity of a man's home and an intrusion into his personal security and his right to sleep which is the normal comfort and a dire necessity for human existence even as an animal? It might not be inappropriate to refer here to the words of the preamble to the Constitution that it is designed to "assure the dignity of the individual" and, therefore, of those cherished human values as the means of ensuring his full development and evolution. We are referring to these objectives of the framers merely to draw attention to the concept underlying the Constitution which would point to such vital words as "personal liberty" having to be construed in a reasonable manner and to be attributed that sense which would promote and achieve those objectives and by no means to stretch the meaning of the phrase to square with any preconceived notions or doctrinaire constitutional theories. Frankfurter, J., observed in *Wolf v. Colorado* (1948) 338 US 25:

"The security of one's privacy against arbitrary intrusion by the police is basic to a free society. It is, therefore, implicit in "the concept of ordered liberty" and as such enforceable against the states through the due process clause. The knock at the door, whether by day or by night, as a prelude to a search, without authority of law but solely on the authority of the police, did not need the commentary of recent history to be condemned as inconsistent with the conception of human rights enshrined in the history and the basic constitutional documents of English speaking people. We have no hesitation in saying that were a State affirmatively to sanction such police incursion into privacy it would run counter to the guarantee of the Fourteenth Amendment."

Murphy, J., considered that such invasion was against "the very essence of a scheme of ordered liberty".

It is true that in the decision of the U.S. Supreme Court from which we have made these extracts, the Court had to consider also the impact of a violation of the Fourth Amendment which reads.

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated: and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized."

and that our Constitution does not in terms confer any like constitutional guarantee. Nevertheless, these extracts would show that an unauthorized intrusion into a person's home and the disturbance caused to him thereby, is as it were the violation of a common law right of a man-an ultimate essential of ordered liberty, if not of the very concept of civilization. An English Common Law

maxim asserts that "every man's house is his castle" and in Semayne's case, (1604) 5 Co Rep 91a, where this was applied, it was stated that "the house of everyone is to him as his castle and fortress as well as for his defence against injury and violence as for his repose". We are not unmindful of the fact that Semayne's case was concerned with the law relating to executions in England, but the passage extracted has validity quite apart from the context of the particular decision. It embodies an abiding principle which transcends mere protection of property rights and expounds a concept of "personal liberty" which does not rest on any element of feudalism or on any theory of freedom which has ceased to be of value.

In our view Clause (b) of Regulation 236 is plainly violative of Article 21 and as there is no "law" on which the same could be justified it must be struck down as unconstitutional."

"15. Subba Rao, J. (as the learned Judge then was) in his minority opinion also came to the conclusion that right to privacy was a part to Article 21 of the Constitution but went a step further and struck down Regulation 236 as a whole on the following reasoning at p. 1306 of AIR):

"Further, the right to personal liberty takes in not only a right to be free from restrictions placed on his movements, but also free from encroachments on his private life. It is true our Constitution does not expressly declare a right to privacy as a fundamental right, but the said right is an essential ingredient of personal liberty. Every democratic country sanctifies domestic life; it is expected to give him rest, physical happiness, peace of mind and security. In the last resort, a person's house, where he lives with his family, is his "castle" ; it is his rampart against encroachment on his personal liberty. The pregnant words of that famous Judge, Frankfurter, J. in Wolf v. Colorado (1948) 338 US 25, pointing out the importance of the security of one's privacy against arbitrary intrusion by the police, could have no less application to an Indian home as to an American one. " If physical restraints on a person's movements affect his personal liberty, physical encroachments on his private life would affect it in a larger degree. Indeed, nothing is more deleterious to a man's physical happiness and health than a calculated interference with his privacy. We would, therefore, define the right of personal liberty in Article 21 as a right of an individual to be free from restrictions or encroachments are directly imposed or indirectly brought about by calculated measures. If so understood, all the acts of surveillance under Regulation 236 infringe the fundamental right of the Petitioner under Article 21 of the Constitution."

"16. Article 21 of the Constitution has, therefore, been interpreted by all the seven learned Judges in Kharak Singh Vs. The State of U.P. and Others, (Majority and the minority opinions) to include that "right to privacy" is a part of the right to "protection of life and personal liberty" guaranteed under the said Article.

17. In Gobind Vs. State of Madhya Pradesh and Another, , a three Judges Bench

of the Court considered the constitutional validity of Regulations 355 and 856 of the Madhya Pradesh Police Regulations which provided surveillance by way of several measures indicated in the said Regulations. This Court upheld the validity of the Regulations by holding that Article 21 was not violated because the impugned Regulations were "procedure established by law" in terms of the said Article.

In *R. Rajagopal alias R.R. Gopal and Another Vs. State of Tamil Nadu and Others*, , *Jeevan Reddy, J.*, speaking for the Court, observed that in recent times right to privacy has acquired constitutional status. The learned Judge referred to *Kharak Singh Vs. The State of U.P. and Others*, ; *Gobind Vs. State of Madhya Pradesh and Another*, , and considered a large number of American and English cases and finally came to the conclusion that "the right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone". A citizen has a right "to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters."

18. We have, therefore, no hesitation in holding that right to privacy is a part of the right to "life" and "personal liberty" enshrined under Article 21 of the Constitution. Once the facts in a given case constitute a right to privacy, Article 21 is attracted. The said right cannot be curtailed "except according to procedure established by law".

19. The right to privacy-by itself-has not been identified under the Constitution. As a concept it may be too broad and moralistic to define it judicially. Whether right to privacy can be claimed or has been infringed in a given case would depend on the facts of the said case "

8. In *Jugla Sharan v. Superintendent of Police, Gonda* 1989 LLJ 345, and *Gurbwc Singh Bakshi v. State of U.P.* 1994 JIC 299 (LB), the two Division Benches of this Court, one of the Principal Bench and the other of the Lucknow Bench, had categorically laid down that in no case the surveillance could continue after lapse of two years" period specially when no order was passed by the Superintendent of Police for its continuance by giving any special reason and in absence of such order, surveillance could not continue beyond two years and that the history-sheet cannot be allowed to continue in an arbitrary manner.

9. Regulation 231 provides that subject to history-sheet of Class A shall continue for two consecutive years and thereafter the surveillance will be discontinued unless some special Teason is recorded by the Superintendent of Police.

9.1. By the non-filing of any counter-affidavit or production of any record by the Respondents, we are handicapped to know as to what were the special reasons assigned by Respondent No. 2 in the record for continuing the surveillance. We draw a presumption in favour of the Petitioners and against the Respondents and hold that there is nothing before the police to justify surveillance.

10. For the reasons aforementioned, we are of the view that the Petitioners are entitled to the reliefs claimed for.

11. In the result, this writ petition succeeds. Respondent Nos. 2 and 3 are directed to close down the history-sheet against the Petitioners and to discontinue surveillance and domiciliary visits.

12. It is clarified that this order shall not be interpreted to mean that if the Petitioners or members of their family had indulged in criminal activities and case/cases had been registered against them, then the police cannot act as per its Regulations.

13. In the peculiar facts and circumstances, however, we make no order as to cost.

14. Let a writ of mandamus issue accordingly.

15. The office is directed to hand over a copy of this order within one week to Sri Sudhir Mehrotra, learned A.G.A. for its communication to and follow-up action by Respondent Nos. 2 and 3.