
(1952) 02 MP CK 0002

In the Madhya Pradesh High Court

Case No : Civil Miscellaneous Case No. 604 of 1951

Sunnulal

APPELLANT

Vs

State of Madhya Bharat

RESPONDENT

Date of Decision : 26-02-1952

Acts Referred:

Constitution of India, 1950 — Article 220, 226
Madhya Bharat Police Act, 2007 — Section 3

Citation : (1952) 02 MP CK 0002

Hon'ble Judges : Shinde, C.J.;Dixit, J

Bench : Division Bench

Advocate : Inamdar, for the Appellant; A.G., for the Respondent

Final Decision : Dismissed

Judgement

Shinde, C.J.—This is a petition for the issue of a writ in the nature of mandamus or suitable order or direction against the District Superintendent of Police Lashkar. The petition alleges that on and from. 15-9-1951 the constables of Police Station, Kotwali Lashkaar have been visiting the house of the Petitioner in Morwaral Bazar, Lashkar at any odd (sic)rs of day und night and have been insisting that either the Petitioner be found at home whenever they came or that he should intimate to the police auctorities of his movements if he chooses to go cut.

The petition further alleges that the visiting, constables have been adopting highly threatening attitude towards the Petitioner and the members of his family and the customers; that by this attitude of the police the Petitioner who runs a sweet-meat shop and also does brokerage business is losing his business; that on enquiry the Petitioner has been informed by the visiting constables that the Superintendent of police Lashkar has passed a day and night surveillance order against the Petitioner for an undisclosed period, that this constant police surveillance has infringed the fundametal right of the Petitioner to move freely and follow the trade of his choice without hindrance; that the order of

surveillance is unwarranted, unjust and unconstitutional. On these grounds the Petitioner prays that a writ in the nature of Mandamus or a suitable order or direction be issued against the non-applicant, directing him to forbear from enforcing the order against him.

2. The non-applicant in his return admits that a surveillance order has been passed by the Superintendent of police, Gwalior but states that the Petitioner has an undesirable record, that the reports received by police authorities from time to time that the Petitioner keeps himself associated with, gamblers, house breakers, and thieves and harbours them, has satisfied the Superintendent of police that a regular watch on the Petitioner's movements is necessary; that it is true that in compliance with the said order police officers do watch the movements of the Petitioner; that in that connection casual enquiries are made by police constables. The non-applicant has emphatically denied that police constables or officers threaten, insult or annoy or provoke the Petitioner or his customers or that they prevent him from going anywhere he likes. The non-applicant has also denied the Petitioner's allegation that the police require him to remain at his house.

3. Under Article 226 Constitution of India a petition can be entertained only for the enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose. That the words "for any other purpose" refer to the enforcement of any legal right has been held in several cases. In *Bagaram Tuloule Vs. The State of Bihar*, Meredith C.J. observed as follows:

I think the correct interpretation is that the words mean for the enforcement of any legal right and the performance of any legal duty.

Chagla C.J. in *Emperor Vs. Jeshingbhai Ishwarlal*, has made similar observations. In the case of *Dayabhai v. Regional Transport Authority Southern region, Indore* Madh B AIR 1951 Mad 121 (FB)(C), this Court also has taken a similar view. The result is unless there is an infringement of a fundamental right conferred by Part III of the Constitution of India or any other legal right, no Petitioner can be entertained under Article 220 of the Constitution. The main contention of the Petitioner is that by a surveillance order the non-applicant has infringed his right to move freely and to follow the trade of his choice. The order of surveillance is passed under Part 6, Chapter 8, Section 3 of the Madhya Bharat Police Regulations. Regulation No. 850 runs as follows:

Surveillance proper, as distinct from general supervision, should be restricted to those persons, whether or not previously convicted, whose conduct, shows a determination to lead a life of crime. The list of persons under surveillance should include only those persons who are believed to be really dangerous criminals. When the entries in a history sheet or any other information at his disposal, leads the District Superintendent to believe that a particular individual is leading a life of crime, he may order that his name be entered in the Surveillance Register. The Circle Inspector will thereupon open a history sheet, if

one is not already in existence, and the man will be placed under regular surveillance.

Regulation No. 851 reads as follows:

Surveillance may, for practical purposes, be defined as consisting of the following measures:

- (a) Through periodical enquiries by the Station house officer as to repute, habits, association, income, expenses and occupation:
- (b) Domiciliary visits both by day and night at frequent but irregular intervals.
- (c) Secret picketing of the house and approaches on any occasion when the surveillance is found absent.
- (d) The reporting by Patels, Mukaddams and Kotwals of movement and absences from home.
- (e) The verification of such movements and absences by means of bad character rolls.
- (f) The collection in a history sheet of all information bearing on conduct.

It must be remembered that the surest way of driving a man to a life of crime is to prevent him from earning an honest living. Surveillance should, therefore, never be an impediment to steady employment and should not be made unnecessarily irksome, or humiliating. The person under surveillance should, if possible, be assisted in finding steady employment and the practice of warning persons against employing him must be strongly discouraged.

These regulations make it quite clear that surveillance can be kept whether a person is previously convicted or not and that surveillance is not to be an impediment to steady employment. Surveillance also is not to be unnecessarily irksome, or humiliating. If, therefore, an order of surveillance is passed it does not, ipso facto, interfere with the right of the Petitioner either to m(sic) freely or to follow his trade. The mere fact (sic) passing a surveillance order, therefore, does not give the Petitioner any right under Article 226 (sic) the Indian Constitution because the surveillance order does not infringe any fundamental right(sic).

4. It is alleged by the Petitioner that under the pretext of the surveillance order police authority insist on his staying at home and also interfere with his custom. These facts have been specially denied by the non-applicant. As the facts are in issue no mandamus can lie. "Lilawati Mutatkar v. The State of Madhya Bharat AIR 1952 Mad 105 (D)", it has held by this Court that when facts are in dis(sic) no Mandamus can issue.

5. The Petitioner has also alleged that order of surveillance is unwarranted, unjust and unconstitutional. The learned Counsel for Petitioner has not been able to show us why order of surveillance is unconstitutional. Under the Police

Regulations if the Superintendent of Police is led to believe, on the information at disposal, that a particular individual is leading a life of crime, he is empowered to order surveillance (vide Regulation No. 950). Whether the information, which led the Superintendent of Police to believe that the Petitioner is leading a life of crime, is adequate or not is not for this Court to enquire.

6. The result is that as there is no infringement of any fundamental right or other legal petition must fail. Accordingly petition is dismissed. We make no order as to costs.

Dixit, J.

7. I am also of the opinion that this Petitioner should be dismissed. At the hearing of the petition, learned Counsel for the Petitioner did challenge the validity of the Regulations Nos. 850 and 851 of the Madhya Bharat Police Regulation. Nor did he challenge the validity of the order of surveillance passed against the petitioner by the District Superintendent of Police Lashkar under those Regulations. The Petitioner's only grievance is that in the enforcement of the order of surveillance, the police officers concerned visited his house and shop frequently to his very much annoyance and to the detriment of his business and require him to stay at home at odd hours day and night. The Petitioner, therefore, sought an order to prohibit the police officers from keeping surveillance on him in the objectional manner of the type referred to above. Quite apart from the fact that it is denied by the opponent in carrying out the order of surveillance passed by the Superintendent of Police Lashkar, Police Officers concerned obstruct or prevent applicant from going anywhere he likes and he is required by them to remain at his house that they visit his house and shop at what hour they like, no order or direction under Article 226 of the Constitution can be made by this Court as regards the manner in which the Police Officer should enforce the order of surveillance against the Petitioner. For, the manner in which, order of surveillance should be carried out is entirely in the discretion of the police officer whose duty is to carry out the order. A direction under Article 226 cannot clearly be issued to consider this discretion of the police officers.