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**(2006) 08 P&H CK 0549**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal Miscellaneous No. 45785-M of 2005

Karnail Singh

APPELLANT

Vs

State of Punjab and others

RESPONDENT

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**Date of Decision:** Aug. 2, 2006

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 302, 34

**Citation:** (2006) 4 RCR(Civil) 513 : (2006) 4 RCR(Criminal) 714

**Hon'ble Judges:** A.N. Jindal, J

**Bench:** Single Bench

**Advocate:** Navkiran Singh, for the Appellant; Soniav and M. Aggarwal, AAG, for the Respondent

**Final Decision:** Allowed

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**Judgement**

A.N. Jindal, J.

By way of this petition, Karnail Singh son of Karam Singh resident of Village Buttari, Tehsil Baba Bakala, District Amritsar, has urged that no criminal case is pending against him and he has not been convicted by any Court. During turmoil period of Punjab, the petitioner had to face trial to ten cases, details of which have been given below :-

1. FIR No. 163/1991 U/s 15 of Arms Act & U/s 5 of the TDA(P) Act, P.S. Mehta, Amritsar. Acquitted by Ld. Addl. Judge designated Court Amritsar on 1.9.1993.
2. FIR No. 28/1993, U/s 302/307/34 IPC, U/s. 25/54/59 Arms Act, 5 TDA(P) Act, P.S. Taran Taran. Acquitted by Ld. Addl. Sessions Judge, Amritsar on 20.2.1995.
3. FIR No. 90/1995, Police Station Verowal, Decided on 4.12.1996 by Id. JMIC Taran Taran.
4. FIR No. 164 P.S. Beas, U/s. 307/34 IPC, 25 Arms Act and 5 of TDA(P) Act. Acquitted by Addl. Judge Designated Court, Amritsar on 6.1.1997.

5. FIR No. 16 of 1995 U/s 457/380 IPC, P.S. Verowal. Acquitted by Ld. JMIC Taran Taran on 4.3.1999.
6. FIR No. 91, U/s 25/54/59 Arms Act, Police Station Beas. Acquitted by Sh. Joga Singh Addl. Sessions Judge, Amritsar on 7.5.1999.
7. FIR No. 27 U/s 379/411 IPC P.S. Bagapurana. Acquitted by JMIC Moga on 2.2.2000.
8. FIR No. 103 of 1995 U/s 382/411/34 IPC P.S. Verowal. Acquitted by Ld. JMIC, Taran Taran on 7.3.2000.
9. FIR No. 26/1997, U/s 379/411/420 IPC, P.S. Baba Bakala. Acquitted by SDJM Baba Bakala on 3.7.2003.
10. FIR No. 37/2004, U/s 341/506/323/500 IPC, P.S. Beas. Acquitted by SDJM Baba Bakala on 31.1.2005.

2. The petitioner was honourably acquitted by the trial Courts in all the above mentioned cases. The respondents have illegally kept his name in the Rolls of Register No. 10. The case of the petitioner does not fall in any of the Clauses of Rule 23.4 of the Punjab Police Rules, therefore, his name may be deleted from the Surveillance Register No. 10.

3. Reply to the petition has been filed, wherein the respondents denied the allegations and submitted that the petitioner has been acquitted in most of the cases on technical grounds/compromise/untraced. However, the petitioner was convicted in case FIR No. 91 dated 9.11.1995 U/s. 25/54/59 Arms Act, P.S. Beas, Police District Majitha and sentenced to rigorous imprisonment of three years and fine Rs. 2,000/- and in case of non-payment of fine the petitioner had to undergo 2 months more R.I. The name of the petitioner was entered in the surveillance register after subjective satisfaction with the activities of the petitioner but at present the activities of the petitioner are silent and no fresh activity came to notice of local police.

4. Regarding case FIR No. 91 dated 9.11.1995 u/s 25 Arms Act, P.S. Beas, the petitioner has produced copy of judgment dated 7.5.1999 passed by Additional Sessions Judge, Amritsar vide which he was acquitted in the case.

5. As such from the aforesaid allegations and counter allegations, it has come out that the accused was never arrested or involved in a case relating to theft or receiving stolen property. He was acquitted in all the cases registered against him. He was not declared habitual offender or receiver of the stolen property. There is no such order of any competent authority declaring him to be a person of such category. To appreciate again, Rule 23.4 refers to maintenance of Surveillance Register No. 10 which is reproduced as under :-

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 u/s 87, Code of Criminal Procedure.

(b) All released convicts in regard to whom an order u/s 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 u/s 401, Criminal Procedure Code.

(d) All persons restricted under Rules of Government made u/s 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 stole property whether they have been convicted or not;

(c) persons under security u/s 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 must be strictly construed, and entries must be confined to the names of persons falling in the four classes named therein.

The same has to be read with Chapter 23.5 (Rule 23.5 ?) of the Punjab Police Rules, which are also reproduced, for the sake of ability :-

23.5 (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 authorized 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.

(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. A conjoint reading of the relevant provisions would indicate that before the name of the person is entered in the Surveillance Register No. 10, then he must be convicted twice or more than twice with respect to the offences as envisaged under Chapter 27.29 of the Punjab Police Rules.

7. Keeping in view that there is no past history of the petitioner being a habitual offender, receiver of the stolen property and that he has never been declared as such by any competent authority, the entry in the Surveillance Register, where his name exists, cannot be maintained.

8. Thus, for the foregoing reasons, petition is hereby accepted. It is directed that name of the petitioner be struck off from the Surveillance Register.