

Mohammed Shafi Vs The State of M.P. and Others

Court: Madhya Pradesh High Court

Date of Decision: March 7, 1992

Acts Referred: Constitution of India, 1950 " Article 226
Madhya Pradesh Police Regulations " Regulation 855, 856
Penal Code, 1860 (IPC) " Section 363, 506

Citation: (1993) CriLJ 505

Hon'ble Judges: S.D. Jha, J; A.G. Qureshi, J

Bench: Division Bench

Advocate: C.R. Joshi, for the Appellant; Kutumble, for the Respondent

Final Decision: Allowed

Judgement

A.G. Qureshi, J.

The petitioner has filed this petition under Article 226 of the Constitution of India for quashing the order of the

Superintendent of Police, Mandsaur placing the petitioner under police surveillance under Regulation Nos. 855 and 856 of the M.P. Police

Regulations framed under the Police Act.

2. According to the petitioner he is a respectable citizen of Mandsaur and he has got sufficient agricultural land, fruit gardens, hotel and buses

operating on the route in M.P. Some officers of the police got biased against the petitioner and, therefore, they took a frivolous action against the

petitioner. The petitioner is not engaged in any trade or business of arms, opium, cocaine or any excisable articles. He is not a dangerous criminal

leading the life of crime or a security risk to the community. A frivolous case was lodged against the petitioner which was crime No. 330/67, but he

has been honourably acquitted by the High Court. Similarly Crime No. 235 of 76 was also registered under Sections 363 and 506 IPC but he was

acquitted by the Chief Judicial Magistrate, Mandsaur. Earlier in 1979 the petitioner was placed under surveillance but that was also lifted. But

surveillance has again been started against the petitioner. Even a history sheet could not be opened against the petitioner in view of paragraph 651

of the Police Regulations. Actually the surveillance is an infringement in the fundamental rights of the petitioners by placing restrictions on the

movements of the petitioner and domiciliary visits by the police during day and night at the house of the petitioner all these actions are against the

regulations of the Police Manual itself.

3. The petition is resisted by the State on the ground that the petitioner although has property and land as shown by him, but actually he is actively

involved in the smuggling of opium. Actually conviction in a criminal case is not necessary for starting the surveillance. It has also been stated that

the petitioner was convicted for criminal offences. It was actually in view of the activities of the petitioner that he was placed under surveillance in

1979, but it was withdrawn. It has been denied that the photograph and finger impressions of the petitioner are displayed on the notice Board of

the Kotwali, Mandsaur. It has also been denied that any attempt was being made to humiliate the petitioner. A history sheet has been opened in

accordance with the provisions contained in paragraph 651 of the Police Manual because such a history sheet can be opened when a person is

suspected of being actively involved in the illegal activities. Therefore, the order of surveillance being proper and valid, the petition of the petitioner

should be dismissed. List of six cases has been filed in support of the contention.

4. As regards the surveillance in the form of secret picketing it is practically a settled view that the secret picketing cannot be said to be an

infringement in the right of citizen to free movement or personal liberty. Such an infringement can be said to be caused only if by any direct or

tangible mode such a right is infringed. It is not intended to protect the personal sensitiveness of the citizen by invoking any of the provisions of the

Constitution. However, the word picketing has to be understood properly by the authorities and it should not be used for offering resistance to the

visitors of the persons who visit the persons under such secret picketing. Neither there should be any physical appearance causing any annoyance

or invasion of the privacy of a citizen or entering the house of the subject. Secret picketing has to be confined only to keep a watch and maintain a

record of the visitors if it may be necessary.

5. The Madhya Pradesh Police Regulations, Regulation Nos. 855 and 856, were considered by the Supreme Court in the case of Gobind Vs.

State of Madhya Pradesh and Another, wherein the Supreme Court has said that the aforesaid Regulation empower the Government to make

Regulation in the Police Act with the purpose of prevention of the commission of offences. As such Regulations Nos. 855 and 856 framed under

the Act with a view to prevent commission of offences has the force of law. However, while upholding the constitutionality of the Regulation Nos.

855 and 856 it has been held by the Supreme Court, at page 1119 (of Cri LJ):

On interpreting the Regulations in a narrower sense it would be clear that Regulation 855 empowers surveillance only of persons against whom

reasonable materials exist to induce the opinion that they show a determination, to lead a life of crime - crime in this context being confined to such

as involve public peace or security only and if they are dangerous security risks. Mere convictions in criminal cases where nothing gravely imperils

safety of society can be regarded as warranting surveillance under this Regulation. Similarly, domiciliary visits and picketing by police should be

reduced to the clearest cases of danger to community security and not routine follow up at the end of conviction or release from prison or at the

whim of a police officer. In truth, legality apart, these regulations ill-accord with the essence of personal freedoms and the State will do well to

revise these old police regulations verging perilously near unconstitutionality.

In view of the aforesaid principles enunciated by the Supreme Court it is manifest that merely convictions in criminal cases where nothing gravely

imperils safety of society can be regarded as warranting surveillance under the Regulations. As regards the domiciliary visits and picketing they

should be confined only to those cases where there is a clearest case of danger to security. Such picketing and domiciliary visits should not be

taken up as a routine. Although the Regulations have not been struck off as unconstitutional the Supreme Court has clearly expressed in

unequivocal terms its views by saying that these Regulations ill-accord with the essence of personal freedoms and an advice has been given to the

State to revise these old police regulations verging perilously near unconstitutionality. However, despite this advice by the Supreme Court,

unfortunately the State of M.P. has not taken any steps towards amending these Regulations formulated years back in the circumstances prevailing

then. However, since the Regulations have not been held to be unconstitutional or infringing in the rights of the citizens, this particular petition has to

be examined in the light of the material placed before us.

6. Now, in the light of the aforesaid principles enunciated by the Supreme Court if we examine the rival contentions raised by the petitioner and the

respondents, it has to be determined first whether the petitioner is such a character who can be branded as a person who may be suspected of

being involved in such activities which may imperil the safety, tranquility and peace of the society. In the instant case it is manifest that the

prosecutions filed by the police against the petitioner long back have resulted finally in the acquittal of the petitioner. However, merely acquittal

cannot be the guiding principles for determining the surveillance. The cause for surveillance shown by the State in the instant case is that the

petitioner is actively engaged in the trade of opium and contraband articles. This list is a list showing the date of some offences, the report and the

contraband seized. Nothing has been placed on record by the police to show that now the petitioner was involved in all the aforesaid cases. When

the State wants the Court to hold that the surveillance is : proper, all the relevant factors with supporting material should be produced in the Court

to show that the material so placed is sufficient to uphold the validity of the surveillance order which has not been done in the instant case.

Furthermore there is not an iota of evidence to support the fact that the surveillance of the petitioner is necessary for saving the society from the

peril of insecurity, disturbance and breach of peace. Actually when a person becomes a menace to the society and is so dangerous that lack of

surveillance may cause damage to the society resulting in the disarray of the order or tranquility and peace of the society then only a surveillance

can be held justified and that too to the extent indicated above in the light of the judgment of the Supreme Court in Govind"s case (supra). In the

instant case we find there is nothing on the record to uphold the order of surveillance passed by the Superintendent of Police, Mandsaur against the

petitioner.

7. In the result the petition is allowed. The order of surveillance passed against the petitioner is quashed.