

(1992) 03 MP CK 0009

Madhya Pradesh High Court

Case No: M.P. 324/85

Mohammed Shafi

APPELLANT

Vs

The State of M.P. and Others

RESPONDENT

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**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

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**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 ft 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 unsecurity, 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.