

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous (Petition) No. 5962/2019

Firoz Khan @ Babloo @ Ganya S/o Shri Abdul Hamid, aged about 42 Years, R/o House No.926, Sunda Teli Ki Gali, Bagru Walon Ka Rasta, Chandpol Bazar, Jaipur.

-----Petitioner

Versus

1. State of Rajasthan, Through PP.
2. Deputy Commissioner of Police North, Jaipur.
3. Station House Officer, Police Station Nahargarh Road, Jaipur North.

-----Respondents

For Petitioner(s)	:	Mr. Nishant Sharma Mr. Rameshwar Prasad Kharol
For Respondent(s)	:	Mr. Jitendra Singh Rathore-PP with Ms. Neha Goyal

JUSTICE ANOOP KUMAR DHAND

Order

27/04/2026

1. By way of filing the instant criminal misc. petition, a challenge has been led to the letter dated 18.03.2019 issued by the Deputy Commissioner of Police, Commissionerate, Jaipur (North) whereby directions were issued to open the history sheet against the petitioner under Rule 4.9 (2) of the Rajasthan Police Rules, 1965 (for short, "the Rules of 1965").

2. Counsel for the petitioner submits that overall, 12 cases were registered against the petitioner from 1993 to 2019 and out of which he was convicted only in two cases i.e. Criminal Case No. 56/93, which was registered with the Police Station Jalupura, Jaipur for the offences punishable under Sections 147, 149, 336

and 456 IPC wherein after the conclusion of trial, he was convicted and sentenced with a fine of Rs. 500/- by the Court of the Additional Chief Judicial Magistrate No. 4, Jaipur vide judgment dated 24.04.1995 and another Criminal Case No. 201/2005, which was registered with the Police Station Nahargarh Road, Jaipur wherein he was convicted for the offence punishable under Section 4/6 of the Indecent Representation of Women (Prohibition) Act, 1986 (for short 'the Act of 1986') with a fine of Rs. 500/- by the Court of the Judicial Magistrate No.16 vide judgment dated 03.07.2006 and the benefit of probation under Section 3 of the Probation of Offenders Act, 1958 was extended to him. Counsel submits that in some of the cases, the petitioner has been acquitted and rest of the cases are still lying pending against him. Counsel submits that under the Rules of 1965, a person can be declared a habitual offender, only if, he has been found guilty and convicted in more than three criminal cases over a continuous five years, however, in the instant case, the petitioner has not been convicted in more than two criminal cases. Hence, the provisions of the Rules 1965 are not applicable in the instant case and the impugned letter issued by the Competent Authority is not sustainable and the same is liable to be quashed and set aside.

3. *Per contra*, learned Public Prosecutor opposes the prayer but he is not in a position to controvert the submissions made by counsel for the petitioner.

4. Heard and considered the submissions made at the Bar and perused the material available on record.

5. Rule 4.9 of the Rules of 1965 provides for opening of a History sheet by the Police, which reads as under:-

"4.9 History Sheets when opened. - (1) A history sheet, if one does not already exist, shall be opened in Form 4.9 for every person whose name is entered in the surveillance register, except conditionally released convicts.

(2) A history sheet may be opened by or under the written orders of, a police officer not below the rank of Inspector for any person not entered in the surveillance registered who is reasonably believed to be habitually addicted to crime or to be an aider or abettor such persons."

(3) The Government Railway Police will maintain the history sheets of criminals known or suspected to operate on the railway in accordance with Police Rule 4.8. They will open history sheets themselves for criminals living in railway premises, who have been absent from their original homes so long that the railway premises may be regarded as their permanent residence. They may also open history sheets for wandering strangers reasonably believed to be habitually addicted to crime on the railway, whose original homes cannot be traced."

6. Rule 4.4 of the Rules of 1965 deals with Surveillance Register No.8, which is to be maintained in every police station in Form 4.4(1), and the same reads as under :-

"4.4 Surveillance Register No.8 - (1) In every police station, other than those of the railway police, a Surveillance Register shall be maintained in Form 4.4. (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 under Section 87, Code of Criminal Procedure.

(b) All released convicts in regard to whom an order under Section 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 under section 401, Criminal Procedure Code.

(d) All persons restricted under Rules of Government made under section 8 of the Rajasthan Habitual Offenders Act, 1953.

(3) In Part II of such register maybe entered at the discretion of the Superintendent-

(a) persons who have been convicted twice, or more than twice, of offences mentioned in rule 8.22;

(b) persons who are reasonably believed to be habitual offenders or receivers of stolen property whether they have been convicted or not;

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

7. As per Clause (1) of Rule 4.9 of the Rules of 1965, a history-sheet can be opened against a person, whose name is entered in the Surveillance Register, except conditionally released convicts. As per Clause (2) of Rule 4.9 of the Rules of 1965, a history-sheet can be opened under the written orders of a police officer not below the rank of Inspector against any person, whose name has not been entered in the Surveillance Register, but who is reasonably believed to be habitually addicted to commit crime or to be an aider or abettor.

8. Rule 4.4 of the Rules of 1965 clearly reveals that there are two categories of persons whose names may be entered in the Surveillance Register: the first category deals with such persons,

who are commonly resident or commonly frequenting within the local jurisdiction of the concerned police station, who are either proclaimed under Section 87 Cr.P.C., or released convicts in regard to whom an order under Section 565 Cr.P.C. has been made, or all convicts, the execution of whose sentence is suspended in the whole, or any part under Section 401 Cr.P.C. The second category of persons are those whose names may be entered at the discretion of the Superintendent of Police, given that they have been convicted twice, or more than twice, for offences mentioned in Rule 8.22. Further, Rule 8.22 deals with specific offences in Chapter XI, XII, XIII, XVI, XVII, XVIII and XXI of I.P.C. or under Chapter VIII of the Cr.P.C. or under the Rajasthan Public Gambling Ordinance, 1949, Indian Arms Act, 1959 or where subsequent conviction, of a person previously convicted of the same or similar offence, would lead to enhanced punishment. Other cases, covered under the second category, include those persons who are reasonably believed to be "habitual offenders" or "receivers of stolen property whether they have been convicted or not", or persons under security under Sections 109 or 110 Cr.P.C., or "convicts released before the expiration of their sentences under the Prisons Act and Remission Rules without imposition of any conditions".

9. As per the definition of the word 'habitual offender', as provided under the Rajasthan Habitual Offenders Act of 1953 (for short, "the Act of 1953"), a person can be declared a habitual offender only if he has been convicted more than three times but in the present case, there is only two conviction recorded against the petitioner and in some of the cases, the petitioner has been

acquitted and rest of the cases are still lying pending for adjudication, however, till date, the petitioner has not been convicted in the rest of the cases. Hence, under these circumstances, the petitioner does not fall within the definition of the "habitual offender".

10. The Rules of 1965 do not empower the police to act in a manner that infringes upon citizen's fundamental freedom. The police does not possess a licence to enter the names of whosoever they like or dislike, in the surveillance register. Ordinarily, the names of persons with previous criminal record alone are to be entered in the surveillance register. They must be proclaimed offenders, previous convicts, or persons who have already been placed on security for good behaviour. In addition, names of persons who are reasonably believed to be habitual offenders or receivers of stolen property whether they have been convicted or not, can be categorized and to be entered in the surveillance register under the Rules of 1965.

11. The Apex Court in the case of **Govind v. State of Madhya Pradesh** reported in **(1975) 2 SCC 148**, observed that a person subjected to surveillance, the object and limitation of such surveillance depends upon the character and antecedents of the person concerned. The Police Regulation has force of law and, therefore, it can not be said to be infringement of fundamental right. Nevertheless, Article 21 of the Constitution of India is a right of an individual to be free from such restriction or encroachment directly imposed or indirectly approached by calculated measures.

12. The criteria for opening a history sheet is the subjective satisfaction of the authority and it has to be arrived at, on the

reasonable belief or knowledge that the person, for whom the history is opened or retained is habitually addicted to aid or abet, the commission of crime, whether convicted or not etc. While arriving at the subjective satisfaction, the activities of such persons which are informative and useful, based on the facts ascertained by the police from the date of last entry shall be made month-wise for close watch of characters and quarterly for non-close watch of characters. The discretion of the authorities has to be exercised, according to the rules of reason and justice and not according to private opinion, according to law and not humour. It is to be not arbitrarily vague, fanciful, but legal and regular and it must be exercised within the limit to which an honest man competent to discharge of his office or to confine himself.

13. A habitual offender or a person habitually addicted to crime is one who is a criminal by habit or by disposition formed by repetition of crimes. Reasonable belief of the police must be based on strong and reasonable grounds. Mere belief is not sufficient. The belief must be reasonable, it must be based on reasonable grounds.

14. Opening of 'History-sheet' must be on the basis of subjective satisfaction of the competent authority and subjective satisfaction must be arrived at in accordance with legal provisions vis-à-vis well reasoned and speaking decision, failing which it would be hit by Articles 14 and 21 of the Constitution of India, being arbitrary in nature and not permissible in law.

15. In the instant case, a letter has been issued by the Competent Authority to open the history sheet against the petitioner simply on the basis of registration of certain criminal

cases against him. No reasons have been assigned in the letter for doing so. It is clear that the letter to open a history-sheet against the petitioner has not been issued in accordance with the relevant provisions of the Police Act and the Rules of 1965. Hence, opening the history-sheet against the petitioner offends his fundamental right, enshrined under Article 21 of the Constitution of India.

16. As per the report furnished by the SHO, Police Station Nahargarh Road, Jaipur (North), the following criminal cases were registered against the petitioner and outcome of the aforesaid are reflected in the conclusive part, which is reproduced in a tabulation form, as under:-

आपराधिक रिकार्ड

फिरोज उर्फ बबलु गन्या पुत्र श्री अब्दुल हमीद जाति मुसलमान उम्र 47 साल निवासी म0न0 926 सुण्डा तेली की गली बगरू वालो का रास्ता थाना नाहरगढ़ रोड़ जयपुर (उत्तर)

क्र. स.	नाम थाना	मु0न0 व दिनांक	धारा	चार्जशीट न0 दिनांक	कोर्ट केश नम्बर व चालान पैश की दिनांक	न्यायालय का नाम	निर्णय न्यायालय का नाम
1	जालपुरा	56/93 06-08-93	147,149,33 6,456,IPC	23/93 31.08.93	647/93 28.09.93	सीजेएम जयपुर शहर	न्यायालय एसीजेएम न0 4 द्वारा दिनांक 24.04.95 को 100 व 400रु कुल 500रु के अर्थ दण्ड से दण्डित किया गया।
2	नाहरगढ़ रोड़	219/03 03.11.03	51,52A,63, 68 A Copy Right Act 292 IPC 3,4,6 IRW	139/03 10.12.03	438/04 20.02.14	जेएम 16 जयपुर शहर	न्यायालय एम एम 16 द्वारा दिनांक 10.03.14 संदेह का लाभ देकर दोषमुक्त किया गया।
3	कोतवाली	37/04 07.02.04	147,149,32 3,382,365 IPC	275/04 29.04.04	754/04 01.12.04 498/15	सीजेएम जयपुर शहर	न्यायालय एम एम 06 द्वारा दिनांक 22.01.18 संदेह का लाभ देकर दोषमुक्त किया गया।
4	नाहरगढ़ रोड़	201/05 12.12. 05	4/6 IRW	146/05 16.12.05	553/05 20.12.05	जेएम 16 जयपुर शहर	न्यायालय जे एम 16 द्वारा दिनांक 03.07.06 को 3 पी.ओ. का लाभ व 500 रु अभियोजन व्यय के जमा।
5	नाहरगढ़ रोड़	192/07 18.09.07	292 IPC4/6 IRW	108/07 26.09.07	900/07 08.10.07	जेएम 16 जयपुर शहर	पैण्डिंग कोर्ट आगामी तारीक पेशी दिनांक 12.09.19 नियत है।
6	नाहरगढ़ रोड़	210/07 21.10.07	365. IPC	44/08 05.03.08	151/08 18.03.08	जेएम 16 जयपुर शहर	न्यायालय एम एम न0 16 द्वारा मुलजिम को दिनांक 07.08.15 को राजीनामा दोषमुक्त किया गया।
7	नाहरगढ़ रोड़	87/08 23.04.08	292 IPC4/6 IRW	83/08 30.04.08	227/08 09.05.08	जेएम 16 जयपुर शहर	न्यायालय एम एम 16 द्वारा दिनांक 11.07.17 को संदेह का लाभ देकर दोषमुक्त किया गया।

8	नाहरगढ़ रोड़	74/09 15.04.09	147,323,34 1,451 IPC	107/09 16.06.09	478/09 08.07.09	जेएम 16 जयपुर शहर	पैण्डिंग कोर्ट आगामी तारीक पेशी दिनांक 01.10.19 नियत है।
9	संजय सार्किल	166/18 02.10.18	143,307,32 3,149,IPC & 3/25 ARMS. ACT	58/19 13.05.19	03/19 17.05.19	श्रीमान एडीजे न0 13 जयपुर महानगर	पैण्डिंग कोर्ट आगामी तारीक पेशी दिनांक 13.09.19 नियत है।
10	नाहरगढ़ रोड़	41/19 17.02.19	143,336,32 3,341,365, 452, IPC	99/19 16.07.19			पैण्डिंग चालान जिसमें अभियोजन स्वीकृति लिया जाना शेष है। जिसमें रिमाण्ड की आगामी तारीक पेशी दिनांक 30.08.19 नियत है।
11	आर्दश नगर	79/19 20.02.19	307,IPC & 3/25 ARMS.ACT	88/19 29.04.19	93/19 30.04.19	विशेष न्यायालय सती निवारण जयपुर महानगर	पैण्डिंग कोर्ट आगामी तारीक पेशी दिनांक 05.09.19 नियत है।
12	माणक चौक	85/19 20.02.19	336,307,34 , IPC & 3/25 ARMS.ACT	73/19 23.04.19	113/19 24.04.19	विशेष न्यायालय सती निवारण जयपुर महानगर	पैण्डिंग कोर्ट आगामी तारीक पेशी दिनांक 05.09.19 नियत है।

17. Bare perusal of the aforesaid tabulation clearly indicate that in the twelve criminal cases, the petitioner was convicted only in two criminal cases, i.e., F.I.R. No.56/1993, which was registered with the Police Station Jalupura, Jaipur wherein after conclusion of trial, he has been convicted for the offences under Sections 147, 149, 336 and 456 IPC by the Court of the Additional Chief Judicial Magistrate vide Judgment dated 24.04.1995 and in Criminal Case No. 201/2005, which was registered with the Police Station Nahargarh Road, wherein after conclusion of trial, he was convicted for the offences punishable under Section 4/6 of the Act of 1986 with a fine of Rs. 500/- by the Court of the Judicial Magistrate vide judgment dated 03.07.2006 and the benefit of probation under Section 3 of the Probation of Offenders Act, 1958 was extended to him and in some of the cases, the petitioner has been acquitted and rest cases are still lying pending for adjudication. The case of the petitioner does not fall within the parameters as prescribed under the Rules of 1965 for declaring him as history sheeter.

18. Considering the overall facts and circumstances of the case, it is clear that the petitioner is not a "habitual offender" in terms of Section 2(1)(a) of the Act of 1953. Hence, the letter dated 18.03.2019 issued by the Deputy Commissioner of Police , Commissionerate, Jaipur (North) is not sustainable in the eyes of law and the same is liable to be quashed and set aside. The Deputy Commissioner of Police, Commissionerate Jaipur (North) as well as the Station House Officer, Police Station Nahargarh are directed to delete the name of the petitioner from the history sheet/surveillance register. Hence, his name cannot be recorded in the history sheet/surveillance register. The letter issued by the Deputy Commissioner of Police Commissionerate Jaipur (North), dated 18.03.2019 is not legally sustainable in the eyes of law and the same is liable to be and is hereby quashed and set-aside.

19. Accordingly, the instant criminal misc. petition stands allowed. The Deputy Commissioner of Police, Commissionerate, Jaipur (North) as well as the Station House Officer, Police Station Nahargarh are directed to delete the name of the petitioner from the history sheet/surveillance register, if already entered, in the Police Station Nahargarh, Jaipur forthwith.

20. Stay application and all pending applications, if any, stand disposed of.

(ANOOP KUMAR DHAND),J