

Crl.M.C.No.3751/25

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'CR'

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

THURSDAY, THE 19TH DAY OF JUNE 2025 / 29TH JYAISHTA, 1947

CRL.MC NO. 3751 OF 2025

CRIME NO.267/2025 OF Thoppumpady Police Station, Ernakulam

PETITIONER:

PRASATH C,
AGED 47 YEARS
S/O CHELLAPPAN, 17/855 A-1, SREEKOVIL (ANU'S
VILLA), MUNDAMVELI P.O, KOCHI, PIN - 682507

BY ADVS.
SHRI.ASHIK K.MOHAMED ALI
SHRI.MUHAMMED RIFA P.M.
SMT.EHLAS HALEEMA C.K.
SHRI.SALMAN FARIS
SMT.GAYATHRI ASHISH NAIR

RESPONDENTS:

1 STATE OF KERALA,
REPRESENTED BY THE STATION HOUSE OFFICER,
THOPPUMPADY POLICE STATION, THOPPUMPADY,
ERNAKULAM, (REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM) ., PIN - 682005

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2 THE SUB INSPECTOR OF POLICE,
THOPPUMPADY POLICE STATION, THOPPUMPADY,
ERNAKULAM, PIN - 682005

OTHER PRESENT:

SRI. M.C. ASHI, SR.PP.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
13.06.2025, THE COURT ON 19.06.2025 PASSED THE FOLLOWING:

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V.G.ARUN, J

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Crl.M.C.No.3751 of 2025

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Dated this the 19th day of June, 2025

ORDER

The petitioner is the accused in Crime No.267 of 2025 registered at the Thoppumpady Police Station for the offence under Section 117(e) of the Kerala Police Act, 2011.

The crime is registered on the basis of Annexure A2 report of the Sub Inspector of Police, Thoppumpady stating that, on 03.04.2025, as part of night check duty on Rowdy History Sheeters, he along with police party had gone to the house of the petitioner, at about 01:30 am, to ascertain whether the petitioner is available at his house. After reaching the house, the police party asked the petitioner to open the door, but the petitioner not only refused to abide by their direction, but abused and intimidated the police personnel, thereby



preventing the officers from discharging their duty.

2. The petitioner's version of the incident and the reasons behind registration of the crime are as under;

The Thoppumpady Police had framed the petitioner in a false POCSO case, of which the petitioner got acquitted after a full fledged trial. Alleging foul play in registering that case, the petitioner approached the State Police Chief. This led to animosity towards the petitioner and the police started registering false cases against him, alleging violation of traffic rules and dangerous driving. While so, the petitioner started receiving frequent phone calls from the police enquiring about his whereabouts. On 03.04.2025 also, by about 12:58 am, the petitioner received a call from the police, asking him to stand outside his house. In obedience of the direction, the petitioner stood outside his house for some time, but did not find anyone there. Later in the morning, the petitioner got another call, asking him to report at the Thoppumpady Police Station. As directed, petitioner went to the Police Station and without any



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reason, was subjected to torture by the Sub Inspector of Police. Immediately thereafter, the petitioner filed W.P.(C) No. 15550 of 2025, alleging police harassment and the writ petition was disposed of by directing the Principal Secretary, Home Department, to enquire into the complaint. According to the petitioner, he is implicated as accused in the present crime to divert that enquiry.

3. Learned counsel for the petitioner contended that the police have no right to intrude into a citizen's privacy at midnight. It is submitted that the general instructions regarding surveillance contained in Paragraph 265 of the Kerala Police Manual permits only 'informal watch' over the activities of history sheeters and 'close watch', if the individual is leading a criminal existence. According to the counsel, the petitioner is not a history sheeter and even if so, the police have no authority to make domicile visits at night. Reference is made to the decision in **Kharak Singh v. State of U.P. and Others** [1962 SCC OnLine SC 10], to point out that the Apex Court had



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set aside the provision in the U.P. Police Regulations authorising domicile visits, finding the provision to be violative of the freedom and liberty guaranteed under Articles 19 and 21 of the Constitution of India. As the visit by the police personnel to the petitioner's residence at midnight and the direction requiring him to come out of the house are not part of their official duties, the offence under Section 117(e) of the Kerala Police Act is not attracted.

4. Learned Public Prosecutor contended that the petitioner's name figures in the Rowdy History Sheet maintained at the Thoppumpady Police Station and on 03.04.2025, the 2nd respondent had telephoned the petitioner to know about his whereabouts. Thereupon, the petitioner told the 2nd respondent that he is in his house. The police had later gone to the petitioner's house to ascertain whether he is actually in the house. As the 2nd respondent and others were thus discharging their official duties, the petitioner's refusal to abide by the direction to step out of the house and intimidation



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of the policemen, attracts the alleged offence. The learned Public Prosecutor further contended that the State is empowered to impose reasonable restrictions on the freedom and liberty guaranteed by the constitution and surveillance of history sheeters is also part of such restriction.

5. From the rival contentions, the question arising for consideration is whether the police has got the authority to visit the residences of history sheeters as part of surveillance. While answering this question it has to be borne in mind that the right to freedom of movement and decent living, guaranteed by Articles 19 and 21 of the Constitution cannot be impinged, without the support of law. Indisputably, the Kerala Police Manual is only a set of guidelines, governing the members of the force and does not fall within the meaning of statute. Even then, it will be profitable to refer the General instructions regarding Surveillance, contained in Paragraph 265 of the Police Manual;

**"General instructions regarding Surveillance**

265. (1) Persons for whom History sheets have been opened shall be informally watched by the Police. When a History Sheet shows that the individual is leading a criminal existence, the Superintendent of Police or the Sub Divisional Officer, if so empowered by the Superintendent of Police, shall decide whether the individual should be 'closely watched' or not.

(2) Whenever a History Sheet is opened for a bad character for the first time, he shall be under 'close watch' for a specified period.

(3) The bad characters returning from jail should be under 'close watch'. If they settle down and are of good character close watch can be removed.

(4) There should be free transfer of bad characters from close watch to non-close watch and vice versa. Orders for such transfers should be obtained from the Sub Divisional Officer or the Superintendent of Police as the case may be. A bad character who continues to be under close watch for a considerable period, is a fit person for action under section 110, Criminal Procedure Code.

(5) The surveillance of a suspect or rowdy other than an ordinary criminal shall be conducted in a confidential manner.

(6) Under the History Sheet heading 'Current doings', entries which are informative and useful based on the facts ascertained both by the Sub Inspector and his men since the date



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of the last entry, shall be made month-wise for close watch bad characters and quarterly for non-close watch bad characters. Anything of interest coming to notice in respect of a bad character during a month should be entered then and there, without waiting for the end of the month or the quarter.

(7) When any information favourable to an individual for whom a History Sheet is being kept is received, it shall be entered therein.

(8) The entries in the various columns in the History Sheet should be checked by the Sub Inspector personally and brought up-to-date once a year. The fact of such verification should be certified to by him in the column under 'Current doings'."

(underline supplied)

Thus, what is permitted by the provision is only, 'informal watching' of history sheeters and 'close watch' over those leading criminal existence. Undoubtedly, neither of those expressions permit domicile visits at night. While on the issue, it will be apposite to note that a specific provision in the U.P. Police Regulations permitting domiciliary visits at night was set aside by the Supreme Court in **Kharak Singh** (supra). The contextually relevant portion of the judgment reads as under;



“7. The sole question for determination therefore is whether “surveillance” under the impugned Chapter 22 of the U.P. Police Regulations constitutes an infringement of any of a citizen's fundamental rights guaranteed by Part III of the Constitution. The particular Regulation which for all practical purposes defines “surveillance” is Regulation 236 which reads:

“without prejudice to the right of Superintendents of Police to put into practice any legal measures, such as shadowing in cities, by which they find they can keep in touch with suspects in particular localities or special circumstances, surveillance may for most practical purposes be defined as consisting of one or more of the following measures:

(a) Secret picketing of the house or approaches to the houses of suspects;

(b) domiciliary visits at night;

(c) through periodical inquiries by officers not below the rank of sub-inspector into repute, habits, associations, income, expenses and occupation;

(d) the reporting by constables and chaukidars of movements and absences from home;

(e) the verification of movements and absences by means of inquiry slips;

(f) the collection and record on a history-sheet of all information bearing on conduct.”



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13. We shall now proceed with the examination of the width, scope and content of the expression “personal liberty” in Article 21. Having regard to the terms of Article 19(1)(d), we must take it that the expression is used as not to include the right to move about or rather of locomotion. The right to move about being excluded its narrowest interpretation would be that it comprehends nothing more than freedom from physical restraint or freedom from confinement within the bounds of a prison; in other words, freedom from arrest and detention, from false imprisonment or wrongful confinement. We feel unable to hold that the term was intended to bear only this narrow interpretation but on the other hand consider that “personal liberty” is used in the Article as a compendious term to include within itself all the varieties of rights which go to make up the “personal liberties” of man other than those dealt with in the several clauses of Article 19(1). In other words, while Article 19(1) deals with particular species or attributes of that freedom, “personal liberty” in Article 21 takes in and comprises the residue. We have already extracted a passage from the judgment of Field, J. in *Munn v. Illinois* [94 US 113 at p. 142] where the learned Judge pointed out that “life” in the 5th and 14th Amendments of the U.S. Constitution corresponding to Article 21, means not merely the right to the continuance of a person's animal existence, but a right to the possession of each of his organs his arms and legs etc. We do not entertain any doubt that the word “life” in Article 21 bears the same



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signification. Is then the word “personal liberty” to be construed as excluding from its purview an invasion on the part of the police of the sanctity of a man's home and an intrusion into his personal security and his right to sleep which is the normal comfort and a dire necessity for human existence even as an animal? It might not be inappropriate to refer here to the words of the preamble to the Constitution that it is designed to “assure the dignity of the individual” and therefore of those cherished human values as the means of ensuring his full development and evolution. We are referring to these objectives of the framers merely to draw attention to the concepts underlying the constitution which would point to such vital words as “personal liberty” having to be construed in a reasonable manner and to be attributed that sense which would promote and achieve those objectives and by no means to stretch the meaning of the phrase to square with any pro-conceived notions or doctrinaire constitutional theories. Frankfurter, J. observed in *Wolf v. Colorado* [338 US 25] .

“The security of one's privacy against arbitrary intrusion by the police ... is basic to a free society. It is therefore implicit in ‘the concept of ordered liberty’ and as such enforceable against the States through the Due Process Clause. The knock at the door, whether by day or by night, as a prelude to a search, without authority of law but solely on the authority of the police, did not need the commentary of recent history to be condemned as inconsistent with the conception of human rights enshrined in the



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history and the basic constitutional documents of English-speaking peoples ... We have no hesitation in saying that were a State affirmatively to sanction such police incursion into privacy it would run counter to the guarantee of the Fourteenth Amendment.”

Having found the provision empowering domicile visits to be unconstitutional, the Supreme Court went on to hold that privacy is not a constitutional right.

6. Much later, by the celebrated judgment in ***K.S. Puttaswamy and Another v. Union of India and Others*** [(2017) 10 SCC 1], the Apex Court reversed the finding that privacy is not a constitutional right. The following erudite exposition on that aspect by the Apex Court is very insightful;

“317. *Kharak Singh* [*Kharak Singh v. State of U.P.*, AIR 1963 SC 1295 : (1963) 2 Cri LJ 329 : (1964) 1 SCR 332] has correctly held that the content of the expression “life” under Article 21 means not merely the right to a person's “animal existence” and that the expression “personal liberty” is a guarantee against invasion into the sanctity of a person's home or an intrusion into personal security. *Kharak Singh* [*Kharak Singh v. State of U.P.*, AIR 1963 SC 1295 : (1963) 2 Cri LJ 329 : (1964) 1 SCR 332] also correctly laid down that the dignity of the individual must lend content to the meaning of “personal liberty”. The first part of the decision in *Kharak Singh*



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[*Kharak Singh v. State of U.P.*, AIR 1963 SC 1295 : (1963) 2 Cri LJ 329 : (1964) 1 SCR 332] which invalidated domiciliary visits at night on the ground that they violated ordered liberty is an implicit recognition of the right to privacy. The second part of the decision, however, which holds that the right to privacy is not a guaranteed right under our Constitution, is not reflective of the correct position. Similarly, *Kharak Singh* [*Kharak Singh v. State of U.P.*, AIR 1963 SC 1295 : (1963) 2 Cri LJ 329 : (1964) 1 SCR 332] reliance upon the decision of the majority in *Gopalan* [*A.K. Gopalan v. State of Madras*, 1950 SCC 228 : AIR 1950 SC 27 : 1950 SCR 88] is not reflective of the correct position in view of the decisions in *Cooper* [*Rustom Cavasjee Cooper v. Union of India*, (1970) 1 SCC 248] and in *Maneka* [*Maneka Gandhi v. Union of India*, (1978) 1 SCC 248]. *Kharak Singh* [*Kharak Singh v. State of U.P.*, AIR 1963 SC 1295 : (1963) 2 Cri LJ 329 : (1964) 1 SCR 332] to the extent that it holds that the right to privacy is not protected under the Indian Constitution is overruled.”

7. In ***K.S. Puttaswamy*** (*supra*), the Apex Court also encapsulated the concept of privacy in the Indian Constitution eruditely in the following words;

“**323.** Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy also connotes a right to be left alone. Privacy safeguards individual autonomy and recognises the



ability of the individual to control vital aspects of his or her life. Personal choices governing a way of life are intrinsic to privacy. Privacy protects heterogeneity and recognises the plurality and diversity of our culture. While the legitimate expectation of privacy may vary from the intimate zone to the private zone and from the private to the public arenas, it is important to underscore that privacy is not lost or surrendered merely because the individual is in a public place. Privacy attaches to the person since it is an essential facet of the dignity of the human being.

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325. Like other rights which form part of the fundamental freedoms protected by Part III, including the right to life and personal liberty under Article 21, privacy is not an absolute right. A law which encroaches upon privacy will have to withstand the touchstone of permissible restrictions on fundamental rights. In the context of Article 21 an invasion of privacy must be justified on the basis of a law which stipulates a procedure which is fair, just and reasonable. The law must also be valid with reference to the encroachment on life and personal liberty under Article 21. An invasion of life or personal liberty must meet the threefold requirement of (i) legality, which postulates the existence of law; (ii) need, defined in terms of a legitimate State aim; and (iii) proportionality which ensures a rational nexus between the objects and the means adopted to achieve them.”



8. It is thus beyond cavil that the police have no right to knock at the doors of suspected persons or history sheeters under the guise of surveillance. The officers should understand that the concept of home transcends its physical manifestation as a dwelling and encompasses a rich tapestry of existential, emotional and social dimensions. In other words, every man's house is his castle or temple, the sanctity of which cannot be vilified by knocking on the door at odd hours. A person's right to life encompasses the right to live with dignity and dignity is non-negotiable. The above discussion leads to the definite conclusion that, under the guise of surveillance, the police cannot knock on the doors or barge into the houses of history sheeters.

9. While on the subject, it will be worthwhile to note that as per Section 39 of the Kerala Police Act, all persons are bound to comply with the 'lawful directions' given by a police officer for the discharge of his functions under the Act. Knocking on the doors of a history sheeter at midnight and



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demanding him to come out of the house cannot by any stretch of imagination be termed as a lawful direction. Consequently, the petitioner cannot be prosecuted for the offence under Section 117(e) of the Kerala Police Act, for refusing to abide by that direction. If, as alleged, the petitioner had used derogatory language or threatened the police during the course of such refusal, his action may invite some other offence, but definitely not the offence he is presently charged with.

For the aforementioned reasons, the Crl.M.C. is allowed. Annexure A1 FIR and all further proceedings in Crime No. 267 of 2025 of Thoppumpady Police Station are quashed.

sd/-

V.G.ARUN, JUDGE



APPENDIX OF CRL.MC 3751/2025

PETITIONER ANNEXURES

Annexure A1	CERTIFIED COPY OF THE FIR IN CRIME NO. 267 OF 2025 OF THE THOPPUMPADY POLICE STATION.
Annexure A2	TRUE COPY OF THE REPORT DATED 03-04-2025 OF THE SUB INSPECTOR OF POLICE, THOPPUMPADY POLICE STATION, TO THE STATION HOUSE OFFICER.
Annexure A3	TRUE COPY OF THE SCENE MAHAZAR DATED 03-04-2025, PREPARED BY THE SUB INSPECTOR OF POLICE.
Annexure A4	TRUE COPY OF THE SEIZURE MAHAZAR PREPARED BY THE SUB INSPECTOR OF POLICE.
Annexure A5	TRUE COPY OF THE SCREENSHOT OF THE E-COURT WEBSITE REGARDING ST NO. 1650 OF 2024.
Annexure A6	TRUE COPY OF THE PETITION DATED 10-03-2025 SENT BY THE PETITIONER TO THE PRINCIPAL SECRETARY, HOME DEPARTMENT, GOVERNMENT OF KERALA.
Annexure A7	TRUE COPY OF THE EMAIL DATED 10-03-2025 SHOWING THE COMMUNICATION TO THE HOME SECRETARY, GOVERNMENT OF KERALA.
Annexure A8	TRUE COPY OF THE CASUALTY OP NO. 18475 DATED 07-04-2025 ISSUED BY THE GOVERNMENT MAHARAJA'S TALUK HOSPITAL, KARUVELIPADY.
Annexure A9	TRUE COPY OF CIRCULAR NO. 9 OF 2011 DATED 23-03-2011 ISSUED BY THE STATE POLICE CHIEF.