



WP(MD)No.25263 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 08/12/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

WP(MD)No.25263 of 2023

and

WMP(MD)Nos.21453 and 21454 of 2023

Savarkar

: Petitioner

Vs.

1.The Superintendent of Police,
Kanyakumari District,
Kanyakumari.

2.The Deputy Superintendent of Police,
Thuckalay,
Kanyakumari District.

3.The Inspector of Police,
Kaliyakkavilai Police Station,
Kanyakumari District.

: Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India, in the nature of Writ of Certiorified Mandamus, to call for the records relating to the impugned proceedings dated Nil on the file of the 3rd respondent and quash the same as illegal and consequently, direct the 2nd respondent to remove the name of the petitioner from the list of history sheeted rowdies and to pass such further or other orders.

For Petitioner : Mr.V.Kathirvelu
Senior counsel
for Mr.K.Jayamohan

For Respondents : Mr.M.Sakthi Kumar
Government Advocate
(Criminal side)



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O R D E R

This writ petition is filed seeking quashment of the impugned proceedings, dated Nil, on the file of the 3rd respondent and consequently direct the 2nd respondent to remove the name of the petitioner from the list of history sheeted rowdies.

2.The facts in brief:-

The petitioner is a practising Advocate at Kanyakumari District and also a political functionary. Several complaints are registered against him due to political motive. All the cases that have been registered against the petitioner are mentioned in the petition. About 11 FIRs have been registered against him. Out of the 11 cases listed in the petition, the case in Crime No.216 of 2023 was registered on the basis of the complaint given by one Saroja. According to him, the issue arose out of surveying of the lands, in which this petitioner is not directly involved. But he was assisting one Shabimol as a Counsel at the time of measuring the property. So, the case in Crime No.216 of 2023 was registered. And a counter case in Crime No.215 of 2023 was also registered on the file of the 3rd respondent police. Later, he came to know that on the basis of the recommendation made by the 3rd respondent, history sheet was opened in History Sheet No.19 of 2023.



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3. Seeking a direction to remove his name, this petition is filed by the petitioner listing out the various cases registered against him and the reasoning for registering the FIRs.

4. Heard both sides.

5. Counter Affidavit is also filed by the 3rd respondent stating that the petitioner indulged in various criminal activities, and commission of the offences against woman, property of private parties and public, and indulged in breach of peace also. For the purpose of enforcement of public order, History sheet was opened against the petitioner to protect the interest of the public. Finally, it is stated that based upon the oral and documentary evidence, several cases have been registered against this petitioner. Absolutely, there is no reason to interfere into the order.

6. Additional typed set of papers also filed by the petitioner, setting out the present status of the cases. Crime Nos. 486 and 551 of 2021 were referred as 'Action Dropped'. Crime Nos. 220 of 2017, 255 of 2021, and 228 of 2022 were either disposed of or referred. According to him, except one or two cases, all other cases either disposed of or referred as 'Action Dropped'.



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7.Per contra, the learned Government Advocate (Criminal side) has circulated a list, wherein it has been stated that the case in Crime Nos.216 of 2023 and 142 of 2023 are now under investigation. The case in Crime No.189 of 2019 on the file of the Kollencode Police Station, Crime No.43 of 2022 on the file of the Manavalakurichi Police and Crime No.63 of 2023 on the file of the Mardhandam Police Station are still pending for trial. Out of the list furnished by the Inspector of Police, the cases in Crime No.216 of 2013 on the file of the Kalliyakavillai Police Station and Crime No.292 of 2014 on the file of the Kottar Police Station are for the offences under section 323, 379, and section 4 of the Tamil Nadu Prohibition of Harassment of Women Act 147, 148, 307 and 341 IPC etc., which are serious offences in nature.

8.Even though, explanation is offered by the petitioner, in respect of these two cases, I am not expressing any opinion on merits. It is within the jurisdiction of the Investigating Officer or the trial court as the case may be. But the fact remains that the petitioner is a political functionary conducted several protest and demonstration, as the case may be, on various issues.



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9. So the question, which arises for consideration is whether these nature of cases are sufficient enough for booking or opening the history sheet.

10. According to the learned Senior Counsel appearing for the petitioner, series of guidelines were issued by this court in WP(MD)No.21040 of 2022 batch etc., dated 03/07/2020 (Thirumugam Vs. The Superintendent of Police, Madurai District and another) for opening or maintaining the history sheet. In the concluding portion, the following directions were issued.

"36. Accordingly, this Court issues the following directions. This is in addition to the principles or directions given earlier namely: (a) The decision to history sheet, or retaining one in the history sheet must be on tangible materials and on an objective basis as declared in Ganesan case [2010(6) CTC 507] (b) and the ratio of this Court in Sabari case [2018-2- LW.(Cr1.)817], wherein this Court has held that mere registration of a FIR under Sec.109 and 110 Cr.P.C. cannot justify an action of the police to retain the name in the history sheet. There should have been a concluded proceedings.

A. In all the cases where a person has to be treated as an habitual



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offender, or one addicted to crime, or a known deprecator of law without a case pending against them when the police propose to history-sheet him, he should have been either notified as a habitual offender under the Tamil Nadu Habitual Offenders Act, 1948, or should have been one against whom an Order has been made under Sec.110 Cr.P.C.

B. In all cases a person can be history-sheeted only for two years as provided in PSO 748(1). Retaining a history sheeteer beyond that period is an exception and it must have an objective basis. Accordingly, history sheet cannot be retained merely on the ground that (a) investigation agency has not filed any final report, or, (b) where the case is pending trial beyond two years time as provided.

C. There cannot be any retention under PSO 748 (2), unless (a) a fresh case is registered (which may be either under investigation or pending) subsequent to the case/cases which necessitated the opening of the history-sheet, or, (b) a history sheeteer is notified as an habitual offender. This should be only for one year as in PSO 748(2). Every subsequent decision to extend or retain a history sheeteer in the history sheet should be made only on the same basis as indicated.



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D. Where no subsequent case is registered, a former convict should not be treated as a suspect.

E. In reckoning the number of cases for treating a person as addicted to or habitually given to commit a crime, cases where (i) the investigation agency has dropped a case, or (ii) where the FIR was closed under Sec.468 [Cr.P.C](#), by the Court which is cases empowered to take cognizance of an offence on a Police report, or (iii) where a history sheet has been discharged or acquitted by a competent Court, and/or (iv) quashed by this Court or by the Hon'ble Supreme Court shall not be included. However, those cases where the investigation or trial is pending, they can be reckoned. This direction has no application to National Registry maintained under the [Criminal Law Amendment Act, 2018](#).

F. Where cases are registered in connection with a citizen participating in any peaceful protests, agitations, or demonstrations or the like, history sheet should not be opened unless an order is passed by the Executive Magistrate under Sec.107 or 110 [Cr.P.C.](#), This is not available to non-citizens. It is clarified that if any other offence alleging violence, or damage of property or threat to personal safety or



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life of other citizens is also involved, the directions given herein is not applicable. G. The Director General of Police is required to constitute a District wise committee through appropriate police officials to examine all the cases of history-sheeting on the basis of parameters hereinabove provided within a period of one year. H. The Director General of Police is directed to take such necessary steps to automate the process of history sheeting to make the whole exercise self-driven.

I. The Director General of Police shall submit a half yearly progress/compliance report the direction given in G and H.

J. The Director General of Police is required to issue a circular contained in A to F of this paragraph along with those stated in Ganesan Vs The District Superintendent of Police & others [2010(6)CTC 507] and Sabari alias Sabarigiri Vs. The Assistant Commissioner of Police, Annanagar (L & O), Madurai City [2018-2 LW (Cr1) 817] as indicated above, to all the SHO and the police Officials who are empowered to supervise/inspect their functioning, in Tamil. The DGP is also required to sensitize the superior police officials who inspect/supervise the functioning of



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*the SHO and the concerned police station
in this regard."*

WEB COPY 11. So this guideline captioned 'A' shows that the petitioner ought to have been notified as an habitual offender under the provisions of Tamil Nadu Habitual Offenders Act, 1946 or he ought to have been proceeded under section 110 Cr.P.C. Reading of the above said guideline does not fit into the initiation of the proceedings by the 3rd respondent.

12. Reading of the communication shows that belated attempt is made by enclosing the list of cases against the petitioner for opening of history sheet.

13. As mentioned by the petitioner, many of the cases are political issues. Four cases are involving the offence under the various provisions of IPC. So it is absolutely not fair on the side of the 3rd respondent to make a recommendation without following the procedures set out in the case of batch of writ petitions namely WP(MD)Nos.21040 of 2018 batch etc.

14. Non-following of the procedure or guideline nullifies the order passed by the competent authority namely the 3rd respondent herein. So without expressing any other opinion over the antecedents of this petitioner, on the sole ground, this petition is liable to be allowed.



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15. In the result, this writ petition stands **allowed**.

The impugned order passed by the 3rd respondent is hereby set aside. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Index:Yes/No
Internet:Yes/No
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To,

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Kanyakumari District,
Kanyakumari.
2. The Deputy Superintendent of Police,
Thuckalay,
Kanyakumari District.
3. The Inspector of Police,
Kaliyakkavilai Police Station,
Kanyakumari District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G. ILANGO VAN, J

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