



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.04.2015

CORAM :

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

Writ Petition (MD) Nos.3879 and 3880 of 2015

WEB COPY

Muthudurai	...	Petitioner in W.P.No.3879 of 2015
Veerasingh	...	Petitioner in W.P.No.3880 of 2015

Vs.

1.The Superintendent of Police,
Tirunelveli District.

2.The Inspector of Police,
Vijayanarayanam Police Station,
Vijayanarayanam,
Tirunelveli District.

Respondents in both W.Ps.

Prayer in W.P(MD)No.3879 of 2015: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents to remove petitioner's name from the History Sheet opened by the 2nd respondent in H.S.No.276 of 2014 within stipulated time as may be fixed by this Hon'ble Court by considering petitioners representation dated 29.12.2015.

Prayer in W.P(MD)No.3880 of 2015: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents to remove petitioner's name from the History Sheet opened by the 2nd respondent in H.S.No.277 of 2014 within stipulated time as may be fixed by this Hon'ble Court by considering petitioners representation dated 29.12.2015.

For Petitioners (in both WPs	: Mr.S.Packiaraj
For Respondents	: Mr.M.Murugan,
(In both W.Ps)	Government Advocate.

ORDER

A history sheet was opened against the petitioner in W.P(MD) No.3879 of 2015 in H.S. No.276 of 2014 by the second respondent.

2.From the counter affidavit, it is seen that the petitioner was said to be involved in criminal case in Crime No.76 of 2014, for the alleged offence punishable under Sections 294 (b) and 506 (ii) IPC and a charge sheet was filed on 24.07.2014 and the same was taken on file before the Judicial Magistrate, Nanguneri in C.C.No.318 of 2014 for appearance of the second accused. Subsequently, in Crime No.57 of 2013 was registered and further action was dropped and Crime No.181 of 2013 was registered on the file of the Vijayanarayanam Police Station for the offence punishable under Section 41(ii) of Cr.P.C and further action was also dropped.



3. The history sheet has been opened against the petitioner merely based upon the report of the Sub Divisional Officer. Except one case in which the petitioner has been charged for the offence under Sections 294(b) and 506(ii) IPC, there is no other case pending. As rightly submitted by the learned counsel for the petitioner that opening a history sheet would come under the protection guaranteed under Article 21 of the Constitution of India. Therefore, an action warranting opening of a history sheet would require application of mind based upon relevant materials.

4. In the case on hand, the history sheet has been opened based upon the order of the Sub Divisional Officer. In other words, it lacks independent application of mind on the part of the second respondent.

5. In *S.Vani Vs. Superintendent of Police, Sivagangai District and others* reported in (2008) 3 MLJ (Cr1) 1525, this Court after taking note of the decision of the Supreme Court was pleased to hold as follows:-

19. In *Malak Singh and others V. State of P & H and others* reported in (1981) 1 Supreme Court Cases 420, the Supreme Court while holding that entry for surveillance register should be made on the basis of the materials, though they may be kept as a confidential document and it does not require observance of Principles of Natural Justice before opening the history sheet, in para nos.9 and 10 of the said judgment, the Court provided for judicial review over illegal actions and those passages may be usefully extracted below:-
Para.9. "But all this does not mean that the police have a licence to enter the names of whoever they like (dislike) in the surveillance register; nor can the surveillance be such as to squeeze the fundamental freedoms guaranteed to all citizens or to obstruct the free exercise and enjoyment of those freedoms; nor can the surveillance so intrude as to offend the dignity of the individual. Surveillance of persons who do not fall within the categories mentioned in Rule 23.4 or for reasons unconnected with the prevention of crime, or excessive surveillance falling beyond the limits prescribed by the rules, will entitle a citizen to the court's protection which the court will not hesitate to give. The very Rules which prescribe the conditions for making entries in the surveillance register and the mode of surveillance appear to recognise the caution and care with which the police officers are required to proceed. The note following Rule 23.4 is instructive. It enjoins a duty upon the police officer to construe the rule strictly and confine the entries in the surveillance register to the class of persons mentioned in the rule. Similarly Rule 23.7 demands that there should be no illegal interference in the guise of surveillance. Surveillance, therefore, has to be unobtrusive and within bounds."

Para 10. "Ordinarily the names of persons with previous criminal record alone are 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 may be entered. It is only in the case of this category of persons that there may be occasion for abuse of the power of the police officer to make entries in the surveillance register. But, here, the entry can only be made by the order of the Superintendent of Police who is prohibited from delegating his authority under Rule 23.5. Further it is necessary that the Superintendent of Police must entertain a reasonable belief that persons whose names are to be entered in Part II are habitual offenders or receivers of stolen property. While it may not be necessary to supply the grounds of belief to the persons whose names are entered in the surveillance register it may become necessary in some cases to satisfy the court when an entry is challenged that there are grounds to entertain such reasonable belief. In fact in the present case we sent for the relevant records and we have satisfied ourselves that there were sufficient grounds for the Superintendent of Police to entertain a reasonable belief." (emphasis added)

20. Therefore, in the light of the facts narrated and the legal precedents, it must be held that the actions of the respondents in all the three Writ Petitions are condemnable. Opening of the history sheets in the name of three petitioners are arbitrary, unreasonable and whimsical and it would amount to denial of right of citizens provided under Article 21 of the Constitution of India to have the right of privacy. Though opportunities were given to the respondents, they have not shown any credible materials to justify their action before this Court. The superior officer though had considerable responsibility to oversee such records have acted in a mechanical fashion to put their initials periodically without any verification.

6. Accordingly, W.P(MD)No.3879 of 2015 is allowed and a direction is issued to the respondents to delete the name of the petitioner from the history sheet in H.S.No.276 of 2014 within a period of eight weeks from the date of receipt of a copy of this order.

7. The order passed in the above writ petition would also govern the case in W.P(MD)No.3880 of 2015 as well. In fact, in the present case, the petitioner is also said to be involved only one case in Crime No.76 of 2014 for the alleged offence punishable under Sections 294 (b) and 506 (ii) IPC.

8. Accordingly, W.P.(MD)No.3880 of 2015 is allowed and a direction is issued to the respondents to delete the name of the petitioner from the history sheet in H.S.No.277 of 2014 within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (Writs)



To

1.The Superintendent of Police,
Tirunelveli District.

2.The Inspector of Police,
Vijayanarayanam Police Station,
Vijayanarayanam,
Tirunelveli District.

+2ccs to MR.T.A.EBENEZER, ADVOCATE IN SR : 16972 & 16973

Sms

SR : 17.04.2015 : 4p/5c

Writ Petition (MD) Nos.3879 and 3880 of 2015
06.04.2015