



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 19.06.2015
CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

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Writ Petition (MD)No.6626 of 2015
and
M.P.(MD).No.1 of 2015

A.Jahir Hussain

... Petitioner

Vs.

1. The Commissioner of Police,
O/o. the Commissioner of Police,
South Chitrai Street, Madurai.
2. The Assistant Commissioner of Police,
O/o. the Assistant Commissioner of Police,
South Chitrai Street, Madurai City, Madurai.
3. The Inspector of Police,
B-1, Vilakuthoon Police Station,
Madurai District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Mandamus, to direct the respondents to remove the petitioner's name in the History Sheet in H.S.No.583/2011 open by the respondent No.3.

For Petitioner	: Mr.S.M.A.Jinnah
For Respondents	: Mr.M.Murugan, Government Advocate

O R D E R

This petition has been filed seeking a direction to the respondents to remove the petitioner's name in the History Sheet in H.S.No.583/2011 open by the third respondent.

2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl. Side) appearing for the respondents and perused the records carefully.

3. The History Sheet has been opened against the petitioner by respondents in H.S.No.583/2011. At the relevant point of time the petitioner was having two cases. It appears that in one case he was accused in so far as other petition concerned, quash petition pending disposal of this court.

4. The counsel for the petitioner submitted that as per the police standing orders the life of history sheet is for only two years. There is no review done. Reliance has been made on the decision by this court in N.Kumar -vs- The Home Secretary, dated 24.07.2014, as per the order, the learned Government Advocate submitted that except those cases which one ended in acquittal which the petitioner's name is thrown out from the history sheet.

<https://hcservices.ecourts.gov.in/hcservices/>

Considering the very same issue in the judgment referred supra this



court was pleased to hold as follows:

"7. In two sessions cases in S.C.Nos.35 and 36/2007 on the file of the Additional District and Sessions Judge, Fast Track Court No.I, Chengalpattu, the petitioner was arrayed as Accused No.13 and was charged for the alleged commission of offences under Sections 120(B), 149 r/w. 302 IPC and both the cases ended in acquittal for the reason that the prosecution has failed to prove the charges levelled against the accused and the orders of acquittal came to be passed on 08.12.2008 and no further challenge was made to the said orders of acquittal. Four years thereafter, the petitioner was said to have been involved in Crime No.286/2012 for the alleged commission of offences under Sections 294(b), 323, 324 and 506(ii) IPC, registered by the fifth respondent and according to the learned counsel appearing for the petitioner, the matter has been compromised and the said fact is not seriously disputed also.

8. This Court, in the order dated 29.11.2012 made in W.P.No.30320 of 2012, has considered a similar issue and by placing reliance upon the earlier decision of this Court dated 22.06.2010 made in W.P.No.1199/2006, has ordered removal of the petitioner therein from the History Sheet. A Division Bench of this Court in the decision in Selvaraj and Others v. The Inspector of Police, Kaliakavilai Police Station, Kaliakavilai, Kanyakumari District and others [2010 Writ L.R. 335] has considered the scope of Police Standing Orders 746, 748, 749(1) & (3), 751 and 758 and also considered the judgment rendered by this Court in Vani v. Superintendent of Police [2008 (3) MLJ 1525] and held that the History Sheets were opened on 09.04.2006 and as per the Police Standing Orders, it should come to an end with December 2007 and in the absence of any information as to the continuance of the same, has found that the keeping of the petitioner's name in the History Sheet is unsustainable and therefore, disposed of the writ petition accordingly. It is relevant to extract the observations of this Court in the above cited judgment [2008 (3) MLJ 1525]:

In all these Writ Petitions, the petitioners have raised questions of far-reaching importance, namely, the rights of citizens of India to lead a free life subject to social control imposed by valid law. The question raised in all these writ petitions at the instance of the alleged disreputable characters cannot be allowed to deflect the perspective of this Court. If the police do what they did to these petitioners, they can also do the same to the honest and law abiding citizens.

2. The common thread in all these three Writ



Petitioners are that the actions taken by the respective Station House Officers in opening History Sheets in the name of the petitioners mechanically counter signed by the respective Superior Police Officers is justified.

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10.6. For those entries, without any basis, the Deputy Superintendent of Police had been counter signed year after year. In all those entries, it is noted that she was unmarried and she was having bad conduct. But she was found working in an Automobile company at Madurai and she was living with her family, who are doing milk business.

10.7. Even after her acquittal by the Criminal Court as early as on 30.09.2007, the Inspector of Police continued to retain her name in the History Sheets. Shockingly, even on 30.9.2007, a note was put up to continue her name under the surveillance list for one more year.

10.8. A perusal of the original file clearly shows that there was no basis for opening a History Sheet in the name of the petitioner and for making such entries there was no factual basis.

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13..... In one case, the petitioner in W.P.No.5378 of 2005 was acquitted. In the second case, the petitioner was on bail and he was also an elected Panchayat President. The notings in the files relating to the second and the third petitioners, noting were made periodically by the respondents stating their conduct was not blameworthy. In the case of the first petitioner Ms.Vani, an endorsement stating that she is a unmarried woman, living with her parents and working in an Automobile Company, at Madurai but she was having bad character. There was not even an iota of material to support such remark found in the file. Either it shows the subjective opinion of the station House Officer or that it shows their clear animus towards the petitioners.

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16. In the above factual matrix, it is necessary to refer the PSO 746 of Tamil Nadu Police Standing Orders providing power for opening history sheets and it reads as follows:

PSO 746, Part-IV History Sheets.

(I) Part V (Form No.111) shall contain the History Sheets of the persons resident permanently or temporarily in their Station limits who are known or believed to be addicted to or to aid and abet the commission of crime, whether convicted or not or who are believed to be habitual receivers.



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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."

5. Considering the same, this court is inclined to allow this Writ Petition with a direction to the third respondent to remove the name of the petitioner in the History Sheet within a period of six weeks from the date of receipt of a copy of this order.

6. With the above direction, this Writ Petition stands allowed. Consequently, connected Miscellaneous Petition is closed. No Costs.

Sd/-

The Assistant Registrar(Per.Admn)

/True copy/

Sub-Assistant Registrar

To

1. The Commissioner of Police,
O/o. the Commissioner of Police,
South Chitrai Street, Madurai.
2. The Assistant Commissioner of Police,
O/o. the Assistant Commissioner of Police,
South Chitrai Street, Madurai City, Madurai.
3. The Inspector of Police,
B-1, Vilakuthoon Police Station, Madurai District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.S.M.A.Jinnah, Advocate SR.No.32002
+1cc to special Government Pleader SR.No.32344

Pjl

Sm:30.06.2015:4P/7C

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