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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE **R.MAHADEVAN**

W.P(MD)No.9446 of 2015

and

M.P.(MD).No.1 of 2015

M.Rafeek Raja

: 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: Writ Petition is filed under Article 226 of the Constitution of India for the issuance of a Writ of Mandamus directing the respondents to remove the petitioner's name in the History Sheet in No.584/2011 open by the third respondent.

For Petitioner : Mr.S.M.A.Jinnah

For Respondents : Mr.M.Murugan,
Government Advocate.

O R D E R

The petitioner has come forward with this Writ Petition seeking for a Writ of Mandamus to direct the respondents to remove the petitioner's name in the History Sheet in H.S.No.584/2011 opened by the third respondent.

2. Heard the learned counsel appearing for the petitioner and Mr.M.Murugan, learned Government Advocate appearing for the respondents.

3. The learned Counsel for the petitioner would submit that the respondent police has proceeded the criminal case against the petitioner. The said dispute arose between the Members of Sungam Pallivasal and this petitioner. The said dispute went upto the Wakf Tribunal as well as this Court too. Therefore, in order to victimize, a case in Crime



No.946 of 2011 under Sections 188,335 and 452 IPC and Section 43 and 4 of the Tamil Nadu Public Properties (Damages & Loss) Act came to be filed by the respondent police against this petitioner. The said Crime No.946 of 2011 was taken on file in S.C.No.157 of 2012 on the file of the learned 6th Additional District Judge, Madurai., which ended in acquittal by the said Court, on 30.10.2012. Even then, the third respondent has opened a History Sheet in H.S.No.584 of 2011. Hence, he prayed this Court the petitioner's name from the history sheet shall be removed by the respondents.

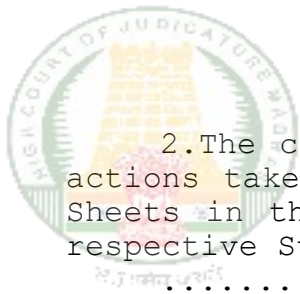
3.1. The learned counsel appearing for the petitioner submitted that the issue involved in this writ petition is squarely covered by the decision of the Principal Seat of this Court in **W.P(MD)No.6023 of 2014, dated 24.07.2014 (N.Kumar v. The Home Secretary, Government of Tamil Nadu and five others)** and prayed for passing similar orders.

4. Per contra, the learned Government Advocate appearing for the respondents, on instructions, submitted that a case in Crime No.703/2009 under Section 397 IPC opened by the third respondent is still pending and the petitioner has moved a quash petition before this Court in CrI.O.P.(MD).No.15922 of 2012 and the same is also pending. Hence, he prayed for the dismissal of this Writ Petition.

7. In the order cited by the learned Counsel for the petitioner in **W.P(MD)No.6023 of 2014, dated 24.07.2014 (N.Kumar v. The Home Secretary, Government of Tamil Nadu and five others)**, this Principal Seat of this Court has held as follows:

"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 other** [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.

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.

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 heir 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.

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.

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. The above cited decisions are squarely applicable to the facts of this case for the reason that in two murder cases, the petitioner was honourably acquitted even in the year 2008 and in yet another case involved in the commission of minor offences, which is said to have taken place in the year 2012, the matter has been compromised and it is also not



made clear whether the name of the petitioner in the Rowdy/History sheet has been extended subsequently. In the light of the materials placed before this Court, it cannot be said that the petitioner is addicted to crime as on today.

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10. In the result, this Writ Petition is allowed and the respondents 3 to 6 are directed to delete the name of the petitioner from History Sheet No.02/2012 forthwith".

8. It is no doubt that the order placed/relied by the learned Counsel for the petitioner is still governing the field. This Court has also an occasion to pass an order dated 19.06.2015 made in W.P.(MD). No.6626 of 2015. However, the learned Govt.Advocate has brought to the notice of this Court that Crime No.703 of 2009 opened by the third respondent is admittedly pending and the same is also averred in paragraph No.17 of the affidavit of the petitioner. Therefore, in order to give quietus to this matter, this Court is of the view that according to the Police Standing orders, the history sheet will be reviewed once in a period two years. During such renewal, if there are no more cases pending against the petitioner, needless to say, that the petitioner is entitled to the relief prayed for in this Writ Petition or else it is open to the respondents to maintain the history sheet in the manner known to law. No costs.

9. With the above direction, this Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/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.

+1cc to Special Government Pleader in SR.No. 38068

TS/23.07.2015/4P - 5C NR/RTI

ORDER MADE IN
W.P (MD) No.9446 of 2015