



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Writ Petition (MD)No.12607 of 2013

C.Abdul Kulam Azad

... Petitioner

Vs.

1.The Commissioner of Police,
Madurai City,
Madurai.

2.The Inspector of Police (L & O),
B5 South Gate Police Station,
Madurai City, Madurai.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the 2nd Respondent to remove the petitioner's name from the History Sheet.

For Petitioner : Mr.T.K.Gopalan

For Respondents : Mr.R.Karthikeyan,

Additional Government Pleader.

O R D E R

The prayer made in the writ petition is to direct the second respondent to remove the petitioner's name from the history sheet maintained by the second respondent.

2.The issue regarding the maintenance of history sheet and the criteria for including the person in the history sheet has been laid down in various decisions which have been relied on and quoted in a decision of this Court in **Ganesan Vs.District Superintendent of Police, Virudhunagar District, Virudhunagar and another** reported in (2011) 1 MLJ 214. At this stage, it would be relevant to quote certain paragraphs of the said judgment which reads as follows:

"50.Keeping surveillance or vigil on a history-sheeted person should not be made permanent, mechanically, as it would affect his freedom of life and liberty. The discretion conferred on the police is both objective and subjective in nature. Objective satisfaction with reference to the conduct of a history-sheeted person, to prevent commission or aiding or abetting of offences, by such persons, involving breach of peace or law and order. The subjective satisfaction should be based on valid materials and it cannot be at the whims and fancies of the police officers. Reading of the Police Standing Order shows that the discretion conferred on the police officers is in-built, subject to the limitations,



including a specific period, provided under the said orders and it is not for any unlimited period, unless the conduct of the history-sheeted person is required to be monitored continuously.

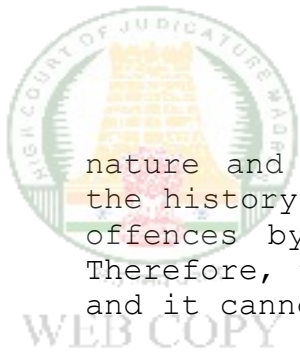
51. As the discretionary jurisdiction conferred on the Police Officers to open and retain a history sheet is to curtail his freedom and right of privacy, there should be awareness on the part of the authority and it should be on the basis of surveillance materials, where that a reasonable man would by probable reasoning arrive at a conclusion or infer that a person has to be necessarily included in the History sheet. 'Belief', in the case on hand, means a degree of conviction of the truth of something especially based on a consideration or examination of the evidence and the authorities vested with discretion of opening and retaining history sheets should prove that on the examination of the data that there is awareness on their part indicating their state of mind that by probable reasoning, they come to a conclusion or infer, about the conduct of person, for whom a History sheet is opened or retained. The record of events and the materials should be considered with care and the authority concerned should pass an order, reflecting that he has thought over the matter deliberately with care and it has been found necessary, as a result of such careful examination, an order opening or retaining a history sheet is required to be passed.

.....

61. Thus it could be seen, that an elaborate procedure and the manner in which the surveillance data has to be collected and ascertained, are set out in the Police Standing Orders. Intimation of the movements of the persons closely watched under PSO 752 is also given to the nearest railway police stations. Needless to say that when movements of the persons are watched, there is an invasion of right of privacy. This intrusion of privacy is authorised to control, prevention of crime and to protect others from crime and if the person against whom the history sheet is opened is free from any taint or suspicion for over a considerable period of time, the Sub Divisional Officers/Superintendent of Police has to exercise his discretion in favour of those branded as rowdy, so as to allow himself to be free in the best interest of the society. The Sub Divisional Officers should not be swayed away by any bald statement of his subordinates seeking opening or retention of history sheets, unless it is considered necessary or where an automatic opening of history sheet is necessary, as in the case of conviction for the offences stated in the police standing orders.

62. In a situation of this nature, keeping in mind the nature of the duties required to be performed by the law enforcing agencies, the discretion to be exercised by the second respondent should be on sound principles of fairness, reasonableness and it should be in accordance with the object sought to be achieved while opening or retaining a rowdy history sheet".

3. In the light of the above observations, it is to be noted that keeping a person in the history sheet should not be a permanent and mechanic one as it would affect the freedom of life and liberty and the discretion conferred on the police is both objective and subjective in



nature and the objective satisfaction is with regard to the conduct of the history sheeted person to prevent commission or aiding or abetting of offences by such persons involving breach of peace or law and order. Therefore, the subjective satisfaction should be based on valid materials and it cannot be at the whims and fancies of the police officers.

4. Admittedly, the petitioner's name was included in the history sheet in 2005 and from the counter affidavit, it appears that except for one case, the respondents have not clearly stated as to how it would be justified in retaining the petitioner's name as history sheeted for more than 10 years. Therefore, in such circumstances, this is a fit case where the respondents should reconsider the matter and to consider as to whether the petitioner should be retained in the history sheet. Further, no record has been placed before this Court as regards the petitioner's conduct and activities after filing of this writ petition to till date.

5. In such view of the matter, the writ petition is disposed of by directing the second respondent to take note of the observations referred in this order and to consider and pass appropriate orders in the representation. Such orders shall be passed by the second respondent within a period of two months from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar (T&P)

/True Copy/

Sub - Assistant Registrar

To

1. The Commissioner of Police, Madurai City, Madurai.

2. The Inspector of Police (L & O),
B5, South Gate Police Station, Madurai City, Madurai.

+ 1 CC to Mr. PT. S. Narendravasan, Advocate in sr.No.4804

+ 1 CC to the Spl. Government Pleader in sr.No.4946

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gdr 19.02.2015 3p/5C