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HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 5036 of 2009**

1. Manish Jha, S/o Koushalendra Jha, Aged about 30 years, Contractor, R/o Dondi, Post & Tahsil Dondid, District – Durg (C.G.)
2. Mukesh Jain S/o Manak Lal Jain, Transporter R/o Dondi, Post & Tahsil Dondi Distt. Durg (Cg)
3. Sukhvinder Singh S/o Mahendra Singh, Transporter, R/o Bhanupratappur, Distt. Kanker (C.G.)
4. Harishankar Gajbhiye S/o Suklal Gajbhiye, R/o Subhash, Chowk, Dalli Rajhara, Distt. Durg (C.G.)
5. Subrat Shah (Khokhan) S/o D.C. Shah, Shop Keeper, R/o Hospital Sector Dalli Rajhara, Distt. Durg (C.G.)
6. Tarun Kumar Chandra S/o A.K. Chandra, Transporter, R/o New Market Gupta Chowk, Dalli Rajhara Distt. Durg (C.G.)
7. Ashwani Soni S/o Johan Soni, Farmer, R/o Old Market, Near Manohar Office Dalli Rajhara, Distt. Durg (C.G.)

---- Petitioners**Versus**

1. State Of Chhattisgarh, Through the Secretary, Department of Home Affairs, Mantralaya, D.K.S. Bhawan, Raipur (C.G.)
2. Director General Of Police Police Head Quarter, Beside Raj Bhawan, Raipur (C.G.)
3. Collector, Distt. Durg, Durg (C.G.)
4. Deepanshu Kabra, Father's Name And Age Not Known To The Petitioners. Superintendent Of Police Distt. Durg (Cg)
5. V.D. Pahade Father's Name And Age Not Known To The Petitioners. C.S.P., Dalli Rajhara, Distt. Durg (C.G.)
6. M.R.Nayak Father's Name And Age Not Known To The Petitioners. T.I., Police Station, Dalli Rajhara, Distt. Durg (C.G.)
7. K.P.Markam Father's Name And Age Not Known To The Pet. T.I., Police Station, dondi, Distt. Durg (C.G.)
8. Kalyan Chandrawanshi Father's Name And Age Not Known To The Pet. Sub Inspector Police Station, Dalli Rajhara, Distt. Durg (C.G.)
9. Subhash Singh Father's Name And Age Not Known To The Petitioners. Head Constable Police Station, Dalli Rajhara, Distt. Durg (C.G.)
10. Anand Father's Name And Age Not Known To The Petitioners. Constable Police Station, Dalli Rajhara, Distt. Durg (C.G.)
11. Suman Thakur Father's Name And Age Not Known To The Petitioners. Constable Police Station, Dalli Rajhara, Distt. Durg (C.G.)

12. Sanjivan Father's Name And Age Not Known To The Petitioners. Head Constable Police Station, Dalli Rajhara, Distt. Durg (C.G.)
13. Jaheer Father's Name And Age Not Known To The Petitioners. Head Constable Police Station, Dalli Rajhara, Distt. Durg (C.G.)
14. Gyanesh Chandel Father's Name And Age Not Known To The Petitioners. Head Constable Police Station, Dondi, Distt. Durg (C.G.)
15. Praveen Sori Father's Name And Age Not Known To The Petitioners. Head Constable Police Station, Dalli Rajhara, Distt. Durg (C.G.)
16. Jai Prakash Yadav Father's Name And Age Not Known To The Petitioners. Head Constable Police Station, Dalli Rajhara, Distt. Durg (C.G.)
17. Rajeev Sharma Father's Name And Age Not Known To The Petitioners Head Constable Police Station, Dalli Rajhara, Distt. Durg (C.G.)
18. Birendra Father's Name And Age Not Known To The Petitioners. Head Constable Police Station, Dalli Rajhara, Distt. Durg (C.G.)
19. Murli Manohar Soni Father's Name And Age Not Known To The Petitioners, Head Constable Police Station, Dalli Rajhara, Distt. Durg (C.G.)

---- Respondents

For Petitioners:	Mr. Suresh Tandon, Advocate
For State/Respondent Nos.1 to 3:	Ms. Madhu Nisha Singh, Panel Lawyer
For Respondent Nos. 5 to 7 & 17	Mr. U.K.S. Chandel, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

13.04.2016

1. The Petitioners through the present Writ Petition seek the following reliefs:

“10.1 That, this Hon'ble Court may kindly be pleased to call for the entire records in respect of the Petitioner's atrocity from concerned Police Station.

10.2 That, this Court may kindly be pleased to Direct the Respondents NO. 1 & 2 to punish the respondents NO. 4 to 19 severally for their illegal unconstitutional acts whereby they have nakedly violated the pious human rights of the petitioners by issuing Writ of Mandamus.

10.3 That, this Hon'ble Court may kindly be pleased to direct the respondents to compensate the petitioners for the damages and mental agony caused to them by issuing Writ of Mandamus.

10.4 Any other relief, writ, order or direction which this Hon'ble Court deems appropriate in the facts and circumstances of the case may kindly be issued in favour of the Petitioners.

10.5 Cost of the Petition may also be provided to the Petitioners."

2. Learned Counsel for the Petitioners submits that on 09.08.2009 the Petitioners were caught in the course of committing the act of gambling in the Forest Rest House in village Rajolidih, District Durg and were arrested by the joint team of Police officials from Police Station Dalli Rajhara and Police Station Dondi. After the Petitioners were arrested they were made to undress for search. According to the Petitioners the action undertaken by the Respondent in taking photographs of the Petitioners in the undressed position is mischievous and arbitrary and is violation of the Article 21 of Constitution of India. Therefore, appropriate action must be ordered against Respondent Nos. 4 to 19 and the Petitioners may also be compensated for the same.

3. Learned Counsel for the State submits that many of the Petitioners in this case are history sheeters. There are a large number of cases leveled against them. In spite of that they were again caught committing an act of gambling on 09.08.2009.

4. Learned State Counsel also submits that an act of the Respondents as alleged by the Petitioners that the photographs were taken by the Respondent Nos. 4-19 and have published in the newspaper is incorrect. Possibility that when the news of a large number of people in the city have been arrested, some of the press members reached the police station and must have taken the photographs. The respondents cannot be made liable

for the act of publication in the newspaper of the Petitioners being in undressed position in the course of the search. Further, it is not the case of the Petitioners that they were all completely naked, as it is evident from the photographs affixed.

5. The writ jurisdiction is a discretionary writ. Such writs are exercised only when there is prima facie violation of any fundamental rights. Writ jurisdiction is normally invoked when there is no other statutory remedies available to the person seeking the writ relief.

6. Admittedly the petitioners here were caught doing something which is prohibited under law. Many of the petitioners are habitual defaulters and yet they are offended of the act of search being conducted by police.

7. It is not the case of the Petitioners that the respondents have got the news item published in the newspaper. As is a normal practice some journalist was able to get the photographs of the petitioners during the search and investigation and got it published in the newspaper and for which the respondents can not be solely blamed.

8. In view of the total facts and circumstances of the case this Court is not inclined to use its discretionary jurisdiction in favour of the Petitioners taking into consideration of their conduct and in many cases their past antecedents. The Petitioners also have the liberty to file a suit for damages.

9. For the foregoing reasons the Writ Petition in its present state is dismissed.

Sd/-
(P. Sam Koshy)
JUDGE