



BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

DATED : 04.04.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P. (MD) No.7576 of 2011

T.Thenmohan

.. Petitioner

Vs.

1. The Government of Tamil Nadu
rep. by the Home Secretary
Fort St. George
Chennai - 9.
2. The Superintendent of Police
Tuticorin District, Tuticorin.
3. The Inspector of Police
West Police Station
Kovilpatti
Tuticorin District.
4. Jayakodi
Inspector of Police
West Police Station
Kovilpatti
Tuticorin District.

.. Respondents

Petitioner under Article 226 of the Constitution of India seeking issuance of a writ of Mandamus to direct the first respondent to provide compensation of Rs.20 Lakhs to the petitioner for the illegal activities committed by the fourth respondent.

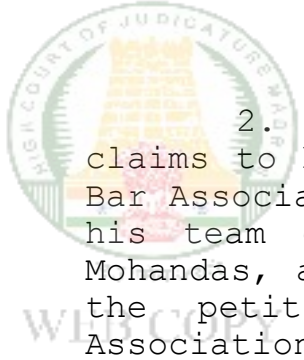
For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.K.Guru
Additional Government Pleader
for respondents 1 to 3

No appearance
for 4th respondent

ORDER

The petitioner has filed this writ petition seeking issuance of a writ of Mandamus to direct the first respondent to provide compensation of Rs.20 Lakhs to the petitioner for the illegal activities committed by the fourth respondent.



2. The case of the petitioner is as under: The petitioner claims to be a practising advocate and President of the Kovilpatti Bar Association. According to him, the fourth respondent along with his team criminally trespassed into the office of an advocate, Mohandas, and took him into illegal custody. Aggrieved by the same, the petitioner, being the President of the Kovilpatti Bar Association, conducted agitation against respondents 3 and 4.

3. It is the case of the petitioner that, in the same lines, several instances occurred which developed hatred in the mind of the fourth respondent against the petitioner. It is alleged that in a domestic quarrel between an husband and wife, the complainant/wife had stated that the petitioner herein and his staff threatened her. On the basis of the said complaint, the third respondent registered a case against the petitioner and his staff in Crime No.430 of 2011 under Sections 294(b), 323, 109 and 506(ii) of the Indian Penal Code and Section 4 of the Women Harassment Act.

4. It is the case of the petitioner that the fourth respondent with ulterior motive registered the case against him. Likewise, various other crimes were also registered by the respondents 3 and 4 against the petitioner with ulterior motive. It is further stated that the third respondent had also opened a history sheet against the petitioner during May, 2011 and the same is being maintained as on date. It is the specific averment of the petitioner that except one case, all other cases pending were closed and there is no necessity for the respondents to maintain the history sheet against him and that no opportunity of hearing was afforded to him before opening the history sheet.

5. In such premise, the present writ petition is filed for the relief stated supra.

6. It is the contention of the learned counsel appearing on behalf of the petitioner that a history sheet cannot be opened against a person unless he is involved in more than one case on the date of opening of the history sheet and inasmuch there is only one case pending against the petitioner, the respondents ought not to have opened the history sheet.

7. It is further contended that as per Clause 748(2) of the Police Standing Orders where retention of a History Sheet is considered necessary after two years of registration, orders of an officer of and above the rank of Assistant Superintendent of Police/ Deputy Superintendent of Police must be taken for the extension in the first instance up to the end of the next December and further annual extensions from January to December, but in the case on hand, no such extension was granted.



8. In the counter affidavit filed by the fourth respondent it is specifically averred that the fourth respondent had acted only in accordance with law. He stated that the petitioner had been involved in over six criminal cases and, therefore, history sheet was opened against him.

9. I heard Mr. T. Lajapathi Roy, learned counsel for the petitioner and Mr. K. Guru, learned Government Advocate for the respondents 1 to 3 and perused the documents available on record. There was no representation on behalf of the 4th respondent.

10. At the outset, it is to be noted that the writ petition, being W.P.(MD) No. 7575 of 2011, filed by the petitioner to direct the third respondent therein to remove the name of the petitioner from the history sheet maintained by the Inspector of Police, West Police Station, Kovilpatti, was dismissed as infructuous recording the fact that the name of the petitioner had been removed from the history sheet.

11. This Court has time and again held that a history sheet cannot be opened against the person by the police authorities, unless he has been involved in more than one criminal case on the date of the order of history sheet or has been convicted under any section of the Indian Penal Code or if not convicted, but believed to be addicted to crimes. This view finds support from the decision of this Court in *M. Rajkumar v. State of Tamil Nadu*, (2010) 4 MLJ (Cri) 577, wherein it is held as under:

"14. Police Standing Order 749 reads as follows:

The following persons shall be classed as suspects and history sheets shall be opened for them under orders of the Superintendent of Division Officer, if so empowered by the Superintendent:

(a) Persons once convicted under any section of the Indian Penal Code are considered to be likely to commit crime;

(b) Persons, not convicted, but believed to be addicted to crimes.

15. A perusal of the above provision which is relied upon by the respondents in the counter affidavit for passing the order against the petitioner for opening a history sheet makes it clear that for opening a history sheet against a person, he should have been convicted



under any section of the Indian Penal Code or not convicted but believed to be addicted to crimes. Admittedly, the petitioner's name was included in only one case and he was not convicted in any offences till date or on the date of passing the impugned order i.e., on 15.7.2005. A person can be said to be addicted to crime if he habitually involves in criminal cases. That means, he should have involved in more than once case at least on the date when his name was ordered to be included in the history sheet."

12. In the case on hand, it is the specific plea of the petitioner that there was only one case pending against him as on the date of opening of the history sheet, which fact is disputed by the respondent authorities.

13. The next plea to be considered is whether there was valid reason for retention of the name of the petitioner beyond the prescribed period and whether necessary orders granting such extension had been granted in the case on hand.

14. While on the one hand, the petitioner emphatically pleads that there has been no order of extension granted by the superordinates for retention of the name of the petitioner in the history sheet, it is pleaded on behalf of the respondents that the entire procedure followed by them is in accordance with law. However, no materials have been placed by either side to substantiate their respective plea.

15. It is trite that even though the Court by exercising the power conferred under Article 226 of the Constitution of India can consider the grievance of the citizens when their right to liberty conferred under Article 21 of the Constitution of India is complained based on undisputed facts, it may not be proper to exercise such power under Article 226 of the Constitution of India in a case of disputed facts.

16. Taking note of the subsequent development that the history sheet is closed and what remains to be adjudicated is as to whether the fourth respondent acted with ulterior motive to wreak vengeance against the petitioner, this Court is inclined to pass the order infra.

17. The writ petition is disposed of with the following directions:

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

- (a) The petitioner is directed to send a representation to respondents 1 and 2 within a period of 15 days from the



date of receipt of a copy of this order, narrating all the facts pleaded in the writ petition.

(b) On receipt of such representation from the petitioner, the respondents 1 and 2 are directed to nominate an officer not below the rank of Deputy Superintendent of Police to conduct an enquiry and investigate into the allegations levelled by the petitioner in his representation and file a report within eight weeks from the date of appointing him before the respondents 1 and 2.

(c) On receipt of the report, the respondents 1 and 2 are directed to consider the claim of the petitioner and pay adequate compensation, if there is any violation as alleged, within a period of four weeks thereafter.

(d) No costs. Consequently, M.P. (MD) No.1 of 2011 is closed.

/True Copy/

Sd/-

Assistant Registrar (CO)

Sub Assistant Registrar

To

1. The Home Secretary,
Government of Tamil Nadu,
Fort St. George,
Chennai - 9.
2. The Superintendent of Police,
Tuticorin District, Tuticorin.
3. The Inspector of Police,
West Police Station,
Kovilpatti, Tuticorin District.

VS

DS/SV/MMS/SAR-4 :11.05.2018: 5P/4C

order made in
W.P. (MD) No.7576 of 2011
and
M.P.No.1 of 2011
04.04.2017