

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 15.3.2018

Delivered on: 22-03-2018

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.3785 of 2012

P.R.Kavitha .. Petitioner

versus

1. The Superintendent of Police,
Salem.

2. The Deputy Superintendent of Police,
Mettur, Salem District.

3. The Inspector of Police,
Karumalai Koodal Police Station,
Mettur Taluk, Salem District. .. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, to call for the records relating to the recommendation dated 12.08.2009 of the 3rd respondent and the order dated 12.08.2009 passed therein by the 2nd respondent inasmuch as opening a Rowdy History Sheet against the petitioner and quash the same.

For Petitioner : Mr.R.C.Paul Kanagaraj for
Mr.Sathish Kumar

For Respondents: Mrs.P.Bhuvaneswari, AGP

ORDER

The petitioner has approached this Court, seeking the following relief:

"To issue Writ of Certiorari, to call for the records relating to the recommendation dated 12.08.2009 of the 3rd respondent and the order dated 12.08.2009 passed therein by the 2nd respondent inasmuch as opening a Rowdy History Sheet against the petitioner and quash the same.

2. The petitioner is a practising Advocate, enrolled with Bar Council of Tamil Nadu and Pondicherry. According to her, she was having practice primarily in Salem District as well as before this Court. According to the petitioner, she has been in active practice ever since her enrollment. In discharge of her duties, the petitioner being a professional lawyer, had been taking up certain sensitive and issues concerning interest and welfare of the downtrodden people who were perceived to be the victims of the police highhandedness. In view of her active involvement as a professional lawyer in taking up the issues against the police personnel, particularly in Salem District, the local police of Salem nurtured grudge against the petitioner as they were being repeatedly questioned by her of their highhanded behaviour and illegal action. Therefore, according to the petitioner, in a matter of few days, several false cases were foisted against her at the instigation of the police personnel and FIRs were also lodged. This was done in order to wreak vengeance on the petitioner by sending a strong message that the petitioner would suffer serious consequences of facing criminal cases for questioning their illegitimate activities. According to the petitioner, all the complaints were emanated from close relatives of the police personnel employed in the Salem District. While so, the 3rd respondent has made a recommendation on 12.8.2009 for opening a history sheet (rowdy) under the provisions of the Police Standing Orders and the second respondent has accepted recommendation and immediately opened history sheet (rowdy) on the ground that the petitioner was addicted to crimes. The relevant provisions of the Police Standing Order under which, the rowdy history sheet was opened against the petitioner, are extracted hereunder:

"PSO 746. Part IV History Sheets.

(1) 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.

(G.O.Ms.No.364, Home, 15th Feb.1943) Only sheets Nos.1,3, 7 and 8 are to be maintained in the History Sheet forms in use in Station. Sheet No.9 should also be maintained, if a photograph of the criminal is available.

Note: This sub-paragraph will not affect the History Sheets maintained in Crime Records Bureau.

(2) At the back of Sheet No.1, below item 7, the following descriptive detail should be shown:

Age, Height, Complexion, and Particular marks of identification.

(3) In sheet 8 under heading the "Current doings" entries which are informative and useful based on the facts ascertained both by the Sub-Inspector and his men since the date of last entry, shall be made month-wise for close watch bad characters and quarterly for non-close watch bad characters. Anything of interest coming to notice, in respect of a bad character during a month should be entered then and there, without waiting for the end of the month or the quarter.

(4) The entries in the various columns in the History Sheet should be checked by the Sub-Inspector personally and brought upto-date once a year. The fact of such verification should be certified by him in the column under the "Current doings".

3. Aggrieved by the opening of rowdy history sheet against her, the petitioner has come forward with the present writ petition, inter alia contending that her constitutional right under Article 21 of the Constitution of India, had been violated by falsely implicating her in number of criminal cases and lodging FIRs against her in order to make it appear that the petitioner was a repeat offender.

4. Shri R.C.Paul Kanagaraj, learned counsel appearing for the petitioner, at the out set, would submit that the petitioner has been in active practice and espousing the cause and interest of the downtrodden and the victims at the hands of the State. She has been advancing the cause of the poor and the weak against the mighty persons backed by police personnel in the District. Therefore, she had earned wrath of local policemen and in order to frustrate her, series of criminal cases were foisted and false FIRs were registered at the behest of relatives of the local policemen.

5. According to Shri Paul Kanagaraj, learned counsel for the petitioner, none of the FIRs or the criminal cases registered against the petitioner had been genuine born out of bona fide action. Eventually, the innocence of the petitioner stood vindicated by series of orders passed by this

Court in various Criminal Original Petitions. The learned counsel would draw the attention of this Court to four Criminal Original Petitions, viz., CrI.O.P.Nos. 8154, 8155, 8156 and 8157 of 2014 filed by the petitioner herein seeking to quash four criminal cases pending on the file of the Judicial Magistrate No.II, Mettur Dam, Salem District in C.C.Nos. 27, 127, 135, and 162 of 2011 respectively. This Court, vide its orders dated 2.3.2014 and 4.3.2014 had quashed all the criminal cases pending against the petitioner while exercising its jurisdiction under Article 482 Cr.P.C. Likewise, the learned counsel would draw the attention of this Court in two other criminal Original Petitions, viz., O.P.Nos.5084 and 5085 of 2015 wherein, this Court has quashed Crime Nos.1664 and 1960 of 2009 on the file of the Inspector of Police, Azhagarapuram Police Station and Pallapatti Police Station, Salem Town, Salem District. By this, learned counsel would submit that whatever the cases which were foisted and lodged against the petitioner had come to an end and all of them were quashed by this Court and as on date, no other criminal case is pending against the petitioner. Therefore, he would submit that the action on the part of the respondents to continue to operate history sheet (rowdy) against the petitioner is illegal, unjust and violative of Article 21 of the Constitution of India.

6. Upon notice, Mrs.P.Bhuvaneswari, learned Addl.Govt.Pleader entered appearance. A counter affidavit has been filed on behalf of the respondents, wherein, various allegations were mentioned in regard to criminal conduct of the petitioner and her husband. As per counter affidavit, it is stated that the petitioner being Advocate, is actively involved in helping her husband who is a known rowdy in the District and the counter affidavit also listed number of cases pending against the petitioner's husband, who according to the respondents, is a notorious criminal. Therefore, the 3rd respondent decided to open a rowdy history sheet against the petitioner as she has been directly or indirectly involved in various criminal activities repeatedly and on the basis of such recommendation, the second respondent has ordered opening of the rowdy history sheet. Therefore, the action of the respondents in opening the history sheet against the petitioner cannot be faulted with. While stating so, the learned counsel appearing for the petitioner has not disputed the fact that as on date, no criminal case is pending against the petitioner as contended by the learned counsel appearing for the petitioner. The fact of the matter is that as on today, the petitioner is not facing any criminal action and all the cases which were tried or lodged, were ultimately quashed by this Court in the aforesaid criminal original petitions.

7. Having considered the submissions made by the learned counsel and the learned Addl. Government Pleader and having perused the materials and pleadings placed on record, this Court is of the view that once all the cases which were initiated and pending against the petitioner, having been quashed by this Court for whatever reasons, the action on the part of the respondents in continuing with the history sheet opened against the petitioner, cannot be justified at all. The fact that all the criminal cases have been quashed, has not been disputed and despite sufficient opportunities were given, no material has been produced before this Court on behalf of the respondents that any other criminal case is pending against the petitioner as on date. This would only prove unequivocally that as on date, no other case is pending against the petitioner and in which event, continuing with the history sheet and describing the petitioner as history sheeteer on the records of the police, has to be interfered with.

8. The provision as extracted above contained in the Police Standing Order has to be invoked for the right cause and such invocation must be a bona fide exercise of power. However, the same cannot be used with mala fide intention to take revenge against a practicing advocate in order to make silence her from raising voice for legitimate cause and interest. In fact, when the petitioner approached this Court in W.P.No.24048 of 2009 seeking for transfer of cases, the learned Judge of this Court, while ordering notice in the Writ Petition has observed as follows in paragraphs 3 to 7:

"3. I have gone through the complaints, based on which, Crime Nos.236, 239, 242, 1664, 1960 and 10 of 2009 were registered.

4. I am prima facie satisfied that those cases were foisted on the petitioner. The petitioner has come to this Court seeking transfer of investigation in those matters to CBI. The petitioner also prayed for registering her complaints against the said Ravichandran and others and to investigate the same.

5. The respondents 1 to 4 have not filed counter affidavit.

6. Hence, a direction is issued to the respondents 1 to 4 to file counter affidavit.

7. In my view, the matter is of much importance involving the rights of an individual, where she is foisted with 6 cases within a period of 2 months and her complaints are not taken on file for investigation."

9. The above observation of the learned Judge would fortify the claim of the petitioner that the cases which were filed against her, were not bona fide and genuine and they were only foisted against her for obvious reasons. The opening of rowdy history sheet, against a citizen of this country has a serious consequence to the liberty of the individual and such action on the part of the police authorities invariably results in negation of Constitutional right of the citizen to live with dignity under Article 21 of the Constitution of India. Such power, therefore, has to be used judiciously and cannot be used for settling scores with the citizens for their own ends. The very fact that all the criminal cases and FIRs came to be quashed in favour of the petitioner, would speak of the conduct of the respondents in opening history sheet (rowdy) against the petitioner.

10. For all the foregoing reasons, this Court has no hesitation in allowing the Writ Petition. The respondents are directed to close the history sheet (rowdy) opened against the petitioner forthwith. No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Superintendent of Police,
Salem.

2. The Deputy Superintendent of Police,
Mettur, Salem District.

3. The Inspector of Police,
Karumalai Koodal Police Station,
Mettur Taluk, Salem District.

Pre delivery Order in
W.P.No.3785 of 2012

TR(09/04/2018)