



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 10.10.2018
ORDERS PRONOUNCED ON : 12.10.2018

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

WP (MD) No.20856 of 2018
and
WWP (MD) No.18634 of 2018

R.Venkateswar

... petitioner

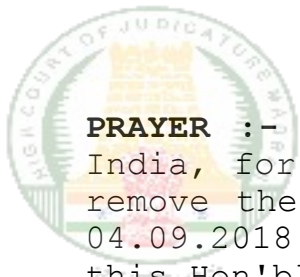
Vs

1. The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai.
2. The Inspector General of Police,
Central Zone, TVS Toll Gate,
Trichy.
3. The Deputy Inspector General of Police,
Thanjavur.
4. The Superintendent of Police,
Thanjavur District,
Thanjavur.
5. The Deputy Superintendent of Police,
Pattukottai Sub Division,
Pattukottai,
Thanjavur District.
6. The Inspector of Police,
Peravurani Police Station,
Peravurani,
Thanjavur District.
7. The Sub Inspector of Police,
Peravurani Police Station,
Peravurani,
Thanjavur District.

8. Sengamala Kannan

9. Janarthanan

... respondents



PRAYER :- Petition filed under Article 226 of The Constitution of India, for issuance a writ of mandamus directing the respondents to remove the petitioner name from History sheet No.376 of 2018 dated 04.09.2018 on the file of the 5th respondent and pass such order as this Hon'ble Court.

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For Petitioner : Mr.R.Gandhi,
for M/s.Ajmal Associates
For respondents : Mr.M.Chandrasekran,
Additional Public Prosecutor.

ORDER

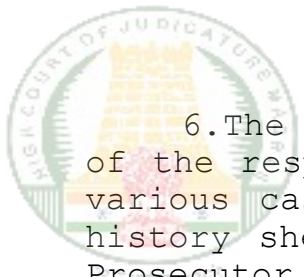
This petition has been filed challenging the inclusion of the name of the petitioner in the history sheet in HS No.376 of 2018 on the file of the 5th respondent Police.

2.Mr.R.Gandhi, learned Counsel appearing for the petitioner would submit that the petitioner is a practicing Advocate at the Madurai Bench of Madras High Court. The petitioner has been practicing as an Advocate from the year 2011. The petitioner belongs to Peravurani Town and a number of encroachments and flex boards were erected indiscriminately in the said Town. Therefore, the petitioner filed a Public Interest Litigation in WP (MD)No.11497 of 2017 to remove the said encroachments and flex boards. When the matter came up for hearing before this Court, this Court appointed a Senior Advocate as an Advocate Commissioner to inspect the spot and file a report. Thereafter all the flex boards and encroachments were removed by the Authorities. The writ petition was also withdrawn by the petitioner.

3.The learned Counsel would further submit that the flex board owners and the Varthaga Sangam of Peravurani, developed animosity against the petitioner. Thereafter, one complaint after the other, was filed against the petitioner and the Police started registering FIR against the petitioner. The petitioner was added as an accused in the cases, in which he was not involved.

4.The learned Counsel for the petitioner would submit that the entire exercise of the respondent Police is clearly attended by *mala fides* and in order to stop the petitioner from questioning the illegalities committed in his hometown, the respondent Police have opened the history sheet for the petitioner. According the learned Counsel for the petitioner this is clearly a misuse and abuse of power.

5.The learned Counsel for the petitioner would further submit that immediately after the name of the petitioner was added in the history sheet, the petitioner also gave a complaint to the Human Rights Commission on 10.04.2018 and the Human Rights Commission has also taken the complaint on file and enquiry is going on.



6.The learned Additional Public Prosecutor appearing on behalf of the respondents would submit that the petitioner is involved in various cases and therefore, the respondent Police had opened the history sheet in HS No.376 of 2018. The learned Additional Public Prosecutor further submitted that the respondent Police will have to keep continuous surveillance against the petitioner and therefore, there is nothing illegal on the part of the respondent Police to have opened to the history sheet in the name of the petitioner, since the petitioner is involved in various offences.

7.The learned Additional Public Prosecutor brought to the notice of this Court that Crime No.196 of 2008, was registered against this petitioner for the offence under Sections 294(b), 324, 506(ii) of IPC and this case ended in acquittal. Thereafter another FIR was registered against this petitioner in Crime No.232 of 2014 for the offence under Sections 147, 148 and 506(i) of IPC and the investigation is pending. Thereafter, another FIR was registered against this petitioner in Crime No.233 of 2017 under Sections 427, 294(b) and 506(ii) of IPC and the same is also pending investigation. The learned Additional Public Prosecutor brought to the notice of this Court another FIR registered against the petitioner in Crime No.31 of 2018, for the offence under Sections 143, 188, 347, 294(b) and 506(i) of IPC and the same is also pending investigation.

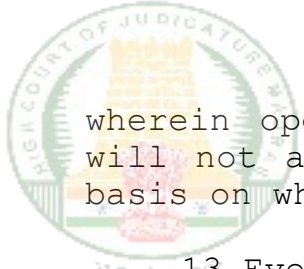
8.That apart, the learned Additional Public Prosecutor brought to the notice of this Court, the latest FIR registered against the petitioner in Crime No.133 of 2018, for the offence under Sections 294(b) and 324 of IPC, Section 3(1) of TNPPDL Act and Section 3(i) (r) (s) of SC/ST Act and the same is also pending investigation.

9.The learned Additional Public Prosecutor pointing to all the above cases would submit that in view of the repeated offences committed by the petitioner, the respondent Police had to open the history sheet against the petitioner and the same has been done in accordance with PSO 747.

10. The 5th respondent has also filed a counter affidavit before this Court reiterating all the above contentions made by the learned Additional Public Prosecutor.

11.This Court has carefully considered the submissions made on either side.

12.In the considered view of this Court, the 5th respondent has not understood the very purport of the PSO No.747. The 5th respondent has stated that he has opened the history sheet against the petitioner by following PSO No.747. PSO NO.747 will not apply to the facts this case. Admittedly, the petitioner has been acquitted in one case and in all other cases, investigation is pending. PSO NO.747 will come into operation only against the person, who is convicted for various offences that has been listed in PSO No.747,



wherein opening of the history sheet is automatic. The said PSO will not apply to the case of the petitioner. Therefore, the very basis on which the history sheet has been opened is illegal.

13. Even if the concerned Police has to open the history sheet under PSO No.746, the Police must be satisfied that the person against whom it is opened is known or believed to be addicted to commission of crime, whether convicted or not. Here the thrust is on the habituality or the propensity to commit a crime by a person, which is sought to be monitored by opening a history sheet.

14. In the present case, it can be clearly seen that there is previous enmity between the petitioner and the 6th respondent. That has even been accepted by the 5th respondent namely the Deputy Superintendent of Police, Pattukottai, Sub-Division in his counter affidavit. The relevant portion is extracted hereunder:

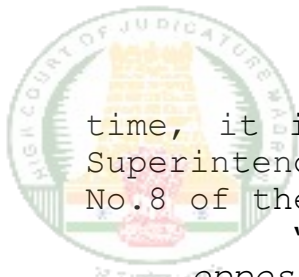
"It is pertinent to point out that there is some disagreement in between the petitioner and the 6th respondent therefore, the petitioner alleged mala fide against me."

15. It can also be seen that all the complaints that have been given against the petitioner was given by either flex board owners or by the Trade Union, who have animosity against the petitioner, since the petitioner had filed public interest litigation before this Court and made the Authorities to remove all the illegal hoardings and encroachment.

16. It is also very pertinent to point out that the petitioner had filed the public interest litigation in June 2017 and this Court had passed an order in the said public interest litigation in July 2017. By virtue of the filing of the writ petition, all the flex boards and encroachments were removed. Immediately, thereafter one complaint after the other is being filed against the petitioner right from the year 2017 by flex board owners and the Trade Union. The Police based on these complaints have immediately opened the history sheet against the petitioner.

17. The act of the 5th respondent in opening the history sheet against the petitioner is clearly a colourable exercise of power. The petitioner is a practising Advocate before this Court. He had fought for the rights of the persons belonging to his hometown by getting the illegal hoardings and encroachments removed by filing PIL before this Court. That has resulted in flurry of complaints against the petitioner by the flex board owners and Trade Union. The entire attempt is only to throttle the voice of the petitioner and to make him stop questioning the illegal activities that happened at Peravurani Town. This can never be allowed by this Court.

18. It can be seen that the the 6th respondent had developed personal animosity against the petitioner and therefore he has acted hand in glove with the flex board owners. At this point of



time, it is relevant to extract the statement made by the Deputy Superintendent of Police, Pattukottai, Sub Division at paragraph No.8 of the Counter affidavit and the same is extracted hereunder:

"Further the petitioner is having the office at very opposite to the Peravurani Police Station and affix the CCTV camera to watch the proceedings of the Police personnel. Hence it is just and necessary to open the History Sheet against the petitioner in HS No.376 of 2018 on 04.09.2018 as per the PSO. 747."

19.This statement made by the 5th respondent in the Counter affidavit, speaks volumes about the attitude of the Police against the petitioner.

20.This Court is convinced that the opening of the history sheet against the petitioner is totally illegal and clourable exercise of power by the Police. The very purpose of opening the history sheet will be defeated, if the Police is permitted to open history sheet like in cases on hand.

21.This Court finds that the continuance of retaining the name of the petitioner in the history sheet is illegal and is violative of Article 21 of the Constitution of India.

22.In view of the above, this writ petition is allowed. The proceedings of the 5th respondent in retaining the name of the petitioner as history sheeter in HS No.376 of 2018 is hereby quashed. There shall be a direction to the 5th respondent to remove the name of the petitioner from the record of history sheet rowdies. Consequently, miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-)

To

1. The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai.
2. The Inspector General of Police,
Central Zone, TVS Toll Gate,
Trichy.
3. The Deputy Inspector General of Police,
Thanjavur.



4. The Superintendent of Police,
Thanjavur District,
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5. The Deputy Superintendent of Police,
Pattukottai Sub Division,
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6. The Inspector of Police,
Peravurani Police Station,
Peravurani,
Thanjavur District.

7. The Sub Inspector of Police,
Peravurani Police Station,
Peravurani,
Thanjavur District.

8. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO M/s.AJMAL ASSOCIATES, IN SR No. 90587

DSK

TE/SV/SAR-2 : 28/11/2018 : 6P/10C

order made in
WP. (MD) No.20856 of 2018
12.10.2018