

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05..09..2019

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.18389 of 2009

A.Annadurai

... Petitioner

-Versus-

1.The Commissioner of Police,
Commissionerate,
Salem.

2.The Inspector of Police,
Suramangalam Police Station,
Salem.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Declaration, declaring that the impugned History Sheet No.01/2008 on the file of the 2nd respondent in respect of the petitioner as illegal, arbitrary and violative of Human Rights.

For Petitioner : Mr.P.Vijendran

For Respondent(s) : Mr.I.Sathish, Addl.
Government Pleader for
RR1 and 2

ORDER

This Writ Petition has been filed seeking to declare that History Sheet No.01/2008 maintained by the 2nd respondent police as against the petitioner as illegal, arbitrary and violative of Human Rights of the petitioner.

2. According to the petitioner, he is the District President of All India Ambedkar Makkal Katchi. He had contested Lok Saba Election held in 2006. He is working for the welfare of marginalized people in the society, also conducted various agitations for the welfare of the downtrodden people. Apart from that he has also involved in so many social welfare activities.

3. While so, in the year 2008, the 2nd respondent opened a History Sheet against him and till date, without any reason what so ever, the same is being maintained without reviewing order and following the procedure as contemplated in Police Standing Orders 746 and 748. Order of the respondent police maintaining the History Sheet against the petitioner is violative of principles of fundamental rights guaranteed in Article 21 of the Constitution of India and it would also cause stigma to the petitioner. Hence, this writ petition.

4. The 2nd respondent filed his counter affidavit inter alia contending that the history sheet of the petitioner was opened in the year 2008 as the petitioner was involved in 9 criminal cases. The petitioner intended to depict himself being a social worker. In the guise of 'social worker' the petitioner used to conduct demonstration after obtaining monetary benefits, that too, without getting permission from the Government and pave way for Law and order Problem. In the above circumstances, in order to restrain the petitioner from indulging in illegal activities, the 2nd respondent opened a history sheet in H.S.No.1 of 2008. The petitioner's activities are being continuously watched by the 2nd respondent and reviewed by the Assistant Superintendent of Police / Deputy Superintendent of Police in accordance with letter and spirit of PSO 746.

5. I have heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents and also perused the records carefully.

6. The learned counsel appearing for the petitioner would submit that in a case where retention of history sheet is necessary after two years of opening of the same, orders of an officer of and above the rank of Assistant Superintendent of Police / Deputy Commissioner of Police must be taken for extension and there should also be a detailed order giving reasons for retaining the history sheet. But, in the instant, without passing any such order, the respondents continued to retain the history sheet for 11 years from 2008 onwards

7. Per contra, the learned Additional Government Pleader would, on instructions, contend that the petitioner involved in so many criminal cases and the conduct of the petitioner is being closely watched, reviewed every year and separate orders are also passed retaining the history sheet every year. He has also produced the records relating to the history sheet of the petitioner for the perusal of this court.

8. PSO 746 provides power for opening of history sheets. It may be useful to extract PSO 746 (1), which reads as follows:-

(1) Part-V (Form-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;

9. PSO 748 provides power to retain the history sheets which reads as follows:-

"(1) History Sheets shall be closed by the definite orders of an officer of and above the rank of Assistant Superintendent of Police / Deputy Superintendent of Police and shall be filed in the Station. The History Sheets of persons who have died shall be destroyed under orders of an officer of and above the rank of Assistant Superintendent of Police / Deputy Superintendent of Police. The Superintendent of Police may order the closure of a History Sheet at any time but a Divisional Officer may only do so on the expiry of the period named above, (G.O.Ms.No.3929, Home, 5th Sept. 1950).

(2) 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 upto the end of the next December and further annual extensions from January to December.

(3) The above orders shall apply to Rowdy Sheets also."

10. The issue regarding the retention of the history sheet is well settled. In *Manivannan v. State Rep.* by District Collector, Coimbatore, (2013) 7 MLJ 501, a learned single Judge of this Court has held as follows:-

"6. In this case, as I have already pointed out, periodical orders extending the period beyond two years had been passed in a very mechanical fashion by the Deputy Superintendent of Police concerned. To illustrate, I may refer to the recordings of the Sub Inspector of Police for the last one

year commencing from 01.01.2012 to 31.12.2012. From the original history sheet, I find that during every English Calendar month, the Sub Inspector of Police, Mudis Police Station, had recorded that he checked the petitioner periodically and found him doing tailoring business and living with his family. There was no adverse entry at all found in respect of the conduct of the petitioner. From the entry on 08.01.2009 onwards till the entry made on 08.03.2013, in none of the recordings of the Sub Inspector of Police I could find that the petitioner had any adverse or suspicious conduct on his part. Except recording that the petitioner is running a tailoring shop and residing in Mudis Town, no adverse entry has been found. When that be so, it is not understandable, as to how, the Deputy Superintendent of Police passed the order dated 01.01.2013 to retain the history sheet till 31.12.2013. This order, in my considered opinion, does not satisfy any legal norms. First of all, this order does not reflect the application of mind on the part of the Deputy Superintendent of Police concerned. Had he applied his mind into the recordings of the Sub Inspector of Police during the last one year, for want of any adverse conduct on the part of the petitioner, the Deputy Superintendent of Police would not have passed an order of this nature to retain the history sheet for yet another period of one year. As has been held by the Hon'ble Supreme Court in Maneka Gandhi v. Union of India, AIR 1978 SC 597, the action of the State should satisfy three basic requirements, in as much as, the order should be fair, just and reasonable. When a restriction is sought to be imposed on the fundamental rights of a citizen, the authority concerned should have a deep application of mind into the facts placed before him and he should pass an order recording his reasons thereby ensuring that the order is fair, just and reasonable. If an order does not reflect reasons or grounds upon which the same is passed, certainly it will suffer from the vice of arbitrariness infringing upon the fundamental rights of the individual. In my considered opinion, in the instant case, the repeated orders passed against the petitioner

extending the period of the history sheet are arbitrary, unreasonable and whimsical. Therefore, the impugned orders cannot be allowed to sustain.

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... ..

8. According to the above provision, if only an individual is either known or believed to be addicted to or to aid and abet the commission of the crime or if he is believed to be habitual receiver, after recording such a finding, history sheet can be either opened or extended beyond the period of two years. This court has noticed that in most of the orders passed under PSO 746 or under PSO 749, there is no such reason found recorded by the police officers as required under the said provisions. This, in my considered opinion, may be, because of lack of understanding of these police standing orders by the officers in the level of the Deputy Superintendent of Police or Assistant Superintendent of Police. Therefore, it is high time for the Director General of Police to issue instructions to all the Divisional Police Officers by means of a circular impressing upon them to pass detailed orders reflecting application of mind as required under PSO 746 or 749, as the case may be, as and when either a history sheet or a rowdy sheet is opened or the period is extended. In view of the foregoing discussion, I am not inclined to impose any compensation to be paid by the State to the petitioner.

11. In another case in Pulithurai v. The Superintendent of Police, Tirunelveli, CDJ 2014 MHC 5111 [W.P. (MD) No. 15581 of 2012 dated 31.07.2014] similar view has been taken by this court.

12. In the instant case, the History Sheet was opened in the year 2008 and it is continued to be retained by the respondents till date. As already stated above, PSO 748 where retention of history sheet is considered necessary after the period of two years of opening of the same, orders of an officer of and above the rank of Assistant Superintendent of Police / Deputy Commissioner of Police must be taken for extension and there should be a detailed order giving reasons for retaining the history sheet. But, in the instant case, the counter filed by the respondents does not speak anything about the detailed order passed by the 2nd respondent after getting order from the

Assistant Superintendent of Police concerned. From the records produced by the respondent, this court is unable to find out any such detailed order and in all these years, the history sheet has been retained by a non speaking order which does not reflect the application of mind by the Assistant Commissioner of Police as to whether the retention of the name of the petitioner is necessary or not. In such view of the matter, the retention of history sheet cannot be allowed to continue, as it is non-est in the eye of law.

13. In view of the above said legal as well as factual position, this court is of the view that retention of the name of the petitioner in the History Sheet maintained by the 2nd respondent is illegal and the writ petition succeeds accordingly.

14. In the result, the writ petition is allowed and the respondents are hereby directed to remove the name of the petitioner from the History Sheet. No costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner of Police,
Commissionerate, Salem.

2.The Inspector of Police,
Suramangalam Police Station, Salem.

+1cc to Mr.P.Vijendran, Advocate Sr.76966
+1cc to the Government Pleader Sr.77360

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srg 24/10/2019