

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2019

CORAM:

THE HON'BLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.13123 of 2018 and WMP Nos.15422 & 15423 of 2018

S.Killai Ravindran

... Petitioner

Vs.

1.The Superintendent of Police,
Nagapattinam District.2. The Deputy Superintendent of Police,
Nagapattinam District.3. The Inspector of Police,
Sirkazhi Police Station,
Nagapattinam - 611 001

...Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the entire records connected with the proceedings listing the petitioner as History sheeted rowdy element on the file of the 3rd respondent police station as also the recommendation of the 2nd respondent in Reference -nil- signed on 17.03.2018 circulated through "whatsapp" and quash the same and consequently, direct the Respondents to provide adequate compensation to the petitioner.

For Petitioner : M/s.V.Lakshmi Narayanan

For Respondents : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

This writ petition has been filed challenging the opening of the history sheet against the petitioner on the file of the 3rd respondent.

2. The learned counsel for the petitioner would submit that the petitioner belongs to a political party and he has been doing a lot of social service to the persons in and around, Chidambaram. The petitioner has also contested as a MLA in Sirkali Constituency. The learned counsel would further submit that the petitioner was fighting against illegal sand mining and had given several complaints in order to curb the illegal sand mining. The persons against whom the complaint was made wanted to stop the petitioner from pursuing further with the complaint and therefore, two FIR's came to be filed on 05.11.2017 and 06.11.2017 before the 3rd respondent police station in Crime No.459 and 460 of 2017, against the petitioner. Immediately, thereafter the 3rd respondent has proceeded to open a history sheet against the petitioner. The learned counsel would submit that the

petitioner come to know about the same only from a Whatsapp message which was circulated showing the petitioner to be a history sheeter.

3. The learned Additional Public Prosecutor on instructions would submit that there are two FIR's pending as against the petitioner and therefore, there is a propensity for the petitioner to commit crime and therefore, a history sheet has been opened as against the petitioner. The learned counsel for the petitioner would further submit that under PS0746, there is no requirement for any conviction and if the police are satisfied that the person is addicted to commission of crime and the thrust being the habituality and therefore, there is no ground to interfere with the opening of the history sheet as against the petitioner.

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

5. It is seen from records that the 3rd respondent has registered two FIR's against the petitioner in Crime No.459 and 460 of 2017. These two FIR's were registered based on the complaint given by the same defacto complainant. It is also seen from records that both these crime numbers

were investigated and final report was also filed and the same was taken on file in CC No.628 of 2018 and STC No.922 of 2018 by the learned Judicial Magistrate Court, Sirkali. Both these proceedings came to be settled between the parties and both the cases were closed before the National Lok Adalat held on 08.12.2018 at Sirkali. Therefore, as on today, no case is pending against the petitioner.

6. The justification given by the 3rd respondent to open a history sheet is totally unsustainable and it goes against the very scope of PS0746 and also the judgment of this Court dated 26.09.2018 in **[Sabari @ Sabarigiri Vs. The Assistant Commissioner of Police and others]** made in WP MD Nos.19651 of 2017 etc batch. This Court after analysing the entire law on the point has categorically held that in order to open a history sheet under PS0746, it should be established that the accused concerned is 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. Unless and otherwise, these immediate requirements are satisfied, the 3rd respondent did not have any power to open a history sheet as against this petitioner.

7. In view of the above, this Court is of the considered view that the 3rd respondent did not satisfy the requirements of PS0746 and also the judgment of this Court referred supra, before opening the history sheet against the petitioner. Added to this, the cases registered against the petitioner is also closed. Therefore, this Court does not find any valid ground to continue to brand the petitioner as a history sheet. This in fact will go against the very liberty of the petitioner guaranteed under Article 21 of Constitution of India.

8. In the result, the history sheet opened against the petitioner by the 3rd respondent is hereby quashed and the 3rd respondent is directed to remove the name of the petitioner from the record of history sheet. Accordingly the writ petition is allowed. Consequently, the connected miscellaneous petitions are closed. No costs.

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Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking Order

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To

1. The Superintendent of Police,
Nagapattinam District.
2. The Deputy Superintendent of Police,
Nagapattinam District.
3. The Inspector of Police,
Sirkazhi Police Station,
Nagapattinam - 611 001
4. The Public Prosecutor,
High Court of Madras.



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N. ANAND VENKATESH , J.

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