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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

Writ Petition No.35008 of 2013

M.Viji @ Vijayakumar

... Petitioner

-Vs-

1. The Deputy Commissioner of Police,
Adayar, Chennai.
2. The Assistant Commissioner of Police,
Neelangarai, Chennai.
3. The Inspector Of Police,
Neelankarai Police Station,
Chennai.

.... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Declaration, declaring that the impugned History Sheet No.007/1999 on the file of the 3rd respondent as illegal, arbitrary and violation of Human Rights.

For Petitioner : Mr. P.Vijendran

For Respondents : Mr. M.Rajendran
R1 to R3 (Additional Government Pleader)

O R D E R

The issue raised in the writ petition is no longer res integra. The Hon'ble High Court, in the case of Ganesan vs. The District Superintendent of Police Virudhunagar District, Virudhunagar in 2010 (6) CPC 507, considered the law in detail and settled the issue in respect of History Sheet maintained by the respondent. The relevant paras of the reads as under:

"45.Reading of the Police Standing Orders dealing with opening and retention of history sheets for different kinds of



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persons, such as, convicts, rowdies, known depredators, suspects and others shows that the authorities who are empowered to open and retain such sheets, have to arrive at a subjective satisfaction, as to whether the abovesaid persons, either by habit or disposition commit, attempt to commit, aid or abet the commission of offences involving breach of peace. An isolated act or commission cannot be characterised as a habitual act or commission involving breach of peace or law and order. While forming an opinion that the person is believed to be addicted to or aid or abet, the commission of crime, whether convicted or not, the Sub-Inspector of Police and his men have to collect information and that the same has to be ascertained before making a recommendation to an officer of and above the rank of Deputy Superintendent of Police, in whose jurisdiction, such person is ordinarily resident either permanently or temporarily.

46. Opening of history sheet in the case of persons convicted for offences involving imprisonment for life under Chapter XII and XVII and conviction for offences under Section 395 to 402, I.P.C. in the case of professional prisoners, Sections 392 to 394, I.P.C. and under Sections 75 of the Indian Penal Code, house breaking theft Section 109 Cr.P.C., 110 Cr.P.C. depending upon the number of convictions stated in Police Standing Order 747, is automatic, at the time of conviction of such persons.

47. Whereas, in the case of opening of history sheets for rowdies as per Form 112, where, some persons are classified as rowdies, the orders of the Superintendent of Police or concerned Sub-divisional Officer have to be obtained, on the basis of the information and facts ascertained by the Station House Officer, and his men. Persons who habitually commit, attempt to commit, or abet, the commission of offences involving breach of peace or (b) Persons bound over under Sections 106 and 107, Criminal



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Procedure Code or (c) Persons who have been convicted under Section 75 of the Madras City Police Act or twice in two consecutive years, under Section 3 Clause 12 of the Town Nuisance Act, or (d) Persons either convicted under Section 49-A of the Madras City Police Act, 1888 (Madras Act III of 1888) or under Section 4 of the Madras Gaming Act, 1930 (Madras Act III of 1930), or reasonably suspected to be habitually committing or abetting the commission of the offences, are classified as rowdies. Clause 4 of Police Standing Order 749, enjoins a duty on the police to enter the names of history-sheeted rowdies in the station register of a known depredator and that rowdies should be checked regularly by beat Police Constable Constables in rural Police Stations and by rowdy patrols in large towns, as also by the Sub-Inspectors (Law and Order). The checking, however should be discretely done by the method of enquiries and not in the manner of domiciliary checks.

48. Police Standing Order dealing with opening and retention of History Sheets in relation to the nature of offences stated in Police Standing Order 749(2)(a) to (d), makes it explicit that a duty is cast on the Sub-Inspector of Police, Station House Officer/ Inspector of Police and his men to collect, verify and ascertain as to whether a person is known or believed to be addicted to or aid and abet, the commission of crime and that there should be active criminality, affecting breach of peace or law and order. Criminality, as conceived in the police Standing Orders, is commission of offences by the individual or aiding commission of offences or, by inducing/instigating commission of offences by other some person.

49. History sheet is ordinarily retained for two years, in the case of persons convicted of offences mentioned in Police Standing Order 747. Where retention of history sheet is considered necessary after two years of registration, orders of an officer of and above the rank of Assistant



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Superintendent of Police/Deputy Superintendent of Police, must be taken for extension in the first instance upto the end of the next December and further annual extension from January to December. Police Standing Orders, thus, makes it clear that the conduct and activities of history-sheeted persons shall be monitored for a specified period during which period, they should not come to any adverse notice and the authority empowered to extend the period of retaining his name in the history sheet, should have reason to believe that such history-sheeted person is habitually addicted to or aid or abet, the commission of offence.

50. Keeping surveillance or vigil on a history-sheeted person should not be made permanent, mechanically, as it would affect his freedom of life and liberty. The discretion conferred on the police is both objective and subjective in nature. Objective satisfaction with reference to the conduct of a history-sheeted person, to prevent commission or aiding or abetting of offences, by such persons, involving breach of peace or law and order. The subjective satisfaction should be based on valid materials and it cannot be at the whims and fancies of the police officers. Reading of the Police Standing Order shows that the discretion conferred on the police officers is in-built, subject to the limitations, including a specific period, provided under the said orders and it is not for any unlimited period, unless the conduct of the history-sheeted person is required to be monitored continuously.

51. As the discretionary jurisdiction conferred on the Police Officers to open and retain a history sheet is to curtail his freedom and right of privacy, there should be awareness on the part of the authority and it should be on the basis of surveillance materials, where that a reasonable man would by probable reasoning arrive at a conclusion or infer that a



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person has to be necessarily included in the History sheet. 'Belief', in the case on hand, means a degree of conviction of the truth of something especially based on a consideration or examination of the evidence and the authorities vested with discretion of opening and retaining history sheets should prove that on the examination of the data that there is awareness on their part indicating their state of mind that by probable reasoning, they come to a conclusion or infer, about the conduct of person, for whom a History sheet is opened or retained. The record of events and the materials should be considered with care and the authority concerned should pass an order, reflecting that he has thought over the matter deliberately with care and it has been found necessary, as a result of such careful examination, an order opening or retaining a history sheet is required to be passed.

52. The Discretion conferred on the authorities is controlled by factors which are in built in PSO 746, which states that history sheets can be broadly opened in respect of persons who are "known or believed to be addicted to or aid and abet the commission of crime, whether convicted or not, or who are believed to be habitual receivers". History sheets can also be re-opened in respect of following persons:

- "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 crime".

53. PSO 747 deals with automatic opening of history sheets at the time of conviction for persons convicted and shall be retained for two years after release from jail. It also deals with opening of a history sheet of a known depredator against whom an order has been passed under Section 356 Cr.P.C., and it shall not be closed, until the period during which he is required to report



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changes of residence, has elapsed. History sheet can be opened for suspects, under the orders of the Superintendent or Divisional Officer, if so empowered by the Superintendent for the persons included in PSO 749.

54. As per PSO 749 (4), all registered rowdies should be kept under the same type of watch as envisaged for registered suspects. The names of History sheeted rowdies should be entered in the Station check register of KDs and the rowdies should be checked regularly by beat police constables in rural police stations and by rowdy patrols in large towns as also by the Sub Inspectors (Law and Order). The checking however should be discretely done by the method of enquiries and not in the manner of domiciliary checks. Inspectors and Divisional Officers when they visit the area should make their own independent enquiries and note their findings in the history sheets and in inspection reports, if any. All reports against notorious rowdies entered in the General diary of the Station or matters brought to light on enquiries in the petitions should be entered against them in the personal sheets and should be dated.

55. As per PSO 748, 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. The above order shall be applied to the rowdy sheets also.

60. Police Standing Orders makes it explicit that the Sub Inspector of Police has to make necessary enquiries and ascertain the same before making a request to the Sub Divisional Officer to open or retain a history sheet. The Sub Divisional Officer or the Superintendent of Police after consideration of the surveillance report should arrive at a reasonable conclusion, as to the existence of materials



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achieved while opening or retaining a rowdy history sheet.

63. In *Global Energy Limited and another v. Central Electricity Regulatory Commission* reported in 2009 15 SCC 570, the Supreme Court held that the exercise of discretion has to be in conformity with the purpose for which, it is conferred, object sought to be achieved and reasons to be recorded.

64. The power has to be exercised with regard to the duty arising from the nature of the action to be performed by the Sub-Divisional Officers. The conditions on the basis of which the power has to be exercised and the repercussions or consequences of such exercise on the price and freedom of the individual has to be considered. It has to be borne in mind, that the power exercised, restricts the freedom and liberty of an individual.

65. The criteria for opening a history sheet therefore, is the subjective satisfaction of the authority and it has to be arrived at, on the reasonable belief or knowledge that the person, for whom the history sheet is opened or retained, is habitually addicted or aid or abet, the Commission of Crime, whether convicted or not etc. While arriving at the subjective satisfaction, current doings in other words, the activities of such persons which are informative and useful, based on the facts ascertained both by the Sub-Inspector and his men from the date of last entry shall be made month-wise for close watch of characters and quarterly for non-close watch of characters.

66. When it is said that something has to be done within the discretion of the authorities, that something has to be done according to the rules of reason and justice, not according to private opinion; according to law and not humour. It is to be not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man,



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competent to the discharge of his office ought to confine himself.

67. Branding a person as a history sheeted rowdy has a tainted image in the society as compared to others. Needless to say that his relationship with others and the prospects of personal development may not remain the same. Characterisation of a person is stigmatic, if any photograph is displayed in some conspicuous places in the area where he resides, or in public places, and it affects not only his personal rights, but there is every likelihood of damage being caused to the members of his family and it cannot be lost sight of. Innocent children of such persons could be even looked down, if the officer, mechanically under the guise of prevention of crime and to protect others, open or extend history sheets, which has an impact on the right of privacy of not only the individual against whom the order is passed, but also causes harm to other person's rights. Therefore, a fair and reasonable decision should be taken, taking into consideration the Constitutional rights under Article 21 of the Constitution of India and the interests of the State. It should be noted that at time of opening a history sheet, the individual is not informed of the decision taken by the authorities behind his back and that the information collected is discreet. Needless to say that every person wants to live with dignity and he cannot be condemned arbitrarily. It is also to be borne in mind that estrangement of the members of a history sheeted rowdy, in social gatherings, etc., is not uncommon in our society. Therefore, opening or retention of history sheets, which interferes with the right of privacy of a person, should be done strictly adhering to the parameters inbuilt in the Police Standing Orders, keeping in mind the object sought to be achieved."

2. This Court in the case of Sabari @ Sabarigiri Versus The Assistant Commissioner of Police, Madurai & Others reported in



CDJ 2018 Madras High Court 5411, has further exemplified the position.

3. In the present case on hand, the writ petitioner was kept under the records of the respondent as History Sheeter from 1989 onwards. Even though, it is stated that two FIR's were filed against him, he was not convicted and did not find any material to show that he was convicted for any offence. As held by this Court in the Judgment mentioned above, it is very clear that for invoking Section 110 Cr.P.C a person should have been convicted twice. Mere filing of FIR is not enough. Further, it is categorically held that the authorised officer shall apply his mind and review the records and they cannot keep a person as a History Sheeter Sine Dine. But in the instant case, from the year 1989 without any review and without recording any reason and without any material to retain him under the History Sheet, the respondents have continued him as a History Sheeter for the past 30 years. Such an order is not sustainable in the eyes of law and accordingly set aside. In the result, the writ petition is allowed. There shall be no order as to costs.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

sha/kpr
To

1. The Deputy Commissioner of Police,
Adayar, Chennai.
2. The Assistant Commissioner of Police,
Neelangarai, Chennai.
3. The Inspector Of Police,
Neelankarai Police Station,
Chennai.

+1cc to M/s.P.Vijendran, Advocate Sr.11361

W.P.No.35008 of 2013

kj[co]
srg 30/05/2022