



W.P(MD)No.17228 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.09.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.17228 of 2022

P.N...

... Petitioner

Vs.

- 1.The Union of India,
Rep. by its Home Secretary,
Ministry and Home Affairs,
New Delhi – 110 001.
- 2.The Union of India,
Rep. by its Secretary,
Ministry of Electronic and Info Technology,
A Block, CGO Complex,
Lodhi Road, New Delhi.
- 3.The State of Tamil Nadu,
Rep. by its Secretary,
Home Department,
Fort St.George,
Chennai – 600 009.
- 4.The State of Tamil Nadu,
Rep. by its Principal Secretary,
Information Technology and Digital Services Department,
Information Technology Department,
Secretariat, Chennai – 600 009.
- 5.The Director,
National Crime Records Bureau,
NH-8 Service Road,



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Mahaipalpur,
Delhi – 110 037.

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6.The Superintendent of Police,
Virudhunagar District.

7.The Inspector of Police,
All Women Police Station,
Sivakasi,
Virudhunagar District.

8.The State Crimes Record Bureau,
Represented by its Secretary,
Chennai.

... Respondents

*(R6 to R8 are suo motu impleaded vide order
dated 01.09.2022 in W.P.(MD)No.17228 of 2022
by GRSJ)*

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to expunge/ expunct the criminal records from the public domain both on paper works and digital records particularly which are available through search engines, pertaining to the petitioner in crime No.2 of 2020 on the file of All women Police Station, Sivakasi in view of the order passed by this Court in Cr.O.P.(MD) No.12441 of 2020 by considering the petitioner's representation dated 18.04.2022 within the time that may be stipulated by this Court.

For Petitioner : Mr.Ajmalkhan,
For M/s.Ajmal Associates.

For Respondents : Mrs.L.Victoria Gowri,
Asst. Solicitor General for R1, R2 & R5.

Mr.M.Sarangan,
Addl. Govt. Pleader for R3, R4, R6 to R8.



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ORDER

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Heard the learned senior counsel for the petitioner, the learned Assistant Solicitor General for the respondents 1, 2 and 5 and the learned Additional Government Pleader for the respondents 3, 4 and 6 to 8.

2.The writ petitioner hails from Sivakasi. He is an engineering graduate. He came to be implicated in Crime No.2 of 2020 registered on the file of All Women Police Station, Sivakasi, for the offences under Sections 13, 14(1), 16, 17 of Prohibition of Child from Sexual Offences Act and Section 67(b),(b) of Information Technology Act. The case was registered based on the complaint given by the Sub Inspector of Police, Cyber Crime Branch, Virudhunagar District. It was alleged that the petitioner had shared pornographic pictures of children through his Instagram account on 05.05.2019. The petitioner was arrested on 15.02.2020 and released on bail only on 03.03.2020. The petitioner subsequently filed Crl.O.P.(MD)No.12441 of 2020 for quashing the said criminal case. After elaborately hearing both sides, the prosecution initiated against the writ petitioner was quashed on the ground that there was no trace in the petitioner's mobile phone that such pictures ever were uploaded or even deleted.



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3.The petitioner however insists that records relating to his case should not be available in the public domain. This is because that would adversely affect his future career prospects. Through the learned senior counsel strongly contended that every individual has the right to be forgotten, I consciously refrain from venturing into consideration of the larger issue. This is because a learned Judge of this Court had already taken a view that the right to be forgotten cannot be invoked in matters relating to judicial records. However, on a case to case basis, relief can certainly be granted. In fact, in the counter affidavit filed by the learned Assistant Solicitor General, the following averments are found:-

*“7.It is humbly submitted that, the Right to Privacy is a fundamental right recognized by the Hon'ble Supreme Court in the case of **K.S.Puttaswamy v. Union of India (2017) 10 SCC 1**. The international legal concept of “right to be forgotten” is evolving in India. The Indian courts also have accepted the doctrine of “right to be forgotten” on a case to case basis in the following cases:*

a. Orissa High Court in Subhranshu Rout v. State of Odisha (BLAPL No.4592/2020, decided on 23rd November, 2020).

b. Karnataka High Court in Vasunathan v. Register General 2017 SCC Online Kar 424.



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c. Jorawer Singh Mundy v Union of India 2021

SCC Online Del 2306 (Case is pending before the Hon'ble High Court of Delhi).

Recently on 18.07.2022 the Hon'ble Supreme Court in Miscellaneous Application No.875/2022 in SLP (Crl) No.3211/2022 – XXXX Vs. Kacherla Durga Prasad & Ors has passed in interim direction to the Court registry directing “to examine the issue and to work out how the name of both the petitioner and respondent No.1 along with address details can be masked so that they do not appear visible for any search engine” and had adjourned the case to three weeks.

4. Here is a case where the petitioner has been falsely and without any justification implicated. That is why, this Court came to his rescue by exercising its jurisdiction under Section 482 of the Criminal Procedure Code to secure the ends of justice. Due to advent of internet technology, a mere click of the writ petitioner's name would throw up past records and that would definitely injure his reputation. In these days, any prospective employer does conduct a due diligence search about a prospective employee's past. The employer may come to adverse conclusions regarding the petitioner even though he has been fully vindicated before this Court. Considering the special facts and circumstances of this case, I deem fit and appropriate to issue the following directions:-



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“(1) The learned Additional Government Pleader appearing for the State Government categorically states before this Court that by order passed by the competent authority, the details pertaining to the writ petitioner have been totally blocked and that the petitioner's name will not even be seen in the public domain.

(2) The fifth respondent is directed to block the details regarding the petitioner in their records so that it is not seen in the public domain.

(3) The petitioner is permitted to send a representation to the Indian Kanoon along with a copy of this order and Indian Kanoon is directed to block the judgment dated 12.01.2022 made in Crl.O.P.(MD)No.12441 of 2020 from being accessed by using search engine such as Google, Yahoo etc.

(4) The impleaded respondents shall not furnish the details regarding the petition mentioned criminal case or the judgment arising out of the same to any third party.



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(5) *The State Government authorities are directed to ensure that the details regarding the petition mentioned case are not available in CCTNS.*

(6) *The petitioner is also given further liberty to petition or move any authority concerned for enforcement of order passed by this Court and the said authority is obliged to comply with the same.*

5. The writ petition is disposed of on these terms. No costs.

01.09.2022

Index : Yes / No
Internet : Yes/ No
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Note: Issue order copy on 05.09.2022.

The name of the writ petitioner should be suppressed while issuing the order copy.

To:

1. The Secretary,
Home Department,



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Fort St.George,
Chennai – 600 009.

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- 2.The Principal Secretary,
Information Technology and Digital Services Department,
Information Technology Department,
Secretariat, Chennai – 600 009.
- 3.The Superintendent of Police,
Virudhunagar District.
- 4.The Inspector of Police,
All Women Police Station,
Sivakasi,
Virudhunagar District.
- 5.The Secretary,
State Crimes Record Bureau,
Chennai.



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G.R.SWAMINATHAN, J.

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