



W.P(MD)No.19933 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :31.07.2023

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THE HONOURABLE MR.JUSTICE P.DHANABAL

W.P(MD)No.19933 of 2013

and

M.P(MD) Nos.1 and 2 of 2013

K. Prabakaran

... Petitioner

-Vs-

1. The Commissioner of Police
Tiruchirapalli City,
Tiruchirapalli.

2. The Assistant Commissioner of Police
Golden Rock Range
Trichy City

3. The Inspector of Police
Ponmalai Police Station
Trichy City

... Respondents

PRAYER:- Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus calling for the records to the impugned order passed by the 2nd respondent in his proceedings in C.No. 45-7/ACP/GR/L&O/TRC/11 dated 11.11.2011 and quash the same and consequentially direct the 3rd respondent to remove the name of petitioner from the history sheet .



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For Petitioner : Mr.S. Santhakumar
for Mr. N.Anandakumar
For Respondents : Mr. R.M.Anbunithi
Additional Public Prosecutor

ORDER

This Writ Petition has been filed seeking for issuance of Certiorarified Mandamus to call for the records to the impugned order passed by the 2nd respondent in his proceedings in C.No. 45-7/ACP/GR/L&O/TRC/11 dated 11.11.2011 and quash the same and consequentially direct the 3rd respondent to remove the name of petitioner from the history sheet .

2. According to the petitioner he was working as a Kalasi Worker (Helper) in Ponmalai Workshop under Southern Railway . Between 1995 and 1998 , he was implicated in three murder cases and three robbery cases by Ponmalai Police and in all the cases he had been acquitted by the criminal Courts. In the year 1995 history sheet was opened against him and he was under surveillance of the third respondent. Though in those cases the petitioner was acquitted by the criminal Courts the petitioner was under the surveillance of the police. In the year 2003 the third respondent called the petitioner along with his friends to the station and under the guise of enquiry had foisted a false case as if they committed extortion by showing



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knife and arrested them and that case was also ended in acquittal. Thereafter in the year 2003 the petitioner along with his friends went to the first respondent office and submitted their grievance that a false case has been foisted against them and till 2006 repeatedly requested the first respondent that they are leading a decent life and hence the first respondent called the third respondent and enquired everything and advised the third respondent to remove the name of the petitioner from the history sheet in the year 2006. Thereafter he was living a peaceful life and working as Kalasi in the Southern Railway Ponmalai Workshop. Since 2004 no other criminal cases or complaint has been registered against the petitioner. Despite that the second respondent vide his proceedings dated 11.11.2011, the third respondent had opened the history sheet against the petitioner without his knowledge and without any criminal cases pending against him. Therefore he gave representation to the third respondent dated 25.09.2012 seeking to remove the name of the petitioner from the history sheet on the file of the third respondent and it has not been considered, hence the impugned order is liable to be quashed.

3. The respondents filed counter alleging that he admitted that the petitioner is working as a Kalasi Worker (Helper) in Ponmalai



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Workshop under Southern Railway and he is also under the surveillance. The respondents denied the allegation made in the affidavit of the writ petition. The facts mentioned in the counter are evasive denial and only stated that the petitioner involved in a case in Crime No.47 of 2017 on the file of the City Crime Branch for the offences under Sections 465,467,468,471,109,466 and 474 of IPC and C.C. No.6 of 2023 is pending.

4. The learned counsel appearing for the petitioner contended that the third respondent opened the history sheet through his proceedings dated 11.11.2011 and no any criminal cases is pending in the year 2013. The petitioner has been implicated as an accused without any *iota* of evidence and thereby he gave representation and the same was not considered, till today they are maintaining the history sheet and hence the impugned order is liable to be quashed.

5. The learned Additional Public Prosecutor would submit that Crime No.47 of 2017 is pending on the file of the City Crime Branch and still it is pending and the petitioner is still having close relationship with other criminals and thereby history sheet has been re-opened as against the petitioner.



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6. Heard both sides and perused the materials available on record.

7. On perusal of the records it is observed that the impugned order pertains to the year 2011 but the learned Additional Public Prosecutor appearing for the respondents admitted that on the date of impugned order there was no case pending as against the petitioner, however he would submit that the petitioner was in close relationship with the other accused. In order to prove that fact no any material has been produced by the respondents and further there are no cases pending on the date of the impugned order passed by the third respondent. Thereafter the cases were registered in the year 2017 and after six years the impugned order was passed. There is no material available as against the petitioner to re-open the history sheet, however the third respondent without any materials reopened the history sheet as against the petitioner.

8. The learned counsel for the petitioner relied on the order passed by this Court in the case of ***Thirumagan and another -vs- Superintendent of Police, Madurai District and others*** reported in ***(2020)4 MLJ (CrI)133***, wherein this Court has quashed the proceedings for the same set of allegations alleged in the present



petition and in para no.36 has held as follows:

“36. Accordingly, this Court issues the following directions. This is in addition to the principles or directions given earlier namely:

(a) The decision to history sheet, or retaining one in the history sheet must be on tangible materials and on an objective basis as declared in Ganesan case [2010(6)CTC 507] (b) and the ratio of this Court in Sabari case [2018-2- LW. (CrL.)817], wherein this Court has held that mere registration of a FIR under Sec.109 and 110 Cr.P.C. cannot justify an action of the police to retain the name in the history sheet. There should have been a concluded proceedings.

A) In all the cases where a person has to be treated as an habitual offender, or one addicted to crime, or a known deprecator of law without a case pending against them when the police propose to history-sheet him, he should have been either notified as a habitual offender under the Tamil Nadu Habitual Offenders Act, 1948, or should have been one against whom an Order has been made under Sec.110 Cr.P.C.

B) In all cases a person can be history-sheeted only for two years as provided in PSO 748(1). Retaining a history sheet beyond that period is an exception and it must have an objective basis. Accordingly, history sheet cannot be retained merely on the ground that (a) investigation agency has not filed any final report, or, (b) where the case is pending trial beyond two years time as provided.

C) There cannot be any retention under PSO748 (2), unless (a) a fresh case is registered (which may be either under investigation or pending) subsequent to the case/cases which necessitated the opening of the history-sheet, or, (b) a history sheet is notified as an habitual offender. This should be only for one year as in PSO 748(2). Every subsequent decision to extend or retain a history sheet in the history sheet should be made only on the same basis as indicated.

D) Where no subsequent case is registered, a former convict should not be treated as a suspect.

E) In reckoning the number of cases for treating a person as addicted to or habitually given to commit a crime, cases where (i) the investigation agency has dropped a case, or (ii) where the FIR was closed under Sec.468 Cr.P.C, by the Court which is empowered to take cognizance of an offence on a Police report, or (iii) where a history sheet has been discharged or acquitted by a competent Court, and/or (iv) quashed by this Court or by the Hon'ble Supreme Court shall



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not be included. However, those cases where the investigation or trial is pending, they can be reckoned. This direction has no application to National Registry maintained under the Criminal Law Amendment Act, 2018.

F) Where cases are registered in connection with a citizen participating in any peaceful protests, agitations, or demonstrations or the like, history sheet should not be opened unless an order is passed by the Executive Magistrate under Sec.107 or 110 Cr.P.C., This is not available to non-citizens. It is clarified that if any other offence alleging violence, or damage of property or threat to personal safety or life of other citizens is also involved, the directions given herein is not applicable.

G) The Director General of Police is required to constitute a District wise committee through appropriate police officials to examine all the cases of history-sheeting on the basis of parameters hereinabove provided within a period of one year.

H) The Director General of Police is directed to take such necessary steps to automate the process of history sheeting to make the whole exercise self-driven.

I) The Director General of Police shall submit a half yearly progress/compliance report the direction given in G and H.

J) The Director General of Police is required to issue a circular contained in A to F of this paragraph along with those stated in Ganesan Vs The District Superintendent of Police & others [2010(6)CTC 507] and Sabari alias Sabarigiri Vs. The Assistant Commissioner of Police, Annanagar (L & O), Madurai City [2018-2 LW (Crl) 817] as indicated above, to all the SHO and the police Officials who are empowered to supervise/inspect their functioning, in Tamil. The DGP is also required to sensitize the superior police officials who inspect/supervise the functioning of the SHO and the concerned police station in this regard.

9. In the case on hand no any case was pending and not notified under the Tamil Nadu Habitual Offender Act,1948. Hence, the said case is squarely applicable to the present facts of the case, thereby the impugned order is liable to be quashed.



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10. In view of the above said discussions, this Writ Petition stands allowed and the impugned order passed by the 2nd respondent in his proceedings in C.No.45-7/ACP/GR/L&O/TRC/11 dated 11.11.2011 is hereby set aside. No costs. Consequently connected miscellaneous petitions are closed.

31.07.2023

Index : Yes/No
Internet : Yes/No
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To

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2. The Assistant Commissioner of Police
Golden Rock Range
Trichy City
3. The Inspector of Police
Ponmalai Police Station
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4. The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai



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P.DHANABAL, J.

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