



Cont.P(MD).No.806 of 2023 in
W.P.(MD)No.28329 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 26.07.2023

Delivered on : 12.09.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Contempt Petition(MD).No.806 of 2023
in
W.P.(MD)No.28329 of 2022

Shanmugam

: Petitioner / Petitioner

Vs.

E.Sundaravathanam, I.P.S.,
Officer of Superintendent of Police,
Karur, Karur District.

: Contemnor/2nd Respondent

PRAYER: Contempt Petition has been filed under Section 11 of the Contempt of Courts Act 1971, against the respondent herein for their willful disobedience to implement the order passed by this Court in W.P.(MD) No.28329 of 2022, dated 23.12.2022.

For Petitioner : Mr.Henri Tiphagne

For Respondent : Mr.S.Ravi,
Additional Public Prosecutor,
for Mr.R.Meenakshi Sundaram,
Additional Public Prosecutor.



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ORDER

The petitioner has filed the above petition, invoking Section 11 of the Contempt of Courts Act, 1971, to initiate contempt proceedings and to punish the respondent for his willful disobedience to implement the order passed in W.P.(MD)No.28329 of 2022, dated 23.12.2022, by this Court.

2. The petitioner has filed a writ petition in W.P.(MD)No.28329 of 2022, seeking a writ of mandamus, directing the respondents therein to remove the petitioner's name from the history sheet opened in History sheet No.3 on the file of the third respondent within a time stipulated by this Court.

3. Considering the submission made by the learned Additional Public Prosecutor that the writ petitioner's representation, dated 20.10.2022, would be considered in the next meeting scheduled to be held in January 2023, this Court by recording the said submission made by the learned Additional Public Prosecutor, directed the second respondent/contemnor herein to consider the writ petitioner's representation, dated 20.10.2022 and pass orders in



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2023.

accordance with law in the next meeting scheduled in the month of January 2023.

4. The case of the petitioner is that the petitioner, after completing the degree course in B.Sc., (Physics) and PGDCA course, has joined law degree course at Sri.G.S.Krishna Memorial College, Rajamundhiri, Andrapradesh and completed the same in 2015; that he had applied to the Bar Council of Tamil Nadu and Puduchery to admit him and enroll him as an advocate; that when the petitioner was waiting for enrollment, he was informed by the Bar Council authorities that they have received a police verification report about him stating that a history sheet was opened against him in H.S.No.3 of 2021; that though the petitioner was acquitted in the criminal cases registered against him, the respondent Police without issuing any show cause notice, with *malafide* intention has purposely opened the history sheet and that therefore, he was constrained to file the writ petition for removal of his name in the history sheet.

5. The petitioner, by alleging that despite specific directions of this Court, dated 23.12.2022 and the representations dated 05.01.2023 and



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22.02.2023 given by the petitioner, they have not implemented the order of this Court and that they have willfully and wantonly disobeyed the orders of this Court, has filed the present Contempt Petition.

6. When the matter was taken up for hearing on 28.04.2023, the learned Additional Public Prosecutor has produced a notebook, in which, some endorsements were made by the Inspector of Police, recommending for extension of history sheet for the petitioner on 31.12.2022 and the Deputy Superintendent of Police, Karur Sub Division has made an endorsement on 05.01.2023 for retaining the history sheet upto 31.12.2022 and he has also produced the order passed by the Superintendent of Police, Karur District, dated 25.04.2023 extending the history sheet, this Court taking note that there was no reference to the review meeting conducted by the Superintendent of Police or by the competent authority in the order dated 25.04.2023, directed the respondent to file a report in that regard.

7. When the matter was taken up for hearing on 22.06.2023, after hearing the learned counsel for the petitioner and also the learned Additional Public Prosecutor, this Court has ordered for issuance of statutory notice to the



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contemnor and in pursuance of the statutory notice issued, the Superintendent of Police, Karur/Contemnor has appeared before this Court on 05.07.2023 and at the request of the learned Additional Public Prosecutor, the matter was adjourned to 26.07.2023 for the reply of the contemnor and this Court further directed the contemnor to furnish the particulars about the meetings held earlier from 2021, the date on which, the petitioner was history sheeted.

8. On 26.07.2023, when the matter was lastly taken up for hearing, the contemnor has filed his counter affidavit, wherein it has been stated that when the history sheet was opened on 01.08.2021, seven cases pending on the file of the Town Police Station, Karur and one case pending on the file of the Thanthonimalai Police Station, were taken into consideration, that the predecessors in Office have conducted the periodical meetings as directed by the Director General of Police and submitted the reports therefor; that the first meeting for the year 2023 has to take place during January 2023, but it did not take place due to administrative difficulties; that the first meeting to review the case of the petitioner along with 26 others history sheet cases was held on 23.02.2023 and that out of 27 cases, 24 history sheeters' names were removed and three history sheeters including the petitioner's name was retained and that the short delay in conducting the review meeting is neither willful nor wanton.



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9. In the counter affidavit, it has been further stated that the petitioner is running a self-styled outfit called “Samaniya Makkal Nalakatchi” and that the petitioner on several occasions had instigated general public with misinformation and created law and order problems, road rokos and thereby disturbing the public peace and tranquillity and also prevented the Government officials from discharging their official duty and also induced common people to fight against the legitimate acts of the Government, thereby jeopardizing general functioning of various organs of Government.

10. In the counter affidavit, the contemnor has listed out five cases pending against the petitioner on the date of review meeting, which were taken into consideration. It has been further stated that the District Collector has forwarded a complaint received by him on Collector's Public grievance day and wherein, the complainant expressed fear over the interference by the petitioner and one M.R.K.Siva, in the legally approved Mines and Minerals Work functioning in Karur District; that the petitioner and his partners said to have demanded a sum of Rs.25 lakhs from a quarry owner at paramathi and the petitioner has received a sum of Rs.3 lakhs; that the other person M.R.K.Siva was said to have extorted a piece of land worth about Rs.1 Crore



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from the quarry owner at Paramathi; that the Karur District Quarry Owners and Crusher Owners Association and Paramathi Jalli and M-Sand Manufacturers Association met the District Collector, Karur on 14.09.2023 and made representation to take action against the persons indulging the criminal intimidation and threatening with an intention to extort money from the businessmen; that the enquiry conducted by the Police revealed that the petitioner is operating three bank accounts and his bank details revealed about the transactions worth about Rs.1,30,00,000/- without any source of income; that 25 cases were registered against the petitioner in Karur Town Sub Divisional Jurisdiction and at present 5 cases are pending, in which, four cases are not taken on file and one case is under investigation.

11. The contemnor/second respondent, by raising the above averments, has stated, in the last paragraph of his affidavit, that in view of the petitioner's criminal tendency, it becomes absolutely necessary on the part of the police machinery to monitor his activities and the continuance of the History Sheet No.3 of 2021, dated 01.08.2021, is necessary in the public interest, otherwise the activities of the petitioner will cause prejudice to the maintenance of public law and tranquillity in and around Karur District.



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12. Though the contemnor/second respondent has stated that 25 cases were filed against the petitioner, he has furnished the details with regard to 11 cases, which include the latest case registered in Crime No.338 of 2023 on 08.05.2023 on the file of the Karur Town Police Station. But, the petitioner in the contempt petition itself has listed out the particulars of 13 cases, which are filed against him and in those 13 cases, 8 cases were already referred and one case ended in acquittal and in another case, charge sheet has been quashed by this Court and that three other cases are yet to be taken on file.

13. As rightly pointed out by the learned counsel for the petitioner, out of 13 cases, 9 cases came to be registered for the offence under Section 3 of Epidemic Diseases Act along with offence under Sections 143, 269 I.P.C. It is evident that the case in C.C.No.164 of 2021 pending on the file of the Judicial Magistrate Court, No.I, Kaur for the offence under Sections 294(b), 353 and 506(i) IPC in Crime No.39 of 2023 on the file of the Thanthonimalai Police Station, has already been quashed by this Court in CrI.O.P.(MD)No.17168 of 2021, vide order dated 18.11.202. Admittedly, Karur Police authorities have not registered any case against the petitioner for any serious or heinous



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offences and that though the contemnor/second respondent has alleged that there were complaints of criminal intimidation and extortion against the petitioner including the complaint forwarded by the District Collector, they have not registered a single case for those serious offences till now.

14. The contention of the contemnor that no one was coming forward or willing to give any complaint against the petitioner for the alleged extortion criminal intimidation, is not expected from a Police Officer in the rank of Superintendent of Police, being the Chief Police Officer of the concerned District. Though the respondent/contemnor has alleged that they came to know that the petitioner had Rs.1,30,00,000/- in his three bank accounts, they have not chosen to produce the bank statements or any other documents to substantiate their serious charge.

15. The contention of the learned counsel for the petitioner that the serious allegations made in the counter affidavit, without any iota of materials to substantiate the same, would go to show their intention to retain the petitioner as a History Sheeter, cannot be rejected outrightly.



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16. The learned Additional Public prosecutor would submit that in pursuance of the directions of this Court of considering the representation and pass orders, the contemnor/second respondent, after conducting review meeting, has rightly passed an order rejecting the petitioner's requisition and that the petitioner cannot challenge the validity or legality of the order passed and as such, the very filing of the contempt petition is not maintainable.

17. Admittedly, the Police authorities, after passing of the said order, has not sent the copy of the order to the petitioner. Despite the receipt of the legal contempt notice sent by the petitioner, the police authorities have not chosen to send any reply not did sent the copy of the order. When the contempt petition was taken up for the first time on 28.04.2023, as already pointed out, the learned Additional Public Prosecutor has produced the copy of the order, dated 25.04.2023.

18. As rightly pointed contended by the learned counsel for the petitioner, the police authorities have not produced any material to show that the impugned order was passed on 25.04.2023, since the petitioner was not served with the copy of the order nor intimated about the passing of the order.



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Hence, according to the learned counsel for the petitioner, the petitioner was constrained to file the above contempt petition.

19. No doubt, this Court directed the contemnor to consider the petitioner's representation and pass orders. "Considering the representation" would only mean considering the representation in accordance with law or Rules or Procedures or Binding Judgment, if any, governing the filed.

20. As rightly contended by the learned counsel for the petitioner, as of now, no case for any serious or heinous offence was registered or pending against the petitioner. The learned counsel for the petitioner has relied on the orders passed in ***Thirumagan and another Vs. The Superintendent of Police, Madurai District and others*** in ***W.P.(MD)No.21040 of 2018 and batch of cases, dated 03.07.2020***, wherein, this Court in addition to the principles or directions given in ***Ganesan Vs. The District Superintendent of Police, Virudhunagar District*** reported in ***2010 (6) CTC 50*** and ***Sabari alias Sabarigiri Vs. The Assistant Commissioner of Police, Annanagar (L&O), Madurai City*** reported in ***2018 2 LW (Crl) 817***, has issued further directions and also directed the Director General of Police to issue a circular to all the



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Police Officials with regard to the instructions given and also the DGP is required to sensitize the superior police officials who inspect/supervise the functioning of the SHO and the concerned police station in this regard.

21. In pursuance of the above order passed by this Court, the Director General of Police has issued a Circular Memorandum dated 20.09.2021 and 22.09.2021 in English and Tamil respectively. It is necessary to refer some of the passages in the above circular.

(A) "In all the cases where a person has to be treated as as 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 Section 110 Cr.PC.

(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



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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 PSO 748(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 (92) 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 cases is registered, a former convict should not be treated as a suspect.

...

(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 a order is passed by the Executive Magistrate under Sec. 107 or 110 Cr.PC. This is not available to non-citizens. It is clarified that if any other offence alleging violence, or damage of property or threat to



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personal safety or life of other citizens is also involved, the directions given here in is not applicable.

.....

The power to open or retain a history sheet is not absolute or uncontrolled. It has to be exercised only within the defined limits and it cannot be done according to private opinion. The competent authority has to examine the materials and then decide objectively and rationally, as to what serves the best interest of the society vis-a-vis an individual's rights....

22. As already pointed out, though the case in C.C.No.164 of 2021, has already been quashed by this Court, in the counter affidavit, the contemnor/second respondent has stated that they have taken into consideration of the case in Crime No.39 of 2020 pending on the file of the Thanthonimalai Police Station (C.C.No.164 of 2021), but the quashing of the said case by the High Court was not brought to his knowledge, on the date of review.

23. Even according to the contemnor/second respondent, the first meeting for the year 2023 was held only on 23.02.2023 and hence, this Court



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is at loss to understand as to how the quashing of the case in C.C.No.164 of 2021 as early as on 18.11.2021, was not entered in their records.

24. On considering the entire facts and circumstances, the averments raised in the counter affidavit and the proceedings issued by the contemnor/second respondent, dated 25.04.2023, this Court has no hesitation to hold that the contemnor/second respondent has miserably failed to follow the directions issued by this Court in *Thirumurugan's* case referred above, which were reiterated in the Circular issued by the Director General of Police, while considering the petitioner's representation. Moreover, it is also evident that the contemnor's predecessors in office have also failed to comply with the directions of this Court and the Circular of the DGP. But at the same time, this Court is also of the view that there is nothing to infer that the contemnor/second respondent has wantonly and willfully disobeyed the directions of this Court and as such, this Court is not inclined to proceed against him further.

25. It is the specific case of the respondent that the petitioner's History sheet is valid till 31.07.2023 and that their next meeting will be held in June



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2023. Considering the above, the contemnor/second respondent is hereby directed to consider the petitioner's case in the next meeting or if the periodical meeting was already convened, in the meeting to be convened for this purpose, in accordance with the directions issued by this Court in ***Thirumurugan's*** case and the Circular issued by the Director General of Police and pass orders within one month from the date of receipt of copy of this order.

26. With the above directions, the Contempt Petition stands disposed of.

No costs.

12.09.2023

NCC : Yes/ No

Index : Yes/No

Internet : Yes/No

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K.MURALI SHANKAR, J.

das

Pre-delivery order made in
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in
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