

Manivannan Vs. State

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Court : Chennai

Decided On : Jun-17-2013

Judge : S.Nagamuthu

Appellant : Manivannan

Respondent : State

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

17. 06.2013 CORAM THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
W.P.No.44548 of 2002 Manivannan .. Petitioner -Versus- 1. State Rep. By The
District Collector, Coimbatore District.

2. The Superintendent of Police, Coimbatore District.

3. The Deputy Superintendent of Police, Pollachi Sub Division, Pollachi,
Coimbatore District.

4. The Inspector of Police, Mudis Police Station, Valparai Taluk, Coimbatore
District.

5. The Sub Inspector of Police, Mudis Police Station, Valparai Taluk, Coimbatore
District. .. Respondents Petition filed under Article 226 of the Constitution of India,
praying for issuance of writ of certiorari fied mandamus calling for the records

pertaining to the order in Na.Ka.No.46477-2002/E-1 dated 22.11.2002 passed by the District Collector, Coimbatore (1st respondent) and the history sheeted list of Rowdies maintained by the Sub Inspector of Police, Mudis Police Station and to quash the same and to direct the respondents to remove the petitioner's name from the History sheeted Rowdy list maintained by the Sub Inspector of Police, Mudis Police Station and to pay Rs.3,00,000/- as compensation. For petitioner : Mr.P.M.Duraiswamy For respondents : Mr.P.Aravind Pandian, Addl. Advocate General Assisted by Mr.R.Rajeswaran, Spl. Government Pleader and Mr.N.Sakthivel, Govt. Advocate

ORDER

The petitioner, a tailor by profession, had been branded as a rowdy element by the 3rd respondent and accordingly, a rowdy sheet was opened against him as per Tamil Nadu Police Standing Order vide PSO749 Contending that opening of such rowdy sheet against him is a serious violation of his personal liberty guaranteed under Articles 19(1) and 21 of the Constitution of India, the petitioner has come up with this writ petition.

2. The facts leading to this writ petition can be summed up as follows:- The petitioner is a native of Mudis Town in Coimbatore District where he resides with his wife and two children. On a complaint by one Mr.Simon alleging that he had caused damage to fish worth Rs.200/-, a case in Crime No.50 of 2001 under Section 294(b) and 427 of IPC was registered against him. The Sub Inspector of Police, Mudis Police Station registered another case in Crime No.77 of 2001 for offence under Section 341, 294(b), 506(i) and 109 of IPC and yet another case in Crime No.151 of 2001 under Section 255 of Cr.P.C. Based on the above and from the other inputs he had, the Sub Inspector of Police, Mudis Police Station submitted a proposal to the then Deputy Superintendent of Police, Valparai, seeking an order to open a rowdy sheet as per PSO749 Accordingly, the Deputy Superintendent of Police passed the following order:- Open a History Sheet and check him frequently. Obviously, the said order is a non speaking order which does not reflect the application of mind on the part of the Deputy Superintendent of Police. In pursuance of the said order, a rowdy sheet was opened. Aggrieved over the same, the petitioner made an appeal to the District Collector seeking to

remove his name from the history sheet. That was not considered. Therefore, he filed a writ petition in W.P.No.32495 of 2002 before this court. When the said writ petition was taken up for hearing, the counsel for the petitioner confined his prayer only for a direction to the District Collector, Coimbatore, to consider his representation for removal of his name from the rowdy sheet. Accordingly, the writ petition was disposed of by order dated 07.08.2002 with a direction to the District Collector to pass orders on the said representation within a period of 15 days thereafter. In pursuance of the same, the District Collector by his proceedings in Na.Ka.No.46477-2002/E-1 rejected the request and declined to remove the name of the petitioner from the rowdy list. Immediately, thereafter, the petitioner rushed to this court with this writ petition on 10.12.2002.

3. This writ petition was admitted on 11.12.2002 and from then onwards, this writ petition has been pending. In the meanwhile, as per the Tamil Nadu PSO748 extension orders were passed periodically every year by the Deputy Superintendent of Police concerned. The movement of the petitioner was checked every month by the Sub Inspector of Police and the same was also duly recorded in the rowdy sheet. From the records placed before me, it is seen that though initially it was opened as rowdy sheet, at one stage, it has taken the shape of a history sheet. No reason what so ever has been stated for the change. At this stage, it needs to be mentioned that a history sheet is opened under the Tamil Nadu Police Standing Order 746 on certain grounds in Form No.111 whereas, a rowdy sheet is opened under PSO749(2) in Form No.112. As I have already pointed out, in this case, at the end, of every English Calendar year, the Deputy Superintendent of Police concerned had passed order which uniformly read as follows:- Retain this history sheet till The last such order was passed by the Deputy Superintendent of Police, Valparai on 01.01.2013 which again reads as follows:- Retain this History Sheet till 31.12.2013 It is at this stage, the present writ petition has come up for final hearing.

4. I have heard the learned counsel for the petitioner and the learned Additional Advocate General and also perused the records placed today before this Court carefully.

5. At the outset, I have to state that opening either a history sheet or a rowdy sheet by branding a person either as a history sheeteer or a rowdy, attaches an indelible stigma on the person against whom such sheet is opened which in turn is likely to cause serious violation of his fundamental rights, more particularly, right to life and liberty and freedom guaranteed under Articles 21 and 19(1) of the Constitution of India. Such a fundamental right can be restricted only on reasonable grounds. If the said right is invaded in any manner on the order of an authority without there being any reasonable cause reflecting fairness on the part of the authority, undoubtedly, it is an infringement, and so, the same needs to be interfered with by higher judiciary which is the protector of the fundamental rights of the citizens of this country.

6. In this case, as I have already pointed out, periodical orders extending the period beyond two years had been passed in a very mechanical fashion by the Deputy Superintendent of Police concerned. To illustrate, I may refer to the recordings of the Sub Inspector of Police for the last one year commencing from 01.01.2012 to 31.12.2012. From the original history sheet, I find that during every English Calendar month, the Sub Inspector of Police, Mudis Police Station, had recorded that he checked the petitioner periodically and found him doing tailoring business and living with his family. There was no adverse entry at all found in respect of the conduct of the petitioner. From the entry on 08.01.2009 onwards till the entry made on 08.03.2013, in none of the recordings of the Sub Inspector of Police I could find that the petitioner had any adverse or suspicious conduct on his part. Except recording that the petitioner is running a tailoring shop and residing in Mudis Town, no adverse entry has been found. When that be so, it is not understandable, as to how, the Deputy Superintendent of Police passed the order dated 01.01.2013 to retain the history sheet till 31.12.2013. This order, in my considered opinion, does not satisfy any legal norms. First of all, this order does not reflect the application of mind on the part of the Deputy Superintendent of Police concerned. Had he applied his mind into the recordings of the Sub Inspector of Police during the last one year, for want of any adverse conduct on the part of the petitioner, the Deputy Superintendent of Police would not have passed an order of this nature to retain the history sheet for yet another period of one year. As has been held by the Hon'ble Supreme Court in *Maneka Gandhi v.*

Union of India, AIR 1978 SC597 the action of the State should satisfy three basic requirements, in as much as, the order should be fair, just and reasonable. When a restriction is sought to be imposed on the fundamental rights of a citizen, the authority concerned should have a deep application of mind into the facts placed before him and he should pass an order recording his reasons thereby ensuring that the order is fair, just and reasonable. If an order does not reflect reasons or grounds upon which the same is passed, certainly it will suffer from the vice of arbitrariness infringing upon the fundamental rights of the individual. In my considered opinion, in the instant case, the repeated orders passed against the petitioner extending the period of the history sheet are arbitrary, unreasonable and whimsical. Therefore, the impugned orders cannot be allowed to sustain.

7. Since there is a serious violation of the fundamental rights of the petitioner, the learned counsel for the petitioner submitted that there may be a direction to the State to pay monetary compensation to the petitioner. The learned Additional Advocate General would submit that though there were materials to satisfy the stand of the police that the petitioner is addicted to crimes, the same were omitted to be recorded in the order passed by the Deputy Superintendent of Police due to inadvertence. Therefore, according to him, the plea for compensation deserves to be rejected.

8. In this regard we may have a glance through PSO746(1) which reads as follows:- Part-IV - History Sheets. (1) Part V (Form No.111) shall contain the History Sheets of the persons resident permanently or temporarily in their Station limits who are known or believed to be addicted to or to aid and abet the commission of crime, whether convicted or not, or who are believed to be habitual receivers. Only sheets Nos.1, 3, 7 and 8 are to be maintained in the History Sheet forms in use in Station. Sheet No.9 should also be maintained , if a photograph of the criminal is available. Note: This sub-paragraph will not effect the History Sheets maintained in Crime Records Bureau. (2) At the back of sheet No.1, below item 7, the following descriptive details should be shown: Age, Height, Complexion, and Particular marks of identification. (3) In sheet 8 under headings the Current doings entries which are informative and useful based on the facts ascertained both by the Sub-Inspector and his men since the date of last entry,

shall be made month-wise for close watch bad characters and quarterly for non-close watch bad characters. Anything of interest coming to notice, in respect of a bad character during a month should be entered then and there, without waiting for the end of the month or the quarter. (4) The entries in the various columns in the History Sheet should be checked by the Sub-Inspector personally and brought upto-date once a year. The fact of such verification should be certified by him in the column under the Current doings. According to the above provision, if only an individual is either known or believed to be addicted to or to aid and abet the commission of the crime or if he is believed to be habitual receiver, after recording such a finding, history sheet can be either opened or extended beyond the period of two years. This court has noticed that in most of the orders passed under PSO746 or under PSO749 there is no such reason found recorded by the police officers as required under the said provisions. This, in my considered opinion, may be, because of lack of understanding of these police standing orders by the officers in the level of the Deputy Superintendent of Police or Assistant Superintendent of Police. Therefore, it is high time for the Director General of Police to issue instructions to all the Divisional Police Officers by means of a circular impressing upon them to pass detailed orders reflecting application of mind as required under PSO746 or 749, as the case may be, as and when either a history sheet or a rowdy sheet is opened or the period is extended. In view of the foregoing discussion, I am not inclined to impose any compensation to be paid by the State to the petitioner.

9. In the result, this writ petition is partly allowed and the history sheet opened against the petitioner is hereby quashed. Further, the Director General of Police, Government of Tamil Nadu, is hereby directed to issue necessary instructions by way of circular to all the Divisional Police Officers as indicated above. No costs.

kmk To 1.The Advocate General, High Court, Madras. 2.The Public Prosecutor, High Court, Madras. 3.The Additional Advocate General, High Court, Madras. 4.The Director General of Police, Government of Tamil Nadu, Chennai. 5.The District Collector, Coimbatore District. 6.The Superintendent of Police, Coimbatore District. 7.The Deputy Superintendent of Police, Pollachi Sub Division, Pollachi, Coimbatore District. 8.The Inspector of Police, Mudis Police Station, Valparai Taluk, Coimbatore District. 9.The Sub Inspector of Police, Mudis Police Station,

Valparai Taluk, Coimbatore District

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