

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 04.03.2020

PRONOUNCED ON :03.07.2020

CORAM :

**THE HONOURABLE Mr. JUSTICE N.SESHASAYEE**

**WP(MD)Nos.21040 of 2018, 7546 of 2019, 15 of 2019, 19654 of 2018, 19657 of 2018, 25185 of 2018, 21506 of 2018, 4716 of 2019, 8069 of 2019, 8332 of 2019, 5939 of 2019, 22402 of 2018, 7774 of 2019, 6096 of 2019, 5913 of 2019, 5979 of 2019, 9671 of 2019, 306 of 2019, 8066 of 2019, 4896 of 2019**

**and**

**CrI.OP(MD) Nos.3541 of 2019, 4921 of 2019, 4904 of 2019, 4914 of 2019, 4915 of 2019, 4725 of 2019, 22137 of 2018, 22742 of 2018, 5982 of 2019 & 4816 of 2019**

**and**

**WMP(MD) No.3901 of 2019 in WP(MD) No.4896 of 2019 & CrI.MP(MD) No.10307 of 2018 in CrI.OP(MD) No.22137 of 2018**

1.Thirumagan .. Petitioner in WP(MD) No.21040 of 2018  
2.P. Madasamy .. Petitioner in WP(MD) No.7546 of 2019

Vs

1.The Superintendent of Police  
Madurai District  
Alagarkovil Road Madurai – 625 007.

2.The Inspector of Police  
Kallikudi Police Station  
Madurai District.

.... Respondents 1 & 2 in WP(MD) No.21040 of 2018

3. The Superintendent of Police  
O/o. Superintendent of Police  
Thoothukudi  
Thoothukudi District ..... 1<sup>st</sup> Respondent in WP(MD) No.7546 of 2019
4. The Assistant Superintendent of Police  
Thoothukudi town  
Thoothukudi. .... 2<sup>nd</sup> Respondents in WP(MD) No.7546 of 2019
5. The Inspector of Police  
Vadagam Police Station  
Thoothukudi District. .... 3<sup>rd</sup> Respondent in WP(MD) No.7546 of 2019
6. The Inspector of Police  
Thalamuthu Nagar Police Station  
Thoothukudi District. .... 4<sup>th</sup> Respondent in WP(MD) No.7546 of 2019
7. The Inspector of Police  
Ottapidaram Police Station  
Thoothukudi District. .... 5<sup>th</sup> Respondent in WP(MD) No.7546 of 2019
8. The Director General of Police  
Chennai. .... 6<sup>th</sup> Respondents in WP(MD) No.7546 of 2019

[R6 in WP(MD) No.7546 of 2019 is suo motu impleaded  
Vide order dated 18.10.2019 made in WP(MD) No.7546 of 2019]

सत्यमेव जयते

**Prayer in WP(MD) No.21040 of 2018** : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to consider the representation given by the petitioner dated 09.10.2017, seeking the respondents to remove the petitioner's name from the history sheet on the file of the second respondent herein and to pass such further or other orders as this Court may deem fit and proper in the circumstances of the case.

**Prayer in WP(MD) No.7546 of 2019** : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to remove the petitioner's name from History Sheet opened in History Sheet No.89 of 2011 on the file of the 4<sup>th</sup> respondent office within a stipulated time that may be fixed by this Court.

For Petitioner : Mr.N.Anandakumar  
(in WP(MD) No.21040 of 2018)

For Petitioner : Mr.Henry Tiphagne  
(in WP(MD) No.7546 of 2019)

For Respondents : Ms.S.Bharathi,  
Govt.Advocate (Crl.Side) [in all W.Ps]

Mr.K.K.Ramakrishnan /Mr.V.Neelakandan  
Additional Public Prosecutor [in all Crl.OPs]

Mr.V.Kathirvelu, Senior Counsel  
Amicus Curiae [in all cases]

**COMMON ORDER**

1.1 Petitioners in this batch of cases impugn the decision of the police to history-sheet them, though the reliefs sought in the petitions are couched differently. They are an oft frequented category of cases that visits this Court, and they rarely show any respite, despite a few template judgments, (to which necessary reference would be made at appropriate places) of

this court on the point. The pith of the ratio in these judgements primarily emphasizes that the decision to history-sheet a convict or a suspect should not be arbitrarily resorted to. The principles they have laid down are informative study material for guiding and educating the police in their approach to history-sheeting. Contextually, are not the pronouncements of this Court adequate enough to sensitize the police officials on the manner of exercise of their power to history-sheet an individual? The experience however, has been disappointing, as the attitude of the police official to history-sheeting is seen varying from plain ignorance to abject indifference in following the principles laid down.

1.2 Litigation-avoidance is critical for eliminating the clogs that chokes the Court system, and its thematic significance and contemporary relevance to our legal system cannot be ignored. One of the contributory factors that diminishes the efficacy of the Courts to render justice in time is attributable to diverting the scarce judicial time to address identical or similar causes repeatedly. Does it not reflect that Courts are used with an inadequate sense of responsibility?

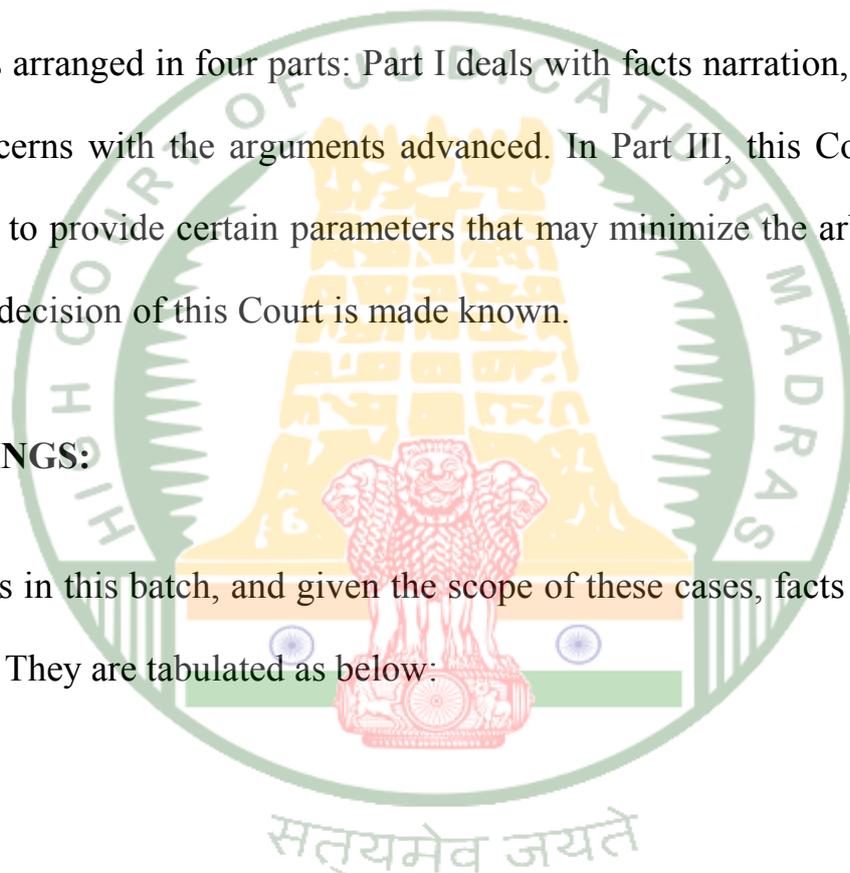
1.3 Any discourse on speedy justice invariably focuses on the exit points to the legal system, on the disposal of cases, and there has been inadequate discussion on the nature of cases that enter the system at its entry points. Here lies the scope for litigation-avoidance. The importance of avoiding a litigation that can be avoided cannot be over emphasized since it clogs and obstructs the free outflow of cases, and contributes to what has come to described

as 'docket explosion'. Nothing explodes where there is a responsibility to avoid it. A serious attempt is therefore made to ensure that the police officials are sensitized in order the inflow of a particular category of cases is reduced.

2. This judgement is arranged in four parts: Part I deals with facts narration, or pleading of the parties. Part II concerns with the arguments advanced. In Part III, this Court discusses the issues and attempts to provide certain parameters that may minimize the arbitrariness. In Part IV the conclusions/decision of this Court is made known.

**PART I - PLEADINGS:**

3. There are 30 cases in this batch, and given the scope of these cases, facts are stated only to the extent required. They are tabulated as below:



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Sl. No.	W.P.(MD)/ CrI.OP(MD) (Petitioner's name)	H.S. Details	No. of cases	Nature of cases			Cases now pending		Cases ended in	Other details
				Political / Social cases	IPC & Other cases	Sec. 107, 109 & 110 Cr.P.C.,	Pending Investigation	Pending Trial		
(1)	(2)	(3)	(4)	5(a)	5(b)	5(c)	6(a)	6(b)	(7)	(8)
1	WP(MD) No. 7546/2019 (Madasamy)	898/2011	4	2	2	.....	None	None	Last case dropped in Cr.No. 40 of 2017	<ul style="list-style-type: none"> <li>◆ Mandamus to remove the petitioner name from H.S.No. 89/2011</li> <li>◆ <b>Counter</b> :Retained in history sheet despite recommendation to drop. Closed once, re-opened in 2013 and closed in January 2017. Again re-opened due to Cr.No. 40 of 2017</li> </ul>
2	CrI.OP(MD) No.3541/2019 (A.Irudayarajan)	5/2012	1	.....	Major offence 307	.....	Pending trial in Sessions case 2014	.....	<ul style="list-style-type: none"> <li>◆ Direction to the respondents to remove the petitioner name from history sheet.</li> <li>◆ Today 100% visually challenged. Admitted. Judicial delay. No accusation petitioner causes delay</li> <li>◆ <b>Counter</b> : S.C.No.69/2014 and Cr.No.93/2014 are pending investigation. Acquittal in C.C.No. 102 of 2012 and final report filed in Cr.No.122 of 2012</li> </ul>	

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(1)	(2)	(3)	(4)	5(a)	5(b)	5(c)	6(a)	6(b)	(7)	(8)	
3	WP(MD) No. 15/ 2019 P.Ananthakumar	409/16	18	-	One IPC offence between 2003 – 2016		5	Crl.OP.No. 271/2014 – cheating case pending investigation	.....	.....	Mandamus to remove the petitioner name from H.S.No.409 of 2016, and to pay compensation.  ◆Acquitted in 8 cases; ◆Quashed in 3 cases; ◆Pending investigation in 2 cases since 2014
4	WP(MD) No. 19654/2018 Balasubramanian	269/2004	7	.....	5	2	3				◆Mandamus to remove the petitioner name from H.S.No. 269 of 2004, and to pay compensation. ◆Acquittal in 2 cases; ◆Pending investigation in 3 cases; oldest is Cr.No. 15/2008 for cheating. ◆ 110 Cr.P.C., proceeding in 2009 & 2011
5	WP(MD) No. 19657/2018 (A.M.Moorthy)	266/2004	7	.....	5	2	3				◆Mandamus to remove the petitioner name from H.S.No. 266 of 2004, and to pay compensation.  <b>Counter :</b> ◆Pending trial in C.C.No.298/2013 ◆Accused of

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(1)	(2)	(3)	(4)	5(a)	5(b)	5(c)	6(a)	6(b)	(7)	(8)
										offences u/s. 143, 188, 353, 291 IPC r/w. 189 of M.V. Act., in Cr.No.68/2019, against which, a quash petition was filed in CrI.OP(MD) No.9110 of 2018 and is pending investigation.
6	WP(MD) No. 25185 / 2018 (Bazeerdeen)	420/2018	10	7 (Sec. 188 & 353 Cr.P.C)	3	.....	3	.....		<ul style="list-style-type: none"> <li>◆Mandamus to remove the petitioner name from the history sheet</li> <li>◆Acquittal in one case;</li> <li>◆Quashed in 6 cases</li> <li>◆3 cases pending, of which 2 pending investigation; oldest case pending investigation in Cr.No.1709 of 2017</li> </ul>
7	WP(MD) No. 21506/2018 (Ganesan)	336/2016	4	.....	4	.....	.....	1		<ul style="list-style-type: none"> <li>◆ Certiorari Mandamus to quash the impugned Na.Ka.No.G5/21529/2018 dated 25.09.2018. H.S.No. 336/2016 and to remove the petitioner's name from history sheet.</li> <li>◆Acquittal in two cases</li> <li>◆Case in Cr.No.703 of 2017 closed as mistake of fact in 2019.</li> </ul>

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(1)	(2)	(3)	(4)	5(a)	5(b)	5(c)	6(a)	6(b)	(7)	(8)
										<ul style="list-style-type: none"> <li>◆ Case in C.C.No.14/2018 pending trial for offences under Sec. 342, 294(b) &amp; 506(ii) IPC &amp; Sec.4 of TNPHW Act.</li> <li>◆ <b>Counter :</b> Rowdyism abet communal clash</li> </ul>
8	Crl.OP(MD) No.4921/2019 (Kalaiselvam)			.....	.....	.....	.....	.....	S.C.No. 131 of 2015 disposed on 09.8.2019	<ul style="list-style-type: none"> <li>◆ Seeking direction to the respondents to remove the petitioners' name from H.S.Nos. 2/2012, 5/2012, 3/2012 &amp; 6/2012</li> <li>◆ All petitioners acquitted in S.C.No. 131/2015</li> <li><b>Counter :</b></li> <li>◆ Kattapanchayat</li> <li>◆ Petitioners viz., Kalaiselvam and Sivakumar are arrayed as accused persons in Cr.No.29/11. FIR closed u/s.468 Cr.PC.,</li> </ul>
9	Crl.OP(MD) No.4904/2019 (Sivakumar)	5/2012							-do-	-do -
10	Crl.OP(MD) No.4914/2019 (Tamizhselvam)	3/2012							-do-	-do-

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(1)	(2)	(3)	(4)	5(a)	5(b)	5(c)	6(a)	6(b)	(7)	(8)
11	Crl.OP(MD) No.4915/2019 (Mohan)	6/2012							-do-	-do-
12	WP(MD)No. 21040/2018 (Thirumugan)	3/12	2 Session case	.....	2	.....	.....	.....	09.06.2017	◆Mandamus to remove the petitioner name from H.S.No. 266 of 2004, and to consider the representation ◆Both cases acquitted by Sessions Court. <b>Counter:</b> Engineering communal clash.
13	WP(MD) No. 4716/2019 (Balan @ Balachandran)	9/2005	6	.....	5	1	.....	.....	24.4.2017	◆ Mandamus to remove the petitioner's name from H.S.No. 09/2005 on the basis of his representation. ◆Acquitted in 5 cases. ◆No details about fate of Cr.No.1403/2010
14	WP.(MD) No. 8069/2019 (Selvaraj)	44/2004	4	.....	3	1 dated 10/3/19	.....	.....	13.7.2018	◆Mandamus to remove the petitioner's name from H.S.No. 44/2004 on the basis of his representation. ◆Acquitted in 5 cases. <b>Counter :</b> Propensity to commit crime.
15	WP(MD) No. 8332/2019 (T.D.Watson)	108/2014	4	.....	3	1 (2018)	1	.....	.....	◆Mandamus to remove the petitioner's name from

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(1)	(2)	(3)	(4)	5(a)	5(b)	5(c)	6(a)	6(b)	(7)	(8)
										H.S.No.108/2014. ♦ One acquittal in 2007 ♦ One to quash Cr.No. 28/2014, against which CrI.OP(MD) No.16456 of 2016 is pending for quash; ♦ Petitioner suffering from papillary carcinoma thyroid with L.N. Metastasis  <b>Counter :</b> C.C.No.38 of 2016 pending trial. 110 Cr.P.C., proceeding withdrawn on 12.4.2019
16	CrI.OP(MD) No.4725/2019 (Muthukumar)	229/2006	1	.....	1 U/s. 302 IPC	.....	.....	.....	2007	♦ Seeking direction to remove the petitioner's name from H.S.No. 229 of 2006 and to consider his representation. ♦ No case after 2007. No review.
17	WP(MD)No. 5939 of 2019 (Rayappan)	Not stated both in the affidavit as well as in counter	2	.....	2	.....	2	.....	.....	♦ Mandamus to remove the petitioner's name from rowdy list and to consider his representation.  ♦ Both cases pending investigation from 2015.
18	WP(MD) No. 22402/ 2018 (P.Poolpandian)	169/2015	6	.....	3	3 (Last case U/s	.....	.....	06.4.2015	♦ Mandamus to remove the petitioner's name

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(1)	(2)	(3)	(4)	5(a)	5(b)	5(c)	6(a)	6(b)	(7)	(8)
						107 dt. 12.8.17)				from H.S.No.169/2015 on the basis of his representation. ◆If Cr.No.154/2016 and Cr.No.533/2017 is discounted, no case after 06.4.2015. ◆Counter : History sheet required because he was involved in six cases.
19	WP(MD) No. 7774/2019 (Antony Backia Selvam)	514/2004	7	.....	All	.....		1		◆Mandamus to review and close the history sheet maintained against the petitioner.  ◆Acquittal in six cases; ◆Pending trial in Cr.No.763/2016. No subsequent case after 2016.
20	Crl.OP(MD) No.22137/ 2018 Gopalakrishnan	136/1999	35		All + NDPS	2 नित्यमेव जयते	1 (Cr.No.361 of 2012)	5		◆ Seeking direction to the respondents to remove the petitioner name from H.S.No. 136/1999. ◆Convicted in 4 cases ◆Acquittal in 18 cases ◆Pending trial in 7 cases ◆Pending investigation in one case ◆Pending CBCID one case

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(1)	(2)	(3)	(4)	5(a)	5(b)	5(c)	6(a)	6(b)	(7)	(8)
										<ul style="list-style-type: none"> <li>◆110 Cr.P.C., 2 cases</li> <li>Compromised 1 case</li> <li>NTF one case</li> <li>◆Oldest pending cases in 2013 – two cases.</li> </ul>
21	WP(MD) No. 6096/2019 (Jambunathan)	H.S. Number not stated in the affidavit as well as in counter	2	.....	2	.....			.....	<ul style="list-style-type: none"> <li>◆Mandamus to remove the petitioner's name from history sheet and to consider his representation.</li> <li>◆In C.C.No. 2102/1978 convicted for 6 months;</li> <li>◆No details about current status of Cr.No.190 of 2003 for offence u/s.147, 148, 342, 332 &amp; 307 IPC</li> <li>◆Counter : Old age, working as overhead tank operator. Petitioner's request was rejected because his integrity suspected.</li> </ul>
22	WP(MD) No. 5913/2019 (Ibrahim)	59/2013	2	.....	2	.....			.....	<ul style="list-style-type: none"> <li>◆Mandamus to consider his representation to remove the petitioner's name from history sheet.</li> <li>◆Involved in Cr.No. 133/2014 &amp;</li> </ul>

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(1)	(2)	(3)	(4)	5(a)	5(b)	5(c)	6(a)	6(b)	(7)	(8)
										Cr.No.342/2015. (History Sheeted in 2013, and current status not stated)
23	WP(MD) No. 5979/2019 (A. Rajkumar)	194/1998	2	.....	2	.....	.....	.....	9 years	<ul style="list-style-type: none"> <li>◆Mandamus to consider his representation and to remove the petitioner's name from history sheet.</li> <li>◆The petitioner was Convicted in S.C.No. 3/1997 for 7 years, however he was released on 22.08.2009, before expiry of his sentence term, on the ground of his good behaviour. He was also acquitted in other case in Cr.No. 536/1998.</li> </ul>
24	WP(MD) No. 9671/2019 (Nepolean)	252/2018	6	.....	6	.....	5	.....	.....	<ul style="list-style-type: none"> <li>◆Mandamus to remove the petitioner's name from history sheet by considering his representation.</li> <li>◆According to the petitioner, CC.No. 228/2017 compounded in Crl.OP.No.18398/2018;</li> <li>◆Direction given in Crl.OP.No.12292/2018 to file final report in Cr.No.159/2018 for</li> </ul>

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(1)	(2)	(3)	(4)	5(a)	5(b)	5(c)	6(a)	6(b)	(7)	(8)
										offence u/s. 307 & TNPPDL Act; ◆ Oldest case pending investigation is Cr.No. 325/2014; Latest case pending investigation is Cr.No.159 of 2018
25	Crl.OP(MD) No.22742/2018 (P.Murugan)	1/2012	8	.....	IPC + Other Acts	.....	1	2		◆ Seeking direction to remove the petitioner's name from H.S.No. 1/2012.  ◆ Convicted twice, lastly in Cr.No.6/2012 for offence u/s. 75 TNCP. Acquitted in three cases Recent case in Cr.No. 102/2019 for offence u/s. 294(b), 323, 506(ii) IPC.,
26	WP(MD) No. 306/2019 (Kandasamy)	259/2013	6	.....	6	.....	2	.....		◆ Mandamus to remove the petitioner's name from H.S.No. 259/2013.  ◆ 2 cases acquitted ◆ 2 cases closed ◆ Cases under investigation are in 2013; Retained 2014 to 2018.
27	Crl.OP(MD) No.5982/2019 (J.V.Kennedy)	742/2012	6	.....	5	1	.....	.....		◆ Seeking direction to remove the petitioner's name from H.S.No. 742 of

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(1)	(2)	(3)	(4)	5(a)	5(b)	5(c)	6(a)	6(b)	(7)	(8)
										2012.  <b>Counter :</b> ♦Acquitted in 5 cases ♦Since the petitioner is an habitual offender, history sheet opened against him is extended till 31.12.2020.
28	WP(MD) No. 4896/2019 (P.Ganesan)	511/2014	6	.....	5	.....	.....	.....		♦Mandamus to consider the petitioner's representation to remove the petitioner's name from rowdy list.  ♦Acquittal in 2 cases ♦Two cases closed ♦Quash petition filed in Crl.(OP)MD No. 15079/2018 against Cr.No. 320/2018. FIR stayed
29	WP(MD) No. 8066/2019 (S.Ranjith Kumar)	548/2017	4	.....	3			1		♦Mandamus to remove the petitioner name from history sheet and to consider his representation.  ♦According to the petitioner, 4 criminal cases are pending against him, of which, acquittal in 2 cases, pending trial in one case and pending

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(1)	(2)	(3)	(4)	5(a)	5(b)	5(c)	6(a)	6(b)	(7)	(8)
										investigation in one case.  <b>◆ Counter :</b> In the counter, the petitioner is stated to have involved in 3 criminal cases. It also states about the alleged incident on 26.12.2017 and there is no information in the counter whether any case was registered against the occurrence on 26.12.2017 or whether the last case (Cr.No.3/2018) in the counter, pertains to it.
30	Crl.OP(MD) No.4816/2019 (Paramasivsam)	155/2010	13		8	5				<b>◆ Seeking a direction</b> to remove the petitioner name from history sheet and not to harass the petitioner and his family members  <b>◆ The petition is bereft</b> of case details and it is alleged in the affidavit that he faced trial before the Sessions Court and was acquitted, and thereafter, a false case was foisted against him in 2015, and was again acquitted.

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(1)	(2)	(3)	(4)	5(a)	5(b)	5(c)	6(a)	6(b)	(7)	(8)
										<b>Counter :</b> ♦ It is alleged that 13 cases are registered against the petitioner . The crime have essentially taken place due to internecine family dispute, in which 9 murders have taken place in three police station limits, and these details were suppressed in the affidavit. ♦ Acquitted in 7 cases ♦ Convicted in one case ♦ Received good behaviour bond in 3 cases ♦ Action dropped in 2 cases

**PART II - THE ARGUMENTS**

सत्यमेव जयते

4. History Sheeting is a permitted means of achieving crime-prevention, and in this State under the provisions of the Police Standing Orders (henceforth the PSO). While there was a general agreement among the counsel for the petitioners on the general utility of surveillance-policing, there was an equal unanimity among them in describing surveillance through history-sheeting as a crude and primitive policing tool, developed during the days of colonial 18/67

control, antiquated both in terms of time and technology. Mr. Henry Tiphagne, the counsel for the petitioner in W.P(MD)7546/2019, also added that the PSO freely uses expressions like '*Known Depredators*' of law (KD), or '*Rowdies*', when no penal law has prescribed powers for any such branding-exercise. Either one is convicted of committing an offence, or not convicted. Still, if looked through the lens that the provisions of the PSO provides, they seem alike to the policemen. It was outlined that history-sheeting through the PSO, conceals an issue of constitutionality that has managed to outmaneuver the forensic scrutinies undertaken earlier. Though the constitutionality of the PSO itself was not pointedly raised, still this court was alerted to examine it.

5. It was argued that if the history-sheeting through PSO is considered as a procedure established within the meaning of Article 21 of the Constitution, at the operational level the PSO leaves enormous space for its arbitrary exercise, which the police officials exploit unflinchingly. The only provision in the PSO in which both the criterion for history sheeting and the duration for which it would be in operation has been spelt with a degree of definiteness is PSO 747. In terms of PSO 747, when once a person is convicted and sentenced to imprisonment for the commission of certain specific offences, a history sheet would be opened automatically against him, and it will be in force during the term of the

sentence plus two years thereafter. This clarity and certainty is unavailable in providing the criterion either for retaining a history sheeter as such as in PSO 748, or in opening a history sheet for suspects and rowdies as in PSO 749. It was further argued:

- It could be gathered from PSO 748(2), a history sheet once opened can be in force only for two years, and beyond that it can be annually extended on the orders of a police official of a specified rank, on an objective appraisal of the materials gathered against a history-sheeter. Notwithstanding the insistence of this Court that the police officials shall be objective in their approach, and its condemnation that they shall not arbitrarily deal with the fundamental rights of the citizens in several of its judgements, most of which are catalogued and relied on in *Sabari alias Sabarigiri Vs. The Assistant Commissioner of Police, Annanagar (L & O), Madurai City* [2018-2 LW (CrI) 817], with primary thrust on the Order of this Court in *Ganesan Vs. The District Superintendent of Police & others* [2010(6)CTC 507], the police personnel remain what they have always been – without realizing a need for change.
- Under PSO 749(1) a history sheet can be opened for Suspects, but it presumes every person who is convicted even once for any offence under the IPC as a suspect. Therefore, even if one is not history sheeted under PSO 747, still he can be history sheeted as a suspect. And being a suspect, it can be opened at any time of the

policemen's choice. The second situation is that even without any conviction, he can still be considered a suspect and can be believed to be addicted to crime. This is paradoxical since it produces the same consequence which results from a conviction. The judgements hitherto delivered by this Court do not deal with the situations where both convicts and non-convicts are treated alike. This goes against the justification for history sheeting a person, and consequently violates the equality doctrine under Article 14 of the Constitution.

- History sheets are regularly opened even where cases are registered in connection with political demonstration. Right to express a dissent, right to protest and right to be part of any demonstration are integral to the democratic rights of the citizens, and resorting to history-sheeting therefore, is an indignation to our Constitutionalism, since history-sheeting can be justified only for prevention of a crime and not for throttling the fundamental rights of the citizens to voice their protest.

- In ***Ganesan Vs. The District Superintendent of Police & Others*** [2010(6)CTC 507], this Court has held that *an isolated act of commission of crime cannot be characterized as a habitual act or commission involving breach of peace or law and order*. However, a history-sheeter is still considered as a habitual offender with more than one case, even

- When the FIR is closed as a mistake of fact and further investigation is dropped;
- Where the investigation is not completed and final report is not laid within the period of limitation provided in Sec.468 Cr.P.C.;
- Where the trial is pending for considerable number of years for no fault of the history-sheeter;
- After the Court has acquitted the history-sheeter.

In each of the cases, a history sheet once opened is kept alive far beyond the two years period stipulated in PSO 748(1) ignoring the principles laid down by this Court.

- Registering a case for the purposes of Sec.109 Cr.P.C. and 110 Cr.P.C. continues to enable the police to open a Rowdy Sheet under PSO 749(2), notwithstanding the deprecation of this practice by this court in *Sabari case* [2018-2-LW 817].
- What is not adequately appreciated is that history-sheeting leaves civil consequences in that it becomes a barrier for obtaining anything from a passport to securing an employment. For instance, in W.P.(MD)7546/2019 and W.P.(MD)25185/2018, the petitioners are not in a position to enroll themselves as Advocates. In fact, in both these cases the petitioners have participated in political demonstrations or have showed their protest in social causes, and despite that, their career and their right to dignified life which their career would support, are largely impaired by the concerned police to retain

their names in the History sheet. And, worse, in the case of the petitioner in W.P. (MD)7546/2019, the concerned police official Vide his report dated 06-01-2017 has recommended closing the history sheet opened against the petitioner, still he is retained in the history sheet. What has become a casualty is the need for objectivity and non-arbitrariness that the Courts have been tirelessly advocating. This petitioner in particular seeks Rs.1,00,000/- as damages for the denial of his right to engage in an avocation of his choice.

- That even if one is history- sheeted at a certain point of time in the past, but was removed from the same subsequently, and if he were to be included in the Register of History-Sheetter at a later point of time, the original folio is opened as if he has been a history sheetter continuously since the time he was first history sheeted. For instance, if one is assigned a history-sheetter number as H.S abc/1995, no matter even if his name is removed from the history-sheet at some point of time, and thereafter re- opened again at a later point of time, he will continue to be assigned the same H.S. abc/1995. This leaves a psychological repercussion as it leaves an easy possibility for an adverse assessment that a person has been a history sheetter continuously since the date the history sheet was opened.

Besides *Sabari alias Sabarigiri Vs. Assistant Commissioner of Police (L & O) Madurai City* [2018-2-LW (CrI) 817 : (2018) 4 MLJ 585], *Ganesan Vs. D.S.P. Virudunagar* [(2011) 1 MLJ (CrI) 214] to which reference has already been made, reliance was also placed on the ratio in *Manivannan Vs. State* [(2013) 7 MLJ 501]; *Selvaraj & Others Vs. Inspector of Police, Kaliakkavilai* [(2010) 4 MLJ (CrI) 12 : (2010) 1 LW (CrI) 497], *S. Vani Vs. Superintendent of Police, Sivagangai* [(2008) 3 MLJ(CrI) 1525].

6. Given the nature of the arguments advanced, this Court appointed Thiru. V.Kathirvel, Senior Advocate, as an *amicus curiae* to assist it. It also impleaded the Director of General of Police in W.P.(MD)7546/2019. It then required the respondent to nominate any serving/retired police official to assist the Court to enable it to harmonize any apparent space for arbitrariness in the PSO. None however, was nominated.

7. In response, the learned Government Advocate (Criminal Side) argued that the police personnel who are entrusted with the power to history sheet have been meticulous in their assessment of the characters against who they open the history sheet, and that they scrupulously follow Chapter XLII of the PSO, besides PSO 367 and 368 (relating to Beats and Patrols) in Chapter XXI.

8. The learned Amicus curiae on his part has stated the law that this Court has declared in various authorities. This court records its appreciation for his efforts.

### **PART III**

#### **THE DISCUSSION**

9. The tone and tenor of the arguments of the learned counsel for the petitioners do not impugn the Constitutionality of the entire Chapter XLII of the PSO which provides for the opening, closing, or retention of a history sheet, or any other related provision specifically. They were more focused on spotlighting the amorphousness of certain specific provisions in the PSO which encourage short-circuiting the fairness and objectivity required in history sheeting a person. And, where arbitrariness in administrative action does not find its correctives from within the principles settled by the judgements of this Court, what steps in for justice is essentially an avoidable litigation, something which those who had exercised the power to history sheet always had the opportunity to avoid. How then to sensitize the police men in their approach to history-sheeting and to prevent an avoidable litigation in that pursuit?

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**(a)History-Sheet: An Over view:**

10.1 History-sheeting falls under the category of surveillance-policing, and it may have to be granted its place for effective policing. To appreciate it, a distinction is required to be drawn between an individual's right to dignified life, and the society's right to peaceful existence. It shall not be ignored that at all times societal peace walks under the shadow of its opposite forces that threaten to defeat it. Policing is all about securing the right to peaceful existence from these opposing forces. This battle has been continuous in every society, since the possibility of a perfect society cannot be considered either as a preferable hypothesis, or as a theoretical possibility, and consequently, policing cannot rest in presuming a certain ideal. Given the tools that the police force currently has for crime- prevention through preventive policing, significance of history-sheeting cannot be ignored.

10.2 The voices that decry history-sheeting as a legacy of the imperialism and opposed to Constitutionalism, presume an ideal and the universal innocence of all. But policing is not about believing in an ideal, and is about presuming its opposite. It is intended to protect those who seek security for their lives under the Constitution from those who make their peaceful journey difficult. Crime is not a choice that law offers, but is one that an individual makes, and hence preventive policing (that which intends to prevent crime) through history- sheeting is not just common-sensical, but also is Constitutionally relevant.

11. One of the first cases in surveillance policing was ***Kharak Singh vs The State of U. P. & Others*** [AIR 1963 SC 1295 = 1964 SCR (1) 332]. Kharak Singh was arraigned in a case of dacoity in 1941. However, he was released under Sec. 169, Cr.P.C., 1898 as there was no evidence against him. On the basis of the accusation made against him, the police have opened a "*history sheet*" against him. Therefore, he challenged the constitutional validity of Chapter XX of the U. P. Police Regulations as violative of his right under Arts. 19(1)(d) and 21 of the Constitution of India. The Constitution Bench struck down Regulation 236 (b) thereof on the ground that these regulations (contained in Chapter XX therein) do not have statutory force, and that they are not relatable to Sec. 12 of the Indian Police Act. It is noteworthy to mention that the entire Regulation was struck down by His Lordship K. Subba Rao J. In his dissent, Justice K. Subba Rao declared his view as below:

*"It is true our Constitution does not expressly declare a right to privacy as a fundamental right, but the said right is an essential ingredient of personal liberty. Every democratic country sanctifies domestic life; it is expected to give him rest, physical happiness, peace of mind and security. In the last resort, a person's house, where he lives with his family, is his "castle": it is his rampart against encroachment on his personal liberty. The pregnant words of that famous Judge, Frankfurter J., in Wolf v. Colorado, pointing out the importance of the security of one's privacy against arbitrary intrusion by the police, could have no less application to an Indian home as to an American one. If physical restraints on a person's movements affect his personal liberty, physical encroachments on his private life would affect it in a larger degree. Indeed, nothing is more deleterious to a man's physical happiness and health than a calculated*

*interference with his privacy. We would, therefore, define the right of personal liberty in Art. 21 as a right of an individual to be free from restrictions or encroachments on his person, whether those restrictions or encroachments are directly imposed or indirectly brought about by calculated measures. If so understood, all the acts of surveillance under, Regulation 236 infringe the fundamental right of the petitioner under Art. 21 of the Constitution.”*

The majority judgement in ***Kharak Singh case*** held that the right to privacy is not protected by the Constitution, and this was overruled by a larger Bench of the Hon'ble Supreme Court Vide paragraph 652.2 in ***K.S. Puttaswamy and Anr Vs Union of India***, [(2017) 10 SCC 1] and proceeded to approve the dissenting judgment of K.Subba Rao J., on right to privacy.

12. In ***Malak Singh Vs State of Punjab & Haryana & Others*** [AIR 1981 SC 760], the question which engaged the Hon'ble Supreme Court was, if including the name of the petitioners in the Surveillance Register maintained under the Punjab Police Rules affects their fundamental right under Article 21. The issue was addressed as below:

*“6. Prevention of crime is one of the prime purposes of the Constitution of a police force.*

*The preamble to the Police Act 1861 says:*

*“Whereas it is expedient to recognize the police to make it a more efficient instrument for the prevention and detection of crime.”*

*Section 23 of the Police Act prescribes it as a duty of police officers “to collect and communicate intelligence affecting the public peace, to prevent the commission of offences and public nuisances”. In connection with these duties it will be necessary to*

*keep discreet surveillance over reputed bad characters, habitual offenders and other potential offenders. Organised crime cannot be successfully fought without close watch of suspects. But, surveillance may be intrusive and it may so seriously encroach on the privacy of a citizen as to infringe his fundamental right to personal liberty guaranteed under Article 21 of the Constitution and freedom of movement guaranteed under Article 19(1)(d). That cannot be permitted. This is recognised by the Punjab Police Rules themselves. Rule 23.7, which prescribes the mode of surveillance, permits the close watch over the movements of the person under surveillance but without any illegal interference. Permissible surveillance is only to the extent of a close watch over the movements of the person under surveillance but without any illegal interference. **Permissible surveillance is only to the extent of close watch over the movements of the person under surveillance and no more.** So long as surveillance is for the purpose of preventing crime and is confined to the limits prescribed by Rule,, we do not think a person whose name is included in the surveillance Register can have a genuine complaint.....*

*7. As we said discreet surveillance of suspects, habitual and potential offenders, may be necessary and so the maintenance of history sheet and surveillance register may be necessary too, for the purpose of prevention of crime. History sheets and surveillance Registers have to be and are confidential documents. Neither the person whose name is entered in the register nor any other member of the public can have access to the surveillance register. **The nature and character of the function involved in the making of an entry in the surveillance register is so utterly administrative and non-judicial.**”(emphasis supplied)*

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The above passage instantly brings to fore that (a) maintenance of History sheet etc., aims at prevention of crime, and that it should not be maintained beyond the point which is essential,

lest it would invade the fundamental rights of all those who are history sheeted. (b) That history-sheeting is only an administrative action and not a judicial action. See also *S. Jothilingam and others Vs. The State, represented by the Deputy Superintendent of Police & Others* [1995(1) MWN (Cr.) 165 : 1995 SCC Online Madras 190], *N. George & another Vs. V.R.Krishnaswami* [1991(1) MWN (Cr.) 44], In *Pandurangan Vs. State by Inspector of Police, Thirukkazhukundram* [1987 LW (Cr.) 400], where this Court has held that the PSO are no more than a set of administrative instructions for the internal use of the police and for policing.

13. The need for effective policing (through history-sheeting), and, the arbitrary and *malafide* exercise of police power in history-sheeting (an individual), are conceptually different. Having stated that history-sheeting has the potential to imperil the fundamental right of the person history-sheeted under Article 21, then in terms of Article 21, any limitation on the right to life could be attempted only as per the '*procedure established by law*'. This court, being adorned with the duty of being a Constitutional sentinel, has to balance between the right of an individual to his fundamental rights as against the interests of the society in maintaining law and order through effective preventive policing. In *Menaka Gandhi Vs. Union of India* [AIR 1978 SC 597], the Supreme Court has telescoped procedural due process into the phrase '*procedure established by law*' to mean that such procedure which the law prescribes must be a fair procedure. This would now signify that the power to surveil a citizen

can be done only by a fair procedure established by law, history-sheeting included.

14. If prevention of crime is the central theme that provides a justification for history-sheeting, and if the decision to history sheet is only an administrative action, it then follows that whenever an administrative action forsakes fairness and ignores objectivity, arbitrariness invites itself to hold the action in contempt of the Constitutional doctrine of equality. Conversely, every action that violates the fundamental rights cherished under Part III of the Constitution, *proprio vigore* will be arbitrary.

15.1(a) Can, therefore, a set of non-statutory administrative instructions such as the Police Standing Order be termed as law, for satisfying the requirement of a '*procedure established by law*' in Article 21, merely because Article 13(3) of the Constitution defines law to include "*Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law?*" Here it needs to be noted that 'law' in Article 13 is set to a specific context where it makes a declaratory statement that "*the State shall not make any law which takes away or abridge the rights conferred by*" Part III. And, to enable an understanding of what this law is, Article 13(3) has provided an inclusive definition, and hence wide and expansive. (Even this was not free from debate, as for instance, whether uncodified personal law can be considered law for the purpose of Article 13 has been

seriously debated and variously decided. This however, is beyond the scope of the present litigations).

15.1(b) Having made this declaration in Article 13, the Constitution itself proceeds to enable the State to make provision for providing exceptions to, or for limiting the exercise of the Fundamental Rights such as in Articles 15, 16, 19(2) to 19(6), 21, 22(7), 25(2). It now requires to be understood if a non-statutory circular, or a non-statutory Order will fall within the definition of law in Article 13(3) (which will be relevant when they are tested for their constitutionality as being inconsistent with, or abridging any of the rights in Part III), and by the same stroke will they become law to enable limiting, or carving an exception to, the Fundamental Rights under Part III (for which the Constitution itself has made provisions) ?

15.2 The difference is well brought out in *Union of India Vs. Naveen Jindal & another* [(2004) 2 SCC 510]. The issue before the Hon'ble Supreme Court was about the citizen's right to fly a National Flag, and to understand if it is part of citizen's fundamental right? The Hon'ble Supreme Court held that it is part of citizen's fundamental right under Article 19(1) (a). One ancillary issue which the Court was required to address is on the legal character of the Flag Code, 2002, under which few restrictions are imposed on the right of the citizen to fly his national flag. The Hon'ble Supreme Court held that the Flag Code is only an Executive

instruction of the Government of India, and proceeded to declare that, “*the Flag Code although is not a law within the meaning of Article 13(3) (a) of the Constitution of India for the purpose of clause (2) of Article 19 thereof, it would not restrictively regulate the free exercise of the right of flying the national Flag .*” (See also **Senior Superintendent of Post Offices Vs. Izhar Hussain**, [(1989) 4 SCC 318 : AIR 1989 SC 2262], where the Hon'ble Supreme Court has held that a statutory rule which is constitutionally invalid cannot be validated with the support of executive instructions. Though it is on a slightly different footing, it highlights the ineffectiveness of Executive Instructions when they deal with the Fundamental rights of the citizens.

15.3 It is now possible to deduce logically, that the Police Standing Orders, inasmuch as they embody a set of administrative instructions, to the extent it either supports the preservation of any of the fundamental rights of the citizens, or operates in a neutral zone, it may be granted a place in the Constitutional scheme. However, when it comes to limiting the right to life under Article 21, its place within the phrase “*procedure established by law*”, appears suspect. This may now mean that the State has to review the very process by which it allows the policemen to history-sheet a citizen and it has to make the whole power and the process statutory.

16.1 It would be pertinent to recall the words of John Locke in his work 'Second Treatise on Civil Government'. The starts with Chapter IV titled “of Slavery” with the following words :

*“The natural liberty of man is to be free from any superior power on earth, and not to be under the will or legislative authority of man, but to have only the law of nature for his rule. The liberty of man, in society, is to be under no other legislative power, but that established, by consent, in the commonwealth; nor under the dominion of any will, or restraint of any law, but what that legislative shall enact, according to the trust put in it. Freedom then is not what Sir Robert Filmer tells us, Observations, A. 55. a liberty for everyone to do what he lists, to live as he pleases, and not to be tied by any laws: but freedom of men under government is, to have a standing rule to live by, common to every one of that society, and made by the legislative power erected in it; a liberty to follow my own will in all things, where the rule prescribes not; and not to be subject to the inconstant, uncertain, unknown, arbitrary will of another man: as freedom of nature is, to be under no other restraint but the law of nature.”*

16.2 In a society that we live in, it is essential to balance the duty of the State to maintain the law and order, and the right of an individual to be left alone. However, till such time the legislature takes a call on its power and the procedure to history-sheet statutory, history sheeting within the present scheme of things under the PSO may have to continue. To strip the police of its power to history-sheet with no reaction time will have greater ramification on the crime-prevention as it concerns the larger public interest. It may lead to a judiciary-engineered imbalance between right of the public and the individual right of the citizens. Hence, there is a

felt need to retain police power to history sheet under the PSO as a transient arrangement.

**(b)The PSO, History sheeting & Arbitrary space:**

17.1 Where lies the fountain head of arbitrary exercise of the power to history-sheet?

History-sheeting essentially revolves around four provisions in Chapter XLII of the Police Standing Order: PSO 746, 747, 748 and 749. They are reproduced:

<i>PSO No.</i>	<i>Contents</i>
<b>746. History Sheets</b>	<p><i>(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.</i></p> <p><i>(G.O.Ms.No.364, Home, 15<sup>th</sup> Feb. 1943)</i></p> <p><i>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.</i></p> <p><i>Note : This sub-paragraph will not effect the History Sheets maintained in Crime Records Bureau.</i></p> <p><i>(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.</i></p>

PSO No.	Contents	
	<p>(3) In sheet 8 under heading the "<b>Current doings</b>" entries which are <b>informative and useful based on the facts ascertained both by the Sub-Inspector and his men</b> 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 of the quarter.</p> <p>(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 "<b>Current-doings</b>".</p>	
<p>747. <b>Automatic Opening of History Sheets :</b></p>	<p>(1) History sheets shall be opened automatically at the time of conviction for persons convicted as under, and shall be retained for two years after release from jail.</p>	
	<p style="text-align: center;"><b>Persons are how convicted</b></p> <p style="text-align: center;">(1)</p>	<p style="text-align: center;"><b>Number of time convicted</b></p> <p style="text-align: center;">(2)</p>
	<p>Persons released from imprisonment for life under Chapters XII and XVII, Indian Penal Code.</p>	
	<p>Professional Prisoners Indian Penal Code, Sec.395 to 402</p>	<p style="text-align: center;">Once</p>
	<p>Indian Penal Code, Sec.392 to 394, if convicted or liable to conviction under Section 75, Indian Penal Code</p>	<p style="text-align: center;">Twice</p>
	<p>House breaking</p>	<p style="text-align: center;">Twice</p>
	<p>Theft</p>	<p style="text-align: center;">Thrice</p>
	<p>Conviction under Section 109, Criminal Procedure Code</p>	<p style="text-align: center;">Twice</p>
	<p>Conviction under Section 110, Criminal Procedure Code</p>	<p style="text-align: center;">Once</p>

PSO No.	Contents
	<p>(G.O.Ms.532, Judl, 20 Feb.1906 and 497, Law (Genl.), 10<sup>th</sup> Feb 1923.)</p> <p><b>Note :</b>  <b>(1)</b> Order No.747 need not be strictly applied to such persons, but History Sheets should be opened under that order in respect of individuals for whom the Superintendent or Sub-Divisional Officer thinks it advisable on account of their active criminality.                      (G.O.Ms.No.3434, Home, 5<sup>th</sup> Nov.1964)</p> <p><b>(2)</b> The History Sheet of a Known Depredator, against whom an order has been passed under Section 356 Criminal Procedure Code, shall not be closed until the period during which he is required to report changes of residence has elapsed.</p> <p><b>(3)</b> Persons convicted as above will be styled <b>Known Depredators</b>.</p> <p><b>Note :</b> Inmates or ex-inmates of a Borstal Institution should not be styled as "Known Depredators".</p>
<p><b>748. Discontinuance of History Sheets :</b></p>	<p><b>(1)</b> History sheets shall be closed by the definite orders of an officer of and above the rank of Assistant Superintendent of Police / Deputy Superintendent of Police and shall be filed in the Station. The History Sheets of persons who have died shall be destroyed under orders of an officer of and above the rank of Assistant Superintendent of Police / Deputy Superintendent of Police. The superintendent of Police may order the closure of a History Sheet at any time but a Divisional Officer may also do so on the expiry of the period named above,                      (G.O. Ms.No. 3929, Home, 5<sup>th</sup> Sept, 1950)</p> <p><b>(2)</b> 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 and further annual extensions from January to December.</p> <p><b>(3)</b> The above orders shall apply to <b>Rowdy Sheets</b> also.</p>
<p><b>749. Suspects</b></p>	<p><b>(1)</b> The following persons shall be classed as <b>suspects</b> and History Sheets shall be opened for them under orders of the</p>

<b>PSO No.</b>	<b>Contents</b>
	<p><b>Superintendent or Divisional Officer</b>, if so empowered by the Superintendent.</p> <p>(a) Persons once convicted under any Section of the Indian Penal Code are <b>considered to be likely to commit crime</b>;</p> <p>(b) Persons, not convicted, but <b>believed to be addicted to crime</b>.</p> <p>(2) The following persons may be classified as <b>rowdies</b> and Rowdy Sheets (Form No.112) may be opened for them under the orders of the Superintendent or Sub-Divisional Officer.</p> <p>(a) Persons who habitually commit, attempt to commit or abet the commission of offences involving a breach of peace.</p> <p>(b) Persons bound over under Section 106 and 107 Criminal Procedure Code.</p> <p>(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.</p> <p>(d) Persons who are illicit distillers and known purveyors of liquor.</p> <p>(G.O.Ms.No.3461,Home, 10<sup>th</sup> Dec,1956).</p> <p>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.</p> <p>(3) The fact that a History Sheet has been opened for a suspect, other than an ordinary criminal shall be kept confidential. (G.O. Ms. No.480,Judl. 10<sup>th</sup> Aug. 1921).</p> <p>(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 <b>K.Ds</b> and the rowdies should be checked regularly by beat Police Constables in rural Police Stations and by rowdy patrols in large town as also by the Sub-Inspectors (Law and Order). The</p>

PSO No.	Contents
	<p>checking however should be discretely done by the method of enquiries and not in the manner of domiciliary checks.</p> <p><b>(5)</b> Inspectors and Divisional Officers when they visit the area should make their own independent enquiries and not their findings in the History Sheets andn in inspection Reports, if any.</p> <p><b>(6)</b> All reports against notorious rowdies entered in the General Diary of the Station or matter brought to light on enquiries in the petitions should be entered against them in the personal sheets and should be dated.</p> <p><b>(7)</b> Rowdies are often employed for committing breaches of peace and of intimidating opponents in times of political or communal tension. Inspectors of Police should take effective and timely action to control their activities. The active ones among these should be dealt with appropriately under Section 110 (a) and (f) of the Criminal Procedure Code or under Section 160 I.P.C or under Section 75 of the Madras City Police Act and Section 106 of the Criminal Procedure Code.</p> <p><b>(8)</b> Besides registered rowdies for whom separate sheets are maintained there are a set of anti-social elements in every sheet and village who intimidate the local people and exploit them for their selfish ends. They are often believed to be keeping brothel houses clandestinely for promoting prohibition or offences under the Gaming Act. Sometimes they have political backing also. The activities of these persons also require vigilant watch and check. For this purpose a register in Form No.112 shall be maintained in all Police Stations. The categories of persons which should be entered into the registers are :</p> <p><b>(a)</b> All persons for whom rowdy sheets are maintained under Order No.747.</p> <p><b>(b)(i)</b> Anti-social elements who intimidate people and exploit them for selfish ends, or actively promote communal disharmony.</p> <p><b>(ii)</b> Persons believed to be keeping brothels or opium dens or promoting offences under the Gaming Act.</p> <p><b>(c)</b> Persons bound over under Section 110(e) and (f) Criminal Procedure Code.</p> <p><b>(d)</b> Persons convicted under Section 294, I.P.C.</p> <p><b>(e)</b> Known drunkards.</p>

17.2 The schematic analysis of the Police Standing Order informs that history sheeting, at one level is the consequence of a penalty – slapped during the term of conviction, and at another level, can visit those who are perceived to exhibit a propensity for committing a crime after their term of sentence, and also includes those who are believed to be addicted to crime, or habitually commit, or attempt to commit, or abet the commission of offenses involving a breach of peace. The Order of this Court in *Ganesan's case* and few other decisions, elaborate these provisions and the zone of their application, and they may be beneficially referred to.

18. Even a cursory glance of these provisions would instantly inform that the history- sheeting under PSO 747 is relatively least troublesome, as the parameter it provides is straight forward: A conviction by a Court for certain specified offenses. The provision itself is titled 'Automatic Opening of History Sheets', as it makes history-sheeting, a concomitant fallout of a conviction. In terms of PSO 747, a convict alone will be history-sheeted, and will remain a history-sheeter during the term of his sentence plus two years. A citizen's right is protected here, since the sine qua non for history-sheeting is a judgment of a Court. This is akin to the National Registry of sexual offenders brought about under the Criminal Law Amendment Act, 2018. It has a legislative base with a judicial verdict as its backing.

**(c) Definitional Uncertainty and Arbitrariness:**

19. The instances, where the PSO fails to provide an objective criterion (in contrast to what is provided for automatic-history-sheeting) are:

- History-sheeting a Suspect in terms of PSO 749. Under PSO 749(1)(a), a person once convicted is presumed to be a suspect at all times; and, under PSO749(1)(b) a non-convict is equated to a convict. Both PSO 749(1) and (2) uses expressions like '*believed to be addicted to*', or '*habitual*' in its reference to commission of a crime that leave interpretative challenges.
- Where a history-sheeter is sought to be retained as a history sheeter under PSO 748(2) even after the expiry of two years after the term of sentence (as provided in PSO 747) based on what is known as '*record of current-doings*', as explained in PSO 746(3).

20. A provision that enables the policeman to presume that every convict shall be '*considered to be likely to commit a crime*' is more an effort to amuse the spirit of Constitutionalism. This will be so, even if the PSO were presumed to have a statutory status. The effect it instantly produces is that it renders the reformation theory (the relevance of which the Probation of Offenders Act, 1958, read along with Sec.360 Cr.P.C. signify) which our criminal justice jurisprudence has not abandoned, instantly meaningless.

21. Due to want of a definitional objectivity, PSO 749(1)(b) provides an unwitting opportunity to the police official to believe that, 'once an offender is always an offender'. There cannot be a greater instance of arbitrary discrimination and insult to the Constitution than to prescribe a presumption that a former convict is an eternal suspect. Preventive policing cannot extend to the extent of treating the entire society as suspects, and hence it ought to filter those who are prone to commit a crime from the rest on an objective criterion for a special-watch through history-sheeting. If the need for involvement of a person in a crime after his initial conviction is eliminated from the line of consideration, that is to mean, if a person is not convicted or where not even a FIR is registered subsequent to his earlier conviction, it is difficult to conceive how a person is known to commit a crime, or believes to have committed a crime, or considered likely to commit a crime. Shockingly, PSO 749(1) (b) does not even make pendency of a FIR a criterion or the least common requirement for history sheeting for identifying a suspect.

22. Here it is necessary to bring in PSO 746 which is the opening provision of the Chapter on History-Sheeting. PSO 746 is more of a general provision, with PSO 747 to 749 addressing specific aspects of History-sheeting. PSO 746 (1) is reproduced again: *'Part V (Form No.111) shall contain the History sheet 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.*” The phrasal expressions like *known or believe to be, considered likely*, are but adjectival phrases that go to qualify an act involving a commission of a crime, or abetting its commission, or disturbing public peace in relation to which the PSO uses these expressions. What is significant here is not the qualifying or the adjectival expressions, but the conduct involving commission of crime or its abetment. In *Ganesan's case* this Court has held:

“51.....*Belief, in the case on hand, means a degree of conviction of the truth something especially based on a consideration or examination of evidence and authorities vested with the 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..*”

23. If a person were to be considered as one addicted to crime, then there should be more than one FIR, for a single FIR cannot merit a classification as an addiction. The word addiction in PSO 749(1)(b), necessarily has to carry the same meaning as given to the expression '*habitually commit*' in PSO 749(2)(a), as given by this Court in *Ganesan case* [2010(6)CTC 507] where it said: “*..An isolated act or commission cannot be characterized as a habitual act..*”.

24.1 The next provision with inadequate definitional clarity and objectivity can be found in PSO 748(2), which provides for retention of a history sheet in the history sheet. This is done on the basis of what the PSO refers to as '*current doings*'. What this term '*current doings*' signifies is known from PSO 746(3). It reads:

*“In sheet 8 under the heading “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”.*

The underscored expressions are: (i) facts ascertained; (ii) bad characters; and (iii) anything of interest. The PSO generously uses these terms at several places such as in PSO 366, 367 in chapter XXI, PSO 752, 754.

24.2 Who then, is a bad character? How to identify a person as a '*bad character*? Is he a person with a FIR pending against him but without a conviction, or should he be one addicted to a crime as in PSO 749(1)(b), or, should be an habitual offender as in PSO 749(2) (a)? If he is a convict, then he may fall under PSO 749 (1)(a), but can he be continued to be

believed as a bad character after the expiry of the term of sentence plus two years under PSO 747, or in other cases for two years as provided in PSO 748(1)? In our criminal jurisprudence, normally, where the statute has not stipulated otherwise, an accused is presumed to be innocent even where a FIR is registered, how then to identify one as a bad character for retaining him in the history sheet and support any such retention? Secondly, what can be '*of interest*' to the policeman? Can it be anything except a conduct constituting a crime? Interestingly under PSO 367 which provides for village beats and patrols, except for habitual offenders, for other categories of bad characters there should not be any domiciliary visits. This would imply that all habitual offenders are bad characters, but not all bad characters are habitual offenders. What are the yardsticks to make that intelligent distinction within the scheme of PSO? None. How then to position a suspect within the meaning of PSO 749(1)(b)?

24.3 There is another situation. Given the possibility that a person can be bad character without a FIR, what is likely to happen, if it is not already happening, is to gather information about the involvement of one in the commission of a cognizable offence, treat him not as an accused (which during investigation is same as Suspect), but as a bad character for the purpose of history sheeting. This is possible within the scheme of PSO, though it is impermissible.

24.4 It will be atrociously outrageous to authorize a police personnel to be judgmental without basis, and to damnify one as a bad character. Therefore, the phrase 'bad character' as found in PSO 746(3) has to be understood only as Suspects or Rowdies within the meaning of PSO 749, which would now require that there ought to be at least few FIRs filed against the person.

#### (d) Of addicted and Habitual Offenders

25.1 The expression 'habitual' gains significance in the context of Rowdy-sheeting a person under PSO 749(2)(a). The understanding of this expression by this Court in *Ganesan's case* has already been referred to in one of the earlier paragraphs. And, this need for a judicial understanding was necessitated due to want of a definition for the expression 'habitual' in the PSO. The word '*habitual*' is used to qualify a person committing a crime and attempting to commit a crime – That is to mean, a habitual offender. Now, it is necessary to introduce here the *Tamil Nadu Restriction of habitual Offenders Act, 1948* (henceforth Habitual Offenders Act). Sec.2 (4) thereof defines a habitual offender:

*“A habitual Offender means a person who, before or after the commencement of this Act, has been sentenced to a substantive term of imprisonment, such sentence not having been set aside in appeal or revision, on not less than three occasions. (Inserted by section 22 of the Tamil Nadu Restriction of Habitual*

*Offenders (Amendment) Act, 1975 (Tamil Nadu Act 55 of 1975) [for any one or more of the scheduled offences] each of the subsequent sentences having been passed in respect of an offence committed after the passing of the sentence on the previous occasion;*

**Explanation** " *The passing of an order requiring a person to give security for good behaviour with reference to section 110 of (Substituted by Tamil Nadu Adaptation Order 1950) [the Code of Criminal procedure, 1973] (Central Act 2 of 1974) shall be deemed to amount to the passing of a sentence of substantive imprisonment within the meaning of this clause.* "

It needs to be noted here that the expression 'habitual offender' is narrowly defined in that Sec. 2(4), as the provision uses the word '*means*', and not means and includes'. A statute which has penal or quasi penal consequences, or that which leaves serious civil consequences, or limits the fundamental right to dignified life, has to be read strictly.

25.2 Where a statutory definition is available to define a habitual offender, a body of administrative instructions in the PSO cannot have a definition different from the one which the statute provides. The Executive is bound by the definition laid down by the legislature. Accordingly, the expression '*habitually*' as found in PSO(2)(a) for qualifying a commission of, or an attempt to commit an offence has to be given the same meaning provided for an habitual offender under Sec.2(4) of the Habitual Offenders Act. The justification can be further elaborated. If Sec.3 of the Habitual Offenders Act is turned to, it reads:

**“Power of Government to notify habitual offenders-** (1) The Government may, **by notification**, if they are satisfied that any person is a habitual offender declare that he shall be subject to the provisions of this Act to such extent and subject to such restrictions, if any, as may be specified in the Notification.

(2) Every notification issued under sub-section (1) shall be in force for a **period of five years** from the date of the publication of such notification, but the Government may, **by notification, at any time before the expiry of the said period**, cancel or modify any notification issued under sub-section (1).

(3) The cancellation of a notification or the expiry of the period of five years, under sub-section (2) shall not be deemed to affect the power of the Government under sub-section (1) to **issue a notification in respect of a habitual offender as often as he is sentenced to a substantive term** of imprisonment such sentence not having been set aside in appeal or revision, for any one or more of the scheduled offences at any time after such cancellation or expiry.

(4) Notwithstanding anything contained in sub-section (2), where a notified offender is sentenced to a substantive term of imprisonment, such sentence not having been set aside in appeal or revision, for any one or more of the schedule offences, the Government may direct that the notification issued under sub-section (1) **in respect of such notified offender shall be in force for a further period of five years from the date of his release from such imprisonment.**

*(5) Before any notification is issued in respect of any person under sub-section (1) or modified to his disadvantage under sub-section (2), or before any direction is issued in respect of any notified offender under sub-section (4), a reasonable opportunity shall be given to him to show cause against such issue, modification or direction, as the case may be.”*

26. In terms of the above provision, a habitual offender is one who has undergone **at least three substantial sentences of imprisonment**, and notified by the Government, and significantly only after granting the one to be affected by the decision, a right of hearing. In terms of the PSO no right of pre-hearing is contemplated while Rowdy-sheeting a person as an habitual offender, whereas the Habitual Offenders Act makes the process mandatory. The PSO pattern to brand a habitual offender without a right of hearing can be justified in terms of the judgment of the Hon'ble Supreme Court in **Malak Singh case** [AIR 1981 SC 760] referred to supra, where it was held:

*“8.....the material provided by the history sheet whose contents, by their very nature have to be confidential. It would be contrary to the public interest to reveal the information in the history sheet, particularly the source of information. Revelation of the source of information may put the informant in jeopardy. The observance of the principle of natural justice, apart from not serving the ends of justice may thus lead to undesirable results. We accordingly hold that the rule audi alteram partem is not attracted.*

However, since in this State there is a legislation to notify a habitual offender as in **Tamil Nadu Habitual Offenders Act, 1948**, the right of hearing cannot be denied. Curiously

enough the draftsman of the PSO knew about the Habitual Offenders Act and finds a mention in PSO 764 in chapter XLIII titled 'Surveillance', but still it is seen as overlooked for the purposes connected with PSO 749(2)(b). And, it needs to be underscored that even *de hors* a statutory provision, Courts have the power to read the principles of natural justice in every statutes or delegated legislations, unless it is specifically excluded. See ***Union of India v. Col. J.N. Sinha and another*** [1971] 1 S.C.R. 791].

27.As noted in an earlier paragraph, a person addicted to crime in PSO 749 (1)(b) is sought to be differentiated from a habitual offender under PSO 749(2)(a). And, elsewhere PSO 368 uses a term, '*known depredator*'. How, a *known depredator* is different from one who is *addicted to crime*, and how both are different from a *habitual offender*? In real terms, considering the substance and the context in which they are randomly used, all shall mean the same. This is critical in the context of the right of pre-hearing available under the Habitual Offenders Act. This Court is at a loss to appreciate the multiple terms used in the PSO to understand the same category of persons. Is the PSO, therefore a piece of deft drafting stratagem, a subterfuge, to deflect the statutory definition in Habitual Offenders Act, of its operational course through the usage of near synonymous phrases to avoid a pre- decisional hearing?

28.1 The definitional inadequacy in identifying a Suspect under PSO 749(1)(b) or a Rowdy (2)(a) is glaring. And, it throws the citizen to the mercy of the police power. This also has relevance in situations where the Court has acquitted a history-sheeter, but still grants to the SHO the luxury to be in a transcendental state to consider him as *known or believed to, or likely to commit a crime*, and to believe what is not.

28.2 The free roaming space that the PSO has provided through its inaccurate and imprecise drafting is an open ticket to arbitrary exercise of police power to history-sheet. The police personnel is reminded that preventive-policing is not easy-policing. It is one thing to have a general watch on the entire society for criminality, and it is entirely another thing to pick a person for special branding as a suspect for surveillance. It is good to remember the words of Lord Atkin in *Liversidge vs. Anderson* [1942 AC 206]. The eminent jurist opined:

*"It has always been one of the pillars of freedom, one of the principles of liberty for which on recent authority we are now fighting, that the judges are no respecters of persons, and stand between the subject and any attempted encroachments on his liberty by the executive, alert to see that any coercive action is justified in law."*

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*I know of only one authority which might justify the suggested method of construction. "When I use a word," Humpty Dumpty said, in rather a scornful tone, "it means just what I choose it to mean, neither more nor less." "The question is," said Alice, "whether you can make words mean so many different things." "The question is," said Humpty Dumpty, "which is to be the master, that's all." After all this long discussion the question is whether the words "If a man*

*has" can mean "If a man thinks he has". I have an opinion that they cannot and the case should be decided accordingly."*

29.1 In **Ganesan's case**, after referring to several authorities of the Hon'ble Supreme Court and also the judgements of this Court, this Court emphasized the need for gathering materials on the basis of which the police official empowered to history-sheet may consider it necessary to history sheet a person, which in other words would mean that he should apply his mind to those materials. This twin criteria would eschew the possibility of arbitrariness seeping into the decision-making process involved in the history-sheeting.

29.2 An individual may suffer an intellectual aberration, and may throw to wind the need for fairness in action, non-arbitrariness in decision making and objectivity in application of mind. However, nothing that authorizes or empowers State actors to interfere with the rights of the citizen such as the PSO, can breed intellectual dishonesty, or can provide for its sustenance.

30. Another aspect that drew the attention of this Court, not very significant though, is that PSO 752(2) states that a bad character should be closely watched. However, PSO 752(1) provides that a history-sheeter should be informally watched. PSO 746(1) provides that for

a bad character, history sheet could be opened, and PSO 746(3) provides for a close watch of bad characters. Now, should a bad character be closely watched, or informally watched?

### **Operational aberrations:**

31.1 Primarily, as can be gathered now, there are two areas where the power to history-sheet is arbitrarily exercised: One while exercising power under PSO 749 and the other while retaining a history sheet under PSO 748(2). There is a mechanism within the police, by which the superior officials are required to inspect the Police Station. Failure to inspect properly has also occasioned in arbitrary exercise of police power to retain a history sheet. Then there are also instances of pure malafide exercise of power.

31.2 It is noticeable that the fine act of preventive policing through history-sheeting, has been marred by a high percentage of subjectivity and unimaginable lack of application of mind. They instantly demonstrate that the principles settled by this Court in the judgements/Orders up till now delivered on the manner of history-sheeting a person, have not even been given the scantiest respect that they deserve. These can be illustrated with reference to few cases in this batch.

batch:

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a) The first category of cases involve both allegations of history-sheeting for participating in democratic protests and demonstrations and also inability to pursue a profession.

- The petitioner in W.P.7546/2019 is a law graduate. He also has to his credit, a M.Phil. degree in Economics. He introduces himself as a social activist and claims to have part taken in political agitations and demonstrations. He had 4 cases to his credit, of which two are more likely to relate to political demonstrations as they are registered under Sec.188 IPC. A history sheet was opened in HS.898/2011 at the concerned police station. It was closed once in 2013 but reopened in 2017 when he was booked in Cr.No:40/2017. In this case further action was dropped by the police, even in 2017. Still, he continues to be a history sheeter. He therefore moved the authorities to remove his name from the history sheet. The Superintendent of Police has forwarded his request to the Assistant Superintendent of Police who in turn called for the report of the SHO of the concerned station, based on whose report, the Assistant Superintendent of Police, Vide his proceedings dated 06-01-2017 had directed closure of the history-sheet opened against the petitioner, but it is yet to happen. Where has gone all the judicial sermons that this court had painstakingly delivered through its judgements? Why were the principles governing history-

sheeting ignored? When no case was pending against him, where is the legal justification for retaining him in the history sheet without recourse to Habitual Offenders Act, or to Sec.107 or Sec. 110 Cr.P.C.? Where is the application of mind?

- The case of Bazeerudin, the petitioner in W.P.(MD) 25185/2018 falls under an identical category. He is also a law graduate, and he too claims to be a social and a political activist, against whom 10 cases were registered. Given the fact that seven of those cases are registered under Sec.188 IPC they could well relate to his participation in some demonstrations on political or social issues. Of them 6 six cases were quashed by this Court, all of which are registered between 2016 and 2018. He was acquitted in one case in Cr.No:1159/2008. Two cases are pending investigation, one each in 2016 and 2017. After 2018, there are no cases registered against him. What this case high lights along with the earlier case in W.P. (MD)7546/2019 is about using history-sheeting as a tool to choke the just voice of the citizen to dissent and to protest democratically.

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b)The cases involved in CrI.O.P.(MD) 3541/2019 and in W.P.(MD)19657/2018 are examples of judicial delay in disposing of the case which appeared to have provided a justification for retaining the respective petitioners in the history sheet.

- Irudhayarajan is the petitioner in CrI.OP (MD) 3541/2019. He is stated to have lost his vision when the petition was filed, and this is admitted by the concerned police. He is facing trial in S.C.69/2014. The counter says the petitioner is also involved in Cr.No: 102/2012 wherein the petitioner was acquitted. These cases apart the petitioner was accused of committing cheating in Cr.No:122/2012 and Cr.No:93/2014. They both are pending investigation. How long will the investigating agency require for completing the investigation is not made clear. And, apparently there is delay in the disposal of the case, and there is no allegation that the petitioner has contributed to it, which on the face of PSO 748(1) is irrelevant. What perplexes this Court is, why should this 100% visually impaired person be forced to suffer an indignation of being listed in the history sheet for the fault of the investigating agency? What threat does this visually impaired person pose to the societal peace today? The police officials have been mindlessly retaining him in the history-sheet well beyond the two years period stipulated in PSO 748(1) Cr.P.C.

(c) The cases in CrI.O.P.(MD) 4921/2019, 4904/2019, 4914/2019, 4915/2019, W.P.

(MD) 21040/2018, 4716/2019, CrI.O.P.(MD)4725/2019, W.P.(MD) 6096/2019 are illustrative of how indifferent the police have been in retaining the respective petitioners in the history sheet. Of them three cases stand out:

- The first is the case of one Jambunathan, the petitioner in W.P.(MD) 6096/2019. He was involved in two cases. The first one was in C.C.2102/1978 in which he was convicted for six months. The other case was in Cr.No:190/2003 and the counter does not whisper about its present status. At any rate, after 2003 there was no case. What can justify his continued retention in the history sheet?
- Muthukumar, the petitioner in CrI.O.P.(MD)No.4725 of 2019 also has similar experience. He was history sheeted in HS 229/2006 when he faced a sessions trial and after 2007 no fresh case is shown to have been registered against him.
- Rajkumar, the petitioner in W.P.(MD)194/1998 has been history sheeted in HS194/1998. He was involved in two cases, and in S.C.3/1997 he was released on 22-08-2009 after serving a term in jail and was acquitted in Cr.No:536/1998. Still he continues to be a history sheeter. Is he because he was a former convict and hence

presumed to be a suspect even without a fresh case, at least after 1998?

d) There are several other cases, where the police did not choose to close the history sheet despite Court acquitting the accused persons. How to justify their continued retention in the history-sheet?

## PART D

### The Decision and the conclusion

32. Now, having spotted a definitional incongruity between the Habitual Offenders Act and the PSO, to recognize its continuity will promote fraud on statute, an anathema, which our Constitutional scheme may not accommodate. As indicated earlier these are issues that require a reaction and response from the legislature. See *Bhavesh Jayanti Lakhani Vs State of Maharashtra* [(2009) 9 SCC 551]. It is its exclusive domain. Still, as referred to earlier (see paragraph 16.2 above) some continuity needs to be given till legislative alternatives are developed.

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33.1 Before arriving at the concluding part of this judgement, it is necessary to reiterate that the pattern of history-sheeting also shows that it has *inter alia*, become the resultant effect of the citizen's right to dissent and protest democratically and within the bounds of law.

Freedom which the Constitution grants is not a delusion into which the citizens may levitate in the elixir of an unknown belief, but is an experience in reality. This is but an amplification of what Justice Holmes tersely premised in his work, 'The Common Law' that “*the life of the law has not been logic; it has been experience*”

33.2 Besides the need for surveillance and crime-prevention, this Court is given to understand that history sheeting seemingly has a longer range to impact a citizen's fundamental right guaranteed under Article 19(1)(g) while seeking employment or for pursuing a profession of his choice. Even, obtaining a passport is made difficult for the one who is history-sheeted, this court was told. Without getting into the advisability of extending the operational scope of a history-sheet for purposes beyond crime-prevention, does it not signify the need for greater care when the power to history-sheet is exercised?

34. Ideally where cases are registered against the citizens for participating in any demonstrations, agitations or protest or the like, consistent with the freedom granted by the Constitution, history-sheeting on that score can be resorted to only after an Order is passed against the concerned person under Sec.107 Cr.P.C. or Sec.110 Cr.P.C. since it will enable to balance the need to safeguard the citizens' right to protest without violence, and duty of the police to maintain peace in the society. This balancing act can be well achieved when an

Executive magistrate, and not the police, takes a decision after hearing the party to be affected by history-sheeting. This cannot be extended to non-citizens, as the rights under Article 19 are confined only to the citizens under the Constitution of India. See *Hans Muller of Nuremburg Vs. Superintendent, Presidency Jail, Calcutta and others* [AIR 1955 SC 367].

35.1 A Court on vigil, therefore, is under a Constitutional duty to ensure, that the freedom as an experience which the Constitution serves to the citizens, is not defiled by a non-statutory administrative action, and that a balance is required to be struck between the right of the citizen to protest and dissent, and the need for preventive policing. This Court senses a duty to step in, and to provide necessary correctives, without necessarily unsettling the present process and the procedure involved in it (till an alternative found), where this Court is guided by the judgments of the Hon'ble Supreme Court in *Vishaka Vs. State of Rajasthan* [(1997) 6 SCC 241] and *Shayara Bano Vs. Union of India & Ors.*, [(2017) 9 SCC 1]. To repeat, this is done as a temporary measure with a limited shelf-value, till the statutory law, or any Executive Order having the force of law are made.

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35.2 Having spotted certain vagueness and internal inconsistencies in the choice of expressions which the PSO employ, and the constant threat they pose to the fundamental right, that ultimately lead to unnecessary and avoidable litigations before this Court, it is

necessary to harmonize and iron out the ambiguities they produce till legislative alternatives are found. The police personnel may have to be provided with clear parameters for exercising their power to history sheet, for doing which this Court draws strength from the ratio in *Madhya Pradesh Special Police Establishment Vs. State of Madhya Pradesh* [(2004)8 SCC 788] and *B.C.Chaturvedi Vs. Union of India & another* [(1995)6 SCC 750].

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. (CrI.)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 sheeter 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 sheeter 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 sheeter 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 sheeter has

been discharged or acquitted by a competent Court, and/or (iv) quashed by this Court or by the Hon'ble Supreme Court shall 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.

### 37. RESULT:

On analyzing the facts of the various cases on the parameters hereinabove enumerated, this Court divide all the cases in this batch into two categories: (a) Where facts are adequate to grant the reliefs forthwith, and (b) where the police personnel have to consider their case in accordance with the principles/parameters stated. Accordingly, the cases are disposed of as below:

Case No.	Result
WP.(MD) No.7546 of 2019 WP. (MD) No.21040 of 2018 WP. (MD) No.15 of 2019 WP.(MD) No.19654 of 2018 WP(MD) No. 8069 of 2019 WP(MD) No.5939 of 2019 WP(M)D No.22402 of 2018 WP(MD) No.7774 of 2019 WP(MD) No.6096 of 2019 WP(MD) No.5913 of 2019 WP(MD) No.5979 of 2019 WP(MD) No.306 of 2019 CrI.OP(MD) No.3541 of 2019 CrI.OP(MD) No.4921 of 2019 CrI.OP(MD) No.4904 of 2019 CrI.OP(MD) No.4914 of 2019 CrI.OP(MD) No.4915 of 2018 CrI.OP(MD) No.4725 of 2019 CrI.OP(MD) No.5982 of 2019	Allowed
WP(MD) No.19657 of 2018 WP(MD) No.25185 of 2018 WP(MD) No.21506 of 2018 WP(MD) No.8332 of 2019 WP(MD) No.9671 of 2019 WP(MD) No.4896 of 2019 WP(MD) No.8066 of 2019 WP(MD) No.4716 of 2019 CrI.OP(MD) No.22137 of 2018 CrI.OP(MD) No.22742 of 2018 CrI.OP(MD) No.4816 of 2019	To consider the case of each of the petitioners in their respective cases based on the directions given in <b>Para 36 (A to F)</b> of this order and as also given in <b><i>Ganesan Vs The District Superintendent of Police &amp; others</i></b> [2010(6)CTC 507] and <b><i>Sabari alias Sabarigiri Vs. The Assistant Commissioner of Police, Annanagar (L&amp;O), Madurai City</i></b> [2018-2 LW (CrI) 817] as mentioned, within a period of three months from the date of receipt of copy of this Order. The petitioners are also permitted to prefer fresh request with necessary particulars in this regard.

No costs. Consequently, connected miscellaneous petitions are closed.

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03.07.2020

Index : Yes/No

Speaking order / Non-speaking order

Ds/CM

65/67

To:

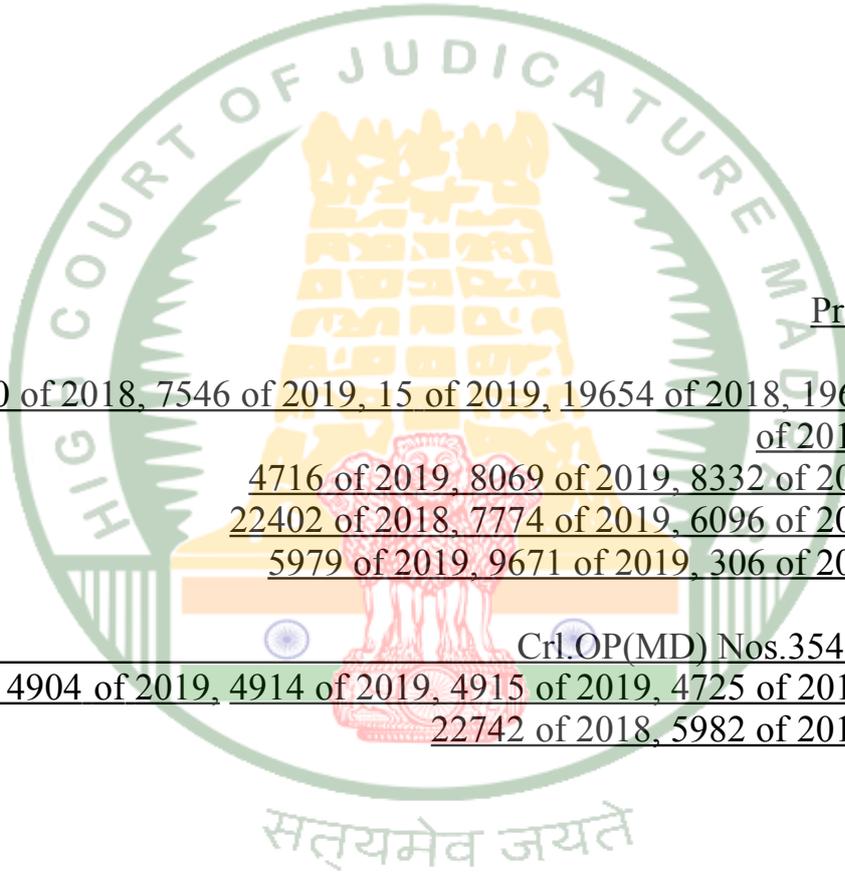
- 1.The Director General of Police Chennai.
- 2.The Superintendent of Police Madurai District  
Alagarkovil Road Madurai – 625 007.
- 3.The Inspector of Police Kallikudi Police Station Madurai District.
- 4.The Superintendent of Police O/o. Superintendent of Police Thoothukudi  
Thoothukudi District.
- 5.The Assistant Superintendent of Police Thoothukudi town  
Thoothukudi.
- 6.The Inspector of Police Vadagam Police Station Thoothukudi District.
- 7.The Inspector of Police Thalamuthu Nagar Police Station Thoothukudi District.
- 8.The Inspector of Police Ottapidaram Police Station Thoothukudi District.
- 9.The Public Prosecutor  
High Court of Madras, Madurai Bench.



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N.SESHASAYEE.J.,

CM



Pre-delivery order in

WP(MD)Nos.21040 of 2018, 7546 of 2019, 15 of 2019, 19654 of 2018, 19657 of 2018, 25185  
of 2018, 21506 of 2018,  
4716 of 2019, 8069 of 2019, 8332 of 2019, 5939 of 2019,  
22402 of 2018, 7774 of 2019, 6096 of 2019, 5913 of 2019,  
5979 of 2019, 9671 of 2019, 306 of 2019, 8066 of 2019,  
4896 of 2019  
and CrI.OP(MD) Nos.3541 of 2019, 4921 of  
2019, 4904 of 2019, 4914 of 2019, 4915 of 2019, 4725 of 2019, 22137 of 2018,  
22742 of 2018, 5982 of 2019 & 4816 of 2019

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