

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.40074 of 2012

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking the following relief:

“to issue writ of Mandamus to declare the action of the respondents in opening and continuing the rowdy sheet against the petitioner despite acquittal in all the criminal cases and representations made, the latest being 19.02.2011 and against the order passed in WP NO.2640/2005 as illegal, arbitrary, unconstitutional and also in violation of the Fundamental rights guaranteed to the petitioner under Articles 14, 19 and 21 of the Constitution of India and consequently direct the respondent No.2 to remove the name of the petitioner from the rowdy sheet list.”

Heard Ms.B. Avani, learned counsel for the petitioner and learned Government Pleader for Home for respondents, apart from perusing the material available before this Court.

Earlier the petitioner herein instituted W.P.No.2640 of 2005 before this Court for the following relief:

“to issue writ of Mandamus by declaring the opening of history sheet of the petitioner herein by the Raidurg police station, Serilingampally Mandal, RR District as Rowdy Sheetor at S1.No. 9 from 13-5-2000, as illegal, bad in law and violative of Articles 14, 19 (i) (a) and 21 of the Constitution of India and violative of principles of natural justice and forbid the respondents from continuing the name of the petitioner in the history sheets on the file of P.S.Raidurg, Serilingampally Mandal, RR District as rowdy sheetor at S1.No.9 from 13-5-2000, and pass such other order or orders as this Hon'ble court may deem fit and proper in the circumstances of the case.

This Court by way of an order, dated 07-03-2008 disposed

of the said writ petition, giving liberty to the petitioner to file a fresh representation for discontinuance of rowdy sheet and this Court also directed to consider the same and pass appropriate orders as per Police Standing Orders.

According to the petitioner, he submitted representations to the Deputy Commissioner of Police, Madhapur Zone, Cyberabad District on 11-02-2010 and 19-02-2011. The grievance of the writ petitioner in the present writ petition is despite submission of the said representations, the respondent authorities did not take any action for discontinuance of rowdy sheet opened against the petitioner herein.

An additional counter-affidavit is filed by the Inspector of Police, Gachibowli Police Station, Cyberabad and paragraph No.4 of the said counter-affidavit reads as under:

"It is humbly submitted that the petitioner mentioned in his affidavit para No.7 that in view of the order passed in W.P.No.2640 of 2005 he submitted representations to the Deputy Commissioner of Police, Madhapur Zone, Cyberabad on 11-02-2010 and 19-02-2011 by explaining the facts regarding his family background and acquittal of all the criminal cases against him. On perusal of the register available at the Deputy Commissioner of Police, Madhapur Zone, there is an entry in the register that the representations of the petitioner addressed to the Deputy Commissioner of Police, Madhapur Zone, Cyberabad was forwarded to the Asst. Commissioner of Police, Rajendranagar Division which was previous division of Raidurgam Police Station and some correspondence was done on the representation of the petitioner, but presently record is not available at the concerned offices. Further I submit that if the petitioner approaches the concerned police authorities regarding closure of his Rowdy sheet it will be examined and take further action as per procedures laid down in APPM."

In view of the averments in the above said paragraph, it is clear that if the petitioner herein approaches the concerned police authorities for closure of rowdy sheet the same will be examined and further action will be taken. Therefore, this Court deems it appropriate to dispose of the writ petition by keeping it open for the petitioner herein to make an application afresh and with a direction to the respondent authorities to consider the same, in accordance with law, by fixing some time frame.

During the course of hearing it is submitted by learned counsel for the petitioner herein that the very continuance of rowdy sheet against the petitioner herein is contrary to the Police Standing Orders and the law laid down by this Court and the Hon'ble Apex Court. It is also submitted by learned counsel for the petitioner that as on date no cases are pending against the petitioner herein. In this connection, learned counsel for the petitioner placed reliance on the judgment of this Court in ***Sunkara Satyanarayana v. State of Andhra Pradesh, Home Department and others***^[1], wherein this Court held at paragraph Nos.33, 49 and 50 as follows:

"33. This Court had many occasions to deal with cases of PSO 742 which deals with opening of rowdy sheets. In Shaik Mahaboob Ali v. Commissioner of Police, 1990 (1) ALT 15 (NRC) this Court held that unless there is adequate material as regards commission of offence or attempt to commit an offence opening of rowdy sheet against a person and continuing the same is illegal. In Hussain Hassan Somali v. Commissioner of Police, 1990 (2) ALT 24 (NRC) his Lordship Justice Y. Bhaskar Rao (as his Lordship then was) held that opening of rowdy sheet against a person without any material, as to his activities that are likely to disturb public order, would violate Article 21 of the Constitution of India. In Patti Eswara Reddy v. Superintendent of Police, dealing with the case of a person bound over Under Sections 106 and

107 of the Code, this Court held that it is reasonable to maintain rowdy sheet for a period of two years after expiry of bound over period. But maintaining the record for 15 years was held to be arbitrary and unreasonable and this Court directed the authorities to close the rowdy sheet against the petitioner. Again in *Ejaz v. Government of Andhra Pradesh*, this Court had an occasion to deal with a case arising under PSO 742. While observing that mere suspicion or apprehension would not be a criteria for opening rowdy sheet against a person, this Court held as follows:

"The fundamental right to personal liberty cannot be allowed to be infringed under the guise of surveillance and monitoring the movements of persons against whom a rowdy sheet is opened. Surveillance of such persons whose names are entered in the rowdy sheet, for reasons unconnected with the prevention of crime and beyond cannot be countenanced. After all the whole purpose of classifying the persons as rowdies and entering their names in the rowdy sheet is the prevention of crime and no other purpose. Otherwise the order of classification will be bad and void. Surveillance and monitoring of movement of persons whose names are entered in rowdy sheets should therefore be proportionate and commensurate to the reasonable apprehension or suspicion entertained by the concerned Police Officer and only with a view to prevent commission of a crime which may result in breach of peace. Any excessive action on the part of the police would not be ultra vires the Standing Order No. 742 but also would only be violative of right to equality and right to freedom guaranteed by Articles 14, 19 and 21 of the Constitution of India. Any unauthorised physical restraint or coercion of any sort would be violative of the fundamental right to freedom and personal liberty guaranteed by the Constitution of India. That the right to personal liberty in substance means a persons's right not to be subject to imprisonment, arrest or other physical coercion."

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49. Therefore, in the context of police surveillance against history sheeters and rowdy sheeters, the following principles vis-a-vis right to privacy under Article 21 of the Constitution would emerge:

(i) If the surveillance is not obtrusive, the same does not violate the right to privacy under Article 21 of the

Constitution of India. The same does not either in material or palpable form affect the right of the suspect to move freely nor can it be held to deprive the history sheeter / rowdy sheeter of his personal liberty.

(ii) In testing whether fundamental right of free movement or personal liberty is infringed or not, it is to be remembered that infringement should be direct as well as tangible. If surveillance hurts personal sensitivities, the same is not a violation, for the constitution makers never intended to protect mere personal sensitiveness.

(iii) If police surveillance is in accordance with executive/departmental guidelines and not authorised by statute or rules having statutory force, it is for the State to prove that surveillance does not in anyway infringe the fundamental right of the person and that the authorities have followed the guidelines scrupulously in ordering surveillance,

(iv) If the action of the police is found to infringe the freedoms guaranteed to the history sheeter / rowdy sheeter and violates his right to privacy, in that, the surveillance is excessively obtrusive and intrusive, it may seriously encroach on the privacy of a citizen as to infringe the fundamental right to privacy and personal liberty under Article 21 as well as the freedom of movement guaranteed under Article 19(1)(d) of the Constitution of India and the same is impermissible,

(v) Even where there is statutory sanction for surveillance against history sheeter/rowdy sheeter principle (iv) is equally applicable, if the surveillance is obtrusive.

(vi) In either case-whether police regulations are statutory or where they have no statutory force-there should be sufficient material to induce the opinion that the history sheeters/rowdy sheeters show a determination to lead a life of crime which involves public peace or security only. Mere convictions in criminal cases where nothing imperils the safety of the society cannot be regarded as warrant surveillance under the relevant regulations, however broadly and in whatever language the regulation might have been couched,

(vii) In either case-whether the regulation is statutory or non-statutory-domiciliary visits and picketing by the police should be reduced to the clearest cases of danger to community security, and there can be no routine follow-up at the end of a conviction or release from prison in every case.

(viii) The above principles that emerge from various binding precedents are only general principles. As seen from various decided cases of this Court, opening of history sheet or rowdy sheet can be justified only when it is proved before the Court by the State that based on the relevant material the competent police officer has applied mind with due care and considered all aspects in the light of the law and then ordered opening of history sheet or rowdy sheet or ordered continuation or retention of the history sheet. In the beginning of this Judgment, all the relevant decisions of this Court have been referred to and those principles may also have to be kept in mind.

50. Therefore, on points I and III that arise for consideration, it should be held that maintenance of history sheet/rowdy sheet for a long time violates not only right to privacy under Article 21 and also other fundamental rights under Articles 14 and 19 of the Constitution of India. The points No. I and III are decided in favour of the petitioner.”

For the aforesaid reasons, the writ petition stands disposed of, giving liberty to the petitioner herein to make application afresh before the 2nd respondent within a period of one week from the date of receipt of a copy of this order and if any such application is made the same be considered, in accordance with the Police Standing Orders, and in the light of the law laid down in the above judgment and appropriate action be taken within a period of two (2) weeks thereafter.

It is also made clear that the petitioner herein is also entitled to place before the 2nd respondent a copy of the above cited judgment in case of Sunkara Satyanarayana v. State of Andhra Pradesh, Home Department and others (1st supra).

Miscellaneous Petitions pending, if any, shall stand closed. There shall be no order as to costs.

December 15, 2015

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THE HON'BLE SRI JUSTICE A.V. SESA SAI

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