

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

WRIT PETITION No.18438 OF 2012

Between:

Habeen Ahmed Alkaf and another

.. Petitioners

and

The Commissioner of Police,
Twin Cities, Hyderabad,
and others.

.. Respondents

DATE OF JUDGMENT PRONOUNCEMENT : 24th AUGUST,
2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE SANJAY KUMAR

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| 1. | Whether Reporters of Local newspapers
may be allowed to see the judgment? | Yes/No |
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| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. | Whether His Lordship wishes to see the fair copy of the judgment? | Yes/No |

THE HON'BLE SRI JUSTICE SANJAY KUMAR

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WRIT PETITION No.18438 OF 2012

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ORDER

The grievance of the petitioners is as to the opening of rowdy sheets in their names on the file of Santoshnagar Police Station, Hyderabad. According to them, they were hardly involved in criminal activity but notwithstanding the same, the police authorities opened rowdy sheets in their names.

The Inspector of Police, Reinbazar Police Station, Hyderabad, filed a counter-affidavit stating that in so far as the first petitioner is concerned, Crime No.62 of 2011 was registered against him under Sections 147, 148, 302, 120B IPC read with Sections 34 and 149 IPC and Section 25(i)(b) of the Arms Act, 1959, on the file of Santoshnagar Police Station and the same is the subject matter of Sessions Case No.367 of 2012. Crime No.71 of 2011 was also registered against him under Sections 498A and 506 IPC read with Section 34 IPC on the file of the Women Police Station, Charminar, and was pending investigation while Crime No.95 of 2012 was registered against him under Section 41(a) Cr.P.C. read with Section 107 Cr.P.C. wherein he was bound over.

As regards the second petitioner, it was stated that he was also an accused in Crime No.62 of 2011 on the file of Santoshnagar Police Station, which is the subject matter of Sessions Case No.367 of 2012.

Owing to the involvement of the petitioners in the aforesaid cases,

rowdy sheets were stated to have been opened in their names on the file of Santoshnagar Police Station on 12.04.2011 and were thereafter transferred to Reinbazar Police Station, Hyderabad, on the point of jurisdiction. The said rowdy sheets were stated to have been extended upto 31.12.2015. As both the petitioners were facing trial in Sessions Case No.367 of 2012 arising out of Crime No.62 of 2011, the Inspector of Police stated that closure of the rowdy sheets in their names would not be just and proper at this stage.

Presently, maintenance of rowdy sheets is governed by Order 601 of the A.P. Police Manual, Part-I, Volume-II.

Order 601 reads as under:

‘601. The following persons may be classified as rowdies and Rowdy Sheets (Form 80) may be opened for them under the orders of the SP/DCP and ACP/SDPO.

- A. Persons who habitually commit, attempt to commit or abet the commission of offences involving a breach of the peace, disturbance to public order and security.
- B. Persons bound over under Sections 106, 107, 108(1) (i) and 110(e) and (g) of Cr.P.C.
- C. Persons who have been convicted more than once in two consecutive years under sections 59 and 70 of the Hyderabad City Police Act or under section 3, clause 12, of the AP Towns Nuisances Act.
- D. Persons who habitually tease women and girls and pass indecent remarks.
- F. Persons who intimidate by threats or use of physical violence or other unlawful means to part with movable or immovable properties or in the habit of collecting money by extortion from shopkeepers, traders and other residents.
- G. Persons who incite and instigate communal/caste or political riots.
- H. Persons detained under the “AP Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land-Grabbers Act, 1986” for a period of 6 months

or more.

- I. Persons who are convicted for offences under the Representatives of the Peoples' Act for rigging and carrying away ballot paper, Boxes and other polling material.'

The period of retention of history sheets of suspects/rowdies is governed by Order 602, which reads as follows:

'602-1. History Sheets of suspects shall be maintained from the date of registration up to the end of December, after which the orders of a gazetted officer as to their discontinuance or retention for a further period shall be obtained.

2. Merely because a suspect/rowdy, having a history sheet, is not figuring as accused in the previous 5 years after the last case in which he was involved, it should not preclude the SP/DCP/CP to continue his history sheet if SP/DCP/CP is of the considered view that his activities are prejudicial to the maintenance of public order or one affecting peace and tranquility in the area or the victims are not coming forward to give complaint against him on account of threat from him.'

Hitherto, Standing Order 742 of the A.P. Police Standing Orders governed the situation as to classification of rowdies and opening of rowdy sheets. This Standing Order reads as under:

'742. Rowdies:- (1) The following persons may be classified as rowdies and Rowdy Sheets (Form 88) may be opened for them under the order of the Superintendent of Police or Sub-divisional Officer:

(a) persons who habitually commit, attempt to commit or abet the commission of, offences involving a breach of the peace;

(b) persons bound over under Sections 106, 107, 108(c) and 110(1) of the Code of Criminal Procedure, 1973 (Act No.2 of 1974);

(c) persons who have been convicted more than once in two consecutive years under Section 75 of the Madras City Police Act or under Section 3, clause 12, of the Towns Nuisances Act;

(d) persons who habitually tease women and girls by passing indecent remarks or otherwise; and

(e) in the case of rowdies residing in an area under one Police Station but are found to be frequently visiting the area under one or more other Police Stations their rowdy sheets can be

maintained at all such Police Stations;

(G.O. Ms. No. 656, Home (Police-D) Dept. Dt. 8-4-1971)

(2) Instructions in Order 735 regarding discontinuance of History Sheets shall also apply to Rowdy Sheets.'

Thus, under Order 601, additional grounds have been introduced, widening the scope for classifying a person as a 'rowdy'.

Now, a look at case law on this issue.

In ***DHANJI RAM SHARMA V/s. SUPERINTENDENT OF POLICE, NORTH DISTRICT, DELHI POLICE***^[1], a three Judge Bench of the Supreme Court held that the condition precedent for opening a history sheet is that such person should be reasonably believed to be habitually addicted to crime or to be an aider or abettor of crime. In order to justify opening of a history sheet, the Supreme Court opined that the police officer must have a reasonable belief based on reasonable grounds.

In ***VIJAY NARAIN SINGH V/s. STATE OF BIHAR***^[2], another three Judge Bench of the Supreme Court held that the expression 'habitually' would mean 'repeatedly' or 'persistently' implying a thread of continuity, stringing together similar repetitive acts, and a single act or omission would not characterize an act as 'habitual'. The Supreme Court was of the opinion that to qualify as a 'habit', a person must have grown accustomed to leading a life of crime, whereby it would be a force of habit, inherent or latent, in an individual with a criminal instinct, with a criminal disposition of mind, that makes him dangerous to society in general. This judgment was rendered in the context of preventive detention but the observations made therein as to the connotations and interpretation of the expression 'habitual' are of relevance.

In ***MAJID BABU V/s. GOVERNMENT OF A.P.***^[3], a learned Judge of this Court was dealing with opening of a rowdy sheet under Standing Order 742. The learned Judge held that two instances of involvement in criminal cases would not make a person a 'habitual offender' and that at least more than two instances should be present

before a person can be described as a habitual offender.

This principle was affirmed by another learned Judge of this Court in **KAMMA BAPUJI V/s. STATION HOUSE OFFICER, BRAHMASAMUDRAM**^[4]. In this case, the persons in whose name the rowdy sheets were opened were involved in two cases but they were acquitted in both. It was sought to be contended on behalf of the police authorities that the rowdy sheets were opened during the pendency of the cases and that acquittal therein would be of no consequence thereafter. The learned Judge rejected this contention and held that rowdy sheets could not be opened in a casual and mechanical manner and a person could not be dubbed a 'habitual offender' merely because he was involved in two criminal cases.

A Division Bench of this Court in **PUTTAGUNTA PASI V/s. COMMISSIONER OF POLICE, VIJAYAWADA**^[5] confirmed this principle holding that a rowdy sheet could not be opened against an individual in a casual and mechanical manner and due care and caution should be taken by the police before characterizing a person as a rowdy. Referring to the earlier case law, the Division Bench expressed agreement with the view of the learned Judge in **KAMMA BAPUJI**⁴ that figuring as an accused in two crimes would not be sufficient to categorize a person as a 'habitual offender'. The same principle was reaffirmed in **SHAIK MAHBOOB V/s. THE COMMISSIONER OF POLICE**^[6], **GUDIVADA SAI BABA V/s. STATE OF A.P., HOME DEPARTMENT**^[7], **P.SATHIYYA NAIDU V/s. SUPERINTENDENT OF POLICE, EAST GODAVARI DISTRICT**^[8] and **BEERJEPALLY VENKATESH BABU V/s. STATE OF A.P.**^[9]

In **MOHAMMED QUADEER V/s. COMMISSIONER OF POLICE, HYD.**^[10], the same learned Judge who decided **KAMMA BAPUJI**⁴ opined that the A.P. Police Standing Orders were not statutory in nature

and were only a compilation of government orders issued from time to time and they therefore did not invest the police officers with any powers of arrest, detention, investigation of crimes etc., not specifically conferred under the Code of Criminal Procedure, 1973, or other enactments. As regards retention of a rowdy sheet, the learned Judge held that opening of a rowdy sheet against a citizen was undoubtedly fraught with serious consequences and the right to reputation under Article 21 of the Constitution could not be deprived except in accordance with the procedure established by law. The learned Judge therefore observed that the law which authorizes the police to open rowdy sheets and exercise surveillance would have to be very strictly construed.

In ***PULLA BHASKAR V/s. SUPERINTENDENT OF POLICE, WARANGAL***^[11], another learned Judge of this Court held that once there is a long interval between involvement in different criminal cases, such a person could not be termed a 'habitual offender' within the meaning of Standing Order 742.

In ***SUNKARA SATYANARAYANA V/s. STATE OF ANDHRA PRADESH***^[12], a learned Judge of this Court was concerned with the maintenance of history sheets/rowdy sheets for considerably long periods of time and held that the same would not only violate the right of privacy but also other fundamental rights of such persons under Articles 14 and 19 of the Constitution. The learned Judge was of the opinion that orders for opening or retention of history sheets/rowdy sheets should be passed under administrative instructions and guidelines and if such orders are challenged, the competent authority has to place the reasons before the Court justifying the opening/retention of such history sheets/rowdy sheets. The learned Judge further opined that it would be better for the police officer concerned to record his own reasons for opening/retention of the history sheets/rowdy sheets.

In ***B. SATYANARAYANA REDDY V/s. STATE OF ANDHRA PRADESH***^[13], a Division Bench of this Court held that the expressions

'habitually commit', 'attempt to commit' and 'abet the commission' of offences indicate the requirement that at least two or more cases have been registered against the person concerned to characterize him as a person who habitually commits, attempts to or abets the commission of offences. The Division Bench held that involvement of a person in a solitary case would not be enough to classify such person as 'habitually' committing offences. The Division Bench therefore held that the solitary instance in which the appellant therein was alleged to be involved in could not constitute the basis to classify him as a rowdy.

The opening and continuance of the rowdy sheets in the present case would therefore have to be examined in the light of the aforestated settled legal position.

It is significant to note that rowdy sheets in the names of the petitioners were opened in April, 2011. At that point of time, only two cases were registered against the first petitioner while one single case was registered against the second petitioner. The third case against the first petitioner was in the year 2012, wherein he was bound over. Significantly, even now, the second petitioner is admittedly involved in only one case. Therefore, at the time of the opening of the rowdy sheets, the requirement of being involved in at least more than two cases was not satisfied for the police authorities to infer that the petitioners were habitual offenders. Despite the same, the police are continuing to maintain the said rowdy sheets.

Merely because the petitioners are facing trial in a sessions case under Section 302 IPC, it cannot be concluded that they would tamper with the evidence and gain over witnesses. Had it been so, the petitioners would not have been enlarged on bail by the competent criminal Court. In any event, neither the opening of the rowdy sheets in the names of the petitioners nor continuance of the same thereafter is sustainable in law given the settled legal position.

The writ petition is therefore allowed and the respondents are directed to forthwith close the rowdy-sheets opened in the names of the

petitioners which are presently being maintained on the file of Reinbazar Police Station. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

24th AUGUST, 2015
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- [\[1\]](#) AIR 1966 SC 1766
 - [\[2\]](#) AIR 1984 SC 1334
 - [\[3\]](#) 1987 (2) ALT 904
 - [\[4\]](#) 1997 (6) ALD 583
 - [\[5\]](#) 1998 (3) ALT 55 (D.B.)
 - [\[6\]](#) 1990 (1) APLJ 363
 - [\[7\]](#) 2002 (3) ALT 391
 - [\[8\]](#) 2011 (2) ALT 61
 - [\[9\]](#) 2014 (3) ALT 264
 - [\[10\]](#) 1999 (3) ALD 60
 - [\[11\]](#) 1999 (5) ALD 155
 - [\[12\]](#) 2000 (1) ALD (CrI.) 117 (AP)
 - [\[13\]](#) 2004 (1) ALD (CrI.) 387 (AP)