

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

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WRIT PETITION No.12686 OF 2012

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ORDER:

This Writ Petition filed under Article 226 of the Constitution of India challenges the action of the respondents in continuing rowdy sheet/suspect sheet against the petitioner herein as illegal, arbitrary and violative of the Police Standing Orders and the fundamental rights guaranteed to the petitioner under Article 14 and 21 of the Constitution of India.

2. Heard Sri K.Rakesh Kumar, learned counsel, appearing for the petitioner and learned Government Pleader for Home, appearing for the respondents.

3. According to the petitioner, he is a resident of Seethanagaram, Tadepalli, Guntur District, which falls within the limits of Tadepalli Police Station and he was implicated in a Sessions Case in Crime No.25 of 2007 on the file of the said Police Station registered under Sections 147, 148, 302 r/w 149 of IPC and he was shown as accused No.4 in the said case. Thereafter, it was numbered as Sessions Case No.194 of 2009 on the file of the Court of the IX Additional Sessions Judge (FTC), Guntur. It is further pleaded that the said Court by way of judgment dated 17.12.2009, acquitted the petitioner of all charges and the said judgment became final. It is further stated that showing registration of the said crime, the respondents herein opened the rowdy sheet No.389, dated 01.01.2007, against the petitioner on the file of the 3rd respondent police station.

4. Counter affidavit is filed by the Sub-Inspector of Police, Tadepalli Police Station. It is contended by the learned counsel for the petitioner that despite the acquittal of the petitioner from all charges in the above referred sessions case, the respondent police authorities are continuing the rowdy sheet against the petitioner and the same is in violation of the Police Standing Orders and contrary to the judgment of the Hon'ble Apex Court in Vijay Narain Singh Vs. State of Bihar reported in AIR 1984 SC 1334 and also the judgments of this Court reported in 1998(3) ALT 55 and 1999 (5) ALD 155.

5. Per contra, reiterating the averments in the counter affidavit of the 3rd respondent, it is submitted by the learned Government Pleader that unless a close watch is maintained against the petitioner herein, there is a chance of petitioner committing unlawful activities once again and in view of the public interest, the rowdy sheet against the petitioner is being continued by the respondent police authorities.

6. The material available on record vividly discloses that the Court of IX Additional Sessions Judge (FTC), acquitted the petitioner of all charges in Sessions Case No.194 of 2009 by way of judgment dated 17.12.2009. Even according to the counter affidavit filed by the 3rd respondent, no fresh case whatsoever has been registered against the petitioner herein on the file of the 3rd respondent police station.

7. In this connection, it may be appropriate to refer to the judgments cited by the learned counsel for the petitioner.

1. In **Vijay Narain Singh Vs. State of Bihar and others**, the Hon'ble Apex Court at Paragraph No.32, held as follows:

“32. In the present case the District Magistrate has relied on three incidents to hold that the petitioner is an anti-social element. They are- (i) that on April 15, 1975 the petitioner along with his associates had gone to the shop of a cloth dealer of Bhagalpur Town armed with an unlicensed pistol and had forcibly demanded subscription at the point of a gun, and (ii) that on June 17/18, 1982 the petitioner was found teasing and misbehaving with females returning from a cinema hall. The third ground is the criminal case now pending against the petitioner in the Sessions Court. The first incident is of the year 1975. It is not stated how the criminal case filed on the basis of that charge ended. The next incident relates to the year 1982. The detaining authority does not state how the criminal case filed in that connection terminated. If they have both ended in favour of the petitioner finding him clearly not guilty, they cannot certainly constitute acts or omissions habitually committed by the petitioner. Moreover the said two incidents are of different kinds altogether. Whereas the first one may fall under sub-clause (i) of [section 2\(d\)](#) of the Act, the second one falls under sub-clause (iv) thereof. They are, even if true, not repetitions of acts or omissions of the same kind. The District Magistrate does not appear to have applied his mind to the above aspects of the case. The third ground which is based on the pending Sessions case is no doubt of the nature of acts or commissions referred to in sub-clause (i) of [section 2\(d\)](#) but the interval between the first ground which falls under

this sub-clause and this one is nearly eight years and cannot, therefore, make the petitioner a habitual offender of the type falling under sub-clause (i) of [section 2\(d\)](#). When I say so I do not certainly minimise the gravity of the offence alleged to have been committed by the petitioner which is still to be tried by the Sessions Court. If the petitioner is found guilty by the Court, he will have to be awarded appropriate punishment. But the point for consideration now is whether the filing of the charge sheet is sufficient to bring the petitioner within the mischief of the Act. The Court should examine the case without being overwhelmed by the gruesomeness of the incident involved in the criminal trial. It is well settled that the law of preventive detention is a hard law and therefore it should be strictly construed. Care should be taken that the liberty of a person is not jeopardised unless his case falls squarely within the four corners of the relevant law. The law of preventive detention should not be used merely to clip the wings of an accused who is involved in a criminal prosecution. It is not intended for the purpose of keeping a man under detention when under ordinary criminal law it may not be possible to resist the issue of orders of bail, unless the material available is such as would satisfy the requirements of the legal provisions authorising such detention. When a person is enlarged on bail by a competent criminal court, great caution should be exercised in scrutinising the validity of an order of preventive detention which is based on the very same charge which is to be tried by the criminal court."

2. In **Pulla Bhaskar Vs. Superintendent of Police, Warangal and others**, this Court at Para No.6, held as follows:

"6. This provision of the Police Standing Orders has been interpreted by this Court on various occasions. The Supreme Court while considering the similar provision in Bihar Control of Crimes Act, 1981 had the occasion of interpreting the word "habitual" used in a similar provision in [Vijay Narain Singh v. State of Bihar](#), AIR 1984 SC 1334. Speaking for the majority, Justice E.S. Venkataramaiah as his Lordship then was, held :

"The expression 'habitually' means 'repeatedly' or 'persistently'. It implies a thread of continuity stringing together similar repetitive acts. Repeated, persistent and similar, but not isolated, individual and dissimilar acts are necessary to justify an inference of habit..... A single act or omission..... cannot therefore be characterised as a habitual act or omission..... Because the idea of 'habit' involves an element of persistence and tendency to repeat the acts or omissions of the same class or kind, if the acts or omissions in question are not of the same kind or even if they are of the same kind when they are committed with a long interval of time between them they cannot be treated as habitual ones."

Going by the definition as laid down by Supreme Court to the word

'habitual' if one sees the facts of the present case, there had been cases against the petitioner which resulted in acquittal in the year 1994 and from 1994 till 1997 there were no cases against the petitioner when, on 5-7-1997 a case had been registered against him and he had been fined with Rs.200/-. Then, after 5-7-1997 two cases of similar nature were registered against the petitioner on 12-6-1998. There have been long intervals between the occurrences and therefore in accordance with the judgment of the Supreme Court [Vijay Narain Singh v. State of Bihar](#) (supra), the petitioner cannot be termed a 'habitual offender' within the meaning of Standing Order 742(a). The Division Bench of this Court in [Puttagunta Pasi v. Commissioner of Police](#), and the learned single Judge in [Mohammed Quadeer and others v. Commissioner of Police](#), 1993 (3) ALD 60, have also laid down the same law as was laid down by the Supreme Court."

3. In **Puttagunta Pasi alia Penta Pasi Vs. Commissioner of Police, Vijayawada and another**, this Court at Para Nos.4 and 5, held as follows:

"4. A person can be listed in the rowdy sheet on the basis of an order passed either by the Superintendent of Police or a Sub-Divisional Officer in exercise of the powers conferred under S.O. 742 of the Police Standing Orders. The word 'Rowdy' has been defined as follows:

"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., dated 8-4-1971)

(2) Instructions in Order 735 regarding discontinuance of History sheets shall also apply to rowdy sheets."

From the above it is clear that to include a person's name in a rowdy sheet, such person shall be a habitual offender i.e., he must habitually commit or abet the commission of offences involving breach of peace. The learned single Judge in Kamma Bapuji's case (1 supra) took into consideration the importance attached to the personal liberty of a citizen and to the consequences in a case where a person is characterised or classified as a 'rowdy' and also placed reliance on following decisions. In the case of [Dhanji Ram Sharma v. Superintendent of Police, Delhi](#), the Supreme Court described a habitual offender as follows:

"A habitual offender or a person habitually addicted to crime is one who is a criminal by habiti or by disposition formed by the repetition of crimes. Reasonable belief of the Police Officer that the suspect is a habitual offender or is a person habitually addicted to crime is sufficient to justify action under Rules 234(3)(b) and 23.9(2). Mere belief is not sufficient. The belief must be reasonable, it must be based on reasonable grounds. The suspect may or may not have been convicted of any crime. Even apart from any conviction, there may be reasonable grounds for believing that he is a habitual offender."

[In Vijay Narain Singh v. State of Bihar](#), while considering the effect of [Sections 2\(d\)](#) and 12 of the Bihar Control of Crimes Act (Act 7 of 1981), which provides for definition of anti-social element, the Supreme Court has observed as follows:

"A person is a habitual criminal who by force or habit or inward disposition, inherent or latent in him, has grown accustomed to lead a life of crime. It is the force of habit inherent or latent in an individual with a criminal instinct, with a criminal disposition of mind, that makes him dangerous to the society in general. Shorn of verbiage the word 'habitually' means 'by force of habit'. [The Act](#) appears to be based on Prevention of Crime Act, 1908 (c.59). By Prevention of Crime Act, 1908, as amended by the Indictments Act, 1915, a person after three previous convictions, after attaining sixteen years of age could, with the consent of the Director of Public Prosecutions in certain cases, be charged with being a habitual criminal and, if the charge was established, he could, in addition to a punishment of penal servitude, in respect of crime for which he has been so convicted, receive a further sentence of not less than five year; or more than 10 years, called a sentence of preventive detention. Upon this question of a man's leading persistently a dishonest or criminal life, where there has been a considerable lapse of time between a man's last conviction and the commission of the offence which forms the subject of the primary indictment at the trial, notice containing particulars must have been given and proved of the facts upon which the prosecution relief for saying that the offender is

leading such a life. If, on the other hand, the time between a man's discharge from prison and the commission of the next offence is a very short one, it may be open to the jury to find that he is leading persistently a dishonest or criminal life by reason of the mere fact that he has again committed an offence so soon after his discharge from a previous one, provided the notice has stated this as a ground. This essentially is a question of fact. The scheme under the [English Act](#), is entirely different where a person has to be charged at the trial of being a habitual criminal. Therefore, the considerations which govern the matter do not arise in the case of preventive detention under [Section 12\(2\)](#) of the Act."

The learned single Judge in *Katnma Bapuji's* case

(1 *supra*) referred to the meaning of the word 'habitual' as defined in *Black's Law Dictionary* which describes the word habitual where it is said that the meaning assigned to 'Habitually' is "Customarily; by frequent practice or use. It does not mean entirely or exclusively". In the case of *Majid Babu v. Government of A.P.* 1987 (2) ALT 904, this Court held that mere two instances would not make a person a habitual offender. Atleast, there shall be more than two instances. Mere figuring of the name of a person in two crimes is not sufficient to hold that he is a habitual offender. [In Shaik Mahboob v. Commissioner of Police](#), 1990 (1) APLJ 363 1990 (1) ALT 15 (NRC) = 1990 (1) An.W.R. 11 (NRC), this Court held as follows:

"Admittedly the two cases registered against the petitioner have ended in acquittal. The third reference that a report was received from Special Branch Police that the petitioner threatened the Managing Editor of *Siasat* daily 'for not publishing in that paper about his organisation' and also threatened to burn the newspaper, cannot be taken as 'copiously substantiated'. Something more is required so as to hold that threat was real which requires preventive measure as either the complainant himself would have registered a complaint or the Police ought to have taken some initiative on this threat. In the absence of this it is not in accord with law to treat the said situation as a cogent evidence so as to bring within the ambit of the person being habitual offender taking that case as a third incident. True whether commission of an offence or attempt to commit an offence could be taken as the relevant factor for the purpose of entering the name of a person in a rowdy sheet within the meaning of S.O. 742 but mere assertion does not lead to the situation that a person attempted to commit an offence. In the circumstances, adequate material has not been made out so as to enter the name of a petitioner in the 'rowdy-sheet' and continue the same unless substantial cogent material is available. In this case it is not possible to hold that enough material within the meaning of the judicial pronouncement laid down is available. Hence, mandamus

is issued directing the respondents to delete the name of the petitioner from the rowdy sheet. This will not however preclude the respondents if fresh circumstances in future arise, warranting opening of rowdy sheet."

In Ejaz v. Govt. of A.P., an un-reported decision delivered in Writ Petition No. 13324/96 dated 10th September, 1996, this Court dealt with the powers of Police as to when a person can be described as 'habitual offender'. According to the learned single Judge, expressions like 'by habit', 'habitual', 'desperate', 'dangerous', 'hazardous' cannot be flung in the face of a man with laxity of semantics.

5. From the above, it is clear that rowdy sheets cannot be opened against any individual in a casual and mechanical manner. Dubbing a person as an habitual offender and to open a rowdy sheet is not sufficient. On the other hand, due care and caution shall be taken by the Police before characterising a person as a rowdy. The important element that has to be seen in the acts of an offender is whether the acts so committed by a person will have a tendency to disturb public peace and tranquility. In Kamma Bapuji's case (1 supra), the learned single Judge, following the decisions already rendered by the Supreme Court and this Court as cited above, held that opening of a rowdy sheet against the petitioner therein viz., Kamma Bapuji is incorrect."

8. Having regard to above legal position enunciated by the Hon'ble Apex Court and this Court, Writ Petition is disposed of, keeping it open for the petitioner herein to make an application before the 2nd respondent – Deputy Superintendent of Police, within a period of one month from the date of receipt of this order and if any such application is made, the same be considered and appropriate action be taken in accordance with law, within a period of one month thereafter.

9. Miscellaneous petitions pending consideration, if any, in the Writ Petition shall stand closed in consequence. No order as to costs.

A.V.SESHA SAI, J

21.12.2015

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