

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

WRIT PETITION No.16611 of 2009

ORDER:

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

“to issue Writ of Mandamus declaring the action of the 1st respondents in opening rowdy sheet/history sheet/ Dossier Sheet against the petitioner as illegal, improper, unjust, contrary to law and violative of Article 21 of the Constitution of India and it is further consequentially prayed to direct the 1st respondent to close the rowdy sheet/history sheet/Dossier Sheet against the petitioner.”

The pleaded case of the petitioner herein is as under:

Petitioner was tried by the Court of the Assistant Sessions, Nalgonda in S.C.No.197 of 2004 arising out of P.R.C.No.4 of 2004 on the file of the Court of the Judicial Magistrate of First Class, Nalgonda in Crime No.40 of 2003 of Kanagal Police Station for the charges under Sections 452, 307 and 324 r/w.34 of I.P.C. and the petitioner was acquitted by virtue of the judgment of the said Court on 11-08-2005. The petitioner has civil dispute with his father with regard to the sale of a rice mill situated at Halia village and the petitioner instituted O.S.No.33 of 2009 before the court of the District Judge for specific performance and the eldest brother of the petitioner, Sri Peetha Sreenivasa Raju and his children also instituted O.S.No.1 of 2009 before the Court of Senior Civil Judge, Miryalguda for permanent injunction to restrain the petitioner's father from selling away certain properties and in I.A.No.2 of 2009 there is an interim injunction, restraining their father from alienating the property.

In order to deter and prevent the petitioner from proceeding with the suit, petitioner's father and brother hatched a plan and lodged a false complaint with Miryalguda Police Station who registered the same as a case in F.I.R.No.30 of 2009 for the offences under Sections 324 and 365 r/w.34 of IPC and transferred

the same to Halia Police Station who opened a rowdy sheet against the petitioner. Parents of the petitioner at the instance of the 2nd brother of the petitioner filed W.P.No.14874 of 2009, complaining inaction on the part of the Halia Police and this Court directed the Superintendent of Police to cause inquiry and to submit a report and the Superintendent of Police submitted a report and this Court, on finding no force in the contention of the parents of the petitioner, closed the said Writ Petition on 10-08-2009.

With the above-mentioned pleadings, the present Writ Petition came to be filed. The grievance precisely of the petitioner in the present Writ Petition is despite absence of conviction in any criminal cases and despite absence of ingredients of the relevant Police Standing Orders, which authorize the police to open rowdy sheet against the petitioner the respondents opened a Rowdy sheet.

In the above background, a counter affidavit deposed by the 1st respondent – Station House Officer, has been filed on behalf of the respondents, stating that a rowdy sheet is opened against the petitioner under the Police Standing Order No.742 on 06-03-2009 after obtaining permission from the Sub-Divisional Police Officer, Miryalguda by quoting as many as four crimes and reply is also filed by the petitioner to the said counter.

Heard Sri S.R. Sanku, learned counsel for the petitioner and learned Government Pleader for Home, apart from perusing the material available before the Court.

It is contended by the learned counsel for the petitioner that the continuation of the rowdy sheet against the petitioner, in the facts and circumstances of the case, is un-warranted and opposed to the Police Standing Orders and violative of Article 21 of the Constitution of India and impugned action affects the life and liberty of the petitioner and deprives the petitioner of his privacy. It is further submitted that the crimes registered against the petitioner are due to the family disputes and do not have the element of disturbance to any public peace and

tranquility and there is no two convictions against the petitioner, as such the impugned action is untenable. It is also submitted by the learned counsel for the petitioner that there is no involvement of the petitioner in any crime after the institution of the present Writ Petition.

The learned counsel, in support of his submissions and contentions, takes the support of the judgments of this Court reported in ***B. SATYANARAYANA REDDY v. STATE OF ANDHRA PRADESH AND OTHERS*** and the order in W.P.No.14907 of 2009 dated 23-04-2013.

On the contrary, it is argued by the learned Government Pleader that the impugned action is in accordance with the Police Standing Orders and in view of the conduct of the petitioner in involving in a number of cases the continuation of rowdy sheet against the petitioner is justified and rowdy sheet is opened against the petitioner in the interest of public at large and in order to maintain public peace and tranquility. It is also argued that the petitioner suffered conviction in criminal case in C.C.No.773 of 2009, wherein the accusation was that the petitioner beat his brothers and kidnapped them.

Even as per the counter filed by the respondents herein, Crime No.40 of 2003 on the file of Kanagal Police Station registered for the offences under Sections 452, 307 and 324 r/w.34 of I.P.C. ended in acquittal vide S.C.No.197 of 2004 on 11-08-2005. Crime No.160 of 2009 on the file of Halia Police Station for the offence under Section 307 of I.P.C. was referred as false. Crime No.164 of 2009 on the file of Halia Police Station under Sections 380 and 504 of I.P.C. also was referred as lack of evidence. Only case which ended in conviction is C.C.No.773 of 2009, dated 17-05-2013 on the file of the Addl. Judicial Magistrate of First Class, Miryalguda, which arose out of an allegation that the petitioner beat his brothers and kidnapped them.

According to the petitioner, he filed Crl.R.C.No.501 of 2014 and this Court on

11-03-2014 granted suspension of sentence and by way of filing reply affidavit the petitioner has furnished the details of the crimes and the respective complaints. Crime No.40 of 2003 on the file of the Kanagal Police Station, which ended in acquittal vide S.C.No.197 of 2004 on the file of the Court of the Assistant Sessions Judge, Nalgonda was at the instance of one Chennu Babji Raju, younger brother of mother of the petitioner. Crime No.30 of 2009 was registered on the complaint of the brother-in-law of the 2nd brother of the petitioner and Crime No.160 of 2009 was registered on the complaint of the parents of the petitioner, which was referred as false and Crime Nof.164 of 2009 was also registered on the complaint of the parents of the petitioner, which was referred as lack of evidence.

While referring to the said cases it is the contention of the learned counsel that the said cases arose out of the private disputes and do not attract the Police Standing

Order 742 and they do not authorize the respondents to open rowdy sheet against the petitioner nor the allegations made in the said complaints attract the aspect of public peace and tranquility. This Court finds sufficient force in the said contention and in this connection it would be apt and appropriate to refer to the judgments cited by the learned counsel for the petitioner in support of his submissions and contentions. In the case of **B. SATYANARAYANA REDDY v. STATE OF ANDHRA PRADESH AND OTHERS** (1 supra) this Court at paragraph Nos.10 to 19 held as under:

“10. The short question that falls for consideration is as to whether the rowdy sheet opened against the appellant herein on 15-12-1991 is in conformity with the police Standing Orders?

11. It is clear from a perusal of Standing Order No. 742 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.

12. In Puttagunta Pasi v. Commissioner of Police a Division Bench of this Court after referring to various decisions of this Court observed:

"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 (1997 (6) ALD 583) , 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. "

13. 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 Police Officer in exercise of the powers conferred under S. O. No. 742 of the Police Standing Orders. The term "rowdy" has been defined as under: "**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, 1889; (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) Department, dated 8-4-1971). (2) Instructions in Order 735 regarding discontinuance of History sheets shall also apply to rowdy sheets. "

14. The question that is required to be considered in every case is as to when a person can be called as a person who habitually commit, attempt to commit or abet the commission of offences involving a breach of the peace? Whether involvement of a person even in a solitary case resulting in a breach of the peace is enough to characterise such person as a person who habitually commit, attempt to commit or abet the commission of offences involving a breach of the peace?

15. The very 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 characterise such person as a person who habitually commit, attempt to commit or abet the commission of offences.

16. In *Ejaz v. Government of Andhra Pradesh and others*, this Court observed: "however, there cannot be any doubt that the Police Officer who is entrusted with the responsibility of classifying the person as a rowdy and opening of rowdy-sheets are under the duty and obligation to consider the applicability of standing Order strictly and confine the entry in the rowdy-sheet only to such class of persons mentioned in the Standing Order and it is not as if the Police have the power and opportunity to enter the names of whoever they like in the said register. The expression like 'by habit', 'habitual', 'desperate', 'dangerous', 'hazardous' cannot be flung in the face of man with laxity of semantics. The Court must insist on specificity of facts and be satisfied that one swallow does not make a summer and a consistent course of conduct convincing enough to draw the rigorous inference that by confirmed habit, which is second nature. "

17. We are required to notice that the word 'habit' implies a tendency or capacity resulting from the frequent repetition of the same acts. The words by 'habits' and 'habitually' imply frequent practice or use. The word 'habit' means persistence in doing an act, a fact which is capable of proof by adducing evidence of the commission of a number of similar acts. 'habitually' must be taken to mean repeatedly or persistently. (See: The Law Lexicon).

18. It is thus clear that unless the acts complained of are more than one, it cannot be held that the involvement of a person even in a solitary case itself forms the basis for classifying such person as 'habitually committing the offences' involving disturbance to the public peace and tranquility.

In *Kamma Bapuji v. Station House Officer, Brahmasamudram*, this Court observed:

"A plain reading of clause (a) of S. O. 742 leads to inescapable conclusion that the submission made by the learned Counsel for the petitioners is absolutely right. A rowdy-sheet can be opened against a person classified as a rowdy, if such person habitually commit, attempt to commit or abet the commission of offence involving breach of the peace. In plain language a person who habitually commit, attempt to commit or abet the commission of offences alone can be classified as a rowdy and rowdy sheet can be opened, provided such offence relates to involving breach of the peace. If the offence even habitually committed, or attempted to be committed or abet commission of the offence, but not involving a breach of the peace, would not enable and authorise the police officer concerned to open rowdy sheet and classify a person as rowdy. It is in this area, a Police Officer has to consider the material available on record and satisfy himself that commission of offence habitually by a person has resulted or is likely to result in breach of peace. The satisfaction is required to be arrived at in an objective manner and on the basis of the material available on record."

19. The appellant in the instant case is involved in one criminal case and charge sheet was filed against him under Sections 324, 323 read with Section 34 of the Indian Penal Code. The offences alleged against the appellant herein have nothing to do with the breach of peace. That solitary incident, in which the appellant herein is alleged to have involved, itself cannot constitute any basis or ground to classify him as a rowdy-sheeter."

After referring to the earlier judgments and the relevant Police Standing Orders, in the order, dated 23-04-2013 in W.P.No.14907 of 2009 this Court at paragraph No.13 held as under:

"13. S.O 735 provides for discontinuance of history sheets and also for renewal. Sub-clause (2) of S.O.735 states that where the retention of a History Sheet is considered necessary after two years of registration, orders of a gazetted officer must be taken for extension of the period in the first instance up to the end of the next December and for further annual extension from January to December. Therefore merits of each case has to be examined and after such examination, the concerned officer has to reach a conclusion that it is inevitable to retain the rowdy sheet. Such consideration of necessity to retain the rowdy sheet has to be with reference to the material

available on record. It is not a matter of course. The gazetted officer, after consideration must arrive at a conclusion as to the existence of the circumstances warranting the retention of the rowdy sheet. The reasons must be recorded and when the party concerned challenges the retention, the authority concerned is required atleast prima-facie the necessity of continuing the charge sheet."

In the facts and circumstances and in the light of the principles laid down in the above referred judgments and keeping in view the totality of the circumstances, this Court deems it appropriate to direct the respondents herein to consider the above facts and principles laid down in the above referred judgments and undertake a review as to whether the rowdy sheet against the petitioner herein needs to be continued and this exercise shall be completed by the respondent authorities within a period of two (2) months from the date of receipt of a copy of this order.

With the above directions, the writ petition is disposed of. There shall be no order as to costs.

The Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

A.V. SESA SAI, J

April 30, 2015

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

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