

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

WRIT PETITION No.13108 OF 2011

Between:

Kenebva Achari @ Sivachari

.. Petitioner

and

Government of Andhra Pradesh, rep. by its
Principal Secretary, Home & Legal Affairs,
Secretariat Buildings, Hyderabad,
and another.

.. 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

WRIT PETITION No.13108 OF 2011

ORDER

The petitioner assails the action of the police authorities in opening a rowdy sheet in his name on the file of Anakapalle Police Station, Visakhapatnam District, contending that it was contrary to the relevant Police Orders and the law laid down by this Court.

The petitioner is an Advocate practising at Anakapalle in Visakhapatnam District. According to him, he was arrayed as an accused in Crime No.276 of 2009 under Section 420 IPC which was referred as 'civil in nature' but thereafter, in relation to the very same incident, Crime No.206 of 2010 was registered by the police authorities under Sections 420, 448, 427 and 379 IPC read with Section 34 IPC. The petitioner further stated that the police registered Crime No.195 of 2010 against him under Section 333 IPC alleging that he had thrown a police constable off a motor cycle. He stated that he filed Criminal Petition No.13576 of 2010 before this Court to quash the proceedings in the said crime and this Court granted interim stay of all further proceedings in Crime No.195 of 2010. The grievance of the petitioner, however, is that the police authorities opened a rowdy sheet in his name owing to his involvement in the aforesaid cases and were harassing him.

The Sub-Divisional Police Officer, Anakapalle Sub-Division, Visakhapatnam District, filed a counter-affidavit admitting that Crime

No.276 of 2009 registered against the petitioner was referred as 'civil in nature' on 23.09.2009, while Crime No.206 of 2010 led to the laying of a charge-sheet against him on 21.03.2011 vide C.C.No.493 of 2011 before the learned Additional Judicial Magistrate of First Class, Anakapalle, Visakhapatnam District. This case was stated to be pending trial. He conceded that as regards Crime No.195 of 2010, the petitioner had obtained stay of investigation therein in Criminal Petition No.13576 of 2010. According to the Sub-Divisional Police Officer, a rowdy sheet was opened in the name of the petitioner pursuant to his proceedings dated 15.04.2011 and the same stands extended till 31.12.2015.

The petitioner filed a reply to the aforestated counter reiterating his claim that the opening of a rowdy sheet in his name was not justified and praying for a direction to the police authorities to close the same.

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 BAPUJI⁴** 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 sheet in the present case would therefore have to be examined in the light of the aforesaid settled legal position.

The proceedings of the Sub-Divisional Police Officer, Anakapalle, dated 15.04.2011, are placed on record and indicate that the rowdy sheet in the name of the petitioner was opened owing to his involvement in Crime Nos.206 of 2010 and 195 of 2010. By the time the said proceedings were issued on 15.04.2011, Crime No.276 of 2009 had already been referred as 'civil in nature'. Therefore, as on the date of opening of the rowdy sheet in the name of the petitioner, he was only involved in two criminal cases.

As this Court has held time and again that involvement in two cases would not be adequate to conclude that such a person is a habitual offender, the opening of the rowdy sheet in the name of the petitioner was unsustainable in its very inception. Notwithstanding the same, it appears that the police authorities are continuing to maintain the said rowdy sheet and it is stated that the same is now extended up to the

end of this year. This Court therefore has no hesitation in holding that the very opening of the rowdy sheet was illegal and unsustainable and continuance thereof is nothing short of adding insult to injury

The writ petition is therefore allowed quashing the rowdy sheet opened in the name of the petitioner on the file of Anakapalle Police Station, Visakhapatnam District.

Before parting with the case, it may be noted that the writ petition was filed against the 'Government of Andhra Pradesh' and not the 'State of Andhra Pradesh', as required under Article 300 of the Constitution and Section 79 CPC. However, as this case has been pending on the file of this Court for over four years, this Court is not inclined to dismiss it on this technical ground. The description of the first respondent is therefore amended *suo motu* to adhere to the legal requirement and the Registry is directed to amend the description of the first Respondent by substituting 'State' in the place of 'Government' before issuing a copy of this Order.

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
PGS

[\[1\]](#) 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)