

HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.31086 OF 2017

ORDER:

Heard Mr.G.Smhadrai for petitioners and the Assistant Government Pleader (Home) for respondents.

The petitioners pray for Mandamus declaring the action of respondents in continuing Rowdy Sheets vide A.P.P.M. Orders No.742(1) dated 26.04.2005 of 3rd respondent against the petitioners, as illegal, arbitrary and unconstitutional and set aside orders dated 26.04.2005.

The petitioners claim to be daily wage workers. They refer to SC.No.21 of 2006 on the file of II-Additional District and Sessions Judge, Amalapuram which ended in acquittal on 16.05.2008. According to petitioners, the opening of rowdy sheets is contrary to Standing Order No.601 and the principles laid down in B. SATYANARAYANA REDDY v. STATE OF ANDHRA PRADESH AND OTHERS¹, MOHAMMED QUADEER AND OTHERS v. COMMISSIONER OF POLICE, HYDERABAD AND ANOTHER², SUNKARA SATYANARAYANA v. STATE OF ANDHRA PRADESH³, GANESAN v. THE DISTRICT SUPERINTENDENT OF POLICE, VIRUDHUNAGAR DISTRICT, VIRUDHUNAGAR AND ANOTHER⁴. It is further contended that the retention of rowdy sheet is completely monotonous and for extraneous reasons. There is no objective consideration of retention of rowdy sheet and therefore, pray for setting aside orders dated 26.04.2005.

¹ 2004 (2) ALT (Cri.) 115 (D.B) (A.P)

² 1999 (3), ALD 60

³ 1999 (6) ALT 249

⁴ (2010) (6) CTC 507

The 3rd respondent filed counter affidavit and on material averments in affidavit replied that the rowdy sheets against the petitioners have been opened having regard to the involvement of petitioners in the following crimes:

i. Cr.No.75/2004 u/s 107 Cr.P.C., if Inavilli P.S., wherein the petitioners were bound over to maintain good behaviour vide MC.No.24/2004 by the Hon'ble Mandal Executive Magistrate, Inavilli.

ii. Cr.No.18/2005, u/s.147, 148, 302, 307 r/w 149 IPC of Mummadivaram Police Station, E.G. District, wherein the petitioners herein are accused along with others. In the above case, after completing investigation, charge sheet was filed on 25.05.2005. However, the said case was ended in acquittal vide S.C.No.21/2006, dt.16.05.2008 by Hon'ble VIII Addl.District Sessions Fast Track Court, Amalapuram.

iii. Cr.No.52/2006 U/s 110(e) Cr.P.C of Inavilli P.S. wherein the petitioners were bound over for their good behaviour by the Special Executive Magistrate, Amalapuram.

iv. Cr.No.55/2006 U/s. 110(e) Cr.P.C of Inavilli P.S., wherein the petitioners were bound over for their good behaviour by the Special Executive Magistrate, Amalapuram.

v. Cr.No.19/2009 u/s.110 (e) Cr.P.C of Inavilli P.S., wherein the petitioners were bound over for their good behaviour by the Special Executive Magistrate, Amalapuram."

The 3rd respondent further asserts that in view of petitioners' involvement in unlawful activities, it is causing breach of peace in the area and has become incumbent on police to keep watch on the activities of petitioners and hence they opened the rowdy sheet in the larger public interest bearing HSNos.64, 67, 70 of 2006 in the 4th respondent police station as per the orders of the SDPO,

Amalapuram dated 26.04.2005. The 3rd respondent further states that the representation of petitioners was considered on 29.01.2013 as per the orders of the Hon'ble High Court in W.P.No.16223 of 2012 dated 30.10.2012. It is stated that the rowdy sheets of petitioners were reviewed by the end of each year and on 08.01.2017, the rowdy sheets were ordered to be retained till 31.12.2017. The respondents pray for dismissing the writ petition.

Now the point for consideration is whether the opening of rowdy sheet and/or retaining the rowdy sheet is legal, valid and tenable?

The rowdy sheet impugned in the writ petition was opened on 26.04.2005 and it was extended up to 31.12.2012. Therefore, the period for which the rowdy sheet was opened expired, but the rowdy sheets are retained and continued till 31.12.2017. Counsel for petitioners challenges the retention order by placing reliance on *MOHAMMED QUADEER's case (2 supra)*. The operative portion reads thus:

“15. It may be relevant to notice that A.P. Police Standing Orders are not framed under any statute. They are not in the nature of Rules or Regulations. It is a compilation of various Governmental Orders right from the pre-independence days till recently. The compilation is published under the orders of the Government vide G.O. Ms. No.308, Home (Police-D) Department, dated 9-2-1960. The order of the Government, itself, declared that the A.P. Police Manual submitted by the Inspector General of Police does not supersede any statutory rule, service rules or other orders issued by the Government from time to time. It further declares that the Manual does not invest police officers with any powers of arrest, detention,

investigation of crimes etc., not specifically conferred by the Code of Criminal Procedure or the Indian Penal Code or other Central or State Laws on the subject. The Manual merely contains the Governmental Orders issued from time to time depending upon the exigencies and the situation. May be the Police Officers being subordinate to the Government are bound by the same. The said Manual containing the Police Standing Orders is required to be so read so as to be in conformity with the Constitutional scheme and various statutes such as the Code of Criminal Procedure and the Indian Penal Code. Wherever necessary restricted meaning is required to be given and may be read down so as to save the same from the vice of un-constitutionality. Most of them may not stand the scrutiny, if challenged. However, I do not propose to express any opinion on the constitutionality of any of the Standing Orders, as the same is not put in issue before me.”

“17. Can the retention of the rowdy sheets be considered as a routine matter ? Can it be retained in a casual and mechanical manner? Any intense application of mind by the concerned gazetted officer is required ?”

“20. Merits of each case may have to be examined. Upon such examination, the concerned officer has to reach a conclusion that it is inevitable to retain the rowdy sheet. Obviously such consideration of necessity to retain the rowdy sheet is with reference to the material available on record. It is not a matter of course. The record produced in this case would disclose a classic case of non application of mind. The officer concerned merely affixed his signature as against the request made by the Inspector of Police. The whole issue is treated as a matter of no consequence.”

“22. A reading of the Standing Order would show that the gazetted officer, after consideration must arrive at a reasonable conclusion as to the existence of circumstances warranting retention or renewal of the rowdy sheet. The reasons need not be disclosed to the concerned person. But, if questioned the authority concerned is required to atleast prove prima facie as to the necessity of continuing the rowdy sheet. The record shall

contain the reasons and the conclusions. The conclusions must relate to the necessity of continuing the rowdy sheets. If the record does not disclose the reasons and ground, the order becomes challengeable on the ground of non application of mind or perversity on the ground that the opinion was formed on collateral grounds.”

The legality of opening/retaining the rowdy sheet depends upon the mode and manner in which the inputs are prepared, presented by the 4th respondent to 3rd respondent and thereafter these inputs are considered by the 4th respondent while ordering opening/retention of rowdy sheets. As held by this Court in MOHAMMED QUADEER's case (2 *supra*), the Gazetted Officer i.e., 3rd respondent after consideration of the inputs arrives at a reasonable conclusion as to the existence of circumstances warranting retention or renewal of the rowdy sheet. The reasons recorded by the Inspector of Police and forwarded to 3rd respondent, however, need not be disclosed to the petitioners. The petitioners are questioning the opening/ retention of rowdy sheet basing on the principles laid down in MOHAMMED QUADEER's case (2 *supra*). The respondents are under obligation, at least, to prove *prima facie* the necessity to open or continue the rowdy sheets. The onus is discharged by placing before the Court the very record through which the opening/ retention of rowdy sheets is ordered. The record contains the reasons and conclusions for ordering opening/retention of rowdy sheets. Both the reasons and conclusions must relate to the necessity of continuing the rowdy sheets. The converse of it is if the record does not disclose reasons or there has been a monotonous recommendation and

acceptance of 3rd respondent, the same does not satisfy the principles laid down in the decisions referred to above, thereby the right of petitioners under Article 21 of the Constitution of India is affected.

The Inspector on 24.04.2005 endorses on opening of rowdy sheets in all the letters addressed by 4th respondent to 3rd respondent as hereunder:

“Sir

Submitted

It is desirable to open a rowdy sheet to check the activities of this individual. Hence, it is requested to issue orders to open “ROWDY SHEET”.

The 3rd respondent orders opening of rowdy sheet with the following endorsement:

“Open rowdy sheet.”

To the pointed query of this Court whether 3rd respondent accorded permission for retention of rowdy sheet after satisfying with the record that sufficient material or inputs is available for retention, the learned Assistant Government Pleader submits that there is no order passed by the 3rd respondent authorizing retention of rowdy sheet up to 31.12.2012. The 3rd respondent ordered opening/retention of rowdy sheets of petitioners. To avoid repetition of very same details, the Court notices that the consideration and acceptance resulting in opening rowdy sheet are continuing up to 31.12.2017. Therefore, for all purposes, the retention of rowdy sheets against petitioners from 26.04.2005 till 31.12.2017 is not according to Standing Orders under which the rowdy sheet is opened and retained by the respondents.

From the details borne out from the record, it is clear that there is complete non-application of mind for retaining the rowdy sheets against petitioners. Further, the requirement is that the inputs given by the subordinates of 3rd respondent relate to the tendency or nature of petitioners to involve in one or the other activities for which guidelines are provided under Standing Order No.601. The cases which are referred to at the inception of rowdy sheet are either bind over proceedings under Section 107 of Criminal Procedure Code or the cases which ended in acquittal by the competent Court.

After perusing the record and keeping in view the principles laid down by this Court in the decisions referred to above, I am satisfied that the retention of rowdy sheet with the details referred to above is not sustained and consequently, rowdy sheets vide A.P.P.M. Orders No.742(1) dated 26.04.2005 of 3rd respondent are set aside.

The writ petition is ordered as indicated above. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

07th November, 2017

Lrkm

S.V.BHATT, J