

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 30033 OF 2017

ORDER:

Opening of a rowdy sheet against the petitioner by the 3rd respondent Station House Officer, I Town Police Station, Adoni, Kurnool District, without issuing notice and without conducting any inquiry, is questioned in this Writ Petition.

As could be make out from the averments in the affidavit filed in support of the Writ Petition, the petitioner is a businessman and a resident of Adoni Town. He is stated to be actively engaged in politics. It is submitted that he is an accused in C.C. No. 356 of 2010 on the file of the Court of the Judicial Magistrate of I Class, Adoni, for the offences punishable under Sections 324, 353 and 506 of the Indian Penal Code. In the said case, after trial, the petitioner was acquitted. Thereafter, once again, he was implicated in Crime No. 204 of 2017 registered for the offence punishable under Section 37-A of the A.P. Excise Act, 1968. Except the above two instances, in no other case, the petitioner is involved, but however, a rowdy sheet bearing No. 630 was opened against him in 2009, at instance of the political rivals. According to the petitioner, opening of rowdy sheet and continuation of the same is violative of the fundamental rights guaranteed to him under Article 21 of the Constitution of India and contrary to the Standing Order 601 of the A.P. Police Manual. Inasmuch as, in only one case, the petitioner was implicated, continuation of the rowdy sheet cannot be sustained. In this context, a reliance has been placed on the judgment dated 27.07.2015 rendered by this Court in ***M. Malla Reddy v. The State of Telangana***¹, wherein it has been held that continuation of rowdy sheet against the petitioners therein is in violation of the constitutionally-guaranteed rights and hence, quashed the rowdy sheet. Contending that his case also

¹ 2016(1) ALD (CrI.) 591 (AP)

stands on the same footing, the petitioner prays for quashing of the rowdy sheet opened against him.

On behalf of the respondents, a counter-affidavit was filed by the Sub-Divisional Police Officer, Adoni. It is stated therein that the petitioner was involved in the following cases on the file of II Town Police Station, Adoni:

- (i) Crime No. 46 of 2008 registered for the offences under Sections 341, 323, 302 read with Section 34 of the Indian Penal Code, wherein the petitioner was accused No.1 and in the aid case, after filing charge sheet, the same was ended in acquittal by the Judicial Magistrate of I Class Court, Adoni;
- (ii) Crime No. 203 of 2009 registered for the offences punishable under Sections 353 and 506 of the Indian Penal Code, wherein the petitioner was Accused No.1. After filing the charge sheet, the same ended in acquittal by the Judicial Magistrate of I Class Court, Adoni;
- (iii) Crime No. 16 of 2016 registered for the offences punishable under Sections 3, 4 and 9(1) of A.P. Gaming Act. In the said case, the petitioner was convicted to pay a fine of Rs.300/- *vide* STC No. 264 of 2016 by the Judicial Magistrate of I Class, Adoni;
- (iv) Crime No. 204 of 2017 under Section 37(A) of the A.P. Excise Act on the file of the Prohibition & Excise Station, Adoni.

It has been further stated that rowdy sheet was opened against the petitioner on account of his involvement in series of cases *vide* order of the Sub-Divisional Police Officer in C. No. 229/SDPO-A/2009, dated 11.05.2009. Despite the same, the petitioner did not mend his way and again and again, he involved in commission of crimes. In those circumstances, to have a vigil on the movements of the petitioner, it has become necessary, in the larger public interest, to keep the rowdy sheet pending and review the same on month to month basis. The opening of rowdy sheet and continuation of the same is justified in terms of the Standing Order No. 601 contained in the A.P. Police Manual. The rowdy sheet opened against the petitioner was in force till 31.12.2017 and considering his conduct in future, a decision would be taken accordingly.

Heard learned counsel for the petitioner as well as learned Government Pleader for Home (Andhra Pradesh).

The law relating to opening and continuation of rowdy sheet / history sheet is now well-settled in ***Mohammed Quadeer v. Commissioner of Police***², wherein the learned Judge had elaborately considered the various issues. In terms of the said judgment, 1) the A.P. Police Standing Orders are non-statutory in nature and they are only a compilation of government orders published in G.O.Ms.No. 308, Home (Police-D) Department, dated 09.02.1960. The A.P. Police Manual does not invest police officers with any powers of arrest, detention, investigation of crimes, etcetera, not specifically conferred by the Code of Criminal Procedure or the Indian Penal Code or other State and Central Laws on the subject; and 2) while the issue relating to opening of rowdy sheet is regulated by the Standing Order 601 read with Standing Order 742, the one relating to withdrawal / continuation of rowdy sheet is governed by the instruction contained in Standing Order 735.

The procedure for opening / continuation of rowdy sheet has been considered by the learned Judge in ***Mohammed Quadeer*** (cited 2 supra) , as under:

“ 13. SO-735 provides for discontinuance of history sheets and also for renewal. Since we are presently concerned with the interpretation of the said Standing Order, it would be apposite to have a look at S.O. 735, which reads as under :

"Discontinuance of History Sheets :

(1) History sheets shall be closed by the definite orders of a gazetted officer and shall be filed in the Station. The History sheets of persons, who have died, shall be destroyed by the order of a gazetted officer. The Superintendent of Police may order the closure of a History sheet at any time, but a Sub-Divisional Officer may only do so on the expiry of the periods named above.

(2) Where the retention of a History sheet is considered necessary after two years of registration, orders of a gazetted officer must be taken for the extension of the period in the first instance upto the end of the next December and for further annual extension from January to December.

14. Sub-Clause (2) of SO-742 makes applicable SO-735 for discontinuance of rowdy sheets also as in the case of History sheets. As noticed, SO-735 provides for closure of History sheets under the definite orders of a gazetted officer. The Superintendent of Police may order the

² 1999 (3) ALD 60

closure of the History sheet at any time, but the Sub-Divisional Officer may only do so on the expiry of the periods named. Sub-Clause (2) of SO 735 provides for retention of the history sheets. It provides that a history sheet may be retained when it is considered necessary after two years of registration, under the orders of a gazetted officer, for a period in the first instance upto the end of the next December and for further annual extensions from January to December. The expression 'registration' used in sub-clause (2) of SO 735 obviously does not carry any meaning. The history sheet opened under SO 734 shall be retained for a period of two years after release of the convicted persons from the jail. Obviously, it has nothing to do with the registration of the history sheet. The period of two years runs from the date of release of the conviction from the jail.

16. Sub-Clause (2) of SO-735 provides for retention of History sheet, if considered necessary under the orders of a gazetted officer. Even according to the Standing Orders, History Sheets, as well as the rowdy sheets are confidential documents maintained in the police station. It is mostly meant for the information of the Police. It enables the Police and the village Magistrates to keep watch over the persons against whom such sheets are opened. Infact, there is no provision for keeping watch or surveillance in respect of persons against whom the rowdy sheets are opened. Standing Order 749 obligates the police to keep a watch over the persons against whom History Sheets have been opened. There appears to be lot of confusion in this regard. Some times the History Sheets and rowdy sheets are treated as one and the same, though clear distinction appears to have been maintained under the Standing Orders. A liberal and extended meaning of history sheets as including the rowdy sheets alone would enable the police to keep watch and surveillance over the rowdy sheeters. Otherwise, there is no meaning whatsoever as to the opening of the rowdy sheet, itself.

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 ?

18. Sub-Clause (2) of SO 735, itself, says that where retention of history sheet is considered necessary after two years of registration, orders of a gazetted officer must be taken.

What is the meaning of 'Consideration'.

'Consider' means contemplate mentally especially in order to reach a conclusion and 'considered' means formed after careful thought (a considered opinion). (See : Concise Oxford Dictionary, New Edition for 1990s).

'Consideration' means the fact or thing taken into account in deciding or judging something. 'Considered' means to fix the mind on, with a view to careful examination. To deliberate about and ponder over. (See : Black's Law Dictionary, Fifth Edition).

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."

The learned Judge had considered the factual as well as legal aspects, in detail, and rejected the contention on behalf of the respondents that mere surveillance by the police would not infringe the

fundamental right of a citizen. Hence, the present case does not warrant any elaboration on that count.

Further, this Court in ***K. Suresh Babu v. Superintendent of Police, Anantapur District***³, following the earlier decisions in ***Kamma Bapuji v. Station House Officer, Brahmasamudram*** (1997(6) ALD 583) and ***Puttagunta Pasi v. Commissioner of Police, Vijayawada*** {1998 (3) ALT 55 (DB)}, had held that opening of a rowdy sheet in the name of the petitioner on the basis of his involvement in a solitary criminal case was not sufficient to term him a habitual offender under Clause (A) of Order 601.

Applying the above case law to the facts of the present case, notwithstanding the assertion of the respondent police that the petitioner is a habitual offender and involved in various cases, even if the same were to be accepted, in view of the fact that the cases wherein the petitioner was involved, do not fall within the specified categories mentioned in Standing Orders 601 and 742, the Writ Petition deserves to be allowed.

The Writ Petition is accordingly, allowed and the respondent police are directed to close the rowdy sheets opened against the petitioner. No costs.

Consequently, the miscellaneous Applications, if any shall stand closed.

CHALLA KODANDA RAM, J

16th October 2017

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³ 2015(6) ALT 556