

HONOURABLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.4676 OF 2012

ORDER.

Heard Mr.P.Sudhakara Reddy, learned counsel for petitioner and learned Assistant Government Pleader for Home.

The petitioner prays for Mandamus declaring the action of respondents in opening rowdy sheet No.153 against him by 4th respondent as arbitrary, illegal, unconstitutional and contrary to the Police Manual and consequently prays for a direction to the respondents to close rowdy sheet No.153 opened and continued against the petitioner.

The case of the petitioner is as follows:

The petitioner claims to be an agriculturist and comes from a respected political family having political affiliation with a political party for three decades and it is alleged that the changed circumstances changed the affiliation of petitioner to another political party in the year 2009.

The respondents to prosecute the followers of a political party, have all of a sudden opened bunch of cases against the party cadre, to which the petitioner has present affiliation and thereafter the respondents are opening rowdy sheets on the basis of Special Report obtained suo-motu against them, including the petitioner, thus rowdy sheet No.153 impugned in the Writ Petition was opened against petitioner. With the opening of rowdy sheet, the 4th respondent has been displaying in Police Station petitioner's photo

along with the photos of thieves, thugs and criminals. The petitioner complains that the opening of rowdy sheet is not based on germane facts and relevant circumstances, as envisaged by Police Standing Order No.601 and the decisions of this court. The petitioner admits that he was shown as accused No.7 in C.C. No.130 of 2009 on the file of Honourable Judicial First Class Magistrate, Pulivendula and on 25-7-2011, the petitioner was acquitted by the Magistrate Court. Though the petitioner would challenge the opening of rowdy sheet and continuing the rowdy sheet against him, by referring to a few allegations on party lines, the learned counsel for petitioner having regard to the decisions on which he is relying upon assails the rowdy sheet and continuing the rowdy sheet on legal grounds. As these averments are not specifically adverted to by the counsel for petitioner, I am not proposing to refer to these allegations.

According to petitioner, the opening of rowdy sheet does not satisfy the requirement of Police Standing Order No.601, for the petitioner is not covered under any one of the classifications in Standing Order No.601. The petitioner feels offended by the opening of rowdy sheet and contends that opening rowdy sheet is prima facie illegal, unwarranted and unconstitutional. Rowdy sheet is not opened based on tenable and well informed circumstances but for reasons beyond the four corners of Police Manual. The discretionary power of opening the rowdy sheet is exercised by the respondents to preserve law and order, peace and tranquility in the locality, but not

to penetrate into the life, liberty, privacy and seclusion granted to the petitioner by Article 21 of the Constitution of India.

The learned counsel for petitioner alternatively submits that even assuming that a few circumstances subsisted (without admitting) for opening the rowdy sheet, still the continuation of rowdy sheet beyond three years is affecting the liberty, movements and life of petitioner. The continuation of rowdy sheet is violative of Article 21 of the Constitution of India.

Stated in other words, the submission of learned counsel for petitioner is that the rowdy sheet is continued in a mechanical and arbitrary manner till date. The continuation of rowdy sheet is a continuous cause of action and this court can look into record and mould the relief. Therefore, he prays the Court to examine the opening of rowdy sheet as well as continuation of rowdy sheet on the well established principles of law enunciated by this court and the Honourable Supreme Court and set aside the rowdy sheet.

On 15-3-2012, the 4th respondent filed counter affidavit denying the material allegations in the affidavit of the petitioner. The 4th respondent refers to the following cases opened against the petitioner and justifies the opening of rowdy sheet.

Sl.No.	Name	Case registered against the petitioner/Police Station	Offence under Section	Present status.
1	V.Ramanjaneya Reddy, Rowdy Sheet No.153	(1) C.C.130/2009, on the file of the JFCM, Pulivendula (A-7)	147, 148, 448, 234, r/w.149 IPC Sec. 136 RP Act.	Acquitted.

		(2) Cr.45/2011 of MEM, Pulivendula vide MC.No.14/2011, dated 13.04.2011.	107 Cr.P.C.	-----
		(3) Cr.17/2012 of MEM, Pulivendula	U/s 110(e) Cr.P.C.	-----

It is further replied that the rowdy sheet is opened in view of petitioner's involvement in above criminal cases and opening rowdy sheet is necessary to curb or curtail petitioner's unlawful activities. The rowdy sheet challenged in the writ petition was opened on 24-2-2011 after obtaining permission of Sub Divisional Police Officer, Pulivendula, Y.S.R.District and is in accordance with Police Manual. The 4th respondent further states that the petitioner is causing nuisance to general public and the general public out of fear for petitioner are not daring to approach the police to lodge complaint against petitioner. Hence, rowdy sheet is opened and it is continued to watch petitioner's activities and movements and prevent commission of a crime. The 4th respondent explains that except opening the rowdy sheet against the petitioner, the 4th respondent never harassed, threatened or interfered with life and liberty of petitioner or the petitioner was called to Police Station at any point of time and prays for dismissing the Writ Petition.

Third respondent filed counter affidavit and refers to Crime No.114 of 2012 under Section 107 of Criminal Procedure Code before the Executive Magistrate, Pulivendula. The petitioner was bound over to maintain good behavior for six months; refers to

Crime No.67 of 2014 under Section 110(e) of Criminal Procedure Code before Executive Magistrate, Pulivendula and Crime No.120 of 2014 under Section 151 of Criminal Procedure Code where the petitioner along with some others were arrested to prevent commission of a cognizable offence. Therefore, the 3rd respondent prays for dismissal of the writ petition, for the opening and continuing the rowdy sheet against the petitioner is to maintain law and order, tranquility in the locality and further prevent petitioner from indulging in cognizable or non-cognizable offences.

The learned counsel appearing for parties have substantially reiterated the stand taken by their respective parties in the pleadings. For brevity, and to avoid repetition, I am not referring to the contentions raised by the parties.

This Court directed respondents 3 and 4 to produce record of rowdy sheet impugned in the writ petition for inspection. The original record is placed before the court and the counsel for petitioner was permitted to go through the record. After going through the record, Mr. Sudhakara Reddy raises additional grounds that the 3rd respondent in counter affidavit refers to Crime Nos.114 of 2012 and 67 of 2014 to justify continuation of rowdy sheet already opened against the petitioner. However, the original record does not refer to either the registration of these crimes or the aggravating circumstances perceived by the respondents from these cases for continuing rowdy sheet No.153. He contends by specifically drawing the attention of this court to the

recommendation of 4th respondent for continuing the rowdy sheet, that all the entries made in the rowdy sheet suffer from non-application of mind and having regard to the principle laid down by this court in *B. SATYANARAYANA REDDY vs. STATE OF ANDHRA PRADESH AND OTHERS* (¹), and *MOHAMMED QUADEER AND OTHERS v. COMMISSIONER OF POLICE, HYDERABAD AND ANOTHER* (²), the rowdy sheet impugned in the writ petition is liable to be set aside.

I have taken note of the submissions of learned counsel for parties, perused the pleadings and also rowdy sheet No.153 registered by 4th respondent.

Rowdy sheet is opened and continued under Police Standing Orders. The right to privacy of the person against whom the rowdy sheet is opened, procedure followed by respondents, the circumstances under which rowdy sheet can be opened, scope of judicial review on the opening of rowdy sheet, continuation of rowdy sheet etc., are no more *res integra*. For convenience and to apply the ratio *decidendi* laid down in *SUNKARA SATYANARAYANA VS. STATE OF ANDHRA PRADESH* (³), *GANESAN Vs. THE DISTRICT SUPERINTENDENT OF POLICE, VIRUDHUNAGAR DISTRICT, VIRUDHUNAGAR AND ANOTHER* (⁴), *B. SATYANARAYANA REDDY vs. STATE OF ANDHRA PRADESH AND OTHERS* (1st cited), *MOHAMMED QUADEER AND OTHERS v. COMMISSIONER OF*

¹ 2004 (2) ALT (Gr.) 115 (D.B) (A.P)

² 1999 (3), ALD 60.

³ 1999 (6) ALT 249.

⁴ (2010) (6) CTC 507

POLICE, HYDERABAD AND ANOTHER (2nd cited) and *K.SURESH BABU AND THE SUPERINTENDENT OF POLICE, ANANTAPUR AND ANOTHER* in an unreported order in W.P.No.18142 of 2012, the relevant passages are excerpted.

In *SUNKARA SATYANARAYANA VS. STATE OF ANDHRA PRADESH* (3rd cited), Honourable Mr.Justice V.V.S.Rao has examined in great detail, the origin of Police Standing Orders, status of Police Standing Orders, procedure to be followed by Police Officers for opening a rowdy sheet and the right of a person aggrieved by the orders opening rowdy sheet and framed the following points for consideration.

While dealing with each one of the points, the following findings have been recorded.

"8. In view of the submissions made by the learned Counsel the points that arise for consideration are.

(I) Whether right to privacy is not violated, if the citizen is subjected to life long surveillance by virtue of continuation of history sheet / rowdy sheet in the police station?

(II) Whether violation of the Fundamental right to privacy flowing from Article 21 of the Constitution of India amounts to violation of human rights and what are the other remedies available to the citizen if human rights are violated?

(III) Whether continuous maintenance of History sheets/rowdy sheets perennially does not violate the rights of the citizen under Articles 14, 19 and 21 of the Constitution of India?

(IV) What is the extent and scope of judicial review of history sheet / rowdy sheet on the touchstone of reasonableness, arbitrariness and non-application of mind?

(V) Is there a necessity for the competent Police Officer to record reasons of his own, for extension or retention of the history sheet / rowdy sheet? Or, is it sufficient legal compliance for the police Officer to endorse the report of the Station House Officer or Circle Officer, as the case may be?

(VI) To what relief?

17. From a reading of these relevant Standing Orders, it is not clear whether they were issued by the Inspector General of Police in the State of Madras Under Section 9 of the Police Act. In the Judgment of the Supreme Court in Venugopal's case (1 supra) it was argued that all the orders and rules promulgated by the Inspector General Under Section 9 of District Police Act were shown with asterisk. Therefore, they have to be taken as administrative orders issued either by the Inspector General of Police or by the Government of the day. For example PSOs 734, 735 and 737 were issued by the executive orders by the Government. Therefore, it has to be held that these Police Standing Orders which govern opening, maintaining and discontinuing the History sheet and rowdy sheet are non-statutory administrative instructions.

18. A reading of the Standing Orders leads to the following conclusions.

(a) A police station has to open History sheet automatically at the time of conviction of a person. But the conviction is not for all offences. When a person is convicted once Under Sections 395 to 402 IPC, when a person is convicted twice for house breaking or theft, when a person is bound over twice Under Section 109 of the Code, and bound over once the Police are empowered to open history sheet. Besides these, persons who are convicted for offences relating to coins and Government Stamps and persons convicted twice for the offences like theft and house breaking and professional prisoners are also the persons against whom history sheet can be automatically opened by the police.

(b) History sheets can also be opened even if there is no conviction. But in such case the person should have been known or believed to be addicted to, or aid or abet the commission of crime.

(c) The History Sheet opened shall be continued and maintained only for a period of two years and shall be closed only on definite orders of Gazetted Officer. The Police may however order closure of the History Sheet at any time (PSO 735).

(d) The History Sheet can be continued and maintained for further period of one year till the end of December, but such continuance can be on specific orders of a Gazetted Officer who after considering the case comes to conclusion that it is necessary to continue the History Sheet and extend retention of the History

Sheet. Annual extensions for continuation of History Sheet can also be given from January to December, (PSOs. 735 and 737).

(e) The police may also open history sheets for suspects. Suspects are those persons who are convicted under any section of the Indian Penal Code and who are considered likely to commit crime again. Persons who are not convicted but are believed to be addicted to crime are also treated as suspects. In case a History Sheet is opened on the ground that a person is a suspect care should be taken that History Sheets are opened only for persons who are likely to become habitual criminals (PSO 736).

22. Therefore, cumulative effect of PSO 736(2), PSO 749 read with PSO 853 is that the persons against whom the history sheet or Rowdy Sheet is opened are subject to police surveillance. As a part of this police surveillance, police often restrict the movements of the History sheeters (persons against whom History sheets/Rowdy sheets are opened). They are called to the police station at all times. They may be detained as and when there is information regarding likely disturbance in the town. These sheeters in some cases are not allowed to move freely in the city or town or leave the town without permission, though PSO 859 says that shadowing should be restricted to only dangerous criminals. Be that as it may, the consequences detailed herein also result when rowdy sheet is opened against a person.

23. Surveillance by the police makes very serious inroads into the life of a person. It even grossly violates the right of persons to privacy. Obtrusive surveillance does not leave a citizen alone. With the subtle methods of telephone tapping, telescope

watching, remote controlled audio and video recording gadgets, a citizen subjected to surveillance can never have mental peace and thus his life and liberty at every movement would be restricted. A person with lot of restrictions cannot be expected to lead a dignified life and exercise his right to liberty and other freedoms. A citizen's life would become miserable. Such a situation is worse than animal existence, For these reasons can it be said that there is a 'right' against surveillance?

30. xxx

Before examining the case law as decided by this Court, it is apposite to note the intention and objectives behind such provisions dealing with surveillance. There cannot be two opinions that police should vigorously enforce the law. It does not however mean that they should rigorously violate the constitutional values and constitutional rights. In enforcing the law they shall not violate the Supreme law of the Nation. The police are charged with responsibility of controlling crime. Control of crime necessarily involves prevention of crime. To prevent crime it is permissible that police should keep a person known to be habitual offender or known to be 'trouble maker' under a watch. What is most objectionable to civilized mind is the use of extra legal methods by the police for prevention of crimes. Surveillance of a person in an arbitrary and unreasonable manner and contrary to the provisions of law, is one such extra legal method which cannot be countenanced by the Constitutional Court.

31. Illegal surveillance makes arbitrary and obtrusive intrusions into one's right to privacy and violates Article 21 of Constitution of India. But keeping a person under unobtrusive watch to prevent crime and to maintain law and order, as authorised by law, is reasonable restriction permissible under the Constitution.

33. This Court had many occasions to deal with cases of PSO 742 which deals with opening of rowdy sheets. In Shaik Mahaboob Ali v. Commissioner of Police 1990 (1) ALT 15 (NRC) this Court held that unless there is adequate material as regards commission of offence or attempt to commit an offence opening of rowdy sheet against a person and continuing the same is illegal. In Hussain Hassan Somali v. Commissioner of Police 1990 (2) ALT 24 his Lordship Justice Y. Bhaskar Rao (as his Lordship then was) held that opening of rowdy sheet against a person without any material, as to his activities that are likely to disturb public order, would violate Article 21 of the Constitution of India. In Patti Eswara Reddy v. Superintendent of Police, 1998(4)ALT284 dealing with the case of a person bound over Under Sections 106 and 107 of the Code, this Court held that it is reasonable to maintain rowdy sheet for a period of two years after expiry of bound over period. But maintaining the record for 15 years was held to be arbitrary and unreasonable and this Court directed the authorities to close the rowdy sheet against the petitioner. Again in Ejaz v. Government of Andhra Pradesh, 1998(2)ALT469 this Court had an occasion to deal with a case arising under PSO 742. While observing that mere suspicion or apprehension would not be a criteria for opening rowdy sheet against a person, this Court held as follows:

"The fundamental right to personal liberty cannot be allowed to be infringed under the guise of surveillance and monitoring the movements of persons against whom a rowdy sheet is opened. Surveillance of such persons whose names are entered in the rowdy sheet, for reasons unconnected with the prevention of crime and beyond cannot be countenanced. After all the whole purpose of classifying the persons as rowdies and entering their names in the rowdy sheet is the prevention of crime and no other purpose. Otherwise the order of classification will be bad and void. Surveillance and monitoring of movement of persons whose names are entered in rowdy sheets should therefore be proportionate and commensurate to the reasonable apprehension or suspicion entertained by the concerned Police Officer and only with a view to prevent commission of a crime which may result in breach of peace. Any excessive action on the part of the police would not be ultra vires the Standing Order No. 742 but also would only be violative of right to equality and right to freedom guaranteed by Articles 14, 19 and 21 of the Constitution of India. Any unauthorised physical restraint or coercion of any sort would be violative of the fundamental right to freedom and personal liberty guaranteed by the Constitution of India. That the right to personal liberty in substance means a persons's right not to be subject to imprisonment, arrest or other physical coercion."

49. Therefore, in the context of police surveillance against history sheeters and rowdy sheeters, the following principles vis-a-vis right to privacy under Article 21 of the Constitution would emerge:

(i) If the surveillance is not obtrusive, the same does not violate the right to privacy under Article 21 of the Constitution of India. The same does not either in material or palpable form affect the right of the suspect to move freely nor can it be held to deprive the history sheeter / rowdy sheeter of his personal liberty.

(ii) In testing whether fundamental right of free movement or personal liberty is infringed or not, it is to be remembered that infringement should be direct as well as tangible. If surveillance hurts personal sensitivities, the same is not a violation, for the constitution makers never intended to protect mere personal sensitiveness.

(iii) If police surveillance is in accordance with executive/departmental guidelines and not authorised by statute or rules having statutory force, it is for the State to prove that surveillance does not in anyway infringe the fundamental right of the person and that the authorities have followed the guidelines scrupulously in ordering surveillance,

(iv) If the action of the police is found to infringe the freedoms guaranteed to the history sheeter / rowdy sheeter and violates his right to privacy, in that, the surveillance is excessively obtrusive and intrusive, it may seriously encroach on the privacy of a citizen as to infringe the fundamental right to privacy and personal liberty under Article 21 as well as the freedom of movement guaranteed under Article 19(1)(d) of the Constitution of India and the same is impermissible,

(v) *Even where there is statutory sanction for surveillance against history sheeters/rowdy sheeters principle (iv) is equally applicable, if the surveillance is obtrusive.*

(vi) *In either case-whether police regulations are statutory or where they have no statutory force-there should be sufficient material to induce the opinion that the history sheeters/rowdy sheeters show a determination to lead a life of crime which involves public peace or security only. Mere convictions in criminal cases where nothing imperils the safety of the society cannot be regarded as warrant surveillance under the relevant regulations, however broadly and in whatever language the regulation might have been couched,*

(vii) *In either case-whether the regulation is statutory or non-statutory-domiciliary visits and picketing by the police should be reduced to the clearest cases of danger to community security, and there can be no routine follow-up at the end of a conviction or release from prison in every case.*

(viii) *The above principles that emerge from various binding precedents are only general principles. As seen from various decided cases of this Court, opening of history sheet or rowdy sheet can be justified only when it is proved before the Court by the State that based on the relevant material the competent police officer has applied mind with due care and considered all aspects in the light of the law and then ordered opening of history sheet or rowdy sheet or ordered continuation or retention of the history sheet. In the beginning of this Judgment, all the relevant decisions*

of this Court have been referred to and those principles may also
have to be kept in mind

(Emphasis added)

50. Therefore, on points I and III that arise for consideration, it should be held that maintenance of history sheet/rowdy sheet for a long time violates not only right to privacy under Article 21 and also other fundamental rights under Articles 14 and 19 of the Constitution of India. The points No. I and III are decided in favour of the petitioner.

65. Therefore, if a person complains that his right to privacy under Article 21 of the Constitution is violated by criminal trespass committed by the police as part of unconstitutional surveillance the person has the following remedies:

(1) By way of a proceeding under Article 226 or 32 of the Constitution of India for judicial review of the police action and for appropriate relief;

(2) To initiate criminal action against the officers responsible for criminal trespass subject to other provisions of Code of Criminal Procedure, 1973;

(3) To seek damages in tort by filing a civil suit and

(4) To also seek appropriate compensation in a public law jurisdiction from the Court of judicial review under Article 226 or 32 of the Constitution which is in addition to the traditional remedies.

74. Therefore, the law is well settled that when a rule or a provision requires the authority to 'consider' to arrive at a reasonable belief, there shall be due application of mind which only means recording of reasons for its decision.

74-A. Arbitrariness and equality are sworn enemies. That was so held in E.P. Royappa v. State of Tamil Nadu, AIR 1974 SC 555. Any action which is arbitrary violates the principle of equality in Article 14 as well as other provisions of the Constitution. What is arbitrariness? In answer to this, I need to refer to three Judgments of the Supreme Court. The law laid down in these three Judgments is relevant for our purpose and in the context of this case.

77. In Mahesh Chandra v. Regional Manager, U.P. Financial Corporation, AIR 1993 SC 935 the Supreme Court considered the scope of Section 29 of the State Financial Corporations Act, 1951. The said provision empowers the Financial Corporation to seize a 'defaulter industrial unit' and sell the same. Holding that Section 29 of the State Financial Corporations Act confers wide power to ensure prompt payment by arming it with effective measure to realise the arrears, the Supreme Court held as follows:

"But the simplicity of the language is not an index to enormous power stored in it. From notice to pay the arrears, it extends to taking over management and even possession with a right to transfer it by sale. Every wide power, the exercise of which has far-reaching repercussions has inherent limitation in it. It should be exercised to effectuate the purpose of the Act. In legislations enacted for general benefit and common good the responsibility is

far graver. It demands purposeful approach. The exercise of discretion should be objective. Test of reasonableness is more strict. The public functionaries should be duty conscious rather than power charged. Its actions and decisions which touch the common man have to be tested on the touchstone of fairness and justice. That which is not fair and just is unreasonable. And what is unreasonable is arbitrary. An arbitrary action is ultra vires. It does not become bonafide and in good faith merely because no personal gain or benefit to the person exercising discretion should be established. An action is mala fide if it is contrary to the purpose for which it was authorised to be exercised. Dishonesty in discharge of duty vitiates the action without anything more. An action is bad even without proof, of motive of dishonesty, if the authority is found to have acted contrary to reason."

(Emphasis supplied)

It is therefore well settled that if an action is taken without reasons, the same is unfair. What is unreasonable and unfair is arbitrary and such arbitrary exercise of power amounts to exercising power mala fide.

78. The Police Officer empowered to extend retention of the history sheet or rowdy sheet has to record reasons which are rational by exercising sound discretion and consider the relevant facts mentioned in PSOs 733, 734, 735 and 742. Automatic endorsement to retain the history sheet would be ex facie illegal and unconstitutional.

79. It is noticed that due application of mind means proper reasons for arriving at a decision. As held by the Supreme Court

in Union of India v. M.L. Capoor, AIR 1974 SC 87 the reasons are the links between the material on which certain conclusions are based and actual conclusions. They disclose how the mind is applied on the subject matter for the decision whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only this way can opinions or decisions recorded be shown to be manifestly just and reasonable'.

81. Therefore, when a police authority empowered to pass orders 'consider' and comes to a 'reasonable belief that a person is likely to be addicted, is likely to commit or abet the commission of offence, by necessary implication he is under constitutional obligation to record reasons. Recording of reasons should not be equated with communicating reasons. Except in a few specified contexts, in all events and in all situations reasons need not be communicated to the aggrieved person. In this context it is helpful to refer to the following statement of law from De Smith's 'Judicial Review of Administrative Action' ('Judicial Review of Administrative Action'. Ed by the Rt. Hon The Lord Woolf and Jeffrey Jowell. 5th Edition, Sweet & Maxwell 1995).

"Where an applicant seeks to impugn a decision of an administrative authority other than by claiming non-compliance with a duty to give reasons—for example by challenging the legality or rationality of the decision—a failure by that authority to offer any answer to the allegations may justify the inference that its reasons were bad in law or that it had exercised its powers unlawfully"

In *B. SATYANARAYANA REDDY vs. STATE OF ANDHRA PRADESH AND OTHERS* (1st cited), this court considered the meaning of rowdy sheet, habitually committed, attempt to commit, abet the commission of offences and held thus:

"The fact remains that the appellant herein is involved in only one case i.e., in Crime No.45/90, which is later numbered as C.C.No.218 of 1990 on the file of the Court of the learned VI Additional Munsif Magistrate, Guntur." (para 8).

"It is clear from a perusal of Standing Order No.742 that to include a person's name is 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." (Para 10).

"A person can be listed in the rodwy 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." (Para 12).

"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." (Para 14).

"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).
(Para 16).*

“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.” (Para 17).

*“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.”
(Para 19).*

In **MOHAMMED QUADEER AND OTHERS v. COMMISSIONER OF POLICE, HYDERABAD AND ANOTHER** (2nd cited), the court considered the procedure to be followed for retaining a rowdy sheet and what are the parameters that are required to be satisfied while opening or continuation of rowdy sheet.

“15. It may be relevant to notice that A.P. Policed 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 unconstitutionality. 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."

In *GANESAN Vs. THE DISTRICT SUPERINTENDENT OF POLICE, VIRUDHUNAGAR DISTRICT, VIRUDHUNAGAR AND ANOTHER* (4th cited), the learned single Judge held as follows:

"45. Reading of the Police Standing Orders dealing with opening and retention of History Sheets for different kinds of persons, such as, convicts, rowdies, known depredators, suspects and others shows that the authorities who are empowered to open and retain

such sheets, have to arrive at a subjective satisfaction, as to whether the abovesaid persons, either by habit or disposition commit, attempt to commit, aid or abet the commission of offences involving breach of peace. An isolated act or commission cannot be characterised as a habitual act or commission involving breach of peace or law and order. While forming an opinion that the person is believed to be addicted to or aid or abet, the commission of crime, whether convicted or not, the Sub-Inspector of Police and his men have to collect information and that the same has to be ascertained before making a recommendation to an officer of and above the rank of Deputy Superintendent of Police, in whose jurisdiction, such person is ordinarily resident either permanently or temporarily.”

“46. Opening of History Sheet in the case of persons convicted for offences involving imprisonment for life under Chapter XII and XVII and conviction for offences under Section 395 to 402, I.P.C. in the case of professional prisoners, Sections 392 to 394, I.P.C. and under Sections 75 of the Indian Penal Code, house breaking theft Section 109, Cr.P.C, and Section 110, Cr.P.C. depending upon the number of convictions stated in Police Standing Order 747, is automatic, at the time of conviction of such persons.”

“47. Whereas, in the case of opening of History Sheets for rowdies as per Form 112, where, some persons are classified as rowdies, the orders of the Superintendent of Police or concerned Sub-divisional Officer have to be obtained, on the basis of the information and facts ascertained by the Station House Officer, and his men. Persons who habitually commit, attempt to commit, or abet, the commission of offences involving breach of peace, or

(b) Persons bound over under Sections 106 and 107, Criminal Procedure Code, or (c) Persons who have been convicted under Section 75 of the Madras City Police Act or twice in two consecutive years, under Section 3 Clause 12 of the Town Nuisance Act, or (d) Persons either convicted under Section 49-A of the Madras City Police Act, 1888 (Madras Act III of 1888) or under Section 4 of the Madras Gaming Act, 1930 (Madras Act III of 1930), or reasonably suspected to be habitually committing or abetting the commission of the offences, are classified as rowdies. Clause 4 of Police Standing Order 749, enjoins a duty on the police to enter the names of History-sheeted Rowdies in the station register of a known depredator and that rowdies should be checked regularly by beat Police Constable Constables in rural Police Stations and by rowdy patrols in large towns, as also by the Sub-Inspectors (Law and Order). The checking, however should be discretely done by the method of enquiries and not in the manner of domiciliary checks."

"48. Police Standing Order dealing with opening and retention of History Sheets in relation to the nature of offences stated in Police Standing Order 749(2)(a) to (d), makes it explicit that a duty is cast on the Sub-Inspector of Police, Station House Officer/Inspector of Police and his men to collect, verify and ascertain as to whether a person is known or believed to be addicted to or aid and abet, the commission of crime and that there should be active criminality, affecting breach of peace or law and order. Criminality, as conceived in the Police Standing Orders, is commission of offences by the individual or aiding

commission of offences or, by inducing/instigating commission of offences by other some person.”

“49. History Sheet is ordinarily retained for two years, in the case of persons convicted of offences mentioned in Police Standing Order 747. Where retention of History Sheet is considered necessary after two years of registration, orders of an officer of and above the rank of Assistant Superintendent of Police/Deputy Superintendent of Police, must be taken for extension in the first instance upto the end of the next December and further annual extension from January to December. Police Standing Orders, thus, makes it clear that the conduct and activities of History-sheeted persons shall be monitored for a specified period during which period, they should not come to any adverse notice and the authority empowered to extend the period of retaining his name in the History Sheet, should have reason to believe that such History-sheeted person is habitually addicted to or aid or abet, the commission of offence.”

“50. Keeping surveillance or vigil on a History-sheeted person should not be made permanent, mechanically, as it would affect his freedom of life and liberty. The discretion conferred on the police is both objective and subjective in nature. Objective satisfaction with reference to the conduct of a History-sheeted person, to prevent commission or aiding or abetting of offences, by such persons, involving breach of peace or law and order. The subjective satisfaction should be based on valid materials and it cannot be at the whims and fancies of the Police Officers. Reading of the Police Standing Order shows that the discretion conferred on the Police Officers is in-built, subject to the limitations,

including a specific period, provided under the said orders and it is not for any unlimited period, unless the conduct of the History-sheeted person is required to be monitored continuously."

"51. As the discretionary jurisdiction conferred on the Police Officers to open and retain a History Sheet is to curtail his freedom and right of privacy, there should be awareness on the part of the authority and it should be on the basis of surveillance materials, where that a reasonable man would by probable reasoning arrive at a conclusion or infer that a person has to be necessarily included in the History Sheet. 'Belief', in the case on hand, means a degree of conviction of the truth of something especially based on a consideration or examination of the evidence and the authorities vested with discretion of opening and retaining History Sheets should prove that on the examination of the data that there is awareness on their part indicating their state of mind that by probable reasoning, they come to a conclusion or infer, about the conduct of person, for whom a History Sheet is opened or retained. The record of events and the materials should be considered with care and the authority concerned should pass an order, reflecting that he has thought over the matter deliberately with care and it has been found necessary, as a result of such careful examination, an order opening or retaining a History Sheet is required to be passed."

"62. In a situation of this nature, keeping in mind the nature of the duties required to be performed by the law enforcing agencies, the discretion to be exercised by the Second Respondent should be on sound Principles of Fairness and Reasonableness and

it should be in accordance with the object sought to be achieved while opening or retaining a rowdy History Sheet.”

“64. The power has to be exercised with regard to the duty arising from the nature of the action to be performed by the Sub-Divisional Officers. The conditions on the basis of which the power has to be exercised and the repercussions or consequences of such exercise on the peace and freedom of the individual has to be considered. It has to be borne in mind, that the power exercised, restricts the freedom and liberty of an individual.”

“65. The criteria for opening a History Sheet, therefore, is the subjective satisfaction of the authority and it has to be arrived at, on the reasonable belief or knowledge that the person, for whom the History Sheet is opened or retained, is habitually addicted or aid or abet, the Commission of Crime, whether convicted or not etc. While arriving at the subjective satisfaction, current doings in other words, the activities of such persons which are informative and useful, based on the facts ascertained both by the Sub-Inspector and his men from the date of last entry shall be made month-wise for close watch of characters and quarterly for non-close watch of characters.”

“66. When it is said that something has to be done within the discretion of the authorities, that something has to be done according to the rules of reason and justice, not according to private opinion; according to law and not humour. It is to be not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man, competent to the discharge of his office ought to confine himself.”

"67. Branding a person as a History-sheeted Rowdy has a tainted image in the society as compared to others. Needless to say that his relationship with others and the prospects of personal development may not remain the same. Characterisation of a person is stigmatic, if any photographs is displayed in some conspicuous places in the area where he resides, or in public places, and it affects not only his personal rights, but there is every likelihood of damage being caused to the members of his family and it cannot be lost sight of. Innocent children of such persons could be even looked down, if the officer, mechanically under the guise of prevention of crime and to protect others, open or extend History Sheets, which has an impact on the right of privacy of not only the individual against whom the order is passed, but also causes harm to other person's rights. Therefore, a fair and reasonable decision should be taken, taking into consideration the Constitutional rights under Article 21 of the Constitution of India and the interests of the State. It should be noted that at time of opening a History Sheet, the individual is not informed of the decision taken by the authorities behind his back and that the information collected is discreet. Needless to say that every person wants to live with dignity and he cannot be condemned arbitrarily. It is also to be borne in mind that estrangement of the members of a History-sheeted Rowdy, in social gatherings, etc., is not uncommon in our society. Therefore, opening or retention of History Sheets, which interferes with the right of privacy of a person, should be done strictly adhering to the parameters inbuilt in the Police Standing Orders, keeping in mind the object sought to be achieved."

After taking note of the binding precedents on scope of judicial review either for opening a rowdy sheet or continuing a rowdy sheet, I propose to examine rowdy sheet No.153 opened by 4th respondent against the petitioner. The 4th respondent opened the rowdy sheet on 3-3-2011 and while opening referred to crime No.89 of 2009 under Sections 147, 148, 448 234 r/w 149 of I.P.C. Section 136 RP Act, which ended in acquittal. 4th respondent refers to crime No.45 of 2011 under Section 107 Cr.P.C. and reference to crime No.137 of 2011 is made, but it is scored out with 'X' mark. The rowdy sheet was opened till 31-12-2012. The 3rd respondent has made the following endorsement on 27-10-2012, 12-11-2012 and 16.12.2012.



The 3rd respondent made the following endorsement accepting retention of rowdy sheet till 31-12-2013.

“Retain the sheet till 31-12-2013”

To the same effect is the retention order dated 10-1-2014 extending till 31-12-2014. These recommendations for retention and the order retaining the rowdy sheet are completely cyclostyled and monotonous.”

In *MOHAMMED QUADEER AND OTHERS v. COMMISSIONER OF POLICE, HYDERABAD AND ANOTHER* (2nd cited), it has been laid down that this court can examine the merits of retention order passed by respondents 3 and 4. Though it is not a requirement that the reasons are disclosed to the concerned person, however, if questioned, the authority concerned is required at least to prove *prima facie* as to the necessity of continuing a rowdy sheet. The rowdy sheet shall contain reasons and conclusions. Further, the continuity of rowdy sheet must relate to the necessity to continue the rowdy sheet.

On the other hand, if the record does not disclose the reasons and grounds, the order continuing rowdy sheet rendered ineffective on the ground of non-application of mind or perversity or that the opinion was formed on collateral grounds.

As the respondents are not disputing the applicability of binding precedents referred to above, but have made a feeble attempt justifying the opening of rowdy sheet, but no convincing effort is

made to convince this court that the record justifies continuing the rowdy sheet No.153 opened by the 4th respondent.

In this case, the rowdy sheet is retained for more than five years from the date of opening the rowdy sheet. The cases referred against petitioner either ended in acquittal or are filed under Section 107 of Cr.P.C. Further, there is no detail warranting opening or continuing rowdy sheet when a person was already bound over by the Executive Magistrate. The periodical information gathered against the suspect should be on suspect's character, connections propensity to abet or commit one or the other crimes referred in Standing Order 601. There should be thorough review with the completion of reasonable period. Further rowdy sheet, once opened, shall not be understood by respondents that the rowdy sheet is continued perpetually. The physical strength or well being of a person against whom rowdy sheet is opened is not the sole criterion on continuing the rowdy sheet. The period of first one year was completed long ago and this court is examining the continuation of rowdy sheet till date and is of the view for the above discussion, the continuation of rowdy sheet is arbitrary, illegal and unconstitutional.

For the above reasons and after pursuing the record, I am satisfied that continuation of rowdy sheet No.153 by 4th respondent is illegal and unconstitutional. Therefore, rowdy sheet No.153 is accordingly set aside.

It is made clear that the petitioner has not pressed the allegations made on the basis of political affiliation. Therefore, they

are not considered or any finding recorded. The issue is confined to the legal framework of right to a citizen under Article 21 of Constitution of India and scope of judicial review under Article 226 of Constitution of India.

The Writ Petition is ordered as indicated above. No order as to costs.

As a sequel to the disposal of this petition, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

Dated 16-3-2017.
Dvs.



JUSTICE S.V.BHATT