

*** HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

+ WRIT PETITION No.34360 OF 2017

% 16th October, 2017

Makala Pullaiah, S/o Anjaneyulu, Aged 44 Years,
Hindu, R/o Arthamuru Village, Bantumalli Mandalam,
Krishna District, Andhra Pradesh.

... Petitioner..

AND

\$ The State of Andhra Pradesh rep. by its Principal
Secretary, Home Department, A.P. Secretariat,
Velagapudi, Amaravathi, Andhra Pradesh and two
others

... Respondents

! Counsel for the Petitioner : Sri M. Radha Krishna

^ Counsel for the respondents : Government Pleader for Home
(Andhra Pradesh)

< Gist:

> Head Note:

? Cases referred:

- 1) 1999 (3) ALD 60
- 2) 2015(6) ALT 556
- 3) (1997(6) ALD 583)
- 4) 1998 (3) ALT 55 (DB)

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 34360 OF 2017

ORDER:

This Writ Petition is filed for a *mandamus* declaring the action of the respondents in listing the petitioner as a member of Suspect sheet / Rowdy sheet *vide* Proc.No.KI/34, dated 27.04.2012 and still continuing the same on the file of 3rd respondent- Station House Officer, Bantumalli Police Station, Bantumalli, Krishna District, as illegal and arbitrary.

As could be made out from the averments in the affidavit filed in support of the Writ Petition, the petitioner is a farmer and a resident of Arthamuru Village, Bantumilli Mandal of Krishna District. It is submitted that due to village politics, on the complaint given by one Makala Venkata Rao, he was falsely implicated in Crime No. 72 of 2011 of Bantumilli Police Station for the offence under Section 379 IPC and the same was numbered as C.C.No.140 of 2011 on the file of the Judicial First Class Magistrate Court at Bantumilli. In the said case, after trial, the petitioner was acquitted on 02.02.2015. Based on the above said Crime, a suspect sheet was opened against him on 27.04.2012 *vide* KI/31 and is being continued though he was acquitted of the charge. Further submitted that, even the respondents have not served a copy of the order and the reasons to open a Rowdy Sheet against him. According to the petitioner, without there being any case pending against him, opening of rowdy sheet and continuation of the same is violative of the Standing Orders 733 to 742 and 749 of the A.P. Police Manual. Inasmuch as, in only one case, the petitioner was implicated, which was ended in acquittal, continuation of the rowdy sheet cannot be sustained. Therefore, he prayed to set aside the impugned Suspect Sheet / Rowdy Sheet, dated 27.04.2012.

Heard the learned counsel for the petitioner.

Learned Government Pleader for Home (Andhra Pradesh) submits that rowdy sheet was opened against the petitioner *vide* KI/34, dated 27.04.2012, as he is habitual offender. 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. 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 and considering his conduct in future, a decision would be taken accordingly.

The law relating to opening and continuation of rowdy sheet / history sheet is now well-settled in ***Mohammed Quadeer v. Commissioner of Police***¹, 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.

¹ 1999 (3) ALD 60

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 the 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 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***², 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

² 2015(6) ALT 556

mentioned in Standing Orders 601 and 742, the Writ Petition deserves to be allowed.

Keeping in view of the principles laid down in the above judgments, the representations of the petitioner shall be considered and pass appropriate orders, deciding whether the rowdy sheet opened against him is required to be considered or not, within a period of four weeks from the date of receipt of a copy of this Order.

The Writ Petition is accordingly, allowed. No costs.

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

16th October 2017

Note: LR copy to be marked.
B/o
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CHALLA KODANDA RAM, J

