

HON'BLE SRI JUSTICE P. KESHA RAO

WRIT PETITION No. 34993 of 2014

ORDER:

Heard the learned counsel for the petitioners as well as the learned Government Pleader appearing for the respondents.

The prayer sought in the writ petition is as under:

“For the reasons stated in the accompanying affidavit, it is hereby prayed that this Court may be pleased to issue a writ, order or direction more particularly in the nature of writ of mandamus, declaring the action of the respondents in opening the rowdy sheet against the petitioners as illegal arbitrary and violative of Articles 14, 19(1) and 21 of the Constitution of India and consequently direct the respondents to close the rowdy sheet against the petitioners and pass such other relief or reliefs as this Court may deem fit and proper in the circumstances of the case.”

The specific case of the petitioners is that they are the vegetable commission agents. About 15 years back, a case was registered against the petitioners for the offence under Section 302 IPC and the same was ended in acquittal vide CrI.A.No.1322 of 2002 and 14 of 2004 dated 12.08.2004. Thereafter, no criminal case is registered against them. However, on 7.9.2014 at about 11.30 p.m., the third respondent along with staff visited their house and forcibly took them to the police station. In the police station, they have taken the photographs of the petitioners. Thereafter, the petitioners are being called to the police station regularly. Questioning the high handed action of the respondent-police, the petitioners filed W.P.No.27083 of 2014. The said writ petition is pending consideration. Thereafter, the respondent-police, in the year 2013 registered another crime vide FIR No.47 of 2013 for the

offence under Section 120-B r/w 34 IPC and Section 25(1)(a) of the Arms Act. The said case is pending consideration. Except the said two crimes, where the petitioners are already acquitted in one case, no other criminal cases are pending against them. In spite of the same, a rowdy sheet has been opened against the petitioners. Questioning the same, the present writ petition is filed.

The third respondent filed a counter affidavit denying the material allegations made in the affidavit filed in support of the writ petition and contended *inter alia* that, in all, three criminal cases have been registered against the petitioners. As far as Crime No.129 of 1999 for the offence under Section 302 r/w 34 IPC is concerned, it is mentioned that they were convicted. However, the said contention has been repelled by the petitioners by placing a xerox copy of the common judgment in CrI.ANo.1322 of 2002 and 14 of 2004 wherein this Court acquitted them for the said offences. As far as Crime No.47 of 2013 is concerned, it is pending trial. In Petty Case No.5762 of 2014 dated 24.08.2014 for the offence under Section 70(b) of City Police Act of Kulsumpura Police Station, though it is said that fine has been paid, the learned counsel appearing for the petitioners specifically denied and contended that the petitioners are not even aware of the said petty case and they have not paid the said penalty.

Having heard both the learned counsel and from the perusal of the material on record, except one case in Crime No.47 of 2013, no other criminal cases are pending against the petitioners, even as per the counter-affidavit filed by the third respondent. Therefore,

the question of pending of a rowdy sheet against the petitioners based on the pendency of criminal case is arbitrary and violates the valuable right of the petitioners under Article 21 of the Constitution of India.

Learned counsel for the petitioners submits that in view of the decision of this Court in *CHITLURI SRINIVASA RAO v. SUB-DIVISIONAL POLICE OFFICER, KAKINADA, EAST GODAVARI DISTRICT*¹, the continuation of the rowdy sheet against the petitioners is illegal.

The above said issue has been dealt with by this Court and the Apex Court in catena of judgments, which are as under:

“In *DHANJI RAM SHARMA V/s. SUPERINTENDENT OF POLICE, NORTH DISTRICT, DELHI POLICE*², 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*³, 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.

¹ 2015(1) ALD 889

². AIR 1966 SC 1766

³. AIR 1984 SC 1334

In *MAJID BABU V/s. GOVERNMENT OF A.P.*⁴, 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, BRAHMA SAMUDRAM*⁵. 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*⁶ 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, GUDIVADA*⁷, *SAI BABA V/s. STATE OF A.P., HOME DEPARTMENT*⁸, *P. SATHIYYA NAIDU V/s. SUPERINTENDENT OF POLICE, EAST GODAVARI DISTRICT*⁹ and *BEERJEPALLY VENKATESH BABU V/s. STATE OF A.P.*¹⁰

In *MOHAMMED QUADEER V/s. COMMISSIONER OF POLICE, HYD.*¹¹, the same learned Judge who decided *KAMMA BAPUJI*⁴ 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

⁴. 1987 (2) ALT904

⁵. 1997 (6) ALD 583

⁶. 1998 (3) ALT55 (D.B.)

⁷. 1990 (1) APLJ 363

⁸. 2002 (3) ALT391

⁹. 2011 (2) ALT61

¹⁰. 2014 (3) ALT264

¹¹. 1999 (3) ALD 60

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*¹², 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*¹³, 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*¹⁴, 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

¹². 1999 (5) ALD 155

¹³. 2000 (1) ALD (Cr.) 117 (AP)

¹⁴. 2004 (1) ALD (Cr.) 387 (AP)

to be involved in could not constitute the basis to classify him as a rowdy.”

In the light of the above stated settled proposition of law, it is clear that opening of a rowdy sheet in the names of the petitioners on the basis of their involvement in three criminal cases is not sufficient to term them as habitual offenders under Clause-A of Order 601 of the Police Control Order.

In the above circumstances, this Court holds that opening of rowdy sheet in the names of the petitioners and continuance of the same thereafter, is in violation of the life and liberty as guaranteed to the petitioner under the provisions of the Constitution of India as well as contrary to the law laid down by this Court and the Apex Court, as stated supra.

Therefore, the Writ Petition is, accordingly, allowed. Consequently, the respondents 2 and 3 are directed to delete the rowdy sheets opened in the names of the petitioners. No order as to costs.

Miscellaneous petitions, if any, shall also stand closed.

P. KESHAVA RAO, J

Date: 29.11.2018
ccm

HON'BLE SRI JUSTICE P. KESHA RAO



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ccm