

THE HON'BLE SRI JUSTICE P.KESHAVA RAO

WRIT PETITION NO.7856 OF 2014

ORDER:

Heard the learned counsel for the petitioner and the learned Government Pleader appearing for respondent Nos. 1 to 5.

2. The prayer sought in the Writ Petition is as under:

"...to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents 2 to 5 in opening and maintaining Rowdy sheet against the petitioner in Wyrā Police Station of Khammam District as illegal, arbitrary, against the principles of natural justice and violative of Article 14, 19 and 21 of Constitution of India and consequently set aside the rowdy sheet opened and maintaining against the petitioner in Wyrā Police Station, Khammam District."

3. The case of the petitioner is that he belongs to Yerukala caste and he is an Ex-Ward member of Wyrā Gram Panchayat. Since he is a social activist, due to local politics, the police registered two false cases against him at the instigation of village landlord T.Ranga Rao in Crime Nos. 230 of 2013 and 231 of 2013 for the offence under Sections 324, 294(b) read with 34 IPC of Wyrā Police Station. On 30.11.2013, respondent No.5 police issued a news item stating that a rowdy sheet has been opened against the petitioner. On 9.12.2013, the petitioner submitted a representation to respondent No.2 requesting to close the rowdy sheet. However, there was no response. It is also the case of the petitioner that as per the AP Police Standing Order No.742, the persons who are classified under the said order shall be treated as a rowdy and a rowdy sheet can be opened under the orders of the

Superintendent of Police or Sub-Divisional Officer. The criterion mentioned in the said Standing Order are not satisfied to open a rowdy sheet against the petitioner since he is neither a habitual offender nor created any problems disturbing the public peace and tranquility.

4. Respondent No.3 filed a counter affidavit denying the material allegations made in the affidavit filed in support of the writ petition and mentioned five criminal cases where the petitioner has been involved. Out of the said five cases, Cr.No.63 of 2007 ended in acquittal, Cr.No.15 of 2010 ended in compromise before the Lok Adalat and Cr.Nos. 230 of 2013 and 231 of 2013 are pending trial vide CC.No. 392 of 2017 and CC.No.411 of 2017 respectively. In Cr.No. 64 of 2014, the petitioner was bound over for a period of one year.

5. During the course of arguments, learned GP produced written instructions dated 12.11.2018 issued by the Sub-Inspector of Police, Wyra Police Station, Khammam district wherein another case in Cr.No.185 of 2018 was also mentioned in which the petitioner was bound over for a period of one year from 4.10.2018. It is further mentioned in the counter that due to fear of the petitioner, no one has approached respondent No.3 police station to lodge a complaint against him. In view of public interest and to curtail the unlawful activities of the petitioner, the respondents continued the rowdy sheet against him extending from time to time.

6. The petitioner filed a reply affidavit disputing the opening of the rowdy sheet in the light of the AP Police Control Order No.601. It is specifically stated in the reply affidavit that the cases in Cr.No.63

of 2007 and Cr.No. 15 of 2010 ended in acquittal. There was no criminal record against the petitioner till the year 2013. However, based on two false complaints, Cr.No.230 of 2013 and Cr.No.231 of 2013 have been registered at the instance of one T. Ranga Rao who was politically motivated against the petitioner. Except the said two cases, no other case is pending against the petitioner. As far as Cr.Nos. 64 of 2014 and 185 of 2018 are concerned, learned counsel for the petitioner brought to the notice of this Court that no notice has been issued to him.

7. Learned GP appearing on behalf of the respondent Nos. 1 to 5 fairly conceded that no notice has been issued to the petitioner when the above said two crimes have been registered.

8. Having heard both the counsel and from the perusal of the material on record, the question that falls for consideration is:

“Whether there is sufficient material available on record to open a rowdy sheet against the petitioner?”

9. It is brought to the notice of this Court that the two cases in Cr.Nos. 230 and 231 of 2013, are pending trial before the concerned Courts. With respect to other two crimes i.e., 64 of 2014 and 185 of 2018, the notice is not issued to the petitioner.

10. Learned counsel also brought to the notice of the Court that the Police is not the competent authority to issue bind over orders but it is for the Executive Magistrate to pass orders in that regard.

11. The above said issue has been dealt with by this Court and the Hon'ble Apex Court in catena of judgements, which are as under:

“In *DHANJI RAM SHARMA V/s. SUPERINTENDENT OF POLICE, NORTH DISTRICT, DELHI POLICE*¹, 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* “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.

*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.

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

¹ AIR 1966 SC 1766

² AIR 1966 SC 1766

³ AIR 1984 SC 1334

⁴ 1987 (2) ALT 904

⁵ 1997 (6) ALD 583

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 SAI BABA V/s. STATE OF A.P., HOME DEPARTMENT*⁷, *P.SATHIYYA NAIDU V/s. SUPERINTENDENT OF POLICE, EAST GODAVARI DISTRICT*⁸ 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 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

⁶ 1998 (3) ALT 55 (D.B.)

⁷ 1990 (1) APLJ 363

⁸ 2002 (3) ALT 391

⁹ 2011 (2) ALT 61

¹⁰ 2014 (3) ALT 264

¹¹ 1999 (3) ALD 60

¹² 1999 (5) ALD 155

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

12. In the light of the above stated settled proposition of law, the petitioner cannot be termed as a habitual offender under Clause-A of Order 601 of the Police Control Order and hence, a rowdy sheet cannot be opened in his name.

13. In the above circumstances, this Court holds that opening of rowdy sheet in the name of the petitioner 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

¹³ 2000 (1) ALD (CrL.) 117 (AP)

¹⁴ 2004 (1) ALD (CrL.) 387 (AP)

well as contrary to the law laid down by this Court and the Hon'ble Apex Court, as stated supra.

14. Therefore, the Writ Petition is, accordingly, allowed. Consequently, the rowdy sheet opened in the name of the petitioner is hereby quashed.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

P. KESHAVA RAO, J

Date: 14.11.2018

KPM

