

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.4659 of 2018

ORDER:

In the present writ petition, challenge is to the opening of Rowdy Sheet No.5/17 against the petitioner on the file of 3rd respondent Police Station.

2. According to the petitioner, he is a native of Venkatapuram Village and Panchayat in West Godavari district and studied upto X Class and he is also the President of Yard Hamali Karmika Sangham for the last two decades. It is the further case of the petitioner herein that he got elected as MPTC Member from Venkatapuram Village and functioned as such during the period 2001-06 and thereafter functioned as Sarpanch of Venkatapuram Gram Panchayat during the period 2006-11 and thereafter his wife got elected as MPTC Member in the year 2013 and also functioned as Mandal President for a period of 2½ years, which expired on 10.1.2017.

3. The sum and substance of the case of the petitioner in the present writ petition is that at the instance of local representative of the people of Legislative Assembly Constituency, the police foisted a false case against the petitioner and his followers. While pleading so, the present writ petition came to be filed, questioning the opening of rowdy sheet against the petitioner on the file of 3rd respondent Police Station.

4. A counter affidavit, deposed by the Sub-Divisional Police Officer, Eluru, is filed on behalf of Respondents, denying the allegations and the averments made in the affidavit filed in support of the writ petition and in the direction of justifying the impugned action.

5. Heard Sri P.Gangaiah Naidu, learned Senior Counsel representing Smt.G.Bhanu Priya, learned counsel for petitioner on record and the learned Government Pleader for Home apart from perusing the material available on record.

6. While reiterating the contents of the affidavit, filed in support of the writ petition, it is contended by the learned Senior Counsel Sri P.Gangaiah Naidu that the impugned action is highly illegal, arbitrary, unreasonable, violative of Articles 14 and 21 of the Constitution of India, besides being opposed to the very spirit and object of Police Standing Orders.

7. It is the further submission of the learned Senior Counsel that in the absence of existence of necessary ingredients of PSO 601, the Respondent Police authorities are not justified in opening and continuing Rowdy Sheet against the petitioner. It is further submitted that the justification sought to be shown by the Respondents in their counter affidavit cannot stand to judicial scrutiny.

6. On the contrary, the learned Government Pleader seeks to justify the impugned action by contending that there is no illegality nor there exists any infirmity in the questioned action and in the absence of the same, the impugned action is not amenable for any judicial review under Article 226 of the Constitution of India. It is further contended that in view of involvement of the petitioner in various crimes, the impugned action on the part of the Respondent Police authorities in opening and continuing Rowdy Sheet against the petitioner cannot be faulted as the same is in accordance with the Police Standing Order No.601.

7. In the light of the pleadings available on record and the contentions advanced on behalf of the petitioner and the Respondents, now the issue that emerges for consideration of this Court is :-

“Whether the Rowdy Sheet No.5/17 opened against the petitioner on the file of 3rd respondent Police Station is sustainable in the facts and circumstances of the case?”.

8. According to the counter affidavit filed on behalf of Respondents, there are five crimes registered against the petitioner herein. They are:

S.No.	Crime Nos.	Registered Under Sections	Police Station
1.	126/05	324 read with 34 IPC	Eluru II Town
2.	91/13	151 Cr.P.C.	Eluru I Town
3.	101/14	324 read with 34 IPC	Eluru Rural PS
4.	110/14	188 IPC and 30 of A.P. Police Act	Eluru III Town
5.	95/2017	120(B) IPC and 25 of Indian Arms Act, 1959	Eluru Rural PS

9. According to Respondents, Crime No.126/05 ended in conviction in C.C.No.603/05. At the hearing, it is submitted by the learned Senior Counsel appearing for the petitioner that on appeal, the same ended in compromise before the Lok Adalat, Eluru vide Award dated 26.2.2009. According to the counter, Cr.No.91/13 registered under Section 151 Cr.P.C., petitioner was preventively arrested. Cr.No.101/14 ended in compromise between the parties before Lok Adalat on 11.4.2015. Cr.No.110/14 ended in acquittal vide C.C.No.1083/14 on 28.9.2016. The only crime where the investigation is pending is Crime No.95/17 on the file of Eluru Rural Police Station registered for the offence under Section 120-B of IPC and Section 25 of Indian Arms Act.

10. In the above background, now it is required to be verified as to whether the action of the Respondent Police authorities in continuing the Rowdy Sheet against the petitioner is sustainable or not.

11. In this context, it may be appropriate to refer to Police Standing Order No.601 and according to the same, the following persons may be classified as Rowdies and Rowdy Sheet may be opened against them.

“Rowdies

601 The following persons may be classified as rowdies and Rowdy Sheets (from 80) may be opened for them under the orders of the SP/DCP and ACP/SDPO.

- A) Persons who habitually commit, attempt to commit or abet the commission of, offence involving a breach of the peace, disturbance to public order and security.
- B) Persons bound over under Sections 106, 107, 108 (1) (i) and 110 (e) and (g) of Cr.P.C.
- C) Persons who have been convicted more than once in two consecutive years under sections 59 and 70 of the Hyderabad City Police Act or under Section 3, Clause 12, of the a.P. Towns Nuisances Act.
- D) Persons who habitually tease woman and girls and pass indecent remarks.
- E) Rowdy Sheets for the rowdies residing in one Police Station area but found frequenting the other PSs area, can be maintained at all such Police Stations.
- F) Persons who intimidate by threats or use of physical violence or other unlawful means to part with movable or immovable properties or in the habit of collecting money by extortion from shopkeepers, traders and other residents.
- G) Persons who incite and instigate communal/caste or political riots.
- H) Persons detained under the “AP Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land-Grabbers Act, 1966’ for a period of 6 months or more.

- I) Persons who are convicted for offences under the Representatives of the Peoples' Act for rigging and carrying away ballot papers, Boxes and other polling material.”

12. It is also relevant in this context that this Court in *M.Malla Reddy v. State of Telangana and others*¹, at paragraph 10 held as under:

“Rowdy sheet cannot be opened in a mechanical, routine and cavalier manner and more care and caution and circumspection is required to be observed for opening of the rowdy sheet as the same undoubtedly touches the personal liberty of the citizen and has a considerable impact on the fundamental rights as enshrined under Chapter III of the Constitution of India. The State and its instrumentalities are the custodians of the statutory and constitutional rights of the citizens. Parliament and the State legislature render the laws, keeping in view the betterment and welfare of the people and the parties functioning under the State laws have the holy and sacred obligation to discharge their duties keeping in view the object and intention behind the said laws made by the legislature. Any deviation and breach of the same would render the actions invalid and void. The actions of the authorities should necessarily be in the direction of creating and strengthening the confidence of the people in the system, lest anarchy prevails, which would never be in the interest of the democratic system which is guided by the rule of law. Every action of the authorities should be inconsonance with the basic structure of the Constitution of India which is the dream of the founding fathers of our magna carta. The action which is under challenge in these writ petitions is required to be examined and adjudicated in the light of the above issues.”

13. The opening of Rowdy Sheet is an action, which has penal consequences, as such, strict adherence to the relevant provisions is mandatory.

¹ 2016(1) ALD (CrL) 591

14. The information available before this Court, in clear and vivid terms, reveals that none of the cases registered so far against the petitioner ended in conviction. As such, by any stretch of imagination it cannot be concluded that the petitioner herein is a habitual offender and whose activities impact the public peace and tranquillity. Therefore, it can be concluded that there are no ingredients of clause (A) of PSO 601 in the case on hand. It is also not the case of the respondents herein that the petitioner is bound over under any one of the sections indicated in clause (B) of PSO 601 nor it is the case of the respondents that the petitioner herein suffered any conviction more than once in two consecutive years under any one of the Sections mentioned in clause (C) of PSO 601. It is also not the case of the Respondents herein that there are ingredients of clauses (D) to (I) of PSO 601 in the present case.

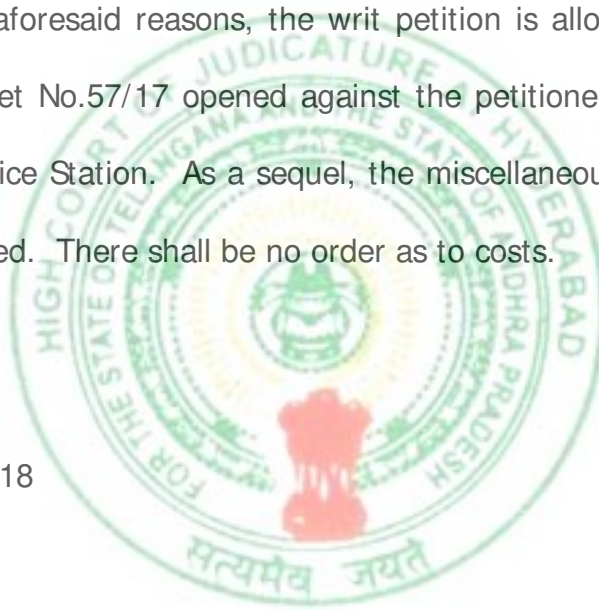
15. On the other hand, the only justification sought to be offered by the Respondents is that in view of involvement of the petitioner in a number of crimes, his activities are required to be watched by continuing the rowdy sheet against him. The said justification offered by the Respondents cannot be sustained nor can be approved as the said justification does not fall under any one of the contingencies as indicated in clauses (A) to (I) of PSO 601. As observed supra, PSO 601 is a provision which is penal in nature. Therefore, any deviation from strict adherence to the said provision would undoubtedly result in invasion and transgression into the fundamental right guaranteed to the citizen under Article 21 of the Constitution of India. Article 21 of the Constitution of India, which is the heart of the basic structure of the Constitution guarantees not merely a right to live and it includes the right to lead a dignified, peaceful and honourable life. Undoubtedly, the opening and continuation of rowdy sheet undermines the

reputation of an individual in the eyes of the public. Therefore, the said provision cannot be pressed into service in a routine and cavalier manner and on the other hand, the said process requires lot of care, caution and circumspection. In the instant case, in the considered opinion of this Court, the said exercise is totally absent. Therefore, this Court has absolutely no scintilla of hesitation nor any traces of doubt to come to a conclusion and to hold that the impugned action is liable to be declared as unconstitutional and a patent infringement of fundamental rights guaranteed under Chapter-III of the Constitution of India.

16. For the aforesaid reasons, the writ petition is allowed, setting aside the Rowdy Sheet No.57/17 opened against the petitioner on the file of 3rd Respondent Police Station. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

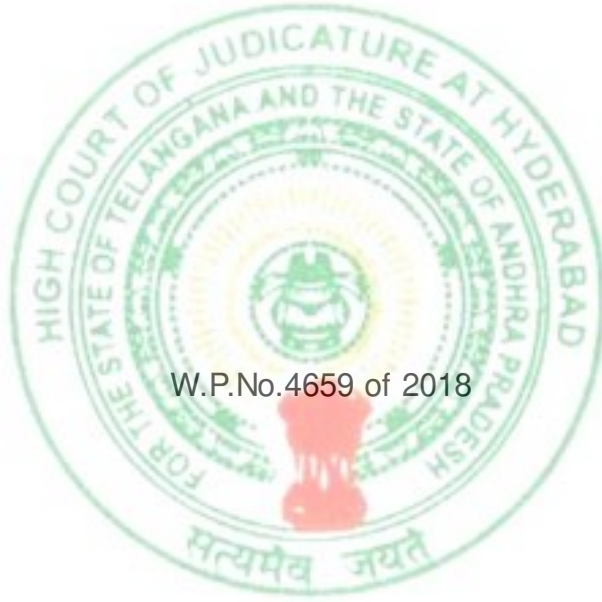
Date: 26.11.2018
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A.V.SESHA SAI, J





THE HON'BLE SRI JUSTICE A.V.SESHA SAI



26.11.2018

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