

THE HON'BLE SRI JUSTICE P.KESHA VA RAO

WRIT PETITION NO.40146 OF 2014

ORDER:

Heard the learned counsel for the petitioners and the learned Government Pleader appearing for respondent Nos. 1 to 4.

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

“....to ~~issue~~ a writ, order or direction particularly one in the nature of Writ of Mandamus, declaring the action of the respondents in not closing the rowdy sheet opened against the petitioners in the year 2004 by conducting periodical review as required under law as illegal, arbitrary and violative of Article 21 of the Constitution of India and consequently direct the respondents to close the rowdy sheet opened against the petitioners forthwith.”

3. The case of the petitioners is that they are agriculturists and residents of Kunchanpally village, Tadepalli mandal, Guntur district. They were implicated in a criminal case about ten years ago by the police of P.S. Thadepalli, Guntur district. Basing on the said crime, a rowdy sheet was opened against the petitioners and the same is being continued. Except the one criminal case, no other case has been registered against the petitioners. It is also the specific case of the petitioners that the criminal case registered against the petitioners has ended in acquittal eight years prior to filing of the Writ Petition.

4. Respondent No.3 filed counter affidavit. In the counter affidavit, it is specifically mentioned that petitioner No.1 is involved in eight criminal cases and petitioner No.2 is involved in 12 criminal cases.

5. During the course of hearing, it is brought to the notice of this Court that in all these cases, the petitioners were acquitted and thereafter no criminal cases have been registered against them.

6. Learned counsel for the petitioners would contend that in the absence of registration of any fresh criminal case against the petitioners, the continuance of rowdy sheet amounts to violating their personal liberty as guaranteed under Article 21 of the Constitution of India.

7. Learned GP appearing on behalf of the respondents, on instructions, submits that no fresh cases have been registered against the petitioners.

8. In the above circumstances, the point that arises for consideration is:

“Whether the rowdy sheet No.43 dated 12.9.2006 opened against the petitioners is still liable to be continued?”

9. 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

¹ AIR 1966 SC 1766

² AIR 1966 SC 1766

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*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 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

³ AIR 1984 SC 1334

⁴ 1987 (2) ALT 904

⁵ 1997 (6) ALD 583

⁶ 1998 (3) ALT 55 (D.B.)

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*⁷, *GUDIVADA 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 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

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

¹³ 2000 (1) ALD (CrL) 117 (AP)

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."

10. In the light of the above stated settled proposition of law, as the petitioners are acquitted in all the criminal cases registered against them, they cannot be termed as habitual offenders under Clause-A of Order 601 of the Police Control Order. It is an admitted fact that the petitioners are acquitted in all the criminal cases registered against them. In spite of the same, the respondents appear to have continued the rowdy sheet in their name.

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

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

¹⁴ 2004 (1) ALD (CrL) 387 (AP)

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

P. KESHA VA RAO,J

Date: 14.11.2018

KPM

