

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

W.P.No.8413 of 2018

ORDER:

In the present writ petition, challenge is to the action of the Respondents in opening and continuing Rowdy Sheet No.128/BML dated 22.7.2017 against the petitioner herein.

2. According to the petitioner, he is the absolute owner and possessor of the land in Survey No.101/2, admeasuring Ac.3.00 gts. situated at Kapuluppada village, Bheemunipatnam mandal, Visakhapatnam district having purchased the same by way of sale deed dated 9.9.2010 and he also owns an extent of Ac.1.70 cents in Sy.No.107/6 in the same village, which he got by way of registered sale deed dated 31.8.2010. It is further stated that due to his family needs, petitioner sold an extent of Ac.1.70 cents in Sy.No.107/6 to one Jampani Krishna Babu S/o late Tataiah by way of registered sale deed bearing document No.1169/12 dated 12.4.2012. It is also averred in the writ affidavit that when some unknown persons removed the boundary stones from the land in the said survey number, petitioner's vendee, Sri Jampani Krishna Babu filed an application, requesting to conduct survey of the land and when no action was initiated, Sri Jampani Krishna Babu filed W.P.No.36155 of 2016 before this Court for a direction to cause survey for demarcating his lands. It is also stated that the Mandal Surveyor, Bheemunipatnam issued notices to all the owners and conducted survey and one K.Narender Reddy and T.N.Kishore, who claimed title over the land to an extent of Ac.0.41 cents in Sy.No.107/6 as per their documents registered in the year 2014 and filed complaints before the Surveyor. The Tahsildar, Bheemunipatnam vide L.Dis.No.08/2017/C dated 6.7.2017 issued

endorsement that it would not be possible to survey the land in view of rival claims. It is further alleged in the writ affidavit that the 4th respondent registered F.I.R.No.23 of 2017 dated 24.1.2017 on the complaint of Sri K.Narender Reddy against Jampani Krishna Babu and the petitioner under Sections 427 and 447 read with Section 34 IPC and on the complaint of Tholeti Naga Kishore against Jampani Krishna Babu and petitioner alleging that on 26.12.2006, they visited the site in Sy.No.107/6 of Kapuluppadu village, Bheemunipatnam mandal and found some persons demolished the shed in the site, police registered F.I.R.No.21/17 dated 23.1.2017. Subsequently, separate charge sheets were filed on 31.3.2017 in the said crimes. While narrating the above aspects, the present writ petition came to be filed, challenging the opening of Rowdy Sheet while contending that on the basis of civil disputes, Rowdy Sheet cannot be opened.

3. Heard Sri V.V.Satish, learned counsel for the petitioner and the learned Government Pleader for Home appearing for Respondents, apart from perusing the material available on record.

4. It is contended by the learned counsel for petitioner that the questioned 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 the Police Standing Order 601. It is the further submission of the learned counsel that in the absence of necessary ingredients of PSO 601, opening of Rowdy Sheet against the petitioner cannot be sustained. It is further submitted that there is no conviction so far against the petitioner and the crimes registered based on civil disputes cannot be made as a foundation for opening of Rowdy Sheet. In support of his submissions and contentions, the learned counsel for the petitioner

placed reliance on the judgment in M.Malla Reddy v. State of Telangana and others¹.

5. 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.

6. 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.128/BML dated 22.7.2017 at Sl.No.17 opened against the petitioner on the file of 4th respondent Police Station is sustainable in the facts and circumstances of the case?”.

7. The material available on record reveals that so far three crimes have been registered against the petitioner. They are:

S.No.	Crime Nos.	Registered Under Sections	Police Station
1.	21/2017	427, 447 r/w 34 IPC	Bheemunipatnam PS
2.	23/2017	427, 447 r/w 34 IPC	Bheemunipatnam PS
3.	210/2017	447 r/w 34 IPC and Secs.3 & 4 of A.P. Land Grabbing and Proh. Act.	Bheemunipatnam PS

¹ 2016(1) ALD (CrL.) 591

8. In Crime Nos.21 and 27 of 2017, police filed charge sheets and are respectively numbered as C.C.Nos.230 and 207 of 2017. Seeking quashment of the same, petitioner filed CrI.P.Nos.2874 and 2876 of 2018 respectively and this Court granted stay in both the matters on 8.3.2018. Insofar as Cr.No.210 of 2017 is concerned, petitioner herein filed CrI.P.No.2513 of 2018 and on 20.8.2018, this Court granted interim stay. It is also not in dispute that there is no conviction so far against the petitioner.

9. 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.”

10. It is also relevant in this context that this Court in *M.Malla Reddy v. State of Telangana and others*², 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 in consonance 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.”

² 2016(1) ALD (CrL) 591

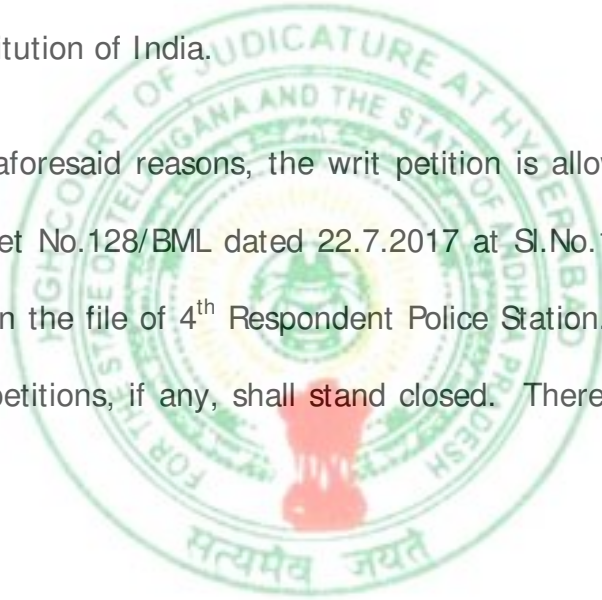
11. The opening of Rowdy Sheet is an action, which has penal consequences, as such, strict adherence to the relevant provisions is mandatory.

12. As observed supra, there is no conviction so far against the petitioner herein, 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, the case of the petitioner does not fall under Clause (A) of PSO 601. 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.

13. 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.

14. For the aforesaid reasons, the writ petition is allowed, setting aside the Rowdy Sheet No.128/BML dated 22.7.2017 at Sl.No.17 opened against the petitioner on the file of 4th Respondent Police Station. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

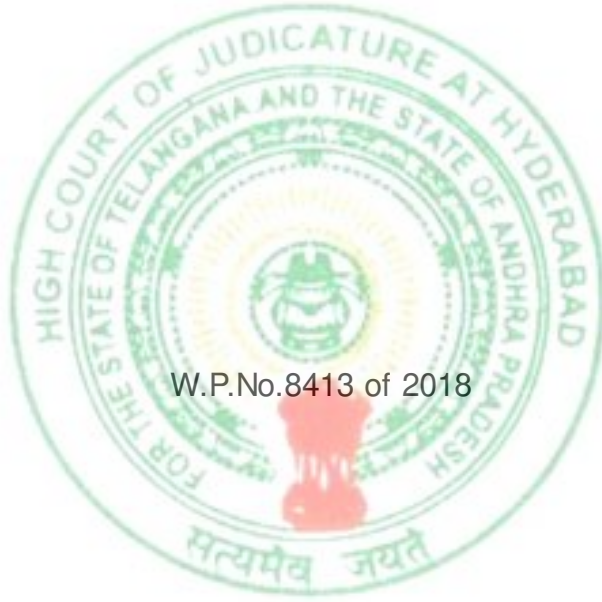


A.V.SESHA SAI, J

Date: 3.12.2018
DA



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



3.12.2018

DA