

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.19874 OF 2018

ORDER:

Aggrieved by the action of the respondents in opening and continuing the rowdy sheet against petitioner, the present Writ Petition is filed.

2. It is the case of the petitioner that he is resident of Mahabubnagar District; that earlier he worked in Police department as Head Constable and he was also awarded President Gallantary Award in the year 2007; that later he resigned the job and joined in politics in order to serve people of Mahabubnagar; that he is having good reputation at Hanwada and Mahabubnagar; that his mother was elected as ZPTC Member of Hanwada Mandal, Mahabubnagar District. As differences arose between him and the present MLA, two false cases were registered against him in Cr.Nos.53 and 54 of 2015 on the file of Mahabubnagar Rural Police Station and that both crimes relating to the same incident alleged to have taken place on 02.02.2015; that the Police after investigation, filed charge sheet and the same is numbered as PRC No.21 of 2016 and CC No.864 of 2015 on the file of Judicial First Class Magistrate (Prohibition and Excise) Mahabubnagar and that basing on those two cases, the respondents have opened rowdy sheet on 30.03.2015; that the respondents have

mechanically opened the rowdy sheet against the petitioner and he is being harassed by the Police asking him to come to Police Station everyday at the time of elections or during important festival days and also whenever an important dignitary visits the town; that his movements are kept under surveillance and thereby losing his privacy, as such, the action of the respondents in opening the rowdy sheet is wholly illegal, arbitrary and same is in violation of Article 19 (1) (d) and Article 21 of the Constitution of India. Aggrieved by opening of rowdy sheet against him, he filed WP No.40365 of 2016 before this Court, wherein 5th respondent herein filed counter admitting that two crimes were registered and basing on the same only, they opened rowdy sheet on 30.03.2015; that the said Writ Petition is disposed of directing the petitioner to make representation to the 5th respondent by informing the relevant provisions of Rules under the Police Standing orders; that he made representation on 17.12.2016 to the 2nd respondent for closure of rowdy sheet against him, but no orders are passed on the same. He made another representation on 02.06.2018 for closure of rowdy sheet, but no steps were taken for consideration; that the office of the 2nd respondent called for report from the SIB and he was informed that SIB also submitted report and that even after submission of the report, office of the 2nd respondent issued

an endorsement on 28.03.2017 refusing his request. Aggrieved by the same, present Writ Petition is filed.

3. Counter affidavit is filed by the 3rd respondent denying the averments in the affidavit filed in support of the Writ Petition stating that two criminal cases are registered against him i.e., Cr.Nos.53 and 54 of 2015 on the file of Mahabubnagar Rural Police Station; that the petitioner is young and energetic and there is every need of surveillance required over his activities to maintain law and order and avoid wrongful activities in Mahabubnagar Town; that after obtaining permission from the Sub-Divisional Police Officer, Mahabubnagar Division, a rowdy sheet had been opened against the petitioner on 30.03.2015, which is extended from time to time till 31.12.2018; that the aforesaid two criminal cases are pending trial before the trial court and that the truth or otherwise would come out only after full-fledged trial is conducted by the trial Court; that if the rowdy sheet is closed, there is every chance that the petitioner may threaten the witnesses; that as per A.P Police Manual Standing Order No.602(2), the suspect sheet can be extended for a further period of five years and that since the petitioner is frequently creating breach of peace in the locality, it is necessary to maintain the rowdy sheet against him; that except continuation of rowdy sheet, police never harassed the petitioner as alleged.

4. Heard Sri Panuganti Vijay Kumar, learned counsel for the petitioner and learned Assistant Government Pleader for respondents 1 to 5.

5. Learned counsel for the petitioner submits that basing on two criminal cases registered against the petitioner at the instance of local politicians rowdy sheet was opened against the petitioner and that even as per the respondents, only two cases are pending against the petitioner, that too registered for the alleged offence which took place on 02.02.2015, as such, same cannot be a sole ground for opening of rowdy sheet. He submits that continuing the same for years together on the said ground, without any application of mind is illegal, arbitrary and erroneous and violative of Article 19 (1) (g) and 21 of the Constitution of India. He submits that when the petitioner made representation on 17.12.2016 to the 2nd respondent, the same has not been considered which is illegal. He also submits that no reasons are recorded by the competent authority either at the time of opening of rowdy sheet or in continuing the same, which is also violation of principles of natural justice. In support of his contentions, he relied on the judgments reported in **i) M.Malla Reddy v. State of Telangana and others¹, Mohammed Quadeer and others v. Commissioner of Police, Hyderabad², K.Suresh Babu v.**

¹ 2016 (1) ALD (CrL.) 591

² 1999 (3) ALD 60

Superintendent of Police, Anantapur District, Anantapur³, Kamma Bapuji v. Station House Officer, Brahmasamudram⁴.

6. On the other hand, learned Assistant Government Pleader for Home submits that since two criminal cases are registered against the petitioner and they are pending for trial before the trial Court. He submits that there is a threat to public peace and tranquility in the Mahabubnagar Rural Police Station and that the authorities, after considering the same, opened rowdy sheet and same is being continued as per the Police Standing Orders and same cannot be interfered with.

7. Perused the record produced by the learned Assistant Government Pleader for Home appearing for respondents.

8. In this case, it is to be seen that admittedly two criminal cases i.e., Crime No.53 of 2015 was registered under Secs.447, 427, 323, 504, 506 r/w 34 IPC and after charge sheet is filed, same is numbered as CC No.864 of 2018 and Cr.No. 54 of 2015 was registered under Secs.147, 148, 447, 307, 324, 427 r/w 149 IPC against the petitioner and that Charge Sheet is filed and same is numbered as SC No.170 of 2017. Basing on both the criminal cases registered against the petitioner, on the requisition of Sub-Inspector of Police, Mahabubnagar Rural PS in C.No.58/B1/2015, dated

³ 2016 (1) ALD (Cri.) 210

⁴ 1997 (6) ALD 583

29.03.2015, the 3rd respondent opened a rowdy on 30.03.2015 against the petitioner.

9. A perusal of the record produced by the learned Assistant Government Pleader goes to show that on the report submitted by the Sub Inspector of Police on 29.03.2015, the 3rd respondent permitted for opening of rowdy sheet against the petitioner vide proceedings C.No.103/SDOM/2015, dated 30.03.2015, which reads as follows:

“ORDER:

As per your requisition of C.No.58/B1/2015 dated 29.03.2015 with sheet is hereby permitted to open rowdy sheet against M.Surender Reddy, S/o. M.Konda Reddy, age: 36 years, caste: Reddy, native of Chegunta village of Thimmajipet Mandal, now at present H.No.4-94/2 Bhagreetha Colony, Mahabubnagar and keep surveillance on him regularly.”

A reading of the aforesaid proceedings goes to show that the Sub Divisional Police Officer-3rd respondent has not recorded any reasons while permitting to open rowdy sheet against the petitioner, which is in violation of A.P.Police Standing Order 601, which reads as follows:

“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 women 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 detailed under the "A.P.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."

Even as per the report submitted by the 5th respondent to the 3rd respondent, except registering two criminal cases as stated supra and mentioning of civil disputes between the petitioner and others, there is nothing against petitioner as alleged by the learned Assistant Government Pleader for Home. In the proceedings of the 3rd respondent, who permitted to open rowdy sheet against petitioner, he has not mentioned in proceedings dated 30.03.2015 under which clause of the Police Standing Orders referred to supra, petitioner's case falls. Learned counsel for petitioner contends that on the political pressure, the aforesaid crimes have been registered against the petitioner. That apart, the nature of allegations made against the petitioner in the above FIRs against petitioner herein do not fall within the parameters of Police Standing Order 601 nor the allegations made would attract the ingredients of Police Standing order.

On the other hand, the same are purely arising out of property disputes between the parties and no allegation of disturbance to public order and security is involved.

10. It is pertinent to note that even as per the record produced by the learned Assistant Government Pleader for Home, after opening of the rowdy, there are no adverse remarks against the petitioner. The petitioner is regular in attending Police Station and it is also recorded that petitioner is doing business and for some time it was recorded that he went to Hyderabad and doing business. He was attending Police Station from 04.04.2015 till 15.06.2018. That apart, when petitioner filed WP No.40365 of 2016, the same was disposed of directing the respondents-Police not to call the petitioner to Police Station, except on registration of any other crime against the petitioner for cognizable offence.

11. A perusal of the record also goes to show that the 5th respondent addressed letter dated 31.12.2015 to the 3rd respondent for renewing the rowdy sheet against the petitioner and same was forwarded by the Circle Inspector-4th respondent to the Sub Divisional Police Officer-3rd respondent by observing as follows:

“Sir,

Submitted and forwarded with a request to renew the rowdy sheet of M.Surender Reddy to keep surveillance on him as he is active.”

Except making such observation, the 4th respondent-Circle Inspector has not made any adverse remarks against the petitioner. Even the 3rd respondent-SDPO, who is competent authority also has not applied his mind in permitting to continue the rowdy sheet against the petitioner, except stating 'Permitted'. The 5th respondent also addressed letter dated 31.12.2016 to the 3rd respondent and same was forwarded by the 4th respondent for renewal of rowdy sheet against the petitioner for the year 2017. It is pertinent to note that the said letter is in format and gaps were filled by blue ink pen. Even the 4th respondent forwarded the same to the 3rd respondent by stating as follows:

"Sir,

Submitted and forwarded with a request that the Rowdy Sheet against M.Surender Reddy may kindly be renewed upto 31.12.2017 as he is active."

The 3rd respondent, who is the competent authority for permitting to renew the rowdy sheet has not even applied his mind in renewing the same except stating 'Permitted'. He has neither recorded any reasons nor sought any remarks from the 4th respondent. Similar request was made by 5th respondent to the 3rd respondent in proforma format for continuation of rowdy sheet against petitioner up to 31.12.2018, which was forwarded by the 3rd respondent and

same was permitted by the 3rd respondent, without application of mind and without even recording reasons. In the said letter it is stated as follows:

“Sir,

Submitted and recommended to accord permission to retain the Rowdy Sheet up to 31.12.2018.”

The 4th respondent, who has forwarded the requisition of the 5th for continuing the rowdy sheet against the petitioner, has not stated any reasons except recommending to accord permission to retain rowdy sheet up to 31.12.2018. The aforesaid facts go to show that there is total non application of mind on the part of 3rd respondent, who is Sub Divisional Police Officer, being competent authority, in opening and continuing the rowdy sheet. The requisition of the 5th respondent for opening and continuing the rowdy sheet were mechanically forwarded by the 4th respondent to the 3rd respondent, and same were permitted by the 3rd respondent, without recording any reasons therein. As I have already observed supra, when once the petitioner does not fall under any of the clauses as envisaged under clause 601 of the Police Standing Order, the action on the part of the respondents 3 to 5 in opening and continuing rowdy sheet against petitioner is highly arbitrary, illegal and in violation of fundamental rights guaranteed under the Constitution of India. That apart, even the petitioner's representation was not

considered for closure of the rowdy sheet, when he filed WP No.40365 of 2016, which was disposed of by this Court by order dated 06.12.2016, permitting the petitioner to make a representation. Though representation is made, there is no reference of the same in the counter affidavit and it is not stated whether it is considered or not or record produced also does not reveal whether the said representation is considered. Though petitioner asserted that in pursuance to representation dated 17.12.2016, the SI of police report was called for on 03.01.2017, there is no denial of same in the counter affidavit. It is pertinent to note here that the 4th respondent has addressed letter dated 03.01.2017 to the 2nd respondent stating that the petitioner was enlisted in the Police Department as Police Constable in the year 1998 and his father by name Konda Reddy also worked in Police Department in the District. It is also stated that during his tenure at SIB, Hyderabad up to 2010 on deputation, he got President Gallantry award and other medals for his good work done in SIB, Hyderabad by the erstwhile Andhra Pradesh Government. While mentioning the reasons for opening of rowdy sheet against the petitioner, it is categorically stated that in Cr.No.53/2015, total ten accused persons and in Cr.No.54/2015, there are total 11 accused persons were involved, but the Rural Police opened rowdy

sheet against the petitioner only. In the final findings of enquiry it is observed as follows:

“My discrete enquiries revealed that after witnessing the political efficiency of petitioner M.Surender Reddy and good status in general public, the local MLA Mahabubnagar Sri V.Srinivas Goud and his brother V.Srikanth Goud might have put pressure on Police to open rowdy sheet to smear off political background and reputation in General Public. Further I submit that the petitioner is not having any previous criminal history or any adverse in General Public as well as during his tenure in Police Department. Moreover the Hon’ble High Court also directed in the writ to consider the request of petitioner and dispose off the same in accordance with law as expeditiously as possible.”

In spite of the aforesaid report by the 4th respondent to the 3rd respondent, the 3rd respondent-SDPO, who is competent authority, for the reasons best known to him, has permitted to renew the rowdy sheet against the petitioner, without application of mind and contrary to Clause 601 of Police Standing Orders. That apart, even as per the report of the 4th respondent, the petitioner earlier worked in police department and he was also awarded President Gallantry award and there was no adverse report while he was working in police department and that except registration of two crimes, there is no further adverse remarks against the petitioner.

Learned Single Judge of this Court had an occasion to consider similar fact situation in WP No.4676 of 2012, wherein it is observed as follows:

“In MOHAMMED QUADEER AND OTHERS v. COMMISSIONER OF POLICE, HYDERABAD AND ANOTHER(2ndcited), it has been laid down that this court can examine the merits of retention order passed by respondents 3 and 4. Though it is not a requirement that the reasons are disclosed to the concerned person, however, if questioned, the authority

concerned is required at least to prove prima facie as to the necessity of continuing a rowdy sheet. The rowdy sheet shall contain reasons and conclusions. Further, the continuity of rowdy sheet must relate to the necessity to continue the rowdy sheet.

On the other hand, if the record does not disclose the reasons and grounds, the order continuing rowdy sheet rendered ineffective on the ground of non-application of mind or perversity or that the opinion was formed on collateral grounds.”

In **Mohammed Quadeer and others v. Commissioner of Police, Hyderabad (supra)**, this Court held as follows:

“31. Opening of a rowdy sheet against a citizen is undoubtedly fraught with serious consequences. [Article 21](#) of the Constitution of India guarantees right to life with dignity and the right to live, as a dignified man, carries with it the right to reputation. Right to reputation is an integral part of right to life guaranteed by [Article 21](#), and such a right cannot be deprived except in accordance with the procedure established by law. Such laws which authorise the Police to open rowdy sheets and exercise surveillance are required to be very strictly construed. Opening of the rowdy sheets and retention thereof except in accordance with law would amount to infringement of fundamental right guaranteed by [Article 21](#) of the Constitution of India. It is true that the State is duty bound at all levels to protect the persons and property from the criminals and criminal activity. Prevention of organised crime is an obligation on the part of the State.

Right to Privacy:

32. Fundamental rights and civil liberties exist and can only flourish in an orderly society. Civil liberties and fundamental rights are intimately connected with the nature and dynamics of the Society. It is the duty of the Police to deal with crime and criminals expeditiously and effectively while at the same time holding to the values and concepts of the fundamental rights and the Constitution. Both the competing interests are to be reconciled. This much is clear so far as our Constitutional system is concerned that intrusion into personal liberty without an authority of law is forbidden. Surveillance and watching of movements of a citizen by the Police is not a matter of course. Such rights can be exercised by the Police only in accordance with law which permits such surveillance. The action in this regard which is in accordance with law may result in violation of the fundamental rights guaranteed by [Article 21](#) of the Constitution of India. Every citizen has fundamental right and entitled to indulge in harmless activities without observation or interference. It is a right to be left alone. The guarantee in [Article 8](#) of the European Convention of Human Rights that "Everyone has the right to respect for his private and family life, his home and has correspondence" reflects both the individual's psychological need to preserve an intrusion-free zone of personality and family, and the anguish and stress which can be suffered when that zone is violated. The saying that 'an Englishman's home is his castle' would be equally applicable to Indian situation and it can be said that an 'Indian citizen's home is his castle.'”

In **B.Satyanarayana Reddy v. State of Andhra Pradesh**⁵,

Hon'ble Division Bench of this Court held as follows:

"10. It is clear from perusal of Standing Order No.742 that to include a person's name in a rowdy sheet, such person shall be a habitual offender i.e., he must habitually commit or abet the commission of offences involving breach of peace.

In **Kamma Bapuji v. Station House Officer, Brahmasamudram (supra)**, learned Single Judge of this Court held as follows:

"13. In the instant case, the petitioners are involved only in two cases and these cases have nothing to do with breach of the peace. It is not the case of the respondents that commission of these offences has resulted in breach of the peace in the village or town, as the case may be. Involvement in two cases itself would not attract clause (a) of S.O.742 and the person/persons cannot be treated as rowdy and no rowdy sheet can be opened against such person(s). be that as it may, even the said two cases registered against the petitioners, admittedly, had not resulted in any breach of peace. Viewed from any angle, the rowdy sheets opened against the petitioners are *ultra vires* the Police Standing orders. The action of the respondents in opening rowdy sheets against the petitioners is illegal and unconstitutional."

In view of above facts and circumstances and principle laid down in the above judgments, and also in view of findings recorded supra, this Court is of the opinion that the very opening and continuation of the rowdy-sheet against the petitioner is illegal, arbitrary and unconstitutional. Moreover, since the petitioner worked in police department earlier and a President Gallantry Award was awarded during his tenure in SIB, Hyderabad, and no adverse remarks were recorded against him during his service or after opening of rowdy sheet, he cannot be branded as rowdy. Even otherwise, there are no cases registered against the petitioner since March,

⁵ 2004 (2) Alt (CrL) 115 (D.B) (A.P)

2015, except registration of two crimes and the record, on the other hand, would reveal that there are no complaints whatsoever against the petitioner. Therefore, this Court is of the opinion that there is total non application of mind on the part of the respondents in opening rowdy sheet and continuing the same in spite of directions of this Court in W.P.No.40365 of 2016. That apart, opening of rowdy sheet definitely will have serious adverse affects on the life and liberty of the person and same cannot be deprived of except in accordance with the procedure established by law as envisaged under Article 21 of the Constitution of India. In this case, the manner in which rowdy sheet was opened against petitioner and continued the same goes to show that the respondents have not followed the procedure envisaged for the same.

For the aforesaid reasons, the Writ Petition is allowed, quashing the rowdy-sheet No.17 of 2015, dated 30.03.2015 of Mahabubnagar Rural Police Station, opened against the petitioner. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

A.RAJASHEKER REDDY,J

27-07-2018
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HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No. 19874 of 2018



Date: 27.07.2018

kvs



