

THE HON'BLE SRI JUSTICE P.KESHA RAO

WRIT PETITION NO. 23990 OF 2013

ORDER:

Heard the learned counsel for the petitioners and the learned GP 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 more particularly one in the nature of writ of Mandamus declaring the action of the respondents in the opening of the rowdy sheets against the petitioners herein Rowdy Sheet No. 40 and 39 respectively against the petitioners herein on the file of the Station House Officer S. R. Nagar P. S. Hyderabad and continuance of the same as illegal, arbitrary without jurisdiction and in violation of the fundamental rights guaranteed under Article 14 and 21 of the constitution of India and consequently to issue directions to the respondents herein to close the rowdy sheets against the petitioners on the file of the Station House Officer S. R. Nagar P. S. Hyderabad 4th respondent herein.”

3. Learned counsel for the petitioners contended that except registration of a crime for the offence under Sections 147, 148, 427, 324 read with Section 149 IPC leading to numbering of CC.No.1825 of 2006 on the file of the Court of the learned III Additional Chief Metropolitan Magistrate, Hyderabad, no other case has been registered against the petitioners. Therefore,

the respondents have committed a material irregularity in opening rowdy sheets against the petitioners though the petitioners are not habitual offenders and the ingredients of opening of a rowdy sheet are not satisfied.

4. Respondent No.4 filed a counter affidavit admitting that only one crime has been registered against the petitioners as stated supra. It is also mentioned in the counter affidavit that in the above said crime, the petitioners were acquitted on 25.9.2009. However, in the counter affidavit it is stated that because of the fear of the petitioners, no one has come forward to the police station to lodge any complaint against the petitioners. Mere acquittal in a criminal case does not entitle the petitioners to claim for closure of the rowdy sheets. To keep a close watch on the petitioners, the rowdy sheets are being continued renewing from time to time to avoid communal tensions in the limits of S.R. Nagar P.S.

5. Having heard both the counsel and from the perusal of the material on record, it is revealed that except one crime, no other case is registered against the petitioners. In fact, the condition precedent for opening of a rowdy sheet is that such person should have a reasonable record of committing offences and he is habitually addicted to commit crime or habituated to be an abettor of a crime. For the purpose of opening of a

rowdy sheet, the police should have reasonable material before them to satisfy for opening of a rowdy sheet.

6. 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 NARAIN SINGH V/s. STATE OF BIHAR*², 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

¹ AIR 1966 SC 1766

² AIR 1984 SC 1334

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.*³, 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, BRAHMASAMUDRAM*⁴. 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*⁵ confirmed this principle holding that

³ 1987 (2) ALT 904

⁴ 1997 (6) ALD 583

⁵ 1998 (3) ALT 55 (D.B.)

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*⁶, *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.*⁹

In *MOHAMMED QUADEER V/s. COMMISSIONER OF POLICE, HYD.*¹⁰, 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

⁶ 1990 (1) APLJ 363

⁷ 2002 (3) ALT 391

⁸ 2011 (2) ALT 61

⁹ 2014 (3) ALT 264

¹⁰ 1999 (3) ALD 60

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*¹¹, 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*¹², 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

¹¹ 1999 (5) ALD 155

¹² 2000 (1) ALD (CrI.) 117 (AP)

record his own reasons for opening/retention of the history sheets/rowdy sheets.

In *B. SATYANARAYANA REDDY V/s. STATE OF ANDHRA PRADESH*¹³, 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.”

7. In the light of the above stated settled proposition of law, it is clear that the opening of a rowdy sheet in the name of the petitioners on the basis of their involvement in a solitary criminal case is not sufficient to term them 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 the sole crime registered against them. In spite of the same, the respondents appear to have continued the rowdy sheets in their name.

¹³ 2004 (1) ALD (CrI.) 387 (AP)

8. In the above circumstances, this Court holds that opening of rowdy sheets 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.

9. Therefore, the Writ Petition is, accordingly, allowed. Consequently, the rowdy sheet Nos. 40 and 39 respectively opened in the name of the petitioners are hereby quashed.

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



P. KESHA RAO,J

Date: 8.11.2018

Issue CC in one week
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