

THE HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

WRIT PETITION No.30168 of 2017

ORDER:

Heard the learned counsel for the petitioner and the learned Government Pleader for Home for respondents 1 to 6 and perused the prayer in the writ petition with the supporting affidavit averments and other material on record. The prayer in the writ petition reads as follows:-

‘to issue a Writ, order or direction, particularly one in the nature of Writ of Mandamus, declaring the order in C.No.258/G/ACP/HNK/2017, dated 09.03.2017, passed by the 4th respondent rejecting the representation submitted by the petitioner pursuant to the order dated 22.11.2016 in W.P.No.40055 of 2014 and also the action of the respondents in continuing the rowdy sheet opened against the petitioner in the year 2011 by not conducting periodical review as required under law and also not closing the rowdy sheet opened against the petitioner on par with similarly situated persons, i.e., Challa Yadagiri who was involved in Crime No.243 of 2013, 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 petitioner forthwith.’

2. The sum and substance of the affidavit averments in support of the prayer in the writ petition are that while the petitioner was working as Sarpanch of Palivelpula Gram Panchayat, a rowdy sheet is opened on the ground that certain criminal cases were registered against him for the offences punishable under different sections of Indian Penal Code including the offence of disturbing peace and tranquility in public. The petitioner contends that though

majority of cases were dismissed against him and in no case he was found guilty, the rowdy sheet against him is being continued. The petitioner filed W.P.No.40055 of 2014 questioning the action of the respondents in continuing the rowdy sheet against him. This court, vide order dated 22.11.2016, disposed of the said writ petition, permitting the petitioner to make a representation to the 3rd respondent for removal of his name from the rowdy sheet and directed the respondent to dispose of the representation of the petitioner on being filed. The petitioner pursuant to the orders of this court submitted a representation to the respondents and the same was rejected by the respondents vide impugned order dated 09.03.2017 on the ground that complaints are being received from the public against him. Questioning the same, the present writ petition is filed.

3. There is no counter filed by the respondents though the writ petition is pending for more than 8 months, but only on oral instructions the respondents are opposing the writ petition, stating that the petitioner went unsuccessful in the earlier round, from the direction in the writ petition No.40055 of 2016 to make a representation, and the representation was considered from the material and rightly rejected as from the very proceedings of the Assistant Commissioner of Police, Hanmakonda, dated 09.03.2017, referred in the writ petition as Ex.P1 disclosing his indulgence in bodily offence and other criminal acts creating fear in the

surroundings, and few persons approached police complaining against him and surveillance is in need over his said activities.

4. Among Exs.P1 to P7 referred in the writ petition, Ex.P1 supra, nowhere refers any crimes even pending as on 09.03.2017. Ex.P2 is the charge sheet in Cr.No.243 of 2013 of Kakatiya University Campus PS of Warangal District for the offences punishable under Sections 447, 427, 307 and 506 r/w.34 IPC, where the writ petitioner Devarakonda Anil Kumar was Accused No.1 among seven accused, and the contents show there was an attempt to murder the complainant Mandala Satish of Rajajinagar, Hanamkonda and lodged a report that was registered as above crime, which report reads cognizable offence, from the facts in the year 2008 the said Satish purchased land of an extent of 10 guntas in Sy.No.447/1 from Potharaboina Ankus, vide registered document No.21/08, dated 02.01.2008, and he constructed a compound wall around the said site and erected two sheds, and while so, on 07.10.2013 (a day before the report) at about 00.20 hours the watchman Kistaiah (LW 2) telephoned that some persons came to the property and threatened him to do away him and his family members and left the place, and he suspects Devarakonda Anil (the writ petitioner shown as A1) besides Challa Yadagiri, Kaluri Suresh and he went to the site and found the tin sheds and compound wall were dismantled, and in course of investigation ascertained ownership details in relation to the said site situated at Palivelupula village, and A8-Vallapu Vijay Kumar, in course of interrogation

disclosed that one year back he worked as coolie under Anil Kumar, the writ petitioner, and Anil Kumar telephoned him on 07.10.2013 to come to near Thusali Bar, he went there, after some time, Devarakonda Anil, Salla Yadagiri, Kaluri Suresh, Alvala Raju and Car driver Nagaraju came there in a car and informed that there was some land dispute going on between Kaluri Suresh and Mandala Sathish regarding the land situated at Palivelpula outskirts, where Mandal Sathish erected tin shed and compound wall around the land, for which they instructed to dismantle the same and they gave money to Sathish and he agreed for it and secured Alakunta Raju, Accused No.4 and secured one JCB of Barsu Yakaiah and they dismantled etc., facts.

5. Even from this charge sheet material, nobody sustained any injuries much less any medical examination and certificate to register the crime under Section 307 of IPC and for if at all, any offence under Section 447 or 427 or 506 IPC. That too, there is no test identification proceedings from the watchman and his wife LWs 2 and 3 or their daughter LW 4, if at all, the so called eyewitnesses in the alleged occurrence, and not any witness states even the participation of Anil Kumar in the alleged offence, and the so called disclosure of Accused No.4 is only the basis.

6. Leave it as it is, so far as another case against the petitioner-Devarakonda Anil Kumar, covered by Cr.No.195/2011 of Kakatiya University Campus P.S, corresponding to CC.No.323 of 2012, on the file of the VII Additional Judicial First Class Magistrate,

Warangal, a cheating case relating to the house property in Sy.No.268 of an extent of 300 square yards of Palivelpula Gram Panchayat on the complaint of one Smt.K.Kalpana for the offence punishable under Section 420 IPC. The case was ended in acquittal not even on any benefit of doubt, vides acquittal judgment, dated 03.05.2013, covered by Ex.P3 acquittal judgment of VII Additional Judicial First Class Magistrate, Warangal.

7. Ex.P5 is the order in W.P.No.37490 of 2015 passed by another learned single Judge of this court in a writ petition filed by Challa Yadagiri, questioning in opening and continuing the rowdy sheet against him by Kakatiya University Campus P.S, Warangal District, pertains to Cr.No.243/2013 for the offence of trespass and mischief, referred supra, covered by PRC No.20/2014 and it is mentioned that as per the expressions of the Division Bench of this court in *Puttagunta Pasi v. Commissioner of Police, Vijayawada*¹ and *Kamma Bapuji v. Station House Officer, Brahmasamudram*² it is not open to police authorities to castigate a person as a habitual offender unless he is involved in at least more than two cases for its continuation and consequentially directing to close the rowdy sheet against the writ petitioner therein as no cases are pending, the writ petition is disposed of.

8. The petitioner, in fact, made a representation to the Commissioner, Asst.Commissioner, Warangal Urban and the Station House Officer, Kakatiya University Campus PS mentioning that

¹ 1998(3) ALT 55 (DB)

² 1997(6) ALD 583

pursuant to the writ petition orders supra, to make a representation, mentioned that Cr.No.189 of 2008, for the offences punishable under Sections 498-A and 324 IPC, was ended in compromise before the Lok Adalat, Cr.No.100/2010, security proceedings under Section 110 Cr.P.C, is no way pending, Cr.No.46/2011, for the offences punishable under Sections 420, 447, 506 IPC etc., referred as civil in nature on 09.06.2012, Cr.No.195/2011, for the offence punishable under Section 420 IPC, covered by Ex.P3 supra, ended in acquittal on 03.05.2013, Cr.No.96/2012, for the offences punishable under Sections 421, 447, 420 IPC etc., referred as civil in nature on 09.06.2012, Cr.No.195/2013, security proceedings under Section 107 Cr.P.C, is lapse, Cr.No.243/2013 covered by PRC No.20/2014 is pending trial, and Cr.No.116/2014, security proceedings under Section 107 Cr.P.C, is lapse.

9. Even from this, as on today, but for if at all, Cr.No.243/2013 pertaining to PRC No.20/2014 bear the role of the petitioner nothing practically but for if at all, abetment to the commission of offence, trespass and mischief, no other cases pending and nothing any material shown he is indulging in any criminal activities and he is dangerous person, and unless continuation of the rowdy sheet against him, it impedes the law and order and peace in the society.

10. Having regard to the above, the writ petition is allowed, directing the police to close the rowdy sheet pending against the writ petitioner. However, it is made clear that if at all he shown

indulged in future in any criminal activity, with reference to the past record supra, it is left open to the police to take any future recourse.

Consequently, miscellaneous petitions, if any, pending in this writ petition shall stand closed.

Dr. B. SI VA SANKARA RAO, J

Date: 12.06.2018
Dsr

