

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.29016 OF 2018

ORDER:

Aggrieved by the action of the respondents 3 to 5 in opening and continuing the Rowdy Sheet No.779 in II town Police Station, Kurnool, Kurnool Town Circle, Kurnool District, against petitioner, the present Writ Petition is filed.

2. It is the case of the petitioner that he is resident of Kurnool Town, Kurnool District; that he is doing cable operating business in Srinivasa Nagar Area of Kurnool Town; that one Sri K.Satyanarayana, who is the owner of Sri Sai Communications and also the nephew of K.E.Krishna Murthy, Deputy Chief Minister of Andhra Pradesh, forced the petitioner to sell off his cable business of Srinivasa Nagar Area to him on 20.05.2013 and that when the petitioner refused to sell the same, a false case had been filed by said K.Satyanarayana against him. Basing on the said complaint, FIR No.130 of 2013, under Section 380 IPC, was registered by the Kurnool II Town Police Station on 14.08.2013, which ended in acquittal; that said K.Satyanarayana again got a false case registered against the petitioner in II Town Police Station, in Cr.No.192 of 2014 on 08.08.2014 for the offence under Section 380 IPC for theft of control room equipment, in which petitioner was acquitted; that the petitioner was also implicated at the instance of K.Satyanarayana in a false case i.e., SC No.420 of 2015 on the

file of Addl. Assistant Sessions Judge, Kurnool for the offences under Sections 147, 148, 452, 324, 307 r/w 149 of IPC, the said case also ended in acquittal on 28.04.2016; that in the Cr.No.348 of 2016 for the offences under Sections 447, 427, 323, 506 r/w 34 IPC and Section 3 (1)(r)(s) of SC/ST POA Amendment Act of 2015 of Kurnool Taluk PS, Kurnool District, the concerned Police after investigation referred it as 'False'; that the respondents 3 to 5 are harassing the petitioner by opening and continuing the rowdy sheet since 2014, even though the same does not confirm and confine to the A.P.Police Manual and to its Standing Order 601; that even though the petitioner does not come under any of the conditions mentioned in Standing Order No.601, the respondents 3 to 5 opened rowdy sheet against petitioner, without applying their mind and renewing since 2014; that the opening and continuation of rowdy sheet against the petitioner and continuing the same since 2014 itself is neither in accordance with the guidelines nor in consonance with the law laid down by this court in **Sunkara Satyanarayana v. State of A.P [1999 (6) ALT 249]** and 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 14 and Article 21 of the Constitution of India.

3. Counter affidavit is filed by the 3rd respondent denying the averments in the affidavit filed in support of the Writ Petition stating that four criminal cases are registered against the petitioner i.e., 1) Cr.No.119/2012 u/s 406 and 380 IPC of Kurnool II Town PS, which was subsequently referred to as 'Civil in nature'; 2) Cr.No.130/2013, u/s 380 IPC & Sec.156(3) of Cr.P.C of Kurnool II Town PS, which was ended in acquittal; 3) Cr.No.192/2014 u/s 380 IPC of Kurnool II Town PS, which was ended in acquittal; 4) Cr.No.251/2014, u/s 147, 148, 452, 324, 307 r/w 149 IPC of Kurnool II Town P.S, which was also ended in acquittal; 5) Cr.No.348/2016, u/s 427, 323, 506 r/w 34 IPC & Sec.3(1)(r)(s) of SCs & Sts (POA) Amendment Act, 2015 of Kurnool Taluk PS, which was subsequently referred to as 'False'; that since the petitioner involved in the aforesaid cases, causing breach of peace in the area, it was necessary on the part of the respondents-police to open rowdy sheet against him on 22.12.2014; that though the cases against the petitioner ended in closure and acquittal, but petitioner, being habitual offender, did not mend his ways and continued his unlawful activities creating breach of public peace; that the opening and continuing of rowdy sheet is in accordance with law and as per the provisions of the A.P.Police Standing Orders; that the petitioner has not made out a prima facie case warranting interference of this Court under Article 226 of the

Constitution of India and sought for dismissal of the Writ Petition.

4. Heard Sri Ponnayolu Sudhakara Reddy, learned counsel for the petitioner and learned Government Pleader for respondents 1 to 5.

5. Learned counsel for the petitioner while reiterating the averments in the writ affidavit submits that basing on the false complaints by one K.Satyanarayana, who is nephew of K.E.Krishna Murthy, Deputy Chief Minister of State of Andhra Pradesh, five criminal cases were registered against the petitioner and in four criminal cases, petitioner was acquitted and in one case, after conducting detailed enquiry, it was referred to as 'False'. He submits that at the instance of said K.Satyanarayana, rowdy sheet was opened against the petitioner and that even as per the respondents, all the cases registered against the petitioner ended in acquittal and that no case is pending as of now, as such, petitioner cannot be branded as a habitual offender and that same cannot be a ground for opening and continuation 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 14 and 21 of the Constitution of India. 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 in violation of principles of natural justice.

6. On the other hand, learned Government Pleader for Home advanced her arguments reiterating the averments in the counter affidavit stating that since five criminal cases are registered against the petitioner and he being a habitual offender causing breach of public peace in the locality, rowdy sheet was opened against him. She submits that there is a threat to public peace and tranquility in the Kurnool II Town 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 by this Court under Article 226 of the Constitution of India.

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, even as per the counter affidavit filed by the 3rd respondent, five criminal cases are registered against the petitioner out of which, Cr.No.119/2012 u/s 406 and 380 IPC of Kurnool II Town PS, was referred to as 'Civil in nature'. The criminal cases registered against petitioner in Cr.No.130/2013, u/s 380 IPC & Sec.156(3) of Cr.P.C, Cr.No.192/2014 u/s 380 IPC, Cr.No.251/2014, u/s 147, 148, 452, 324, 307 r/w 149 IPC of Kurnool II Town P.S, ended in acquittal. Though a crime was registered against the petitioner in Cr.No.348/2016, u/s 427,

323, 506 r/w 34 IPC & Sec.3(1)(r)(s) of SCs & Sts (POA) Amendment Act, 2015 of Kurnool Taluk PS, the same was subsequently referred to as 'False'. Basing on the criminal cases, i.e., Crime Nos.130/2013, 192/2014 and 251/2014, registered against the petitioner, on the requisition of Inspector of Police, Kurnool II Town PS, dated 22.12.2014, the 3rd respondent opened a rowdy on 22.12.2014 against the petitioner. As already stated supra, even as per the counter affidavit, the petitioner was acquitted in the above crimes, basing on which rowdy sheet was opened by the 4th respondent on the permission accorded by the 3rd respondent-Sub Divisional Police Officer, Kurnool Town.

9. A perusal of the record produced by the learned Assistant Government Pleader also goes to show that only on the report submitted by the Inspector of Police on 22.12.2014 as three crimes were registered against the petitioner, the 3rd respondent permitted to open rowdy sheet against the petitioner vide proceedings C.No.2308/SDPO-K/2014, dated 22.12.2014, which reads as follows:

“ORDER:

As per the grounds explained by the Inspector of Police, Kurnool II Town PS it is permitted to open Rowdy Sheet against Malik Basha @ Kokila Basha, 45 years S/o.Mahaboob Basha r/o H.No.57-66-D7, Ranga Reddy Gate, Kurnool Town who is involved in Criminal cases of Kurnool II Town PS viz., Cr.Nos.251/2014 u/s 147, 148, 452, 324, 307 r/w 149 IPC, 130/2013 u/s 380 IPC and 192/2014 U/s. 380 IPC.

In this regard, the Inspector of Police, Kurnool II Town PS is instructed to keep close watch on their movements.”

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, except stating that 'as per the grounds explained by the Inspector of Police, Kurnool II Town PS', 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 4th respondent to the 3rd respondent, except registering three criminal cases as stated supra, there is nothing against petitioner as alleged by the learned Assistant Government Pleader for Home that the

petitioner is a habitual offender and he is creating breach of peace in the locality. Even according to the learned Government Pleader for Home, petitioner's case does not fall in any of the clauses mentioned in Police Standing Order 601. Even as per the proceedings of the 3rd respondent, who permitted to open rowdy sheet against petitioner, has not even mentioned in proceedings dated 22.12.2014 under which clause of the Police Standing Orders referred to supra, petitioner's case falls. Learned counsel for petitioner contends that the at the instance of the political pressure exerted by K.Satyanarayana, who is nephew of K.E.Krishna Murthy, Deputy Chief Minister of the State of Andhra Pradesh, on the respondents-police, 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 sale of area of operation of cable network maintained by the petitioner in favour of K.Satyanarayana, but there is 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 Government Pleader for Home, after opening of the rowdy, there are no adverse remarks against the

petitioner. It is clearly observed in the Rowdy Sheet No.779 that since 13.01.2015 till 22.07.2018, the petitioner is regularly present at the Ranga Reddy Gate I Town and it is also recorded on 22.07.2018 that petitioner is doing business.

11. A perusal of the Rowdy Sheet also goes to show that the 4th respondent submitted a note on 01.01.2016 to the 3rd respondent for renewing the rowdy sheet against the petitioner and same was permitted by the Sub Divisional Police Officer-3rd respondent. The said note reads as follows:

“Sir,

Submitted,

The Rowdy Sheeter 779 Malik Basha @ Kokila Basha is aged and active person. His movements are needed under close watch.

Hence the orders may be issued to retain the sheet till 31.12.2016.

Sd/-

Inspector of Police
Kurnool II Town PS.

Permitted to retain the Sheet till 31.12.2016.

Sd/-

Sub Divisional Police Officer,
Kurnool”

Except requesting to retain rowdy sheet, the 4th respondent 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 as ‘Permitted’. Likewise, the 4th submitted a note on 30.12.2016 to the 3rd respondent for renewal of rowdy sheet

against the petitioner for the year 2017. The said note reads as follows:

“Sir,

Submitted,

The Rowdy Sheeter 779 Malik Basha @ Kokila Basha is aged and active person. His movements are needed under close watch.

Hence the orders may be issued to retain the sheet till 31.12.2016.

Sd/-

Inspector of Police
Kurnool II Town PS.

Permitted to retain the Sheet till 31.12.2016.

Sd/-

Sub Divisional Police Officer,
Kurnool”

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 as ‘Permitted’. He has neither recorded any reasons nor sought any remarks from the 4th respondent. Similar request was made by 4th respondent to the 3rd respondent in proforma format for continuation of rowdy sheet against petitioner up to 31.12.2018, which was permitted by the 3rd respondent, without application of mind and without even recording reasons. 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 requisitions of the 4th respondent for opening and continuing the rowdy sheet were mechanically 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.

12. The action on the part of the respondents in opening and continuing the rowdy sheet against the petitioner is also contrary to the Circular Memo No.L & O/N2/3063/2002, dated 19.07.2002, which is issued in view of orders passed by this Court while disposing of a number of Writ Petitions filed by History Sheeters against opening and/or not closing the history sheets despite there being no pending cases against the petitioners. In the said Circular, a reference was made to the principles laid down in S.Satyanarayana's case (supra), which were followed by a Division Bench of this Court in Writ Appeal No.627 of 2001, dated 26.04.2001. As per the said principles, when an order is passed by the competent police officer for retention of the history sheet by simply endorsing on the report/letter of the S.H.O, a single line order, that by itself cannot be a ground to continue the rowdy sheet and also that any order passed by the Sub-Divisional Police Officer shall have to be supported by reasons. The reasons need not be communicated but to be recorded. In the said circular, it is

also stated that any order of the competent police officer, which is not supported by reasons, is itself unreasonable and arbitrary and can be termed as malafide in the sense that it is contrary to the purpose for which Police Officer is authorized under relevant Police Standing Orders. But in the instant case no such reasons are recorded by the 3rd respondent-SDPO while retaining the rowdy sheet against the petitioner. This itself shows that the 3rd respondent, being the competent officer to accord permission, has not applied his mind in retaining the rowdy sheet against the petitioner, as such, the action of the respondents in opening and retaining rowdy sheet against the petitioner is illegal and arbitrary.

13. 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:

- a) “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.”

b) In **Mohammed Quadeer and others v. Commissioner of Police, Hyderabad**¹, this Court held as follows:

¹ 1999 (3) ALD 60

“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.'”

c) In **B.Satyanarayana Reddy v. State of Andhra Pradesh**²,

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.

d) In **Kamma Bapuji v. Station House Officer, Brahmasamudram**³,

learned Single Judge of this Court held as follows:

² 2004 (2) Alt (CrL.) 115 (D.B) (A.P)

³ 1997 (6) ALD 583

“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 the principles laid down in the judgments referred to supra, 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 a patent violation of the fundamental rights guaranteed to the petitioner under Chapter III of the Constitution of India and that there is total non application of mind on the part of the respondents in opening rowdy sheet and continuing the same.

14. 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.779 of 2014, dated 22.12.2014 of Kurnool II Town Police Station, Kurnool District, 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.

30-10-2018
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A.RAJASHEKER REDDY, J



HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No. 29016 of 2018



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