

HON'BLE SRI JUSTICE P. KESHA RAO

WRIT PETITION No.18631 of 2013

ORDER:

Heard the learned counsel for the petitioner as well as the learned Government Pleader appearing for the respondents 1 to 3.

The prayer sought in the writ petition is as under:

“For the reasons stated in the accompanying affidavit, it is hereby prayed that this Court may be pleased to issue a writ, order or direction more particularly in the nature of writ of mandamus declaring the action of the 2nd respondent herein in not considering representation of the petitioner herein in seeking deletion of rowdy sheet on him as arbitrary autocratic illegal and against to the principles of natural justice and consequently direct the respondents 2 and 3 herein to delete the rowdy sheet against the petitioner herein as no criminal cases are pending against him subsequent to his acquittal under Judgment dt.03.01.2006 in Sessions Case No. 116/2003 on the file of II Additional District and Sessions Judge, East Godavari District, at Rajahmundry in the interests of justice and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

The grievance of the petitioner is that the respondent police are continuing the rowdy sheet without there being any criminal cases pending against him. Only one criminal case which is registered against the petitioner in Crime No.122 of 2000 is pending. The said crime was also ended in acquittal vide S.C.No.116 of 2003. Thereafter, there are no criminal cases against the petitioner. In the counter affidavit filed by the third respondent, it is mentioned that the petitioner was involved in three criminal cases. Out of which in Crime No.122 of 2000 the petitioner got an acquittal and in Crime No.33 of 2004 and Crime No.108 of 2013, the bind over orders are passed by the Mandal Executive Magistrate, Rayavaram.

Learned counsel for the petitioner submits that in view of the decision of this Court in *CHITLURI SRINIVASA RAO v. SUB-DIVISIONAL POLICE OFFICER, KAKINADA, EAST GODAVARI DISTRICT*¹, the continuation of the rowdy sheet against the petitioner is illegal.

The above said issue has been dealt with by this Court and the Apex Court in catena of judgments, which are asunder:

“In *DHANJI RAM SHARMA V/s. SUPERINTENDENT OF POLICE, NORTH DISTRICT, DELHI POLICE*², 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*³, 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 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.*⁴, 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.

¹ 2015(1) ALD 889

². AIR 1966 SC 1766

³. AIR 1984 SC 1334

⁴. 1987 (2) ALT 904

This principle was affirmed by another learned Judge of this Court in *KAMMA BAPUJI V/s. STATION HOUSE OFFICER, BRAHMASAMUDRAM*⁵. 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*⁶ confirmed this principle holding that 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, 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.*¹⁰

In *MOHAMMED QUADEER V/s. COMMISSIONER OF POLICE, HYD.*¹¹, 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 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

⁵. 1997 (6) ALD 583

⁶. 1998 (3) ALT 55 (D.B.)

⁷. 1990 (1) APLJ 363

⁸. 2002 (3) ALT 391

⁹. 2011 (2) ALT 61

¹⁰. 2014 (3) ALT 264

¹¹. 1999 (3) ALD 60

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*¹², 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*¹³, 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 record his own reasons for opening/retention of the history sheets/rowdy sheets.

In *B. SATYANARAYANA REDDY V/s. STATE OF ANDHRA PRADESH*¹⁴, 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."

In the light of the above stated settled proposition of law, it is clear that opening of a rowdy sheet in the name of the petitioner on the basis of his involvement in three criminal cases is not

¹². 1999 (5) ALD 155

¹³. 2000 (1) ALD (Cr.) 117 (AP)

¹⁴. 2004 (1) ALD (Cr.) 387 (AP)

sufficient to term him as habitual offender under Clause-A of Order 601 of the Police Control Order. Further, from the perusal of the counter affidavit, the said bind over period has also expired long back.

In the above circumstances, this Court holds that opening of rowdy sheet in the name of the petitioner and continuance of the same thereafter, is in violation of the life and liberty as guaranteed to the petitioner under the provisions of the Constitution of India as well as contrary to the law laid down by this Court and the Apex Court, as stated supra.

Therefore, the Writ Petition is, accordingly, allowed. Consequently, the respondents 2 and 3 are directed to delete the rowdy sheets opened in the name of the petitioner. No order as to costs.

Miscellaneous petitions, if any, shall also stand closed.

P. KESHA VA RAO, J

Date:22.11.2018
ccm

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