

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.37785 of 2018

Between:

Appana Kanaka Durga Prasad

...Petitioner

VERSUS

The State of A.P., rep. by its
Secretary, Department of Home Secretary
and others.

...Respondents

DATE OF JUDGMENT PRONOUNCED: 22.11.2018

SUBMITTED FOR APPROVAL:

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

1. Whether Reporters of Local Newspapers
May be allowed to see the Judgment?

Yes/No

2. Whether the copies of judgment may be
Marked to Law Reporters/Journals?

Yes/No

3. Whether Their Lordship wish to see the
Fair copy of the judgment?

Yes/No

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.37785 of 2018

% 22.11.2018

Appana Kanaka Durga Prasad

...Petitioner

VERSUS

\$ The State of A.P., rep. by its
Secretary, Department of Home Secretary
and others.

...Respondents

< GIST:

> HEAD NOTE:

!Counsel for Petitioner: Sri D.S.N.V.Prasad Babu

^ Counsel for Respondent Nos.1 to 5: G.P. for Home

? Cases referred:

1. 2016(1) ALD (CrI.) 591



THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.37785 of 2018

ORDER:

Opening of Rowdy Sheet against the petitioner on the file of Station House Officer, Hanuman Junction Police Station, Krishna district is under challenge in the present writ petition.

2. According to the petitioner, as of now two cases are pending against him for trial. The sum and substance of the case of the petitioner is that at the instance of 6th respondent, the police authorities have opened the rowdy sheet against him.

3. A counter affidavit, deposited by the Sub-Divisional Police Officer, is filed on behalf of Respondents, denying the allegations and the averments made in the affidavit filed in support of the writ petition and in the direction of justifying the impugned action.

4. Heard Sri D.S.N.V.Prasad Babu, learned counsel for the petitioner and the learned Government Pleader for Home, appearing for the Respondent Nos. 1 to 5.

5. While reiterating the contents of the affidavit, filed in support of the writ petition, it is contended by the learned counsel for the petitioner that the impugned action is highly illegal, arbitrary, unreasonable, violative of Articles 14 and 21 of the Constitution of India, violative of human rights and is politically motivated and opposed to the very spirit and object of Police Standing Orders. It is the further submission of the learned counsel that even in the cases where the petitioner is implicated falsely, he has

absolutely no personal interest. It is further maintained by the learned counsel that the impugned action is a patent contravention of principles laid down by the Hon'ble Apex Court and this Court.

6. On the contrary, the learned Government Pleader seeks to justify the impugned action by contending that there is no illegality nor there exists any infirmity in the questioned action and in the absence of the same, the impugned action is not amenable for any judicial review under Article 226 of the Constitution of India. It is further contended that in view of involvement of the petitioner in various cases, the impugned action, which is strictly in accordance with the Police Standing Order No.601 same cannot be faulted.

7. In the light of the pleadings available on record and the contentions advanced on behalf of the petitioner and the Respondents, now the issue that emerges for consideration of this Court is :-

“Whether the rowdy sheet opened against the petitioner vide C.No.1753/6 OIS/SDO-N/2018 on the file of the Station House Officer, Hanuman Junction, Krishna district-5th respondent herein is sustainable in the facts and circumstances of the case?”.

8. According to the counter affidavit, the following are the particulars of the cases registered against the petitioner and their present status:

S.No.	Crime Nos.	Registered Under Sections	Police Station	Present Status
1.	102/08	323, 447, 506 r/w 34 IPC	Pedapadu	Acquitted in C.C.No.569/08
2.	2/09	323, 447 r/w 34 IPC	Pedapadu	Acquitted in C.CNo.139/09
3.	184/10	283, 341, 149, 143 IPC	Hanuman Junction	Acquitted in C.C.No.636/11
4.	101/12	341, 143 r/w 34 IPC	Hanuman Junction	Acquitted in C.C.No.793/12
5.	115/12	143, 341, 188 r/w 149 IPC	Hanuman Junction	Acquitted in C.C.N.o.720/15
6.	150/13	341, 143, 153(a), 188 r/w 149 IPC	Hanuman Junction	Ended in acquittal in C.CNo.781/13

7.	18/17	151 of Cr.P.C.	Hanuman Junction	Preventively arrested and bound over
8.	36/17	151 of Cr.P.C.	Pedapadu	Preventively arrested and bound over
9.	90/17	354(b), 323, 506, 379 r/w 34 IPC	Pedapadu	Closed as false
10.	91/17	354 r/w 34 IPC	Pedapadu	Pending trial in C.C.No.438/17 before JFCM, Eluru.
11.	125/18	143, 341, 149 IPC	Hanuman Junction	Under investigation
12.	204/18	151 of Cr.P.C.	Hanuman Junction	Preventively arrested and bound over
13.	263/18	143, 147, 148, 341, 286, 332 r/w 149 IPC	Hanuman Junction	Under investigation

9. It is very clear from the above narration that out of 13 cases registered against the petitioner, six cases ended in acquittal after trial, one case was closed as false, three cases i.e. Cr.Nos.18/17, 36/17 on the file of Pedapadu Police Station and Cr.No.204/18 on the file of Hanuman Junction Police Station are the cases registered under Section 151 of Cr.P.C. wherein the petitioner was arrested as preventive measure and bound over. Three crimes i.e. Cr.No.91/17 on the file of Pedapadu Police Station under Section 354 read with Section 34 IPC is pending trial vide C.C.No.438/17 on the file of JFCM, Eluru and Cr.No.125/18 on the file of Hanuman Junction Police Station under Sections 143, 341, 149 of IPC is under investigation and Cr.No.263/18 on the file of Hanuman Junction Police Station under Sections 143, 147, 148, 341, 286, 332 read with Section 149 IPC is under investigation.

10. Counter affidavit, deposed by the Sub-Divisional Police Officer, seeks to justify the impugned action by stating that in view of involvement of the petitioner in the above cases and in view of petitioner's unlawful activities, causing threat in the area, it has become incumbent on the part of the Respondent police to open Rowdy Sheet in order to keep a watch on the

activities of the petitioner and to curtail the same. It is also stated in the counter affidavit that out of (13) cases, only three cases are pending and out of them, one is pending vide C.C.No.438/17 on the file of JFCM, Eluru for the offences under Section 354 r/w 34 IPC and other two cases are at crime stage i.e. Crime No.125/18 on the file of Hanuman Junction Police Station under Sections 149, 341, 149 IPC and Cr.No.263/18 on the file of Hanuman Junction Police Station under Sections 143, 147, 148, 341, 286, 332 read with Section 149 of IPC.

11. In order to resolve the issue in the present writ petition, it would be highly appropriate and apposite to refer to Police Standing Order No.601. According to the same, the following persons may be classified as Rowdies and Rowdy Sheet may be opened against them.

“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 woman 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 detained under the “AP 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.”

12. According to the learned counsel for the petitioner, in the absence of existence of any one of the ingredients of Police Standing Order No.601, the Respondent authorities are not justified in opening and continuing rowdy sheet against the petitioner and the reasons assigned in the counter affidavit for justifying the impugned action are neither sustainable nor tenable in the eye of law. As mentioned supra, the learned Government Pleader strongly supports the impugned action by contending that in view of the involvement of the petitioner in a number of criminal cases, the police authorities are perfectly justified in resorting to impugned action. According to the learned Government Pleader, the continuation of rowdy sheet against the petitioner is highly essential for maintaining peace and tranquillity in the area and to have a watch on the movements of the petitioner. It is the further submission of the learned Government Pleader that necessary ingredients of Police Standing Order 601 do exist in the case on hand. While dealing with opening and continuation of rowdy sheets, this Court in *M.Malla Reddy v. State of Telangana and others*¹, at paragraph 10 held as under:

“Rowdy sheet cannot be opened in a mechanical, routine and cavalier manner and more care and caution and circumspection is

¹ 2016(1) ALD (CrL) 591

required to be observed for opening of the rowdy sheet as the same undoubtedly touches the personal liberty of the citizen and has a considerable impact on the fundamental rights as enshrined under Chapter III of the Constitution of India. The State and its instrumentalities are the custodians of the statutory and constitutional rights of the citizens. Parliament and the State legislature render the laws, keeping in view the betterment and welfare of the people and the parties functioning under the State laws have the holy and sacred obligation to discharge their duties keeping in view the object and intention behind the said laws made by the legislature. Any deviation and breach of the same would render the actions invalid and void. The actions of the authorities should necessarily be in the direction of creating and strengthening the confidence of the people in the system, lest anarchy prevails, which would never be in the interest of the democratic system which is guided by the rule of law. Every action of the authorities should be in consonance with the basic structure of the Constitution of India which is the dream of the founding fathers of our magna carta. The action which is under challenge in these writ petitions is required to be examined and adjudicated in the light of the above issues.”

13. The information available before this Court, in clear and vivid terms, reveals that none of the cases registered so far against the petitioner ended in conviction, as such, by any stretch of imagination it cannot be concluded that the petitioner herein is a habitual offender and whose activities impact the public peace and tranquillity. Therefore, it can be concluded that there are no ingredients of clause (A) of PSO 601 in the case on hand. It is also not the case of the respondents herein that the petitioner is bound over under any one of the sections indicated in clause (B) of PSO 601 nor it is the case of the respondents that the petitioner herein suffered any conviction more than once in two consecutive years under any one of the Sections mentioned in clause (C) of PSO 601. It is also not the case of the Respondents herein that there are ingredients of clauses (d) to (i) of PSO 601 in the present case.

14. On the other hand, the only justification sought to be offered by the Respondents is that in view of involvement of the petitioner in a number of crimes, his activities are required to be watched by continuing the rowdy sheet against him.

15. In the considered opinion of this court, the said justification given by the Respondents in their counter affidavit cannot be sustained nor can be approved as the said justification does not fall under any one of the contingencies as indicated in clauses (A) to (I) of PSO 601. It is also required to be noted that PSO 601 is obviously a provision which is penal in nature. Therefore, any deviation from strict adherence to the said provision would undoubtedly result in invasion and transgression into the fundamental right guaranteed to the citizen under Article 21 of the Constitution of India. Article 21 of the Constitution of India, which is the heart of the basic structure of the Constitution guarantees not merely a right to live and it includes the right to lead a dignified, peaceful and honourable life. Undoubtedly, the opening and continuation of rowdy sheet undermines the reputation of an individual in the eyes of public. Therefore, the said provision cannot be pressed into service in a routine and cavalier manner and on the other hand, the said process requires lot of care, caution and circumspection. In the instant case, in the considered opinion of this Court, the said exercise is totally absent. Therefore, this Court has absolutely no scintilla of hesitation nor any traces of doubt to come to a conclusion and to hold that the impugned action is liable to be declared as unconstitutional and a patent infringement of fundamental rights guaranteed under Chapter-III of the Constitution of India.

16. For the aforesaid reasons, the writ petition is allowed, setting aside the Rowdy Sheet opened against the petitioner vide C.No.1753/6 OIS/SDON / 2018 on the file of 5th Respondent Police Station. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 22.11.2018
DA





THE HON'BLE SRI JUSTICE A.V.SESHA SAI



W.P.No.37785 of 2018

22.11.2018

DA