

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

W.P.No.41749 of 2017

ORDER:

This writ petition, filed under Article 226 of the Constitution of India, challenges the opening and continuation of Rowdy Sheet against the petitioner, on the file of the fourth respondent Police Station.

2. Briefly stated the case of the petitioner, as per the affidavit filed in support of the writ petition, is as follows:

2.1. Petitioner is a permanent resident of S.R.T Colony, Hyderabad and his father is an academican and is the Founder Secretary of a group of educational institutions under the name and style of Ahmed Memorial Educational Society, Yakuthpura and the said society has the Engineering College, Post Graduate Course in Business Administration and Sciences, B.Ed, Degree and Junior Colleges apart from primary and high schools.

2.2. Petitioner was born to an academican and brought up in the family of good morale and principles and he is a graduate. During the course of journey, petitioner was attracted towards politics and became active member in AIMIM party from the year 2003 and actively participating in all the programmes and protest calls given by the party.

2.3. Petitioner became Corporater from Division No.29 of Hyderabad Municipal Corporation in the year 2009. The popularity which the petitioner gained from the public became an eyesore for a section of public and political opponents and they are trying to put the petitioner in troubles and waiting for opportunity.

2.4. During his tenure as Corporater, he actively raised his protest on Gandhi principles and against the policies of the Government and the other authorities and when he found the same against the public interest, petitioner conducted Dharna and Rastha Roko along with public on the calls given by his party and due to which he was

implicated in several false cases and during the period 2009-2014 nearly 14 cases were registered against him. Out of the said cases, maximum were on the basis of the report from the police personnel and the officials of the State Government.

2.5. He came to know during the end of his tenure that the fourth respondent opened a Rowdy Sheet on 09.02.2013 as per the instructions of respondents 1 to 3 and the petitioner requested them to enquire and close Rowdy Sheet.

3. Pleading in the manner indicated *supra*, the present writ petition came to be filed, questioning the action on the part of the respondent authorities in opening and continuing the rowdy sheet against the petitioner herein.

4. Counter affidavit is filed by the fourth respondent, 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.

5. Hears Sri P.S Nagarjan, learned counsel for the petitioner and the learned Government Pleader for Home for the State of Telangana for the respondents apart from perusing the material available before the Court.

6. Contentions/submissions of the learned counsel for the petitioner:

6.1. The impugned action is highly illegal, arbitrary, unreasonable and violative of Article 14 of the Constitution of India.

6.2. The questioned action of opening and continuing Rowdy Sheet against the petitioner is opposed to the very spirit and object of the Police Standing Orders.

6.3. No crime was registered against the petitioner for any other cause or on the allegations of personal gain or interest till date in any police station in and around the twin cities.

6.4. The surveillance on the petitioner by the respondents makes serious inroads into the private life of the petitioner and the same is a patent violation of Article 21 of the Constitution of India.

In support of his submissions and contentions, learned counsel for the petitioner places reliance on the judgment of the Hon'ble Apex Court in *CHERUKURI MANI v. THE CHIEF SECRETARY, GOVERNMENT OF ANDHRA PRADESH AND ORS*¹ and the judgments of this Court in *K.SURESH BABU v. THE SUPERINTENDENT OF POLICE, ANANTAPUR DISTRICT AND ORS*², *SURITI RAMULU v. SUPERINTENDENT OF POLICE, MAHABOONAGAR AND ANOTHER*³, *SUNKARA SATYANARAYANA v. STATE OF ANDHRA PRADESH, HOME DEPARTMENT AND ORS*⁴ and *L.RAVINDRAN v. THE COMMISSIONER OF POLICE AND ORS*.

7. Submissions/contentions of the learned Government Pleader:

7.1. There is no illegality nor there exists any infirmity in the impugned action and in the absence of the same, the questioned action is not amenable for any judicial review under Article 226 of the Constitution of India.

7.2. The impugned action is strictly in consonance with the Police Standing Orders.

7.3. The impugned action cannot be faulted as the petitioner herein is habitual offender, falling under Police Standing Order 601 (B).

8. In the above background, now the issue that emerges for consideration of this Court is_ "Whether the action of the respondents in opening and continuing Rowdy Sheet against the petitioner is sustainable and tenable and whether the petitioner is entitled for any relief from this Court under Article 226 of the Constitution of India?

¹ AIR 2014 SC 2090

² 2016 (1) ALD (CRL) 210 (AP)

³ 1999 (6) ALD 681

⁴ 1999 (6) ALT 249

9. The sum and substance of the case of the petitioner is, that in the absence of any ingredients of Police Standing Order No.601, the respondent authorities are not justified in opening and continuing the Rowdy Sheet against the petitioner and the same is violative of Articles 14 and 21 of the Constitution of India.

10. On the other hand, the case of the respondents, as advocated by the learned Government Pleader for Home for the State of Telangana, appearing for the respondents, is that the petitioner herein squarely falls under Clause (B) of Police Standing Order 601 and in view of his involvement in various criminal cases, it has absolutely become necessary for the respondents to open a Rowdy Sheet and to avoid further offences, the Rowdy Sheet is being maintained against the petitioner herein.

11. In order to resolve the present issue, it would be necessary and appropriate to refer to Police Standing Order 601, which deals with the Rowdies and the same reads as follows:

“601. The following persons may be classified as rowdies and Rowdy Sheets (Form 80) may be opened for them under the orders of the SP/DCP and ACP/SDPO.

B. Persons who habitually commit, attempt to commit or abet the commission of, offences involving a breach of the peace, disturbance to public order and security.

C. 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 AP 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 detained under the “AP Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land-Grabbers Act, 1986” 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 paper, Boxes and other polling material.”

12. Now, it is required to be seen whether the submission of the learned Government Pleader that the petitioner herein falls under Clause B of the Police Standing Order 601 is tenable. It is very much clear from a reading of the above that the respondent police authorities are empowered to open a Rowdy Sheet against the person who habitually commit, attempt to commit or abet the commission of, offences involving a breach of the peace, disturbance to public order and security.

13. In this context, it may be appropriate to refer to the Judgments cited by the learned counsel for the petitioner in support of his submissions and contentions.

14. In *CHERUKURI MANI (supra 1)*, the Hon’ble Apex Court while dealing with the detention order at paragraph 7, held as follows:

“7. When the appellant challenged the detention of her husband before the High Court in a habeas corpus Writ Petition, the High Court dismissed the same with a cryptic order. In our considered view, when habeas corpus writ petition is filed, even though the petitioner has not properly framed the petition and not sought appropriate relief, it is expected from the Court to at least go into the issue and decide on merits. Normally, in such matters where liberty of a person is at stake, the Courts would take a liberal approach in the procedural aspects. But unfortunately in the instant case, the High Court has dismissed the writ petition at the threshold itself.”

15. In *K.SURESH BABU (supra 2)*, this Court while considering the earlier judgments of this Court and the Hon'ble Apex Court, at paragraph No.18, held as under:

"18. In the light of the afore-stated settled legal position, the opening of a rowdy sheet in the name of the petitioner on the basis of his involvement in a solitary criminal case was not sufficient to term him a habitual offender under clause (A) of Order 601. Further, it is an admitted fact that he stood acquitted in the said case. Despite the same, the police authorities seem to have continued the rowdy sheet in his name. This Court therefore has no hesitation in holding that the opening of the rowdy sheet in the name of the petitioner and continuance of the same thereafter was in utter violation of the law laid down by this Court."

16. In *SURITI RAMULU (supra 3)*, this Court at paragraphs 2, 6 and 7, held as under:

"2. The brief facts of the case are that the petitioner was resident of Marikal village of Dhanwada Mandal, Mahaboobnagar District, and he was an agriculturist. In addition to that doing some civil contracts in Goa since a long time and he was also the Block Congress President of Devarkadra which falls in Amarchinta Assembly Constituency. He further submitted that one Satyanarayana Goud of Marikal, belonging to Telugu Desam Party, resides in their village, that there is a lane in between the house of said Satyanarayana Goud and S. Veeranna being used as passage for about 20 families living behind the houses of the said two persons and the houses of those two persons face towards the main road. The said Satyanarayana Goud, with an evil idea of blocking the way tried to open a door into the lane by constructing steps and a civil case in OS No.15 of 1998 was filed by one S. Ramulu S/o. Savarappa, before the District Munsif, Narayanpet for injunction against the said Satyanarayana Goud and the other affected parties also filed their affidavits in the said suit and the District Munsif granted temporary injunction restraining him from proceeding with the construction and the said suit is pending. Thereafter, Satyanarayana Goud, on 11-6-

1998 gave a complaint to the Marikal Police stating that on 8-6-1998 while he was raising the level of the flooring at his house, the petitioner and eight others trespassed into his house and beat him and a case in Cr. No.44 of 1998 for the offences under Sections 427, 448, 342, 323 read with 34 IPC was registered. He further stated that though the petitioner was nothing to do with the civil litigation between Satyanarayana Goud and other residents he was shown as accused No.1 in the above criminal case. The said Satyanarayana Goud also gave another complaint which was registered as Cr. No.39 of 1999 on the file of Police Marikal for the offences under Sections 147, 148, 452, 307 read with 147 IPC against eight persons, who figure as the accused in Cr. No.44 of 1998 including the petitioner herein. It is further stated by the petitioner that he was Sarpanch of Marikal village and also Block Congress President of Deverakadra, that due to the local politics and at the instance of local MLA the respondents have opened a rowdy-sheet against him, opening of the rowdy-sheet was also published in the local newspapers against the petitioner. It is also stated that the police have served summons to the petitioner to appear and answer a charge under Section 107 Cr.PC in Cr. No.71 of 1999 on 21-8-1999 at 11.00 a.m., before the Sub-Divisional Magistrate and Revenue Divisional Officer, Narayanpet. Except the above three cases, there are no criminal cases registered against him. He further submitted that the requirements under Order 742 of the Police Standing Order for opening rowdy-sheet against the petitioner are not at all in existence. Therefore, the action of the respondents is against Articles 14, 19 and 21 of Indian Constitution. Therefore, the petitioner filed this writ petition seeking the above said relief.

6. As seen from the counter affidavit, two crimes were registered in 1998 and another two crimes were registered in 1999 and except saying that the acts of the petitioner are causing breach of peace and as per the instructions of the Sub-Divisional Police Officer, Narayanpet, nothing was said about the petitioner. It is also pertinent to note that Cr. Nos.44 of 1998 and 39 of 1999 were registered based upon the complaint of the same complainant, Satyanarayana Goud. The offences alleged against the petitioner also not serious in nature. The petitioner's allegation that the rowdy-sheet against him was opened at the

instance of the local MLA makes it clear that there are local politics, to which the petitioner fell prey. In these circumstances, I am of the view that surveillance and monitoring of movements of persons whose names are entered in rowdy-sheets should therefore, be proportionate and commensurate to the reasonable apprehension of suspicion entertained by the concerned Police Officer and only with a view to prevent commission of a crime which may result in breach of peace. Any excessive action on the part of the police would not only be ultra vires the Standing Order No.742 but also would be violative of Articles 14, 19 and 21 of Constitution of India and any unauthorised or coercion of any sort would be violative of the fundamental right to freedom and personal liberty guaranteed by the Constitution of India. Therefore, for all the above reasons, I am satisfied, after going through the counter affidavit, that there was political rivalry in the village of which the petitioner was a victim and therefore. I am of the considered view that the petitioner could not have been classified as a rowdy and his name entered in the rowdy-sheet as there was only four crimes registered in the years 1998 and 1999, he could not be said to be habitual offender. That the requirements of Standing Order No.742 are also not satisfied and there is no reason whatsoever to enter the petitioner's name in the rowdy-sheet.

7. For the foregoing reasons, a writ of mandamus is issued directing the respondents to delete the name of the petitioner from rowdy-sheet. It is, however, always open to the authorities to make fresh assessment about the necessity of taking action under the said Police Standing Order, depending upon the availability of material as on today and take decision according to law. The writ petition is accordingly allowed. No costs.”

17. In *SUNKARA SATYANARAYANA (supra 4)*, this Court at paragraph 91, held as follows:

“91. Relying on various judgments of the Supreme Court I have to hold that the obtrusive surveillance on the petitioner violated right to life and liberty under Article 21 of the Constitution of India. This criticism can only be met by the police by producing valid reasons before this Court. In my considered opinion the

competent Gazetted Police Officer has not at all applied mind while passing orders from 1-1-1989 onwards. The pendency of petty cases under the Gaming Act cannot be the ground for retention of the history sheet. Even on this it is to be noticed that with regard to petty case Nos. 303 to 306 of 1997 Under Section 9(1) of Gaming Act and petty case Nos. 416 to 425 of 1977 for the same offence, fine was imposed in summary trial cases. The offences against a person under Gaming Act, if any, do not furnish any ground for opening a history sheet. Therefore, it has to be held that the fundamental rights of the petitioner to the life and liberty have been grossly violated by the respondents. The spirit of relevant Police Standing Orders have not been kept in view. There is considerable force in the submission of the learned Counsel for the petitioner that retention of the history sheet against the petitioner after 1988 is arbitrary and violates the human rights of the petitioner."

18. In *L.RAVINDRAN (supra 5)*, the Madras High Court at Paras 12 and 13, held as follows:

"12. Keeping the above in mind, while dealing with the provisions of PSO 748 and 749, a learned Judge of this Court in the judgment in *K.M.Sheriff v. The Superintendent of Police, Pudukkottai District and another*, 2006 (2) MWN (Cr.) 421, had ultimately observed as follows:-

"12. A reading of the above said provisions, especially PSO 749, shows that a person shall be classed as suspects and History Sheets shall be opened for him under orders of the Superintendent or Divisional Officer, if so empowered by the Superintendent, if such person is believed to be addicted to crime. The averments in paragraph 6 of the counter affidavit shows that the respondents have proceeded against the petitioner believing him to be addicted to crime and History Sheet has been opened. If that is so, the respondents should have followed PSO 748. As per PSO 748, the Superintendent of Police may order the closure of a History Sheet at any time but a Divisional Officer may only do so on the expiry of the period named above. As per 748(2), where retention of a History Sheet is considered necessary after two years of registration, orders of an officer of and above the rank of the Assistant

Superintendent of Police/Deputy Superintendent of Police must be taken for extension in the first instance upto the end of the next December and further annual extensions from January to December. As per PSO 748(3), PSO 748(1) and 748(2) apply to rowdy sheets also. Therefore, it is crystal clear that whenever retention of History Sheet is considered necessary after two years of registration, orders of an officer of and above the rank of the Assistant Superintendent of Police/Deputy Superintendent of Police must be taken. In this case, it is not the case of the respondents that such orders of extension was obtained as per PSO 748(2). This is one grave illegality committed by the respondents in this case.

13. PSO 748 as contained in the recent publication is in pare materia with PSO 748 as found in 1999 publication. In the counter affidavit, though first part of PSO No.748 has been extracted in paragraph 7, the respondents have conveniently omitted to extract/refer to PSOs 748(2) and 748(3). When the above said Police Standing Order No.748(2) mandates the taking of specific orders from superior officers for the retention of a History Sheet beyond two years of registration, the respondents in this case have failed to do so. PSO 748(2) further mandates that for further annual extensions from January to December, separate orders should be taken from the authorities mentioned therein every year. This vital provision which safeguards the rights of a citizen has also not been followed by the respondents as there is no averment to that effect in the counter affidavit. When so many safeguards have been provided for in the PSO, before and after opening of History Sheets/Rowdy Sheets, none of them seem to have been observed by the respondents herein. But to add insult to injury, the first respondent has not cared to pass any orders on the representation dated 01.02.2005 submitted by the petitioner. The failure on the part of the first respondent to pass orders on the representation of the petitioner is unjustified and it amounts to dereliction of duty as the failure on the part of the first respondent has seriously affected the valuable rights of the petitioner. Therefore, it is a fit case where a writ of mandamus should be issued."

13. The very same view has been taken by another learned Judge in the judgment in G.Raja v. State through the Inspector of Police, Kalayarkovil Police Station, Sivagangai District and another, 2009 (2) MWN (Cri.) 416. In fact, in that case, the petitioner therein was shown in the History Sheet for his alleged involvement in three complaints. Even before the above judgment, this Court in an unreported judgment dated 15.9.2008 made in W.P.No.2286 of 2005, has come down heavily on the respondent-police for their arbitrary act and directed the removal of the names of the petitioner therein from the History Sheet maintained by the police. “

19. Coming to the instant writ petition, the following are the crimes registered against the petitioner and the particulars of the same as stated in the affidavit, dated 06.03.2018, filed by the petitioner herein before this Court:

1. Crime No.41 of 2007, on the file of Madannapet Police station, which is pending vide C.C.No.786 of 2017.
2. Crime No.42 of 2007, on the file of Madannapet Police Station, which is pending vide C.C.No.787 of 2017.
3. Crime No.43 of 2007, on the file of Madannapet Police Station, which is pending vide C.C.No.788 of 2017.
4. Crime NO.44 of 2007, on the file of Madannapet Police Station, which is pending vide C.C.No.785 of 2017.
5. Crime No.14 of 2009, on the file of Hussain Alam Police Station which is pending vide C.C.No.834 of 2011.
6. Crime No.257 of 2009, on the file of Rein Bazar Police Station vide C.C.No.67 of 2011, which ended in acquittal on 21.01.2015.
7. Crime.No.47 of 2011, on the file of Chandrayana Gutta Police Station, which is pending vide C.C.No.268 of 2013.
8. Crime No.283 of 2012, on the file Rein Bazar Police Station vide C.C.399 of 2013 ended in acquittal on 29.09.2015.

9. Crime No.305 of 2012, on the file of Kachiguda Police Station vide C.C.386 of 2016 ended in acquittal on 30.04.2015.
10. Crime No.305 of 2012, on the file Rein Bazar Police Station where no charge sheet is filed.
11. Crime No.306 of 2012, on the file of Rein Bazar Police Station and is numbered as C.C.No.535 of 2014.
12. Crime No.308 of 2012, on the file of Rein Bazar Police Station numbered as C.C.317 of 2016.
13. Crime No.309 of 2012, on the file of Rein Bazar Police Station numbered as C.C.No.634 of 2016.
14. Crime No.245 of 2016, on the file of Chaderghat Police Station numbered as C.C.No.634 of 2016 and the charge sheet is filed.
15. Crime No.27 of 2016, on the file of Rein Bazar Police Station numbered as c.C.No.2770 of 2016 and ended with Lokadalat.
20. A reading of the above information shows that in three criminal cases which arose out of Crime No.357 of 2009, on the file of Rein Bazar Police Station, Crime No.283 of 2012 on the file of Rein Bazar Police Station and Crime No.305 of 2012 on the file of Kachiguda Police Station, the petitioner herein got acquittal and the rest of the cases are pending against the petitioner herein at one stage or the other.

21. As per the information furnished by the respondent police authorities in their counter affidavit Crime No.14 of 2009, on the file Hussain Alam Police Station, Hyderabad, is pending trial vide C.C.834 of 2011 and the police registered the said Crime for the offences alleged under Section 147, 148, 324, 427 and 506 r/w 34 I.P.C. Crime No.47 of 2011, which is pending trial vide C.C.268 of 2013 is an offence registered under Sections 447, 353, 427 and 506 I.P.C, on the file of Chandrayana

Gutta Police Station, Hyderabad. Crime No.306 of 2012, which is pending trial vide C.C.535 of 2014 is registered under Sections 147, 148, 332, 188, 153 (a) r/w Section 149 I.P.C and Section 7 (1) of Criminal Amendment act. Crime No.307/2012, which is pending trial vide Sr.No.2036 of 2015 is also registered under the above said provisions of law. Crime No.308 of 2012, which is also registered under the above said provisions of law is also pending trial in SR C.C.No.2016. Crime No.309 of 2012, which is registered under the above said provisions of law is also pending trial vide C.C.No.637 of 2016. Crime No.249 of 2016, which is pending vide C.C.No.589 of 2016 is also an offence alleged to have been committed under Section 332, 290, 506 and 504 I.P.C.

22. The above situation, in the considered opinion of this Court, strengthens the submissions of the learned Government Pleader in the direction of continuing the Rowdy Sheet against the petitioner herein. This Court finds sufficient force in the submission of the learned Government Pleader in sustaining the action of the respondent police authorities under the Police Standing Order No.601(B).

23. For the aforesaid reasons, this Court finds no merit in the writ petition and the writ petition is accordingly dismissed. 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:03.04.2018

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



W.P.No.41749 of 2017

Dated:03.04.2018

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