

HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.46594 of 2018

ORDER:-

Heard learned Counsel appearing for the petitioner and learned Government Pleader for Home for the respondents.

2. In the present Writ Petition challenge is to the action of the respondents in opening and continuing the rowdy-sheet No.730 of 2012 against the petitioner herein.

3. According to the learned Counsel for the petitioner, the impugned action of opening and continuing the rowdy-sheet against the petitioner herein is highly illegal, arbitrary, unreasonable and violative of Articles 14 and 21 of the Constitution of India besides being opposed to the very spirit and object of the provisions of Police Standing Order 601. In elaboration, it is further submitted by the learned Counsel for the petitioner that in view of the lack of any ingredients of Clauses (a) to (i) of Police Standing Order 601 in the case on hand, there is absolutely no justification on the part of the respondent-Police authorities in opening and continuing the rowdy-sheet against the petitioner herein. It is further submitted that there is no conviction order so far against the petitioner herein nor the petitioner can be branded as habitual offender and as such the impugned action cannot be sustained.

4. On the other hand, it is submitted by the learned Government Pleader that in view of the involvement of the petitioner herein in Cr.No.28 of 2012 on the file of Kandukur Town Police Station for the offence under Section 302 r/w 34 I.P.C., it has incumbent on the part of the respondent-Police authorities to open a rowdy-sheet

against the petitioner herein only in order to have a close watch on the movements of the petitioner herein.

5. The provisions of Police Standing Order 601 are penal in nature, as such, strict adherence to the mandatory requirements, as stipulated therein, is necessary. Unless the necessary ingredients of Clauses (a) to (i) of the Police Standing Order 601 do exist in a given case, a rowdy-sheet cannot be opened against an individual in a casual and mechanical manner, otherwise, the same tantamounts to invasion into the fundamental right guaranteed to a citizen under Article 21 of the Constitution of India.

6. In this context, it may be appropriate to refer to a judgment of this Court in **M.MALLA REDDY v. STATE OF TELANGANA AND OTHERS**¹. Para 10 of the said judgment reads as under:-

“Rowdy-sheet cannot be opened in a mechanical, routine and cavalier manner and great care, caution and circumspection are 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 Legislatures make the laws, keeping in view the betterment and welfare of the people and the authorities functioning under the same 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

¹ 2016(1) ALD (CrL.) 591

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, assessed and adjudicated in the light of the above issued.”

7. In the considered opinion of this Court, the justification sought to be offered by the learned Government Pleader for sustaining the impugned action cannot be sustained in the eye of law, as observed supra, and unless the necessary ingredients of clauses (a) to (i) of Police Standing Order 601 are present in a given case, the rowdy-sheet cannot be opened.

8. Having heard the learned Counsel for the petitioner and the learned Government Pleader, this Court deems it appropriate to dispose of the Writ Petition, directing the 3rd respondent herein to consider the representation, dated 08.10.2018, said to have been submitted by the petitioner herein and pass appropriate Orders/take appropriation action, strictly in accordance with law, and keeping in view of the observations made supra, within a period of six weeks from the date of receipt of a copy of this Order.

Miscellaneous petitions pending, if any, shall stand disposed of. There shall be no order as to costs.

Date:24.12.2018
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A.V.Sesha Sai, J