

HONOURABLE SRI JUSTICE P. KESHA RAO

WRIT PETITION No.22490 of 2014

ORDER:

Heard the learned counsel for the petitioner as well as the learned Government Pleader for the respondents.

The prayer sought in the writ petition is as under:

“... to issue writ or direction or order more particularly one in the nature of writ of Mandamus declaring the inaction of the respondent in closing the rowdy sheet opened against the petitioner on the file of 2nd respondent is illegal, arbitrary and unconstitutional and consequently direct the respondent to close the rowdy sheet opened against the petitioner forthwith in the Meerpet Police Station, R.R. District.”

Learned counsel for the petitioner submitted that the petitioner, who was arrayed as accused No.2 in S.C.No.265 of 2007 on the file of the V Additional District and Sessions Judge (FTC), R.R. District at L.B. Nagar for the offences under Sections 147, 148 and 302 IPC read with Section 149 IPC, was acquitted on 10.05.2012. There are no other criminal cases pending against the petitioner. When no cases are pending against the petitioner, the rowdy sheet opened against him cannot be continued without there being any material and the same is arbitrary and illegal. In fact, the petitioner also made several representations to the 2nd respondent requesting him to withdraw the rowdy sheet opened against him. That apart, the respondents are also continuously calling the petitioner to the police station for no reason. The acts of the respondents are affecting the

petitioner's business and offending his fundamental rights guaranteed under Article 21 of the Constitution of India.

Learned Government Pleader appearing for the respondents placed on record letter No.257/V3/RCK/2019 dated 26.09.2019 addressed by the 2nd respondent to the Deputy Commissioner of Police, L.B. Nagar Zone, Rachakonda.

From a perusal of the said letter, it is revealed that the 2nd respondent requested the Deputy Commissioner of Police, L.B. Nagar Zone, Rachakonda to close the rowdy sheet which is maintained at Meerpet Police Station, L.B. Nagar Zone against the petitioner and provide him an opportunity to lead a good family life. As per the records, the petitioner was involved in Crime No.485 of 2001 for the offences under Sections 147, 148 and 302 read with Section 149 IPC of L.B. Nagar police station and he was acquitted in the said case and since then he did not involve in any offence and at present he is residing in the same address. In view of his good behaviour for the last ten years and as per the directions of this Court, the 2nd respondent requested the Deputy Commissioner of Police, L.B. Nagar Zone, Rachakonda, to consider the petitioner's grievance and pass appropriate orders.

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 DISTRICT¹, 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.

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

¹ 2015(1) ALD 889

². AIR 1966 SC 1766

³. AIR 1984 SC 1334

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.

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.

⁴. 1987 (2) ALT904

⁵. 1997 (6) ALD 583

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**⁷, **GUDEVADA SAI BABA V/s. STATE OF A.P., HOME DEPARTMENT**⁸, **P.SATHIYYA NAIDU V/s. SUPERINTENDENT OF POLICE, EAST GODAVARI DISTRICT**⁹ 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

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

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 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

¹². 1999 (5) ALD 155

¹³. 2000 (1) ALD (Crl.) 117 (AP)

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 PRADESH¹⁴**, 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 and continuing a rowdy sheet in the name of the petitioner on the basis of his involvement in a solitary criminal case is not sufficient to term him as habitual offender under Clause-A of Order 601 of the Police Control Order.

¹⁴. 2004 (1) ALD (CrL) 387 (AP)

From the arguments of both the counsel what is culled out is that after acquittal of the petitioner in Crime No.485 of 2001 on 10.05.2012, the petitioner did not involve in any other offence. In these circumstances, this Court is of the opinion that the rowdy sheet opened against the petitioner cannot be continued without there being any material.

In the above circumstances, this Court holds that opening of rowdy sheet in the name of the petitioner and continuing the same thereafter, is in violation of the life and liberty 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.

Accordingly, the Writ Petition is allowed. Consequently, the rowdy sheet of Meerpet Police Station, L.B. Nagar Zone, opened in the name of the petitioner is hereby quashed. No order as to costs.

Miscellaneous petitions, if any, shall also stand closed.

P. KESHAVA RAO, J

Date: 24.10.2019.
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