

HONOURABLE SRI JUSTICE P. KESHA RAO

WRIT PETITION No.18542 of 2013

ORDER:

Heard the learned counsel for the petitioner and the learned Government Pleader appearing for the respondents.

The prayer sought in the writ petition is as under:

“... to issue a writ or order or direction, more particularly one in the nature of writ of mandamus declaring the action of the respondents in opening and maintaining rowdy sheet against the petitioner as illegal, arbitrary and violation of Article 14, 19(1)(e) and 21 of the Constitution of India.”

The case of the petitioner is that he is a resident of Chanchalguda, Hyderabad. To eke out his livelihood, he is doing business of tours and travel. While matter stood thus, Crime No.100 of 2010 was registered under Sections 323, 302, 120-B IPC read with 34 IPC on the file of Bhavaninagar Police Station against him. Subsequently, the respondent police filed the charge sheet. After taking cognizance, the same was numbered as S.C.No.570 of 2011 and the same is pending before the learned VII Additional Metropolitan Sessions Judge, Hyderabad. However, on 23.12.2010, while exercising the powers under the Police Standing Order No.742, a rowdy sheet vide Sl.No.18 was opened against the petitioner by respondent No.3. The said rowdy sheet has been continuing from time to time. The petitioner specifically stated that except the above said crime, he is not involved in any crime. He is leading a peaceful life being a responsible citizen. Therefore, continuation of the rowdy sheet is challenged in the present writ petition.

Respondent No.3 filed counter affidavit stating that apart from S.C.No.570 of 2011, which is pending, the Special Executive Magistrate, Hyderabad, issued bind over proceedings against the petitioner in Crime Nos.132 of 2011 and 129 of 2012 under Section 107 Cr.P.C. Except the above said crimes, no other criminal case has been registered. It is also mentioned in the counter affidavit that due to the fear of the petitioner no one is coming forward to the police station to lodge any complaint against him. Therefore, unless and until proper vigilance is maintained against the unlawful activities of the petitioner, there is every chance that he may repeat the offences.

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.

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

¹ 2015(1) ALD 889

². AIR 1966 SC 1766

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.

This principle was affirmed by another learned Judge of this Court in **KAMMA BAPUJI V/s. STATION HOUSE OFFICER,**

³. AIR 1984 SC 1334

⁴. 1987 (2) ALT904

BRAHMASAMUDRAM⁵. 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**⁷, **GUDIVADA 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

⁵. 1997 (6) ALD 583

⁶. 1998 (3) ALT55 (D.B.)

⁷. 1990 (1) APLJ 363

⁸. 2002 (3) ALT391

⁹. 2011 (2) ALT61

¹⁰. 2014 (3) ALT264

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 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

¹¹. 1999 (3) ALD 60

¹². 1999 (5) ALD 155

¹³. 2000 (1) ALD (Crl.) 117 (AP)

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 and continuing a rowdy sheet in the name of the petitioner on the basis of his involvement in a solitary criminal case

¹⁴. 2004 (1) ALD (Cr.) 387 (AP)

is not sufficient to term him as habitual offender under Clause-A of Order 601 of the Police Control Order. It is an admitted fact that the petitioner is an accused in S.C.No.570 of 2011. In addition to that two other crimes were registered against the petitioner vide Crime Nos.132 of 2011 and 129 of 2012 and he was bound over in the said cases. In spite of the same, the respondents have continued the rowdy sheet in his name.

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 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.

Accordingly, the Writ Petition is allowed. Consequently, the Rowdy Sheet at Sl.No.18 of Bhavaninagar Police Station, Hyderabad opened in the name of the petitioner and transferred to Rein Bazar Police Staion is hereby quashed. No order as to costs.

Miscellaneous petitions, if any, shall stand closed.

P. KESHAVA RAO, J

Date: 22.10.2019.
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