

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 2545 of 2019

Date : 6 .3.2019

Between:

Bokka Vishnu Vardhan S/o B Surender Reddy Aged 32 years
Occ Student R/o H No 11-208 Opp Police Station
Bokkoniguda Ghatkesar Rangareddy 501301

Petitioner

And

The State of Telangana
Rep by its Principal Secretary Home Department Secretariat
Hyderabad & others

Respondents

The Court made the following:



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ORAL ORDER:

Heard learned counsel for petitioner and learned Government Pleader for Home.

2. This Writ Petition is against opening of rowdy sheet. The averments in the affidavit filed in support of Writ Petition would disclose that three crimes were reported against petitioner. Ghatkesar Police registered three crimes; on investigating into the crimes filed charge sheets. The jurisdictional Magistrate took cognizance of offences alleged and assigned C.C.No.470 of 2016, C.C.No.486 of 2017 and C.C.No.3517 of 2018. Petitioner was acquitted in C.C.No.470 of 2016. Other two C.Cs. are pending at the stage of conducting trial. Holding that petitioner is actively involved in three bodily offence crimes in Ghatkesar Police Station limits, is a trouble monger and likely to involve in bodily offences and would cause breach of peace and public tranquillity, rowdy sheet was opened.

3. Learned counsel for petitioner would submit that there is no justification to open rowdy sheet merely because three crimes are reported, when these crimes concern property dispute and falsely reported to grab his property. The offences alleged do not concern breach of peace, disturbance to public order and security. Due to opening of rowdy sheet his image is tarnished and he is looked down in the society causing harm to his reputation and dignity for no fault of him.

4. In support of his contentions, he placed reliance on following decisions:

M. Malla Reddy Vs. The State of Telangana¹, Puttagunta Pasi alias Penta Pasi Vs. Commissioner of Police, Vijayawada and another².

5. Per contra, learned Government Pleader would submit that petitioner is in the habit of involving in quarrels causing breach of peace. Thus, to curb his unlawful activities, rowdy sheet is opened and when he is facing criminal cases if rowdy sheet is closed, he might tamper the record and gain over witnesses. He would therefore justify opening of rowdy sheet.

6. The Court is not going into narrative on running feud between petitioner and others concerning landed property. The only issue for consideration, in the facts of this case is whether opening of rowdy sheet on petitioner is justified.

7. Right to life and liberty are sacrosanct to a person. A person is entitled to lead his life with dignity and self respect. Right to privacy flows out of Article 21 of the Constitution of India. Surveillance on person certainly infringes on his right to life, privacy and liberty. These rights cannot be infringed except by due process of law. Compelling public interest may require intrusion into privacy of a person but while doing so great care and caution has to be observed. Thus, if police open a rowdy sheet to keep surveillance on a person it must show justification, impelled to ensure peace and order in the society.

8. The scope and width of Article 21 of the Constitution of India, scope of power of police to infringe privacy of a person and scope and ambit of Police Standing Orders (for short PSO) were vividly analysed and dealt with extensively by two learned Judges of this Court, one of whom, Hon'ble Sri Justice B.Sudershan Reddy, adorned the office of Judgeship

¹ CDJ 2015 APHC 698

² 1998 SCC Online AP 57

in the Supreme Court of India, in **Mohammed Quadeer and others Vs. Commissioner of Police, Hyderabad and another**³ and **Sunkara Satyanarayana Vs State of Andhra Pradesh, Home Department and others**⁴. In both these decisions it is held that PSOs are non statutory executive instructions and have no binding force of law. However, in the instant case, that issue need not be elaborated further.

8.1. In **Mohammed Quadeer and others**, it is held:

“31. Opening of a rowdy sheet against a citizen is undoubtedly fraught with serious consequences. Article 21 of the Constitution of India guarantees right to life with dignity and the right to live, as a dignified man, carries with it the right to reputation. Right to reputation is an integral part of right to life guaranteed by Article 21, and such a right cannot be deprived except in accordance with the procedure established by law. Such laws which authorise the Police to open rowdy sheets and exercise surveillance are required to be very strictly construed. Opening of the rowdy sheets and retention thereof except in accordance with law would amount to infringement of fundamental right guaranteed by Article 21 of the Constitution of India. It is true that the State is duty bound at all levels to protect the persons and property from the criminals and criminal activity. Prevention of organised crime is an obligation on the part of the State.

Right to Privacy:

32. Fundamental rights and civil liberties exist and can only flourish in an orderly society. Civil liberties and fundamental rights are intimately connected with the nature and dynamics of the Society. It is the duty of the Police to deal with crime and criminals expeditiously and effectively while at the same time holding to the values and concepts of the fundamental rights and the Constitution. Both the competing interests are to be reconciled. This much is clear so far as our Constitutional system is concerned that intrusion into personal liberty without an authority of law is forbidden. Surveillance and watching of movements of a citizen by the Police is not a matter of course. Such rights can be exercised by the

³ 1999 (3) ALD 60

⁴ 1999 (6) ALT 249

Police only in accordance with law which permits such surveillance. The action in this regard which is in accordance with law may result in violation of the fundamental rights guaranteed by Article 21 of the Constitution of India. Every citizen has fundamental right and entitled to indulge in harmless activities without observation or interference. It is a right to be left alone. The guarantee in Article 8 of the European Convention of Human Rights that "Everyone has the right to respect for his private and family life, his home and has correspondence" reflects both the individual's psychological need to preserve an intrusion-free zone of personality and family, and the anguish and stress which can be suffered when that zone is violated. The saying that 'an Englishman's home is his castle' would be equally applicable to Indian situation and it can be said that an 'Indian citizen's home is his castle.'

33. Therefore, I have no hesitation whatsoever to reject the plea that mere surveillance and watch by the Police itself would not infringe the fundamental rights of a citizen. Such surveillance and watch which is not authorised by law may be unconstitutional. Such surveillance and watch even if it is authorised by law but if it is not in accordance with that law would equally be unconstitutional."

8.2. In **Sunkara Satyanarayana**, it is held:

"23. Surveillance by the police makes very serious inroads into the life of a person. It even grossly violates the right of persons to privacy. Obtrusive surveillance does not leave a citizen alone. With the subtle methods of telephone tapping, telescope watching, remote controlled audio and video recording gadgets, a citizen subjected to surveillance can never have mental peace and thus his life and liberty at every movement would be restricted. A person with lot of restrictions cannot be expected to lead a dignified life and exercise his right to liberty and other freedoms. A citizen's life would become miserable. Such a situation is worse than animal existence, For these reasons can it be said that there is a 'right' against surveillance?

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30.....Before examining the case law as decided by this Court, it is apposite to note the intention and objectives behind such provisions dealing with surveillance. There cannot be two opinions that police should vigorously enforce the law. It does not however

mean that they should rigorously violate the constitutional values and constitutional rights. In enforcing the law they shall not violate the Supreme law of the Nation. The police are charged with responsibility of controlling crime. Control of crime necessarily involve prevention of crime. To prevent crime it is permissible that police should keep a person known to be habitual offender or known to be 'trouble maker' under a watch. What is most objectionable to civilized mind is the use of extra legal methods by the police for prevention of crimes. Surveillance of a person in an arbitrary and unreasonable manner and contrary to the provisions of law, is one such extra legal method which cannot be countenanced by the Constitutional Court.

31. Illegal surveillance makes arbitrary and obtrusive intrusions into one's right to privacy and violates Article 21 of Constitution of India. But keeping a person under unobtrusive watch to prevent crime and to maintain law and order, as authorised by law, is reasonable restriction permissible under the Constitution.

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53. Therefore the right to privacy under Article 21 of the Constitution is a Human right essential for human dignity without which social justice cannot be achieved.”

8.3. In paragraph 49 of **Sunkara Satyanarayana**, learned single Judge culled out principles on police surveillance against history/rowdy sheeters. It reads as under:

“49. Therefore, in the context of police surveillance against history sheeters and rowdy sheeters, the following principles vis-a-vis right to privacy under Article 21 of the Constitution would emerge:

(i) If the surveillance is not obtrusive, the same does not violate the right to privacy under Article 21 of the Constitution of India. The same does not either in material or palpable form affect the right of the suspect to move freely nor can it be held to deprive the history sheeter / rowdy sheeter of his personal liberty.

(ii) In testing whether fundamental right of free movement or personal liberty is infringed or not, it is to be remembered that infringement should be direct as well as tangible. If surveillance hurts personal sensitivities, the

same is not a violation, for the constitution makers never intended to protect mere personal sensitiveness.

(iii) If police surveillance is in accordance with executive/departmental guidelines and not authorised by statute or rules having statutory force, it is for the State to prove that surveillance does not in anyway infringe the fundamental right of the person and that the authorities have followed the guidelines scrupulously in ordering surveillance,

(iv) If the action of the police is found to infringe the freedoms guaranteed to the history sheeter / rowdy sheeter and violates his right to privacy, in that, the surveillance is excessively obtrusive and intrusive, it may seriously encroach on the privacy of a citizen as to infringe the fundamental right to privacy and personal liberty under Article 21 as well as the freedom of movement guaranteed under Article 19(1)(d) of the Constitution of India and the same is impermissible,

(v) Even where there is statutory sanction for surveillance against history sheeter/rowdy sheeter principle (iv) is equally applicable, if the surveillance is obtrusive.

(vi) In either case-whether police regulations are statutory or where they have no statutory force-there should be sufficient material to induce the opinion that the history sheeters/rowdy sheeters show a determination to lead a life of crime which involves public peace or security only. Mere convictions in criminal cases where nothing imperils the safety of the society cannot be regarded as warrant surveillance under the relevant regulations, however broadly and in whatever language the regulation might have been couched,

(vii) In either case-whether the regulation is statutory or non-statutory-domiciliary visits and picketing by the police should be reduced to the clearest cases of danger to community security, and there can be no routine follow-up at the end of a conviction or release from prison in every case.

(viii) The above principles that emerge from various binding precedents are only general principles. As seen from various decided cases of this Court, opening of history sheet or rowdy sheet can be justified only when it is proved before the Court by the State that based on the relevant material the competent police officer has applied mind with due care and considered all aspects in the light of the law and then ordered opening of history sheet or rowdy sheet or ordered continuation or retention of the

history sheet. In the beginning of this Judgment, all the relevant decisions of this Court have been referred to and those principles may also have to be kept in mind.”

9. Rowdy sheet is opened on petitioner on the ground that three crimes were registered against him. In Crime No. 359 of 2016, it is alleged that petitioner gained entry into the complainant's (Bokka Prabhakar Reddy) office, abused in filthy language, damaged office furniture, caught hold of complainant's shirt collar and threatened him. Petitioner was acquitted of the charge in CC No. 470 of 2016. Same person lodged complaint, registered as Crime No. 294 of 2018. It is alleged that when complainant went to the house of Venkataramana to pay respects to departed soul, accused came there, lifted him and thrown him down, beaten him, kicked him and threatened with dire consequences. Crime No. 494 of 2017 is reported by Bokka Chandra Reddy, who is father of Bokka Prabhakar Reddy, complainant in two other crimes, alleging that when he was in the office of his son he has threatened that he would kill his son and abused him in filthy language. Based on these two crimes, cases are pending at the stage of conducting trial. While so, complaint filed by petitioner against Bokka Prabhakar Reddy is registered as FIR No. 303 of 2018 under Sections 323, 504 and 506 of IPC

10. In the case on hand, relevant PSO is 601-A. It reads as under:

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

A. 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.”

11. Reading of extracted provision of PSO-601-A, makes it clear that to open rowdy sheet emphasis is on committing offence involving breach of peace, disturbance to public order and security.

12. The justification shown in the counter to open rowdy sheet against petitioner is that petitioner is active and energetic and involving in frequent quarrels and causes breach of peace and public tranquillity. It is further asserted that petitioner may tamper the record and gain over the witnesses.

13. It is not stated as to how opening of rowdy sheet would detain petitioner from tampering the record and gain over the witnesses. In fact, it may embolden him to exert pressure under duress. Further, it is not the case of police that petitioner is a known /habitual offender and is in the habit of creating nuisance affecting peace in the area. As noted above, the crimes registered against him relate to property dispute interse confined to two persons. Thus, the ingredients of PSO 601-A are not attracted in the case.

14. As held in precedent decisions, PSO is non-statutory instrument to guide police in discharge of their duties. It can not give licence to police to open rowdy sheet in a casual and mechanical manner. Opening of rowdy sheet is not as a matter of course whenever crimes are reported. Opening rowdy sheet against petitioner, in the facts of this case, cannot be termed as in public interest. Petitioner's right to life and liberty sought to be infringed by police without reasonable cause. It is made in abuse of power and authority, is illegal and amounts to infraction of fundamental rights guaranteed to petitioner.

15. Writ petition is allowed. The decision to open rowdy sheet against petitioner is held as illegal. Miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE: 6-3-2019
TVK

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