

HONOURABLE SRI JUSTICE P. KESHA RAO

WRIT PETITION No.18543 of 2013

ORDER:

Heard the learned counsel for the petitioners 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 petitioners as illegal, arbitrary and violation of Article 14, 19(1)(e) and 21 of the Constitution of India.”

The case of the petitioners is that they are the residents of Yakutpura, Hyderabad. To eke out their livelihood, petitioner No.1 is doing marble work, petitioner Nos.2 and 4 are private employees and petitioner No.3 is a student and also works part time to bear his educational expenditure. 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 them. 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, rowdy sheets vide Sl.Nos.62, 61, 60 and 59 were opened against the petitioners by respondent Nos.3 and 4. The said rowdy sheets have been continuing from time to time. The petitioners specifically stated that except the above said crime, they are not involved in any crime. They are leading peaceful life being

responsible citizens. Therefore, continuation of the rowdy sheets is challenged in the present writ petition.

Learned Government Pleader appearing for the respondents placed on record written instructions dated 16.09.2019 issued by the Inspector of Police, Rein Bazar Police Station, Hyderabad.

From a perusal of the said written instructions, it is revealed that apart from S.C.No.570 of 2011, the Special Executive Magistrate, Hyderabad, issued bind over proceedings against the petitioners in Crime Nos.157 of 2011 and 90 of 2012 under Section 41-A/107 Cr.P.C. Except the above said crimes, no other criminal case has been registered. It is also revealed that initially the rowdy sheets were opened at Bhavaninagar Police Station and on 08.02.2011 on the point of jurisdiction the said rowdy sheets were transferred to Rein Bazar Police Station and they are continuing. After transferring the rowdy sheets no crimes have been registered against the petitioners by Rein Bazar Police Station. It is further mentioned that in SC.No.570 of 2011 the petitioners were convicted and aggrieved by the same, they preferred appeal vide CrI.A.No.1104 of 2017 before this Court and the same is pending. Therefore, unless and until proper vigilance is maintained against the unlawful activities of the petitioners, there is every chance that they may repeat the offences.

Learned counsel for the petitioners 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 preventive detention but the observations made therein as to the connotations and interpretation of the expression 'habitual' are of relevance.

¹ 2015(1) ALD 889

². AIR 1966 SC 1766

³. AIR 1984 SC 1334

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.

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

⁴. 1987 (2) ALT904

⁵. 1997 (6) ALD 583

⁶. 1998 (3) ALT55 (D.B.)

KAMMA BAPUJI⁴ 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 POLICE⁷, GUDIVADA SAI BABA V/s. STATE OF A.P., HOME DEPARTMENT⁸, P.SATHIYYA NAIDU V/s. SUPERINTENDENT OF POLICE, EAST GODAVARI DISTRICT⁹** 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 BAPUJI⁴** 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.

⁷. 1990 (1) APLJ 363

⁸. 2002 (3) ALT391

⁹. 2011 (2) ALT61

¹⁰. 2014 (3) ALT264

¹¹. 1999 (3) ALD 60

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 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

¹². 1999 (5) ALD 155

¹³. 2000 (1) ALD (Cr.) 117 (AP)

¹⁴. 2004 (1) ALD (Cr.) 387 (AP)

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 rowdy sheets in the name of the petitioners on the basis of their involvement in a solitary criminal case is not sufficient to term them as habitual offenders under Clause-A of Order 601 of the Police Control Order. It is an admitted fact that the petitioners are accused in S.C.No.570 of 2011 and they were convicted. Aggrieved by the same, Crl.A.No.1104 of 2017 was filed before the Hon'ble High Court at Hyderabad and the same is pending. In addition to that two other crimes were registered against the petitioners vide Crime Nos.157 of 2011 and 90 of 2012 and they were bound over in the said cases. In spite of the same, the respondents appear to have continued the rowdy sheets in their names.

Except Crl.A.No.1104 of 2017 filed before this Court against the judgment in S.C.No.570 of 2011 no other cases are pending. In these circumstances, this Court is of the opinion that the rowdy sheets opened against the petitioners cannot be continued without there being any material.

In the above circumstances, this Court holds that opening of rowdy sheets in the name of the petitioners and continuing the

same thereafter, is in violation of the life and liberty as guaranteed to the petitioners 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 Sheets at Sl.Nos.62, 61, 60 and 59 of Bhavaninagar Police Stations, Hyderabad opened in the name of the petitioners and transferred to Rein Bazar Police Station are hereby quashed. No order as to costs.

Miscellaneous petitions, if any, shall stand closed.

Date: 22.10.2019.
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P. KESHA RAO, J

