

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.4587 OF 2019

Date:18.04.2019

Between:

Mohammed Aqeel Ahmed,
S/o. Mohammed Nazeer Ahmed,
Aged about 34 years, Occ: Business,
R/o.H.No.18-7-423/A/712, Aman Nagar B,
Talabtatta, Charminar, Hyderabad .. Petitioner

And

The State of Telangana, rep., by its
Principal Secretary, Home Department,
Secretariat, Hyderabad and others .. Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P.NAVEEN RAO**WRIT PETITION No.4587 OF 2019****ORDER:**

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

2. Petitioner claims to be doing petty business and hails from the middle class and respectable family. Persons who are inimical to petitioner, having an evil eye on his property, created several problems and in the process, crime was registered, which resulted in showing him as accused in C.C. No.489 of 2018 pending for trial in the Court of VIII Additional Chief Metropolitan Magistrate, Hyderabad. On the insistence of persons, who are responsible for implicating the petitioner in the above case, a rowdy sheet was opened against him. In the guise of opening a rowdy sheet, petitioner is frequently called to the police station and the same is illegal. Seeking to declare the action of the respondent – police in opening rowdy sheet and calling him to the police station and making him to sit over for hours together as illegal, arbitrary and unconstitutional, this Writ Petition is filed.

3. According to learned counsel for the petitioner, right to life, liberty and privacy are sacrosanct guaranteed by Article 21 of the Constitution of India. Such right cannot be infringed except by due process of law. Merely on the ground that crime was registered against the petitioner, the respondent – police could not have opened rowdy sheet and on the ground of opening of a rowdy sheet, harass and humiliate the petitioner infringing his right to life, liberty and privacy.

4. Learned counsel for the petitioner submits that there is no provision of law which enables the police to open a rowdy sheet and on the ground that rowdy sheet is opened, harass the petitioner and ask him to visit the police station. The only source of power available to the respondent – police is Police Standing Orders (for short, 'the PSO'). The PSOs are non-statutory and are only in the form of guidelines to the police and the same cannot be relied upon infringing upon the right to life, liberty and privacy. In support of his contention, learned counsel for the petitioner placed reliance on the decisions of this Court in W.P.Nos.40853 of 2018, dated 28.11.2018, 18584 of 2017, dated 07.08.2018, and 19194 of 2012, dated 24.08.2015.

5. Per contra, according to learned Government Pleader for Home, petitioner is a habitual offender and is involved in several crimes. Petitioner is involved in committing bodily offences habitually since the year 2006. Having regard to the history of involvement of petitioner, rowdy sheet was opened in Bhavaninagar Police Station, Hyderabad, on 13.05.2009. As of now, he is convicted in petty offence case and C.C.No.489 of 2018 is pending for trial. In addition, petitioner was bound over in seven crimes. He breached bound over for good conduct and involved in two cases, one of them being under Arms Act where he is now facing trial. Learned Government Pleader therefore justifies opening of rowdy sheet and continuing the same. Learned Government Pleader placed reliance on several decisions in support of his contention that rowdy sheet was validly opened and surveillance is necessary.

6. Right to life and liberty are sacrosanct to a person. A person is entitled to lead his life with dignity and self respect. He is entitled to privacy. His rights flow 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.

7. 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 in the Supreme Court of India, in **Mohammed Quadeer and others Vs. Commissioner of Police, Hyderabad and another**¹ and **Sunkara Satyanarayana Vs State of Andhra Pradesh, Home Department and others**². 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.

7.1. 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,

¹ 1999 (3) ALD 60

² 1999 (6) ALT 249

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 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.”

(emphasis supplied)

7.2. 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.”

(emphasis supplied)

7.3. 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 sheet / rowdy sheet 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 sheet/rowdy sheet 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.”

(emphasis supplied)

8. As can be seen from paragraph Nos.5 and 10 of the counter affidavit, 17 crimes were registered against the petitioner. He was acquitted in three criminal cases, four criminal cases were compromised and in seven crimes registered against him, he was bound over for good conduct and he is presently facing trial in C.C.No.489 of 2018, wherein allegation of breach under Arms Act is also made and is convicted in petty case. From the facts, as briefly noted above, it cannot be said that rowdy sheet was illegally opened against the petitioner.

9. As of now, petitioner is facing trial in one case and all other crimes are not pending now. Guided by precedent decisions noted above based on one case pending against the petitioner, whether respondent – police are justified continuing rowdy sheet requires consideration in the Writ Petition.

10. The Andhra Pradesh Police Manual deals with various aspects of functioning of police personnel which include registration of crimes, investigation, conducting of trial and opening of rowdy sheets etc. PSO 601 deals with opening of rowdy sheet. According to Clause A thereof, if a person habitually commits, attempts to commit or abet the commission of offences involving breach of peace, disturbance to public order and security, a rowdy sheet should be opened and his movements and activities are to be watched. According to Clause B thereof, the

persons who are bound over should be classified as rowdies and rowdy sheets can be opened and continued.

11. In the instant case, as seen from paragraph No.5 of the counter affidavit, so far 17 crimes were registered against the petitioner, whereunder, charges levelled against him concern Sections 324, 307 r/w 34 I.P.C., 447, 448, 427, 323, 506, 147, 148 r/w 149 I.P.C., and Sections 3 and 4 of Andhra Pradesh Gaming Act and Section 25 of the Arms Act. Only in three cases, petitioner was acquitted and four cases were closed because he entered into compromise with the complainants. Reliance is also placed on Clause D of PSO 601, which deals with persons who habitually tease women and girls and pass indecent remarks. Therefore, respondent - police justify opening of rowdy sheet against petitioner and keeping him under surveillance.

12. In the light of the facts, noted above, it is appropriate to note the observations of the Hon'ble Supreme Court in **Vijay Narain Singh v. State of Bihar**³. It was a case of preventive detention, but the Court considered what constitutes 'habitual offender' and the role of the Court vis-a-viz the responsibility of the police for maintenance of public order. It is useful to extract paragraph No.15 of the said judgment. It reads as under:

"15. It is not difficult to conceive of a person who by himself or as a member or leader of a gang habitually commits or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code. It however does not follow that because of the word 'habitually' in sub-cl. (i), sub-cl. (ii) or sub-

³ AIR 1984 SC 1334

cl. (iv), there should be a repetition of same class of acts or omissions referred to in sub-cl. (i), sub-cl. (ii) or in sub-cl. (iv) by the person concerned before he can be treated to be an anti-social element and detained by the District Magistrate under Section 12 (2) of the Act. In my view, it is not required that the nature or character of the anti-social acts should be the same or similar. There maybe commission or attempt to commit or abetment of diverse nature of acts constituting offences under Chapter XVI or Chapter XVII of the Indian Penal Code. What has to be 'repetitive' are the anti-social acts.

13. In W.P.No.19194 of 2012, learned single Judge of this Court in the judgment rendered on 24.08.2015 reviewed the entire case law on the subject. The learned single Judge set aside the decision of opening of rowdy sheet on the ground that petitioner therein was not involved in more than two crimes, whereas the requirement to open a rowdy sheet was, a person must involve in more than two crimes and therefore declared the opening of rowdy sheet as tainted in law from the inception. The facts of that case are not same as in this case. In the case on hand, petitioner was involved in more than 17 crimes, was convicted in one case, was bound over in seven cases and was facing trial on charges of violating Arms Act.

14. Guided by the law laid down in the precedent decisions, on a close scrutiny of the facts in the case on hand and having regard to the history of involvement of the petitioner in several crimes, it cannot be said that opening of rowdy sheet was made in excess of the power and authority available to the police and that

surveillance on the petitioner is not valid. Therefore, the Writ Petition fails and is liable to be dismissed.

15. However, learned counsel for the petitioner submits that in the guise of opening and continuing rowdy sheet against the petitioner, petitioner is harassed and humiliated by the police. According to respondent – police, as part of surveillance, often restrict the movements of petitioner, call him to the police station at all times, resort to detention on the guise of information on likely disturbance in the locality and is not allowed to move freely. According to learned counsel, these restrictions are unreasonable and not valid. Compelling public interest may require intrusion into privacy of a person, but while doing so, police are bound to apply great care and caution and should not unnecessarily intrude into the privacy of the petitioner. Surveillance should not be obtrusive. He should not be called to police station unless required for investigation into crime reported against him. Subject to above observations, the Writ Petition is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, shall stand closed.

P. NAVEEN RAO, J

Date:18.04.2019

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