

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.4978 OF 2019

Date: 09.04.2019

Between:

Md. Abdul Kareem @ Haji,
s/o. Md.Abdul Quadeer,
Aged 27 years, Occu:Business,
R/o.18-11-104, Barkas,
Chandrayangutta, Hyderabad.

.....Petitioner

and

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

.....Respondents



The Court made the following:

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ORDER:

Heard Sri Mohd.Muzafferullah Khan, learned counsel for petitioner and learned Government Pleader for Home.

2. Crime No.133 of 2009 was registered against petitioner in Chandrayangutta Police Station under Sections 148, 302 & 307 of IPC and Section 27(2) of Arms Act. Petitioner was accused no.1. On completion of investigation, charge-sheet was filed. The trial Court took cognizance of offence in Session Case No.472 of 2010 and committed for trial in the Court of I Additional Metropolitan Sessions Judge at Hyderabad. Learned Metropolitan Sessions Judge vide his judgment dated 18.02.2016 acquitted the petitioner. After registration of crime, on 10.07.2009 rowdy-sheet was opened in Chandrayangutta Police Station against the petitioner. Though petitioner was acquitted, the rowdy-sheet is continued. Aggrieved by the continuation of rowdy-sheet even after his acquittal, this Writ Petition is filed.

3. Learned counsel for petitioner would submit that there is no justification to open rowdy sheet merely because crime is reported, when the offence alleged does not concern breach of peace, disturbance to public order and security. Due to opening of rowdy-sheet and continuing, 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. *Per contra*, learned Government Pleader would submit that petitioner was involved serious crime at a young age. Thus, to

curb such unlawful activities, rowdy-sheet was validly opened. He would therefore justify opening of rowdy-sheet.

5. It is not in dispute that on registering Crime No.133 of 2009, rowdy-sheet was opened. Later, petitioner was acquitted of the charges levelled against him. Once he is acquitted of the charge, all that was alleged gets wiped out irrespective of what was alleged against him. Petitioner is not involved in any other crime.

6. In the light of the undisputed facts, the question for consideration is whether continuation of rowdy-sheet even after acquittal of petitioner is valid in law ?

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 in the Supreme Court of India, in

Mohammed Quadeer and others Vs. Commissioner of Police, Hyderabad and another¹ and **Sunkara Satyanarayana Vs State of Andhra Pradesh, Home Department and others²**. In both these decisions it is held that PSOs are non statutory executive instructions and have no binding force of law.

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.”

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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¹ 1999 (3) ALD 60

² 1999 (6) ALT 249

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) to (vii) xxxxxx

(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. 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 and continuing is not as a matter of course whenever crime is reported. Continuing rowdy-sheet against petitioner even after his acquittal 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.

10. Writ Petition is allowed. The decision to open rowdy-sheet against petitioner is held as illegal. Pending miscellaneous petitions shall stand closed.

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