

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.5404 OF 2019

Date:18.04.2019

Between:

Mohammed Azmathullah Khan,
S/o. Habeebullah Khan,
H.No.110, Karkhana near Masjid,
Suceunderabad, Hyderabad

.. Petitioner

And

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

.. Respondents



The Court made the following:

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ORDER:

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

2. Petitioner claims to be a businessman running an establishment in the name and style of M/s.GRILL 9 at Karkhana, Secunderabad. In this Writ Petition, petitioner alleges that illegally a rowdy sheet was opened against him and the same is affecting his right to life and liberty. Therefore, petitioner seeks a declaration against opening of rowdy sheet against him.

3. According to learned counsel for the petitioner, right to life, liberty and privacy are sacrosanct and guaranteed by Article 21 of the Constitution of India. Such right cannot be infringed without sanction of law. Merely on the ground that Crime No.111 of 2018 was registered against the petitioner, the respondent – police could not have opened rowdy sheet and on that ground harass and humiliate the petitioner infringing his right to life, liberty and privacy. According to learned counsel, on 19.02.2019, he was asked by respondent No.5 to be present in Amberpet Police Ground on 21.02.2019. On questioning the reason for such direction, petitioner was informed that due to Lok Sabha Elections, he was required for counseling as rowdy sheet is maintained. Petitioner attended on 20.02.2019 as directed at about 10:30 A.M. and he was made to wait till 1:00 P.M. and he was asked to come on the next day. Learned counsel for the petitioner therefore alleges that without any reason and without any justification, the Task Force

Police were making the petitioner to visit the police station everyday harassing and humiliating him. By such conduct his day to day activity is being adversely affected.

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 that ground harass the petitioner and ask him to visit the police station frequently. In support of his contention, learned counsel for the petitioner placed reliance on the decisions of this Court in **Md. Khadeer v. Commissioner of Police**¹ and **Govind v. State of Madhya Pradesh**².

5. According to learned Government Pleader for Home, petitioner was involved in several crimes and in paragraph No.4 of the counter affidavit, six crimes registered against the petitioner are listed. Since the petitioner is a frequent offender, rowdy sheet was opened against him. According to him, petitioner is an unlawful character, continuously indulging in commission of lawless acts involving in breach of public peace and tranquility and therefore his movements are required to be watched to curb and curtail the unlawful activities and therefore justifies opening of rowdy sheet.

6. The question for consideration is, whether opening of rowdy sheet against the petitioner is legal?

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.

¹ 1999 (3) ALD 60

² (1975) 2 SCC 148

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 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

³ 1999 (3) ALD 60

⁴ 1999 (6) ALT 249

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.”

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?

....

....

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.

....

....

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 sheeters/rowdy sheeters 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 warranting 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. The Andhra Pradesh Police Manual deals with various aspects of functioning of police personnel which includes registration of crimes, investigation, conducting of trial and it just requires to be taken for conducting of trial and includes opening of rowdy sheets. PSO 601 deals with opening of rowdy sheet.

According to Clause A thereof, a person who habitually commits, attempts to commit or abet the commission of offences involving breach of peace, disturbance to public order and security, a rowdy sheet can be opened against such a person 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.

10. The averments in the counter affidavit would disclose that six crimes were registered against the petitioner. It is seen from paragraph No.4 of the counter affidavit, Crime No.9 of 2007, Crime No.188 of 2007 and Crime No.82 of 2008 ended in compromise. Petitioner was accused in C.C.No.1008 of 2015 and C.C.No.755 of 2018, but was acquitted of the charges leveled against him. C.C.No.5245 of 2018 is pending trial in the XI Additional Chief Metropolitan Magistrate, Secunderabad. In Crime No.144 of 2018, he was bound over for his good behaviour. It is thus seen that three crimes were earlier to 2009 and were closed long ago. In two other criminal cases, he was acquitted. Leaving these five cases aside, petitioner is facing trial in one case and in another crime, he was bound over for good behaviour. From the allegations leveled in Crime No.111 of 2018, it is seen that two constables were on duty observing the Election Campaign going on 21.10.2018. They were sitting on two wheeler vehicle. At that time, petitioner came on another two wheeler and dashed the complainant with his two wheeler, due to which he was about to fall on the road. The complainant alleged that petitioner used filthy language and objected to the presence of the complainant in that area and

threatened him that he would see his end. As of now, only one criminal case is pending against the petitioner.

11. 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 6 crimes, was bound over in one case and is facing trial in one case. It appears police were apprehending illegal activities during general elections.

12. Now that general elections are over and having regard to this peculiar facts, the Deputy Commissioner of Police, North Zone, Court Complex, Secunderabad, the 3rd respondent herein, is directed to review the desirability of further continuation of rowdy sheet against the petitioner and to take decision as warranted by law and communicate the decision to the petitioner by assigning due reasons in support of his decision within a period of three weeks from the date of receipt of a copy of the order.

13. The Writ Petition is accordingly disposed of. There shall be no order as to costs. Miscellaneous petitions, if any, shall stand closed.

P. NAVEEN RAO, J

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