

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.18017 OF 2020

Date: 15.12.2020

Between:

Karthik Pansari s/o. Om Narayan Pansari,
Aged about 25 years, occu: Private Employee,
R/o. H.No.4-4-228, Panbazar, Lala Temple Street,
Secunderabad, T.S.

.....Petitioner

And

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

.....Respondents



The Court made the following:

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ORDER:

Heard Mr. C.H.Jayakrishna, learned counsel for petitioner and the Assistant Government Pleader for Home for the respondents.

2. Petitioner assails the decision of the respondent-Police in opening rowdy-sheet and continuing the rowdy-sheet against him. According to petitioner, he is not a known offender and not habitually involved in crimes, whereas surveillance is placed on him offending his right to life, liberty and privacy. It is his case that mere involvement in one or two crimes is not a ground to resort to open a rowdy- sheet.

3. In the counter-affidavit, deposed by the Deputy Commissioner of Police, North Zone, Secunderabad, it is stated that petitioner is involved in two crimes. Crime No.137 of 2019 was registered under Sections 353 and 290 of IPC in Mahankali Police Station, Secunderabad on 21.07.2019. After conducting investigation, final report was filed. The Magistrate took cognizance of the crime and assigned C.C.No.2815 of 2019 and petitioner is facing trial in the Court of XI Additional Chief Metropolitan Magistrate at Secunderabad. Petitioner was also involved in another Crime No.30 of 2020 and bind over order for good behavior was passed against him on 12.02.2020.

4. In other words, the reason assigned for opening rowdy-sheet against the petitioner is on account of his involvement in two crimes.

5. It is not the case of the respondent-Police that petitioner is in the habit of involving in crimes or attempting to commit crime or abetting committing crimes warranting opening of a rowdy-sheet. Rowdy-sheet is opened only to observe the movements of the individual and surveillance is kept to ensure that he does not indulge in further crimes.

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 analyzed and dealt with extensively by two learned Judges of this Court 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.

¹ 1999 (3) ALD 60

² 1999 (6) ALT 249

8. In **Mohammed Quadeer and others** (supra), it is held:

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)

8.1. In paragraph 49 of **Sunkara Satyanarayana** (supra), learned single Judge culled out principles on police surveillance against history/rowdy sheeters. To the extent relevant, they read 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:

.....

(iii) If police surveillance is in accordance with executive/departamental 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,

.....

(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 warrange surveillance under the relevant regulations, however broadly and in whatever language the regulation might have been couched,

.....

(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)

9. 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-601³ deals with opening of rowdy sheet. According to Clause-A⁴ 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 can be opened to closely observe his movements and activities. According to Clause-B⁵ thereof, the persons who are bound over should be classified as rowdies and rowdy sheets can be opened and continued.

10. Reading of extracted provision of PSO-601-A, makes it clear that to open and continue rowdy sheet emphasis is on habitually committing offence involving breach of peace, disturbance to public order and security. Merely, making orders binding over for good conduct cannot *per se* result in opening rowdy-sheet unless Police have other inputs suspecting the possibility of involvement in further crimes. It cannot be a matter of routine process. Mere involvement in two offences cannot qualify petitioner as habitual offender. As held by this Court in W.P.No.19194 of 2012, dated 24.08.2015 to consider opening a rowdy-sheet, the person must have been involved in more than two offences.

11. Having regard to the facts noticed above, the decision of the respondent-Police in opening rowdy-sheet and continuing the rowdy-sheet against petitioner is not sustainable and it is

³ “**Order 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.

⁴ ‘**Clause-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.”

⁵ ‘**Clause-B.** Persons bound over under Sections 106, 107, 108(1)(i) and 110(e) (g) of Cr.P.C.

accordingly declared as illegal and the Writ Petition is allowed. The respondent-Police are directed to close the rowdy-sheet against the petitioner forthwith. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

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