

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.18364 OF 2020

Date: 03.12.2020

Between:

M.Laxman, s/o. late Adavaiah,
Aged about 51 years, occu: Business,
R/o. 1-7-171/1, ECIL, Khapra,
Keesara Tehsil, Medhcal Malkajgiri district.

..... Petitioner

And

The State of Telangana, rep.by its Prl.Secretary,
Home Department, Secretariat, Tank Bund,
Hyderabad and another.

..... Respondents



This Court made the following:

HON'BLE SRI JUSTICE P.NAVEEN RAO**WRIT PETITION NO.18364 OF 2020****ORDER:**

Heard learned counsel for petitioner and learned Assistant Government Pleader for Home.

2. The facts as averred in the affidavit filed in support of the writ petition disclose that the petitioner claims to be the permanent resident of Kushaiguda, Kapra village and running cloth shop near Kushaiguda Bus Stop. Mr. Kasula Nandam is the protected tenant and in possession of land to an extent Acs.6.32 guntas in Sy.No.170 of Kapra village, having obtained occupancy rights certificate in the year 1979. Said Kasuma Nandam appointed the petitioner as General Power of Attorney holder to look after the said property. According to the petitioner, there are several bogus claimants over the said land based on fabricated documents. Earlier rival claim was made by M/s. Bhavana Rishi Welfare Association. They instituted O.S.No.1013/2002 in the Court of III Additional Senior Civil Judge (FTC), Ranga Reddy. The suit was dismissed by judgment and decree dated 15.12.2010 upholding the claim of petitioner's principal. A.S.No.194 of 2011 filed by the said association is pending consideration of this Court. Petitioner alleges that person, who is making false claim on the above extent of land, lodged several complaints against him over a period of time. In all the complaints, which are registered against the petitioner and facing prosecution, pertain to very same land. On the ground of registration of crimes, and pending trial before the criminal Courts, rowdy sheet is opened and in the guise of opening of rowdy sheet, respondent-Police are keeping close

surveillance on the movements of the petitioner, affecting his right, liberty and privacy. Petitioner assails the said decision of the respondent-Police in opening the rowdy sheet.

3. According to the learned counsel for petitioner, all the crimes registered against the petitioner pertain to the land disputes and they are all false claims generated by rival claimants to knock away the property. The rowdy sheet is opened at the instance of rival claimants only to harass and humiliate him. There is no application of mind by the Police before opening the rowdy sheet and their action in opening rowdy sheet amounts to abuse of process of law. Merely because certain crimes are registered, which mostly relate to the allegation of criminal trespass by the rival claimants, petitioner cannot be classified as habitual offender necessitating opening of rowdy sheet. In support of his contention, learned counsel for petitioner placed reliance on the decision of the Division Bench of this Court in **Puttagunta Pasi vs. Commissioner of Police and others**¹.

4. From the averments in the counter-affidavit filed by the 2nd respondent, it is seen that so far seven crimes are registered against the petitioner since the year 2017. Out of this, in five crimes, he is facing trial and two crimes are pending at the stage of collection of evidence.

5. In view of the registration of said crimes, on 07.10.2020 rowdy sheet was opened in Kushaiguda Police Station. According to the respondent-Police, there is ample evidence adduced during the course of investigation alleging that petitioner is grabbing

¹ 1998 (3) ALT 55

private and Government lands by way of illegal means, that due to fear of the petitioner, no one is coming forward to lodge fresh complaint. Thus, in view of the public interest and to safeguard the residents of the area, where petitioner is residing, and to curb his unlawful activities, rowdy sheet is opened. In support of their decision to open rowdy sheet reliance is placed on Police Standing Order 601.

6. Supporting the averments in the counter-affidavit and the decision to open rowdy sheet, learned Assistant Government Pleader submitted that unless a close monitoring is undertaken against the petitioner, there is every possibility of committing more crimes. He would submit that the crimes registered under various provisions of IPC reflect criminal mind of petitioner. Even though crimes relate to landed property, the nature of crimes registered against the petitioner and that he is facing trial would show that petitioner is in the habit of committing offences, causing disturbance to the public and security of the public.

7. The issue for consideration is whether the Police are justified in opening the rowdy sheet against the petitioner ?

8. Enforcement of law and order is most important State function. To enforce law and order State formed Police Force. Enforcement of law and order includes taking all preventive measures to ensure that no untoward incident happens and peace and tranquility is not affected. To prevent breach of peace and tranquility, it is permissible for the police to take all measures possible.

9. There are several persons who are known to be frequently involving in crimes. Such involvement can be on various aspects. Because of frequent involvement in crimes, they pose threat to life, liberty and freedom of others and a greater challenge on police to control such persons. In order to prevent such person indulging in crimes, police may resort to keep a watch on him; in other words, to keep surveillance on him; to closely monitor his day today activities and his movements. No statutory provision prescribes such surveillance. Police Standing Orders are notified in exercise of executive power which deal with various aspects of functioning of the Police Officer. These standing orders also deal with keeping surveillance on known criminals. For the purpose of keeping surveillance, Police Standing Order 601 enables opening a Rowdy Sheet in the concerned police station. After opening of rowdy sheet, close surveillance is enforced on the concerned person.

10. Opening of Rowdy Sheet and thereon keeping close surveillance on the person would certainly infringe upon right to life, liberty and privacy of the individual concerned. Right to life, liberty and privacy flows out of Article 21 of the Constitution of India. Right to life and liberty are sacrosanct to any person. A person is entitled to lead his life with dignity and self respect and does not want an outsider to intrude in his private affairs and to probe into his movements. Thus, there are two competing interests on preventive measures. On the one side is right guaranteed by Article 21 of the Constitution of India, which is sacrosanct and on the other side is the primacy of enforcement of law and order, maintenance of peace and tranquility, which is the primary

responsibility of the State through its police force. Compelling public interest may require intrusion into privacy of a person.

11. Having regard to the mandate of Article 21 of the Constitution of India, when a rowdy sheet is opened, it is the bounden duty of the police to take due care and caution and resort to opening of rowdy sheet can be only in extraordinary circumstances where such recourse is imminent to enforce peace and tranquility in the locality and to prevent happening of untoward incident. When a citizen comes to the High Court alleging infringement of his right to life, liberty and privacy by opening a rowdy sheet, the Court can look into whether the decision of the police to have a surveillance on the petitioner is justified and supported by the material on record or it was initiated only to harass and humiliate the individual. It is to be noted that mere involvement in a crime may not *per se* require surveillance on that person.

12. In **Mohammed Quadeer and others Vs. Commissioner of Police, Hyderabad and others**², learned single Judge of this Court observed as under:

“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.

² 1999 (3) ALD 60

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.'

13. Learned single Judge of this Court in **Sunkara Satyanarayana Vs State of Andhra Pradesh, Home Department and others**³, held as under:

"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?

.....

"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

³ 1999 (6) ALT 249

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 sheeter/rowdy sheeter 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)

14. 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**⁴. It was a case of preventive detention,

⁴ AIR 1984 SC 1334

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-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.

15. Having regard to the principles governing opening of Rowdy Sheet vis-à-vis right to life and liberty, it is necessary to considered whether by opening rowdy sheet against petitioner, respondent police have violated the mandate of Article 21 of the Constitution of India and whether their decision is supported by reasons warranting requirement to open rowdy sheet.

16. As per the proceedings impugned in the writ petition, it is seen that 7 crimes were registered against the petitioner. In 5 crimes, he is facing trial. The crimes involved include Sections 447 IPC (criminal trespass); 427 IPC (Mischief); 506 IPC (criminal intimidation); 420 IPC (cheating and dishonestly inducing delivery of property); 468 IPC (forgery for purpose of cheating); 471 IPC (using as genuine a forged document); 452 IPC (House trespass after preparation for hurt, assault or wrongful restraint); 120-B IPC (criminal conspiracy) and 34 IPC (Act done by several persons in

furtherance of common intention). This would show that petitioner is in the habit of involving in crimes, disturbing peace and tranquility.

17. The Police Standing Order 601 reads as under:

“PSO 601: The following persons may be classified as rowdies and Rowdy Sheets (Form 80) may be opened for them under the orders of the SP/DCP and ACP/SDPO:

- A. Persons who **habitually** commit, attempt to commit or abet the commission of, offence involving a breach of the peace, disturbance to public order and security.
- B. Persons bound over under Sections 106, 107, 108 (1) (i) and 110 (e) and (g) of Cr.P.C.
- C. Persons who have been convicted more than once in two consecutive years under Sections 59 and 70 of the Hyderabad City Police Act or under Section 3, Clause 12 of A.P. Towns Nuisances Act.
- D. Persons who habitually tease woman and girls and pass indecent remarks.
- E. Rowdy sheets for the rowdies residing in one Police Station area but found frequenting the other PSs area, can be maintained at all such Police Stations.
- F. Persons who intimidate by threats or use of physical violence or other unlawful means to part with movable or immovable properties or in the habit of collecting money by extortion from shopkeepers, traders and other residents.
- G. Persons who incite and instigate communal/caste or political riots.
- H. Persons detained under the “A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1966” for a period of 6 months or more.
- I. Persons who are convicted for offences under the Representatives of the Peoples’ Act for rigging and carrying away ballot papers, Boxes and other polling material.

18. Police Standing Order 601-A has wide amplitude and encompasses various aspects of crime. Having regard to the crimes registered against the petitioner and that he is facing trial in five cases, it cannot be said that action of the Police in opening rowdy sheet amounts to abuse or misuse of power and authority, and cannot be said as one made in illegal exercise of power and without application of mind. It is permissible to the Police to open a rowdy sheet if Police are of the view that petitioner is habitually committing offences/abutting commission of offence involving

breach of peace, disturbance to the public order and security. Thus, there is no merit in the writ petition and is accordingly dismissed. However, it is made clear that while keeping surveillance, Police shall ensure that it is minimal, not obtrusive and not to impinge upon his privacy. Pending miscellaneous petitions, if any, stand closed.

JUSTICE P.NAVEEN RAO

Date: 03.12.2020
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