

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION No.2432 of 2019

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking the following relief:

“to issue an appropriate Writ, Order or Direction more particularly one in the nature of Writ of Mandamus declaring the C.No.01/HS/ACP-H/2018 dated 12.01.2018 of the 1st respondent in according permission to open Rowdy Sheet and consequential Rowdy Sheet No.3/2018 on the file of Malkapuram Police Station, Visakhapatnam District against the petitioner and obtaining Photos, Aadhaar Card and finger prints forcibly as illegal, void, without jurisdiction, violative of Article 21 of the Constitution of India and also Police Standing Order 601 of A.P.Police Manual Standing Orders, and also declare that the petitioner is entitled for the damages on account of loss of reputation being caused by opening Rowdy sheet against him”

The petitioner is a resident of Visakhapatnam and he worked at different countries like Singapore and Malaysia. He performed his elder sister's marriage in the year 1985, after marriage she left to Malaysia along with her husband, who is a citizen of Malaysia. Later, the petitioner shifted his family to Singapore in connection with employment during the year 1987, worked there till 1991 and came back to Visakhapatnam, constructed two storied building behind the old tiled house with his own earnings. In the year 1992, he performed the marriage of his younger sister with the brother of his elder sister's husband; she also left to Malaysia and they are living with their families since then and they are Malaysian Citizens.

The petitioner got married in the year 1995 and blessed with two daughters viz. Ch.Pujitha and Ch.Navya. Due to convenience of his business, he is residing at Muralinagar in a rented house with his family, and his mother used to reside in their own house at

Sriharipuram, which is in her name and she let out a portion of the building and regularly visits his house, used to stay with the petitioner. While the matters stood thus, his mother out of natural love and affection voluntarily executed a Gift Settlement deed in favour of his elder daughter namely Ch.Pujitha on 20.03.2012 and the same was registered before the Sub-Registrar, Gajuwaka, Visakhapatnam vide document No.967/2012. The property tax is being paid in the name of Ch.Pujitha with tax assessment No.76605 and electricity consumption charges were also paid in the name of Ch.Pujitha.

The elder sister of the petitioner having come to know about the gift settlement deed executed by his mother on 20.03.2012 in favour of his daughter, she had taken his mother to Malaysia, thereafter managed to get cancelled the gift settlement deed dated 20.03.2012 by executing another document No.1825 of 2014 dated 23.04.2014 and on the same day got executed another gift settlement deed in her favour vide document No.1826 of 2014 by playing fraud and coercing her mother. After getting gift deed, elder sister of the petitioner managed to get Aadhar Card No.548512893847 to show that she is residing at Visakhapatnam though she is a Malaysian Citizen. On coming to know about the same, the petitioner filed suit O.S.No.20 of 2016 on the file of XIII Additional District Judge, Visakhapatnam through her elder minor daughter to declare the document No.1825 of 2014 as null and void, consequently cancel the gift settlement deed No.1826 of 2014 dated 23.04.2014 as unenforceable and for permanent injunction against his elder sister and his mother.

While the matters stood thus, his mother became sick and admitted in the hospital. While his mother was undergoing treatment, his both sisters along with their family members visited NRI Hospital, Visakhapatnam and his mother died on 26.09.2016 while undergoing treatment in the hospital. Before cremation of dead body of the mother of the petitioner, his elder sister started quarrelling and asked his family not to enter into the house as it is her property by virtue of gift settlement deed dated 23.04.2014, which is the subject matter of O.S.No.20 of 2016, and lodged a false complaint before the Malkapuram Police Station on 26.09.2016 for the offence punishable under Section 448, 509, 506 read with 34 of I.P.C., and the same was registered as a case in Crime No.217 of 2016, after investigation police filed charge sheet in the said crime and the same was numbered as C.C.No.1133 of 2016 on the file of I Additional Chief Metropolitan Magistrate, Visakhapatnam.

The daughter of the petitioner also filed another complaint on 29.07.2017 against his elder sister for the offence punishable under Section 454 and 380 of I.P.C. and the same was registered as a case in Crime No.143 of 2017, but the same was referred as false. Elder sister of the petitioner filed another complaint on 13.11.2017 for the offence punishable under Section 324, 448, 506 read with 34 of I.P.C. and the same was registered as a case in Crime No.203 of 2017. After completion of the investigation, police filed charge sheet and the same was numbered as C.C.No.661 of 2017, which is pending on the file of III Additional Chief Metropolitan Magistrate, Gajuwaka, Visakhapatnam. On the same day, elder daughter of the petitioner filed another complaint against his elder sister for the

offence punishable under Section 324 of I.P.C. The said complaint was registered as a case in Crime No.204 of 2017, but the said compliant was referred as false after investigation, allegedly, at the influence of his sister. The elder sister of the petitioner, who grabbed house property, managed the Sub-Inspector of Police, Malkapuram, got registered a case suo moto in Crime No.205 of 2017 for the offence punishable under Section 145 of Cr.P.C. before the Mandal Executive Magistrate, Visakhapatnam Urban. Thus, two crimes and proceedings under Section 145 of Cr.P.C. are pending against the petitioner. On the basis of filing charge sheets for various offences, the Sub-Inspector of Police addressed a letter, obtained permission from the Sub-Divisional Police Officer to open a rowdy sheet against the petitioner in terms of Standing Order 601 of A.P. Police Manual. Taking advantage of the rowdy sheet opened against the petitioner, the police are causing much harassment to the petitioner infringing his fundamental right guaranteed under Article 21 of the Constitution of India. The petitioner never involved in any criminal case causing disturbance to peace. Hence, the act of the respondents in opening rowdy sheet against the petitioner is illegal and arbitrary.

Respondent No.1 filed counter denying all the material allegations while admitting about opening of rowdy sheet against the petitioner. It is further contended that the petitioner is involved in the following criminal cases registered on the file of Malkapuram Police Station, Visakhapatnam city.

- (1) Crime No.217 of 2016 registered for the offence punishable under Sections 448, 506 and 509 read with 34 of I.P.C. and the same is pending trial vide C.C.No.1133 of 2016.

(2) Crime No.203 of 2017 registered for the offence punishable under Sections 324, 448 and 506 read with 34 of I.P.C. and the same is pending trial vide C.C.No.661 of 2017

(3) Crime No.205 of 2017 registered for the offence punishable under Section 145 of Cr.P.C., and the same is pending before the Mandal Executive Magistrate, Visakhapatnam Urban.

It is further contended that in view of the involvement of the petitioner in the above criminal cases, to curb and curtail his unlawful activities, the then Assistant Commissioner of Police, Harbor Sub-Division, Visakhapatnam vide proceedings dated 12.01.2018 opened a rowdy sheet against the petitioner. At present, the petitioner is facing trial in the above criminal cases, when the petitioner is facing criminal proceedings in the above said cases, it is not just and proper to close the rowdy sheet, requested to dismiss the writ petition.

Sri G.Seena Kumar, learned counsel for the petitioner, while reiterating the contentions urged in the petition, contended that the respondents mechanically accorded permission to open rowdy sheet against the petitioner, when such order was passed mechanically, the same is against the principles of natural justice and violative of Article 21 of the Constitution of India, requested to issue a direction to the respondents to close the rowdy sheet opened against the petitioner.

Learned Assistant Government Pleader for Home contended that, if, for any reason, the rowdy sheet is closed when the petitioner is facing trial in the cases, there is every possibility of petitioner may

tamper the record and win over the witnesses. Therefore, the truth or otherwise in the allegations can be decided after full-fledged trial in the above cases and therefore, the same cannot be declared as illegal, requested to dismiss the writ petition.

Considering rival contentions, perusing the material available on record, the points that arose for consideration are:

1. ***Whether opening of rowdy sheet against the petitioner is in accordance with Standing Order 601 of A.P.Police Manual? If not, whether the respondents are directed to close the rowdy sheet opened against the petitioner?***
2. ***Whether calling the petitioner to the police station and subjecting him to harassment frequently, amounts to infringement of fundamental right guaranteed under Article 21 of the Constitution of India?***

P O I N T No.1:

Admittedly, two crimes are registered against the petitioner and charge sheets are filed as stated above, and the said cases are pending for trial. C.C.No.1133 of 2016 is registered for the offence punishable under Section 448, 506 and 509 read with 34 of I.P.C. and C.C.No.661 of 2017 is registered for the offence punishable under Section 324, 448 and 506 read with 34 of I.P.C. and proceedings under Section 145 of Cr.P.C. are pending before Mandal Executive Magistrate, Visakhapatnam, which is subject matter of Crime No.205 of 2017.

A rowdy sheet may be opened in accordance with Standing Order No.601 of the Andhra Pradesh Police Manual, Standing Order No.601 reads as follows:

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

1. 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.

2.. Persons bound over under Sections 106, 107, 108 (1) (i) and 110 (e) and (g) of Cr.P.C.

3. 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 the A.P. Towns Nuisances Act.

4. Persons who habitually tease woman and girls and pass indecent remarks including offences under Sections 354-A, B, C and 354-D of I.P.C..

5. Persons who have been charge sheeted under the offence of rape. (Section 376, 376-A,C,D,E of I.P.C.)

6. Persons who have been charge sheeted under the offences of PCSO act, 2012 and Acid Attacks.

7. Rowdy Sheets for the rowdies residing in one Police Station area but found frequenting the other Police Stations area, can be maintained at all such Police Stations.

8. 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 including “loan sharks”.

9. Persons who incite and instigate communal/caste or political riots.

10. Persons detained under the AP 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.

11. Persons on whom charge sheets filed under the offence of assault on public servants, under Arms Act and such offences punishable with imprisonment of 2 years or more

12. Persons on whom charge sheets filed under the offence of murder and attempt to murder.

13. Persons on whom charge sheets filed under the offence of chain snatching.

14. Persons who are convicted for offences under the Representatives of the Peoples Act, 1951, for rigging and carrying away ballot papers, Boxes and other polling material.”

Filing of charge sheets against the petitioner for the offences punishable under Sections 448, 506 and 509 read with 34 of I.P.C. and under Sections 324, 448 and 506 read with 34 of I.P.C. would not attract any of the clauses contained in Standing Order 601 of A.P.Police Manual, at best clause No.12 enables the police to open rowdy sheet when a charge sheets filed for the offence punishable under Section 302 and 307 of I.P.C. But no charge sheet is filed for the offence punishable under Section 302 and 307 of I.P.C. Therefore, opening of rowdy sheet basing on C.C.No.1133 of 2016 and C.C.No.661 of 2017 pending on the file of jurisdictional Magistrate is an illegality.

The main contention of respondents is that rowdy sheet is opened against the petitioner invoking clause No.8 of Standing Order 601 of A.P.Police Manual, which reads as follows:

“8. 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 including “loan sharks”.”

Taking advantage of the said clause, learned Assistant Government Pleader for Home contended that opening of rowdy sheet is justifiable.

No doubt, when there is criminal intimidation by threat or use of physical violence or other unlawful means to part with immovable or movable property, the same is a ground to open rowdy sheet. The second part of clause No.8 of Standing Order 601 of A.P.Police Manual has no application to the present facts of the case.

Here, in the present case a civil suit is pending with regard to immovable house property between the daughter of the petitioner and his sister even prior to registration of crimes against the petitioner. It is evident from the record, police without considering the pendency of Civil Suit, filed charge sheets for the offences punishable under Sections 324, 448, 506 and 509 read with 34 of I.P.C. and they are pending before the competent Court.

If really, filing of charge sheets for the offences punishable under Sections 324, 448, 506 and 509 read with 34 of I.P.C. is a ground to open the rowdy sheet, those sections ought to have been included in the Standing Order 601 itself, but a blanket clause is included in the Standing Order 601 of A.P. Police Manual, which is inclusive of offence punishable under Section 506 of I.P.C. i.e. criminal intimidation as defined under Section 503 of I.P.C. coupled with Section 448 of I.P.C. Therefore, opening of rowdy sheet on account of alleged acts of the petitioner falls within first part of clause No.8 of Standing Order 601 of A.P. Police Manual. Therefore, the respondents cannot be directed to close the rowdy sheet opened against the petitioner. Accordingly, the point is answered against the petitioner and in favour of the respondents.

P O I N T No.2:

The purpose of opening rowdy sheet against the petitioner is only to watch his movements so as to prevent commission of further offences. No provision in the Standing Order 601 of A.P. Police Manual or Code of Criminal Procedure permits the police to call the petitioner to the police station and harass him on the ground of opening of rowdy sheet. At best, police are entitled to watch his

movements with the machinery available with them, but they cannot compel the petitioner to appear before the police frequently. Therefore, restricting the movements of the petitioner and calling him to the police station frequently is nothing but infringement of fundamental right to life and liberty guaranteed under Article 21 of the Constitution of India. The contention of the learned counsel for the petitioner that calling the petitioner to the police station frequently restricting his movements is nothing but infringement of fundamental right of life and liberty guaranteed under Article 21 of the Constitution of India is accepted. Accordingly, the point is answered in favour of the petitioner and against the respondents.

In the result, the writ petition is dismissed while directing the respondents – police not to call the petitioner to the police station frequently and restrict his movements. However, the respondents – police are permitted to keep their watch on the movements of the petitioner outside his residential premises with the machinery available with them. The petitioner is at liberty to submit representation to the concerned authority for closure of rowdy sheet opened against him. No costs.

Consequently, miscellaneous applications pending if any, shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

10.09.2020
Ksp