

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI
(SPECIAL ORIGINAL JURISDICTION)

MONDAY, THE TWELFTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY TWO

:PRESENT:

THE HONOURABLE SRI JUSTICE SRI C.PRAVEEN KUMAR
AND
THE HONOURABLE SRI JUSTICE B.SYAMSUNDER



I.A.No.1 OF 2022
IN
WRIT APPEAL NO: 674 OF 2022

Writ Appeal under Clause 15 of the Letters Patent, filed against the order made in
WP.No.3568 of 2022, dated 15.07.2022, on the file of the High Court

Between:

1. The State of Andhra Pradesh, Rep by its Principal Secretary, Home Department, Secretariat, Velagapudi, Amaravathi.
2. The Superintendent of Police, Prakasam District Ongole
3. The Sub Divisional Police Officer, Darsi Prakasam District
4. The Circle Inspector of Police, Addanki Prakasam District
5. The Station House Officer, Addanki Police Station, Prakasam District.

Appellant/Respondents in W.P.

AND

Udathu Suresh, S/o Anjaneyulu Hindu aged about 43 years, R/o Addanki town,
Prakasam District.

Petition in Writ Petition

Petition under Section 151 of CPC is filed praying that in the circumstances stated in the affidavit and memorandum of grounds filed in WA, the High Court may be pleased to suspend the common order Dt.15.07.2022 In W.P.No.3568 of 2022 along with batch of writ petitions, pending disposal of the W.A.No.674 of 2022 on the file of the High Court.

The Petition coming on for hearing, upon perusing the Appeal and the memorandum of grounds filed in W.A., and upon hearing the arguments learned GP for Home for Appellants and Sri K.Raja Reddy, Counsel for Respondent the Court made the following.

ORDER:

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE SRI JUSTICE B. SYAMSUNDER

I.A. NO. 1 OF 2022

IN

WRIT APPEAL NO. 674 of 2022

ORDER: (*Per Hon'ble Sri Justice C. Praveen Kumar*)

1. Heard learned Government Pleader for Home, appearing for the Appellants, and Sri. Koneti Raja Reddy, learned Counsel appearing for the Respondents.

2. In this batch of Writ Petitions, a learned Single Judge of this Court while declaring Chapter 37 of A.P. Standing Orders as void, directed closure of rowdy sheets in the entire State of A.P. and also gave certain directions to the Police with regard to the acts of Police in performing their duties against the suspects/accused, which are as under:

"45) Hence, the Writ Petition No.3568 of 2022 is allowed declaring the Standing Orders of A.P. Police Manual / A.P. Police Standing Orders to the extent of opening/continuation of Rowdy Sheet, Suspect Sheet, History Sheet etc., and on that basis the surveillance of the individual (in terms of Chapter 37 of the above said Standing Orders) as void. All the other Writ Petitions are also allowed. All the rowdy sheets opened in this batch of Writ Petitions are directed to be closed immediately. The

*police cannot open or continue a rowdy sheet or collect data pertaining to a person without the sanction of "law". Collection of personal data and its usage for prevention of crimes also can only be in accordance with a "law" which crosses the thresholds mentioned in the Constitution of India and the various judgments including **K.S.Puttaswamy** case (2 supra) since 'privacy' is now a Fundamental Right as per Part-III of the Constitution of India. It is reiterated that the police cannot (under the existing orders) indulge in night visits; domiciliary visits to the houses of a suspect or accused. They cannot take or demand the photographs, fingerprints etc., except under the procedure established by a 'law' and if the conditions laid down are satisfied. Accused or suspects cannot be summoned or called to the Police Station or anywhere else either during festivals / elections/ weekends etc. They cannot be made to wait at the Police Stations for any reason or seek permission to leave the local jurisdiction."*

3. (i) Learned Government Pleader for Home, mainly submits that, the learned Single Judge erred in embarking upon the validity of Chapter 33 of A.P. Police Standing Orders in-stead of deciding the violations on case-to-case basis. He further submits that, these Standing Orders, which are issued, have statutory force, which is evident from the Police Act. According to him, the restrictions imposed on the right of the individual are reasonable restrictions and the same are not in violation of fundamental rights.

(ii) The learned Government Pleader mainly submitted that, the ratio laid down in ***K.S. Puttaswamy V Union of India***¹, wherein, 'right to privacy' was declared as 'fundamental right', cannot be made applicable to opening of rowdy sheets and history sheets. In other words, his argument appears to be that, both the cases run parallel to each other. It is urged that, the Order of the learned Single Judge is implemented in toto, it would be difficult for the Police to proceed with investigation in sensitive cases, as most of the cases are now based on the material collected by interrogating the suspects. He also relies upon the judgment of the combined High Court of Andhra Pradesh in ***Sunkara Satyanarayana V. State of Andhra Pradesh, Home Department and Ors.***², to contend that, the Police Standing Orders are clothed with statutory power. Hence, seeks to suspend the order impugned.

4. Sri. Koneti Raja Reddy, learned Counsel appearing for the Writ Petitioners/Respondents, mainly submits that, when the learned Single Judge has held the Police Standing Orders has no force of law and in view of the Judgment of the Hon'ble Supreme Court in ***K.S. Puttaswamy's*** [cited 1st supra], wherein, right to privacy was declared as Fundamental Right, the Court cannot

¹ (2017) 10 SCC 1

² 1999 (6) ALT 240

suspend the order. In other words, his argument appears to be that, when fundamental rights are held to be infringed, question of suspending the said Order would not arise. He took us through the judgments of the Hon'ble Supreme Court to establish that these rowdy sheets have no force of law and, there cannot be any surveillance invading the privacy of Writ Petitioners, more so, by summoning them to Police Station, making them wait for hours together and, thereafter, torturing them under the guise of investigation. Hence, pleads that I.A. may be dismissed.

5. The issue that arises for consideration is, *whether a prima facie case to suspend the Common Order, dated 15.07.2022, passed in W.P. No. 3568 of 2022, is made out by the Appellants?*

6. In order to appreciate the rival contentions, it would be appropriate for us to trace the origin of the Police Standing Orders based on the material available with us at this stage.

7. Under Section 9 of Madras District Police Act, the Inspector General of Police, as Head of Police force, issued number of Standing Orders, which were mainly guidelines for day to day administration and functioning of Police force. The Madras District Police Act (Act 24 of 1859), which was later adopted by the State of Andhra Pradesh, as Andhra Adaptation Order, 1953, after

the formation of State came to be known as A.P. (Andhra Area) District Police Act, 1859. It is also to be noted here that, a separate Act was then framed even for Telangana Area as well. From the above, it is *prima facie* clear that, all the Police Standing Orders that were issued till 1954 by the Inspector General of Police for the State of Madras were adopted in toto by the Andhra Pradesh State.

8. The Andhra Pradesh (Andhra Area) District Police Act, 1859, [**Act**], was enacted for better regulation of police force within the Andhra Area of the State of Andhra Pradesh. The Preamble of the Act states that, it is expedient to make the police force throughout the Andhra area of the State of Andhra Pradesh, a more efficient instrument for prevention and detection of crime and to re-organize the Police-force. At this stage, it would be appropriate to refer to Section 9 and 21 of the said Act, which are as under:

9. Director General to control force and make rules: -

The Director General may, from time to time, subject to the approval of the State Government, frame such orders and regulations as he shall deem expedient, relative to the general government and distribution of the force, the places of residence, the classification, rank and particular service of the members thereof: their inspection the description of arms accoutrements and other necessities to be furnished to them; to the collecting and communicating intelligence and information; and all such other orders and regulations

relative to the said Police-force as the said Director General shall, from time to time, deem expedient for preventing abuse or neglect, and for rendering such force efficient in the discharge of all its duties.

21. Duties of Police-Officers: -

Every police officer shall, for all purposes in the Act contained, be considered to be always on duty and shall have the powers of a Police Officer in every part of the General Police District. It shall be his duty to use his best endeavours ability to prevent all crimes, offences and public nuisances; to preserve the peace; to apprehend disorderly and suspicious characters; to detect and bring offenders to justice; to collect and communicate intelligence affecting the Public peace; and promptly to obey and execute all orders and warrants lawfully issued to him.

9. *Prima facie*, Section 21 of A.P. (Andhra Area) District Police Act, 1859, is in *pari materia* with Section 23 of the Police Act, 1861. Both Sections clearly discuss the duties of police officer, namely, that it shall be their duty to collect and communicate intelligence, to prevent commission of offences, to detect and bring offenders to justice and, to apprehend the person whom the police are legally authorized to do. It also clearly states that, it is the duty of police to maintain order, preserve the peace and prevent crimes.

10. Section 9 of Act, is in *pari materia* with Section 12 of the Police Act, 1861, where Director General/ Inspector General were conferred with powers to frame such orders and rules, from time to time, for rendering such force efficient in discharge of its duties.

11. Now, it is to be seen whether these Standing Orders have statutory force.

12. In ***Sunkara Satyanarayana*** [cited 2nd supra], a learned Single Judge of the combined High Court has specifically framed a issue, namely, “as to whether the Police Standing Orders have any statutory force”. Considering the judgment of the Hon’ble Supreme Court in ***State of Andhra Pradesh V. N. Venugopal***³, and the other judgments of the Hon’ble Supreme Court, it is held as under:

“1) Nature and scope of opening of history sheet/rowdy sheet:

(1.1) The Police Standing Orders, though were originally issued by the Inspector General of Police by the State of Madras under Section 9 of the Madras Police Act, which are adopted subsequently by the State of Andhra Pradesh, have no force of law. But such of the Police Standing Orders which are issued in exercise of any statutory power either by the Government or by other authorities and duly notified, can be clothed with statutory power.

³ AIR (1964) SC 33

(1.2) Whether the Police Standing Orders statutory or non-statutory, it is permissible for the police to implement Police Standing Orders only with a view to prevent Crime in the society and for nothing else.

(1.3) A reading of the relevant Police Standing Orders authorising the police to record and maintain crime history of the station including opening of history sheets and rowdy sheets would show that they are administrative instructions.

(1.4) A police officer may open History Sheet automatically at the time of conviction of a person. But the conviction is not for all offences. When a person is convicted once under Section 395 to 402 IPC, when a person is convicted twice under Section 392 to 394 IPC, when a person is convicted twice for house breaking of theft, when a person is bound over twice under Section 109 of the Code, and bound over once under Section 110 of the Code, the police are empowered to open history sheet. Besides these, persons who are convicted for offences relating to coins and Government Stamps and persons convicted twice for the offences like theft and house breaking and professional prisoners are also the persons against whom history sheets can be opened by the police.

(1.5)

(1.6)

(1.7)

(1.8)”

13. From a reading of the above judgment, it is very clear that, though, they are administrative instructions authorizing the Police to record, maintain crime history of the police including opening of

history sheets and rowdy sheets, but the same were held to be clothed with statutory power. The said Judgment has not been challenged and it has become final.

14. Issue identical to the case on hand, came up for consideration before the Karnataka High Court, wherein, a learned Single Judge, while tracing the power of the police to open rowdy sheets to Police Order No. 1059 of the Mysore Police Manual held that, there is no statutory basis for the said order and that they are merely executive or departmental instructions.

[N. Venkatachalapathy V. State of Karnataka⁴].

15. However, a Division Bench of the Karnataka High Court in **K.M. Muniswamy Reddy V State of Karnataka⁵**, upheld the validity and statutory nature of the Police Standing Orders by deriving the powers from Karnataka Police Act, to make Rules or Orders. It would be appropriate to extract the same, which is as under:

“18. ...However, a perusal of the Karnataka Police Act, 1965, would show that Order No. 1059 has a statutory source. Section 21(g) of the Police Act empowers the Inspector General of Police to make Rules or Orders “regulating the

⁴ ILR 1988 KAR 1261

⁵ (1992) SCC Online Kar 183

collection and communication by the Police of intelligence and information”, “Intelligence” and “information” referred here can only be intelligence or information necessary to discharge the duties by Police Officers effectively.”

16. The said Standing Order No. 1059 is said to be identical with Order 600 and 601 of Andhra Pradesh Police Standing Orders. Further, Section 21 of the Karnataka Police Act, 1965, relied upon by the Division Bench of the Karnataka High Court is in *pari materia* with Section 9 of A.P. District Police Act, 1859. It is no doubt true that, the said judgment from Karnataka High Court is not binding on this Court, but, definitely it can be looked into for persuasive value.

17. It is also to be noted that the practice of regulating the crime by opening rowdy sheets has been in vogue since 60 years. Though in ***Sunkara Satyanarayana*** [cited 2nd supra], the Court observed that they are only executive instructions, but still did not quash the rowdy sheet on the said ground. On the other hand, it regulated the opening and closing of rowdy sheets by giving various directions. Hence, at this stage, since, a *prima facie* case is made out by the Appellants, we feel that the Order of the learned Single Judge has to be suspended in relation to the opening of rowdy sheets.

18. One another factor, which requires consideration is that, the learned Single Judge mainly relied upon **K.S. Puttaswamy's** [cited 1st supra], to hold that opening of rowdy sheets and surveillance of suspects could invade the privacy of an individual. It is no doubt true that, the Hon'ble Supreme Court in **K.S. Puttaswamy's** [cited 1st supra], held that right to privacy is a fundamental right guaranteed under Article 21 of the Constitution of India. But, learned Government Pleader for Home, mainly submits that the issue in **K.S. Puttaswamy's** [cited 1st supra], was totally different. It was a case where an individual was asked to furnish details for the purpose of issuing Aadhar Cards, and under those circumstances, the Court dealt with right of privacy. According to him, the case on hand relates to suspects/accused against whom rowdy sheets are opened for regulating the crime. This argument of learned Government Pleader, in our view, cannot be brushed aside at this stage and the same requires adjudication at length. Therefore, merely because a rowdy sheet is opened against an individual, *prima facie*, can it be said that it invades his privacy thereby violating Article 21 of the Constitution of India?

19. Therefore questions, which may arise for consideration would be, *whether observing the movements of suspect or an accused amounts to infringement of privacy or whether summoning of a witness or a suspect/accused for questioning or interrogation [if in accordance with law], amounts to infringement of privacy?*

20. The Hon'ble Supreme Court in **Malak Singh and Others V. State of Punjab and Haryana and Others**⁶, while dealing with Section 23 of the Police Act and the Rules made there-under categorically observed as under:

"7. As we said, discreet surveillance of suspects, habitual and potential offenders, may be necessary and so the maintenance of history sheet and surveillance register may be necessary too, for the purpose of prevention of crime. History sheets and surveillance registers have to be and are confidential documents. Neither the person whose name is entered in the register nor any other member of the public can have access to the surveillance register. The nature and character of the function involved in the making of an entry in the surveillance register is so utterly administrative and non-judicial, that it is difficult to conceive of the application of the rule of audi altrem partem. Such enquiry as may be made has necessarily to be confidential and it appears to us to necessarily exclude the application of that principle. In fact observance of the

⁶ (1981) 1 SCC 420

principles of natural justice may defeat the very object of the rule providing for surveillance. There is every possibility of the ends of justice being defeated instead of being served. It was well observed in Re: K(Infants), 1965 A- 201 at p. 238:

"But a principle of judicial inquiry, whether fundamental or not, is only a means to an end. If it can be shown in any particular class of case that the observance of a principle of this sort does not serve the ends of justice, it must be dismissed; otherwise it would become the master instead of the servant of justice"."

21. Dealing with Rule 23.7 of Punjab Police Rules, the Court held that, permissible surveillance is only to the extent of a close watch over the movements of the persons under surveillance and no more. The Hon'ble Supreme Court went on to hold that, as long as surveillance is for the purpose of preventing a crime, it cannot be said that, a person whose name is included in the surveillance register can have a genuine cause for complaint. In-fact, in **Sunkara Satyanarayana** [cited 2nd supra], the learned Single Judge of the Combined High Court of Andhra Pradesh has laid down certain guidelines for surveillance of the accused, basing on Police Standing Orders.

22. Having regard to the *prima facie* findings, arrived at by us, in the preceding paragraphs, the Order of the learned Single Judge in declaring the Standing Orders of A.P. Police Manual / A.P. Police Standing Orders to the extent of opening/continuation of rowdy sheets/history sheets/suspect sheets and the surveillance of an individual [in terms of Chapter 37 of the above said Standing Orders] as void, is hereby **suspended**. However, the rowdy sheets/history sheets/suspect sheets, which are closed pursuant to the Orders of the learned Single Judge, shall not be reopened until further orders. It is made clear that, the Appellants are at liberty to open rowdy sheets/history sheets/suspect sheets if there is any fresh material in respect of those individuals. Further, as an interim measure, surveillance of a suspect or an accused shall be made in accordance with the provisions of the Standing Orders. Summoning of an accused or any person to the Police Station should only be on a prior notice issued in accordance with the provisions of law/order.

23. It is needless to mention that the Police shall not indulge in visiting the houses of the suspect/accused during night time, except to execute the order of arrest or apprehend the suspect/accused if he is required in any crime registered or if it is permissible under any law or statute. Collection of finger prints

etc., shall be in accordance with the procedure established by law,
as held by the learned Judge.

Sd/- B. CHITTI JOSEPH
ASSISTANT REGISTRAR

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To

SECTION OFFICER

1. Udathu Suresh, S/o Anjaneyulu, R/o Addanki town Prakasam District
2. One CC to Sri K.Raja Reddy, Advocate [OPUC]
3. Two CC to GP for Home, High Court of A.P at Amaravati (OUT)
6. One spare copy

SRL

HIGH COURT

CPKJ & BSSJ

DATED: 12.09.2022

ORDER

I.A.No.1 OF 2022

IN

WA.No.674 of 2022

DIRECTION

