

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 18726 of 2020

Date : 19.1.2021

Between:

Thumkunta Madhava Reddy
S/o Late Chitta Reddy Aged About 55 years occ Real
Estate R/o H No 110148 Pedda Thokatta near Arya
Samaj New Bowenpally Secunderabad

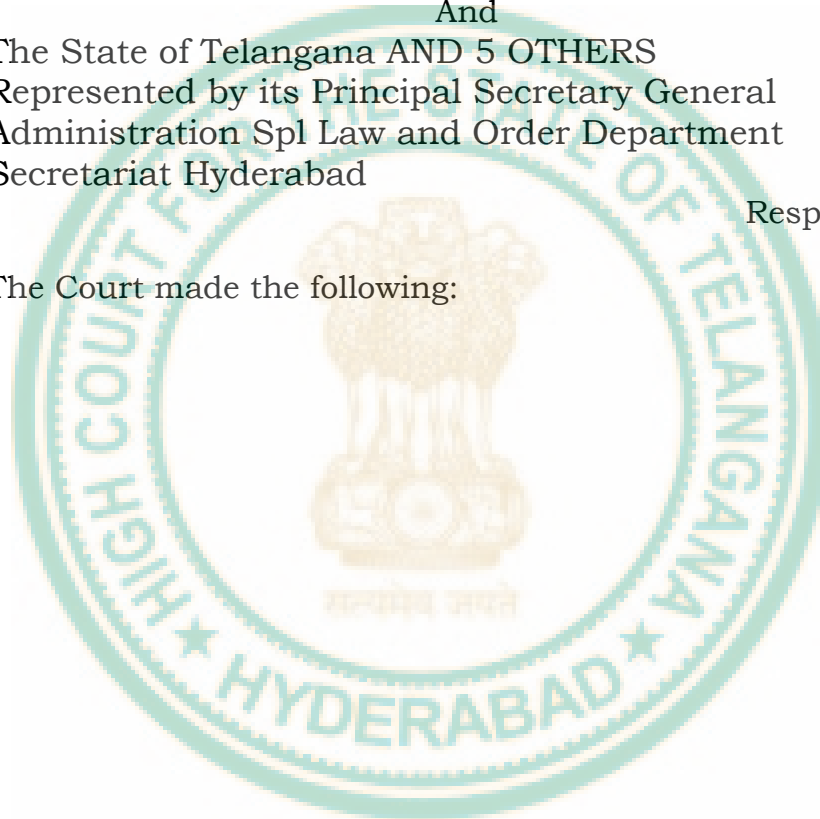
Petitioner

And

The State of Telangana AND 5 OTHERS
Represented by its Principal Secretary General
Administration Spl Law and Order Department
Secretariat Hyderabad

Respondents

The Court made the following:



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ORAL ORDER:

Heard learned counsel for petitioner Sri Prabhakar Sripada and learned Assistant Government Pleader for Home.

2. In this writ petition, petitioner is aggrieved by the action of 6th respondent in sending police men to enter the house of petitioner bearing No.1-10-148, Pedda Thokatta, Near Arya Samaj, New Bowenpally, Secunderabad in the midnight every day ringing the door bell/knocking the door, waking up the petitioner late night, thereby disturbing his sleep as illegal and unconstitutional.

3. Learned counsel for petitioner drew the attention to the averments made in paragraph 16 of the affidavit filed in support of the writ petition regarding alleged visits of police constable(s) on various dates at times mentioned in tabulated form, as noticed from the Closed Circuit Television Camera recordings. However, he submitted that petitioner is restricting his claim to direct the respondent police not to visit his house at late night hours, disturb the petitioner and other tenants in the premises and that petitioner has no objection if police want to pay visits to his house during day time.

4. According to learned Assistant Government Pleader, having regard to the criminal record of the petitioner, a rowdy

sheet was opened and police are keeping a watch on the moments of the petitioner to prevent committing of further crimes and except maintaining the rowdy sheet and keeping a watch on the moments of the petitioner, police are not interfering with the life and liberty of the petitioner.

5. Petitioner was shown as accused in Crime No.387 of 2005 for the offences punishable under Sections 447 and 506 of IPC. After investigation police filed charge sheet and XI Additional Chief Metropolitan Magistrate, Secunderabad took cognizance of the offence and petitioner was placed on trial in C.C.No.352 of 2007. Vide judgment dated 5.7.2012 petitioner was acquitted. Petitioner was shown as accused in Crime No.471 of 2019 for the offences punishable under Sections 448, 427, 323, 354(B), 506, 509 read with section 34 IPC; after investigation police filed charge sheet and petitioner is facing trial in C.C.No.770 of 2020 in the Court of XI Additional Chief Metropolitan Magistrate, Secunderabad. Petitioner was also shown as accused in Crime No.474 of 2019 for the offences punishable under Sections 452, 302, 120(B), 212 read with Section 34 of IPC. After investigation, police filed charge sheet and matter is pending at the stage of taking cognizance of the offence vide PRC No.35 of 2020 in the Court of XI Additional Chief Metropolitan Magistrate, Secunderabad. Having regard to the involvement of the petitioner in the above crimes, Crime No.283 of 2020 for the offence punishable under Section 107 of Criminal Procedure Code was

registered and the Special Executive Magistrate, Hyderabad passed orders on 15.9.2020 binding over the petitioner for good conduct. Referring to involvement of the petitioner in above crimes, rowdy sheet was opened against the petitioner.

6. According to learned counsel for petitioner, petitioner was acquitted in Crime No.387 of 2005 and registration of Crime No.282 of 2020 binding over the petitioner for good conduct stands set aside in view of the judgment of this Court in Criminal Petition No.4662 of 2020 dated 5.10.2020, therefore, as on today only two crimes are pending against the petitioner.

7. According to learned Assistant Government Pleader, in view of involvement of the petitioner in several criminal cases, surveillance is necessary, whereas, according to learned counsel for petitioner, even assuming that police are entitled to keep surveillance, police cannot disturb the petitioner in the late night hours and cause hardship to him, which amounts to uncalled for interference in life, liberty and privacy of the petitioner.

8. No statutory instrument deal with opening rowdy-sheet and keeping surveillance on a person. 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 601 deals with opening of rowdy sheet. According to Clause-A 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 should be opened and his movements and activities are to be watched. According to Clause-B thereof, a person bound over for good conduct should be classified as rowdy and rowdy sheet can be opened and continued.

9. On opening the rowdy-sheet, Police keep watch on movements of the person. According to Police, this is necessary as part of their duty to ensure law, order and peace in the community and to prevent a habitual offender from possible indulgence of crimes affecting the society at large i.e., to prevent commission of offence. This is nothing but surveillance.

10. Right to life, liberty and privacy are sacrosanct to a person. A person is entitled to lead his life with dignity and self respect. These 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 resort to surveillance on the ground that rowdy-sheet is opened on petitioner, it must show justification, impelled to ensure peace and order in the society.

11. 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 in two decisions 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.

11.1. 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 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

¹ 1999 (3) ALD 60

² 1999 (6) ALT 249

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."

(emphasis supplied)

11.2. 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 7 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.***

(emphasis supplied)

11.3. In paragraph-49 of **Sunkara Satyanarayana**, learned single Judge culled out principles on police surveillance against history/rowdy sheeters. To the extent relevant, 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.

...

(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.

(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.”

12. In the case on hand, a rowdy-sheet was opened against the petitioner and the same is not under challenge. Learned counsel for petitioner also fairly submits that he has no objection if Police keep a watch on his movements, during the day, but cannot disturb his privacy and cannot disturb him in late night hours. There is merit in the submission of the learned counsel for petitioner that only on the ground that rowdy-sheet is opened, Police cannot visit the residence of the petitioner in the late night hours and disturb him. It does amount to intruding into privacy offending the right of the person. It is not the case of the respondent-Police that petitioner continues to involve in criminal

activities, which can be assumed to be resulting in possible law and order problem in the society and such late night incursion was necessary in the larger public interest. Therefore, the action of the Police in visiting the house of the petitioner in the late night hours is not valid.

13. In the facts of this case, therefore, the respondents are directed to confine the surveillance on the petitioner to the barest minimum, and if warranted visiting the residence of the petitioner shall be only during the course of the day and such surveillance should not be excessively obtrusive and intrusive and shall not disturb the petitioner during late night hours. If petitioner is required in the investigation / enquiry, they shall follow due procedure required by law.

14. Accordingly, the writ petition is disposed of. Pending miscellaneous petitions, if any pending, shall stand closed.

JUSTICE P.NAVEEN RAO

DATE: 19-01-2021
TVK/KKM

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