(1998) 02 AP CK 0007

Andhra Pradesh High Court

Case No: Writ Appeal No. 107 of 1998

Puttagunta Pasi alias Penta Pasi		APPELLANT
	Vs	
Commissioner of Police and Another		RESPONDENT

Date of Decision: Feb. 4, 1998

Acts Referred:

- Andhra Pradesh Police Standing Orders - Order 741, Order 742

Citation: (1998) 3 ALT 55

Hon'ble Judges: N.Y. Hanumanthappa, J; B.V. Ranga Raju, J

Bench: Division Bench

Advocate: K. Srinivas Reddy, for the Appellant; Govt. Pleader for Home, for the Respondent

Final Decision: Allowed

Judgement

N.Y. Hanumanthappa, J.

Heard Mr. K. Srinivas Reddy, learned Counsel for the appellant and Sri J.K. Qureshi, learned Govt. Pleader for Home. The question that arises for consideration in this appeal is whether the rowdy sheet opened against the appellant by the Police in exercise of the powers under Standing Order No. 742 of the Police Standing Orders is proper and legal. The Law and Order Police, Machavaram Police Station, Vijayawada opened a rowdy sheet against the appellant for the reason that the appellant was involved in Cr. No. 111/97 on the file of Law and Order, Machavaram Police Station for the offences punishable under Sections 147, 326, 323, 342, 363, 353, 506 and 427 of Indian Penal Code and u/s 3 of the Damage to the Public Property Act. Earlier, a ease was registered against the appellant in Cr. No. 70/96 by the Law & Order Police of Machavaram and after investigation the same was registered as C.C. No. 184/97 and the learned III Metropolitan Magistrate, Vijayawada after trial acquitted the appellant. Subsequently, the appellant was required in Cr. No. 111/97 for his alleged involvement in the above offences.

Aggrieved by the listing of the appellant''s name in the rowdy sheet bearing rowdy sheet No. 41 /97, the appellant filed Writ Petition No. 34686 of 1997. The learned single Judge, after hearing both sides dismissed the writ petition by giving reasons that the appellant is a habitual offender and his acts resulted in causing disturbance to public peace and tranquility and as such, there was no illegality in opening the rowdy sheet against the appellant. Aggrieved by the said judgment, the appellant preferred this Writ Appeal.

2. Sri K. Srinivas Reddy, learned Counsel for the appellant criticised the order passed by the learned single Judge on the ground that the learned single Judge was not justified in accepting the action of the Police in opening the rowdy sheet against the appellant as correct. He contends that the learned single Judge should have noticed that opening of a rowdy sheet, though at the outset appears to be not of a serious nature, but it will have a stigma on a person whose name is found in the rowdy sheet. As such, the authorities should have been more cautious in opening the rowdy sheet. According to him, opening of a rowdy sheet shall be preceded by continuous acts of a person which arc criminal in nature and which result in disturbance of public peace and tranquility in the area. Further, he shall also be a habitual offender. Thus arguing, he sought that the appeal be allowed and the order of the learned single Judge be set aside.

3. In support of his case, the learned Counsel for the appellant also placed reliance on the decision of a learned single Judge of this Court in Kamma Bapuji and Others Vs. Station House Officer, Brahamasamudram and Another, wherein this Court interpreted the scope of Standing Order 741 relating to opening of a rowdy sheet and when it has to be opened. Whereas, Sri J.K. Qureshi, learned Govt. Pleader for Home supported the action of the Police in opening the rowdy sheet. According to him, the order passed by the learned single Judge is correct. He maintained that though the earlier proceedings resulted in acquittal, but subsequently Anr. case was registered against the appellant in Cr. No. 11l /97 from which it is clear that the appellant is a habitual offender and thus opening of a rowdy sheet against him is a just one. Me contends that the decision relied upon by the learned Counsel for the appellant has no relevance to this case on facts.

4. A person can be listed in the rowdy sheet on the basis of an order passed either by the Superintendent of Police or a Sub-Divisional Officer in exercise of the powers conferred under S.O. 742 of the Police Standing Orders. The word ''Rowdy'' has been defined as follows:

"Rowdies.: (1) The following persons may be classified as rowdies and rowdy sheets (Form 88) may be opened for them under the order of the Superintendent of Police or Sub-Divisional Officer:

(a) persons who habitually commit, attempt to commit or abet the commission of, offences involving a breach of the peace;

(b) persons bound over under Sections 106, 107, 108(c) and 110(1) of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974);

(c) persons who have been convicted more than once in two consecutive years u/s 75 of the Madras City Police Act or u/s 3, Clause 12 of the Towns Nuisances Act;

(d) persons who habitually tease women and girls by passing indecent remarks or otherwise; and

(e) in the case of rowdies residing in an area under one police station but are found to be frequently visiting the area under one or more other police stations their rowdy sheets can be maintained at all such police stations.

(G.O.Ms. No. 656, Home (Police-D), Dept., dated 8-4-1971) (2) Instructions in Order 735 regarding discontinuance of History sheets shall also apply to rowdy sheets."

From the above it is clear that to include a person''s name in a rowdy sheet, such person shall be a habitual offender i.e., he must habitually commit or abet the commission of offences involving breach of peace. The learned single Judge in Kamma Bapuji''s case (1 supra) took into consideration the importance attached to the personal liberty of a citizen and to the consequences in a case where a person is characterised or classified as a ''rowdy'' and also placed reliance on following decisions. In the case of Dhanji Ram Sharma Vs. Superintendent of Police, North Dist, Delhi Police and Others, , the Supreme Court described a habitual offender as follows:

"A habitual offender or a person habitually addicted to crime is one who is a criminal by habiti or by disposition formed by the repetition of crimes. Reasonable belief of the Police Officer that the suspect is a habitual offender or is a person habitually addicted to crime is sufficient to justify action under Rules 234(3)(b) and 23.9(2). Mere belief is not sufficient. The belief must be reasonable, it must be based on reasonable grounds. The suspect may or may not have been convicted of any crime. Even apart from any conviction, there may be reasonable grounds for believing that he is a habitual offender."

In Vijay Narain Singh Vs. State of Bihar and Others, , while considering the effect of Sections 2(d) and "12 of the Bihar Control of Crimes Act (Act 7 of 1981), which provides for definition of anti-social element, the Supreme Court has observed as follows:

"A person is a habitual criminal who by force or habit or inward disposition, inherent or latent in him, has grown accustomed to lead a life of crime. It is the force of habit inherent or latent in an individual with a criminal instinct, with a criminal disposition of mind, that makes him dangerous to the society in general. Shorn of verbiage the word ''habitually'' means ''by force of habit''. The Act appears to be based on Prevention of Crime Act, 1908 (c.59). By Prevention of Crime Act, 1908, as amended by the Indictments Act, 1915, a person after three previous convictions, after

attaining sixteen years of age could, with the consent of the Director of Public Prosecutions in certain cases, be charged with being a habitual criminal and, if the charge was established, he could, in addition to a punishment of penal servitude, in respect of crime for which he has been so convicted, receive a further sentence of not less than five year;; or more than 10 years, called a sentence of preventive detention. Upon this question of a man''s leading persistently a dishonest or criminal life, where there has been a considerable lapse of time between a man''s last conviction and the commission of the offence which forms the subject of the primary indictment at the trial, notice containing particulars must have been given and proved of the facts upon which the prosecution relief for saying that the offender is leading such a life. If, on the other hand, the time between a man''s discharge from prison and the commission of the next offence is a very short one, it may be open to the jury to find that he is leading persistently a dishonest or criminal life by reason of the mere fact that he has again committed an offence so soon after his discharge from a previous one, provided the notice has stated this as a ground. This essentially is a question of fact. The scheme under the English Act, is entirely different where a person has to be charged at the trial of being a habitual criminal. Therefore, the considerations which govern the matter do not arise in the case of preventive detention u/s 12(2) of the Act."

The learned single Judge in Katnma Bapuji''s case (1 supra) referred to the meaning of the word ''habitual'' as defined in Black''s Law Dictionary which describes the word habitual where it is said that the meaning assigned to ''Habitually'' is "Customarily; by frequent practice or use. It does not mean entirely or exclusively". In the case of Majid Babu v. Government of A.P. 1987 (2) ALT 904 this Court held that mere two instances would not make a person a habitual offender. Atleast, there shall be more than two instances. Mere figuring of the name of a person in two crimes is not sufficient to hold that he is a habitual offender. In Shaik Mahboob v. Commissioner of Police, 1990 (1) APLJ 363 1990 (1) ALT 15 (NRC) : 1990 (1) An.W.R. 11 (NRC) this Court held as follows:

"Admittedly the two cases registered against the petitioner have ended in acquittal. The third reference that a report was received from Special Branch Police that the petitioner threatened the Managing Editor of Siasat daily ''for not publishing in that paper about his organisation'' and also threatened to burn the newspaper, cannot be taken as ''copiously substantiated''. Something more is required so as to hold that threat was real which requires preventive measure as either the complainant himself would have registered a complaint or the Police ought to have taken some initiative on this threat. In the absence of this it is not in accord with law to treat the said situation as a cogent evidence so as to bring within the ambit of the person being habitual offender taking that case as a third incident. True whether commission of an offence or attempt to commit an offence could be taken as the relevant factor for the purpose of entering the name of a person in a rowdy sheet within the meaning of S.O. 742 but mere assertion does not lead to the situation

that a person attempted to commit an offence. In the circumstances, adequate material has not been made out so as to enter the name of a petitioner in the ''rowdy-sheet'' and continue the same unless substantial cogent material is available. In this case it is not possible to hold that enough material within the meaning of the judicial pronouncement laid down is available. Hence, mandamus is issued directing the respondents to delete the name of the petitioner from the rowdy sheet. This will not however preclude the respondents if fresh circumstances in future arise, warranting opening of rowdy sheet."

In Ejaz v. Govt. of A.P., an un-reported decision delivered in Writ Petition No. 13324/96 dated 10th September, 1996, this Court dealt with the powers of Police as to when a person can be described as ''habitual offender''. According to the learned single Judge, expressions like ''by habit'', ''habitual'', ''desperate'', ''dangerous'', ''hazardous'' cannot be flung in the face of a man with laxity of semantics.

5. From the above, it is clear that rowdy sheets cannot be opened against any individual in a casual and mechanical manner. Dubbing a person as an habitual offender and to open a rowdy sheet is not sufficient. On the other hand, due care and caution shall be taken by the Police before characterising a person as a rowdy. The important element that has to be seen in the acts of an offender is whether the acts so committed by a person will have a tendency to disturb public peace and tranquility. In Kamma Bapuji''s case (1 supra), the learned single Judge, following the decisions already rendered by the Supreme Court and this Court as cited above, held that opening of a rowdy sheet against the petitioner therein viz., Kamma Bapuji is incorrect.

6. The question involved in this Writ Appeal is almost similar to the one involved in Kamma Bapuji''s case (1 supra). Apart from this, the appellant himself has filed an affidavit today swearing that in future he will not give room for any action to be taken against him for any offences. If the rowdy sheet opened against him is cancelled, he assures that he would make a decent living without attempting to disturb public peace and tranquility. The said affidavit is taken on record. From the facts narrated, it is very difficult to bring the appellant within !he definition of a ''habitual offender''. The mention of his name in the rowdy sheet: is of non-application of mind by the authorities to the relevant provisions viz., Standing Orders 741 and 742 of the Police Standing Orders. The learned single Judge should have taken these aspects into consideration before accepting the opening of rowdy sheet against the appellant as correct: Probably, the learned single Judge would have agreed with the judgment rendered by his Lordship Justice B. Sudershan Reddy in the case of Kamma Bapuji''s case (1 supra) and would have quashed the proceedings relating to opening of rowdy sheet if the said judgment was placed before his Lordship. Accordingly, the appeal is allowed and the order of the learned single Judge is set aside. We are completely in agreement with the order of the learned single Judge (B. Sudershan Reddy, J.) rendered in Kamma Bapuji''s case (1

supra).

7. In the result, the Writ Appeal is allowed and the rowdy sheet opened against the appellant in rowdy sheet No. 41/97 is cancelled.