

Md. Gulam Abbas and Another

Vs

Md. Ibrahim and Others

Review Petition No. 36 of 1977

(CJI M. H. Beg, Jaswamt Singh, P. N. Bhagwati JJ)

16.12.1977

ORDER

BEG, C.J. -

1. This review application seems quite unnecessary. Since, however, learned Counsel for the petitioners have earnestly tried to impress upon us that, unless we mention the correct principles on which jurisdiction is to be exercised under Section 144 of the Criminal Procedure Code by Magistrates, they may continue to exercise them on wrong principles, we may clear up these possibly imaginary difficulties. We find it hard to believe that Magistrates will deliberately shut their eye to the requirements of law as laid down clearly in Section 144, Cr. P.C., but, as which is not easily conceivable sometimes does happen, we will explain the provisions of Section 144, Criminal Procedure Code a little.
2. This provision confers a jurisdiction to "direct any person to abstain from a certain act or to take certain order with certain property in his possession or under his management" with the object, inter alia, of preventing "a disturbance of the public tranquility, or a riot, or an affray". Section 144(3) specifically lays down that the order under this section "may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place". The kind of orders mentioned here are obviously intended only to prevent dangers to life, health, safety or peace and tranquility of members of the public. They are only temporary orders which cannot last beyond two months from the making thereof as is clear from Section 144(6) of the Code. Questions of title cannot be decided here at all. But, previous judgments on them may have a bearing on the question whether, and, if so, what order should be passed under Section 144, Criminal Procedure Code.
3. It may sometimes happen that a person may be prevented from doing something even upon his own property provided the doing of a perfectly legal act constitutes a danger to human life, health or safety of others or to public peace and tranquility. An example of this can be shouting to provocative slogans from one's own house top. Nevertheless, it is the duty of the authorities to aid and protect those who are performing completely legal acts in a reasonable and perfectly legal manner or in accordance with what the law permits them do so. It is only where it is not practicable to allow them do so something which is quite legal, having regard to the state of excited feelings of persons living in a area or frequenting a locality, that any action may be taken under Section 144, Criminal Procedure Code which may interfere with what are, otherwise, completely legal and permissible conduct and speech.
4. It was asserted on behalf of the petitioner that in a representative suit between Shia and Sunni sects of Muslims question of title to properties or places to which Magistrate's orders under Section

144, Criminal Procedure Code related has already been decided. If that be so, we have no doubt that the Magistrate will respect that decision in making an order under Section 144, Cr. P. C. in the future. Then it would be easier for the Magistrate to see who should be allowed to exercise the legitimate right of holding a meeting on or occupying a particular property or doing anything else there. It may however be noted that the Magistrate is not concerned with individual rights in performing his duty under Section 144 but he has to determine what may be reasonably necessary or expedient in a situation of which he is the best judge.

5. If any community or sect is disposed to transgress the rights of another in a particular property habitually, the remedy lies by way of a civil suit for an injunction. Both sides before us make conflicting assertions on such questions. It is impossible to decide them for the first time either on a writ petition or in a proceeding under Section 144 of the Criminal Procedure Code. If public peace and tranquility or other objects mentioned there are not in danger the Magistrate concerned cannot act under Section 144. He could only direct parties to go to the proper forum. On the other hand, if the public safety, peace, or tranquility are in danger, it is left to the Magistrate concerned to take proper action under Section 144, Criminal Procedure Code. No hard and fast rules can be laid down for guidance in exercising a power on which decisions must necessarily be governed by the existing situation in each case. It has to be judged on facts and circumstances existing at a particular place at a particular time.

6. We have no doubt that, particularly after this brief and obvious explanation of the provisions of Section 144, Criminal Procedure Code, no orders will be passed contrary to what the section itself so clearly requires as conditions precedent to the passing of an order. We are not convinced at all that the applicants had any real ground for seeking a review of our orders. Consequently, we dismiss this application. We, however, make no orders as to costs.

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