

BOMBAY HIGH COURT

D.V. Belvi

Vs

Empore

(Madgavkar and Murphy, JJ.)

05.03.1931

JUDGMENT

Madgavkar, J.

1. This is an application in revision against an order under Section 144 of the Criminal Procedure Code passed by the District Magistrate, Belgaum, on December 11, 1930, forbidding Prabhat Pheris in the city and cantonment of Belgaum as creating a nuisance and inconvenience and creating conditions favourable to the disturbance of public tranquillity. The period of the order was two months. The order has, therefore, expired, but we have allowed the application to be argued on the merits, as it is represented to us that a certain number of persons have been convicted and the prosecution of others is contemplated for disobeying the order.

2. The two grounds on which the order is challenged are, firstly, that the order is too wide, and secondly, that evidence tendered by the petitioners was not allowed to be adduced by the learned District Magistrate.

3. It is contended for the Crown that the order is an administrative order, the recording of evidence was not absolutely necessary and that the order was implicitly confined to the streets of Belgaum.

4. The weight of authority is in favour of the view that such orders are judicial and not administrative. The question has been set at rest in cases of this Court such as *Queen-Empress v. Lakhmidas Makandas*¹ *Emperor v. Bhagubhai*, and *Emperor v. Ganesh Mavlankar*² and by the Madras High Court in *Queen-Empress v. Tirunarasimha Chari*³ and *Muthuswami v. Thangammal Ayiyar*⁴

5. If the order is judicial, the Magistrate must keep an open mind and record not necessarily the whole but at least a reasonable portion of the evidence essential for the judicial determination of the objections rather than say, as he apparently does here, that his opinion could not be changed

by any such evidence and refuse to record any evidence.

6. We are also of opinion that the order being addressed to the public generally must be limited under Section 144(3) to the public when frequenting or visiting a particular place. To argue that though no such particular place is specified, all the streets in the city and cantonment of Belgaum are implied, would appear to defeat the objects of the section, prohibiting, as it does, the performance of acts, which would otherwise be lawful. This has been so held by this Court in the three Bombay cases cited above. It has also been considered in *Dagdu Tatyā Shimpi v. Emperor*⁵, decided by Patkar and Wild JJ., on Juen 13, 1929 (Bom. Unrep.)

7. On these grounds the petition must, in our opinion, be allowed and the order of the District Magistrate set aside as being bad in law for the reasons stated above.

Cases Referred.

1(1889) I.L.r. 14 Bom. 165

2(1930) 33 Bom. L.R. 59

3(1895) I.L.R. 19 Mad. 18

4(1929) I.L.r. 53 Mad. 320

5(1929) Criminal Revision No. 162 of 1929