

(1951) 10 KL CK 0001
In the High Court Of Kerala

Abdulkadir Lebba Abdul Rahiman and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 26-10-1951

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 142, 144

Citation : (1952) CriLJ 1121

Hon'ble Judges : Sankaran, J

Bench : Single Bench

Judgement

Sankaran, J.—All these three petitions are directed against the order passed by the district Magistrate of Trivandrum on 4.6.1124 prohibiting the use of a particular type of net by these petitioners and others for the purpose of fishing in the coastal waters extending from Vettoor to Chilakkoor in the Chirayinkizh Taluk. The order was passed by the District Magistrate in the exercise of the powers conferred on him by Section 142 of the Code of Criminal Procedure of Travancore (corresponding to Section 144 of the Indian Code). On getting notice of the order, the petitioners through their counsel appeared before the District Magistrate and moved for the cancellation of the order. They contended that they were not doing anything to occasion a breach of the peace and that there was no justification for issuing a prohibitory order against the normal pursuit of their activities in the matter of fishing in the coastal area referred to above with the aid of the more efficient types of nets. Respondents 2 and 3 as well as others who took exception to the use of these modern types of nets by the petitioners, maintained that the use of these nets by the petitioners was harmful to their fishing interests and that therefore the use of such nets should be prohibited. By the proceedings passed on 1.8.1124, the District Magistrate confirmed the prohibitory order holding that there were no valid grounds for cancelling it. The duration of the prohibitory order was indefinitely extended by the Notification R.O.C. No. 793/49/ LAB dated 23.4.1949, issued by Government under Clause 6 of Section 142 of the Code of Criminal Procedure. The petitioners who are aggrieved by the order have filed these revision petitions praying for the

cancellation of the order by this Court in the exercise of its revisional jurisdiction.

2. The main point urged On behalf of the petitioners is that the District Magistrate was dearly misusing his powers u/s 142 of the Code of Criminal Procedure in passing the prohibitory order in question. To appreciate the force of this contention it is necessary to have an idea as to the circumstances which induced the District Magistrate to take action u/s 142 against these petitioners. One section of the fisher folk residing in the coastal region from Vettoor to Chilakkoor in the Chirayinkizh Taluk filed a series of petitions before the District Magistrate complaining about the hardships caused to them as a result of the present petitioners and others belonging to another section of the fisherfolk in the same region resorting to the use of a new type of net. The complaint was that those who are using the new type of net are able to get a good catch of the fish while the others using the old type of net are able to get only a poor catch. It was also stated that the large majority of the fisher folk in the area are persons using the old type of net, and that they are not in a position to compete with the others who are in a position to command the use of the more modern and efficient type of net. The majority complained that unless the use of these modern nets by the others is not prohibited, their means of livelihood would be seriously prejudiced and that as a consequence breach of peace was likely to occur. It may be mentioned here that the complainants have no case that the use of the modern type of net was in anyway unlawful or that those resorting to use of such net had no right of fishing in the coastal waters from Vettoor to Chilakkoor. In the reports submitted to the District Magistrate by the Police Officers who enquired into the allegations contained in the petition, it was not even suggested that the use of the modern type of net by the petitioners and others was unlawful or unauthorized. In fact those reports proceeded on the basis that the fisher folk in this particular locality had the right to use any type of net they liked for the purpose of fishing in the coastal waters of that region. All the same it was pointed out that the majority of the fisher folk who had only the old type of net at their command very strongly resented the use of the new type of net by the others and that such resentment and opposition on their part were likely to result in a clash between the two parties. It was to avoid such a clash and the consequent breach of peace that action u/s 142 of the Code of Criminal Procedure was recommended by the Police. The District Magistrate accepted such a recommendation and passed the order in question and in effect imposed a ban on the petitioners in the exercise of their lawful rights in a lawful manner.

3. Section 142 of the Code of Criminal Procedure is certainly not intended to restrict the liberty of the citizen in exercising his lawful rights in a lawful manner. Occasions may arise where the District Magistrate who is responsible for maintaining peace and tranquillity in his District, may have to take immediate action for preventing an apprehended breach of the peace. There may not be time enough for the Magistrate to enquire and ascertain as to which of the opposing parties is in the wrong so that action may be taken against such wrong-doer. In such an emergent situation the Magistrate will have to prohibit the

commission of the particular act which might result in a breach of the peace even though the act itself may be a lawful one. Section 142 is primarily intended to meet such emergent situations. Any order passed to meet an emergent situation cannot be allowed to be in force for any indefinitely long period. On the other hand it is the duty of the Magistrate to make a prompt enquiry into the legality or otherwise of the act prohibited and also into the causes which may lead to a breach of the peace as a result of that act; If as a result of such enquiry it is found that the act is a lawful one and is within the legal rights of one party and that a breach of the peace would occur only as the result of the interference by the other party with the lawful exercise of such rights, the Magistrate is bound to rescind the prohibitory order and to render every protection needed for the lawful exercise of the said legal rights by the party entitled to do so. The restraint, if any, can only be against the other party threatening a breach of the peace by illegally interfering with the exercise of such legal rights.

4. In the present case the facts which had been brought to the notice of the District Magistrate were such as to leave no room for doubt as to which party was in the wrong. The complaint petitions and the police reports received by the Magistrate had made it abundantly clear that the revision petitioners in making use of the more modern and efficient type of net for the purpose of fishing in the coastal waters from Vettoor to Chilakkoor, were only exercising their legal rights in a lawful manner and that any breach of peace could occur only on account of the unlawful opposition threatened by the opposite party. Such oppositions cannot be justified, by the fact that the members of this party find it difficult, with the old type of nets at their command, to compete with the others in the matter of fishing. The easy way out of such a difficulty would be for these persons also to resort to the use of the more modern and efficient type of nets. There is nothing to prevent them from resorting to such a legitimate method of resolving their difficulties and getting their grievances redressed. If they prefer to adhere to the primitive method of fishing by resorting to the use of the old type of nets, they will have to put up with the inevitable handicap and inconveniences resulting from the adoption of such a course. But it is not within their rights to compel the others also to continue to use the old type of nets and to refrain from adopting any modern method of fishing. It is the inherent right of every citizen to strive to achieve the greatest success in the pursuit of his lawful avocations by resorting to the most efficient and up-to-date methods available. Courts of law are bound to protect all lawful activities in the exercise of such a legal right. Any threatened opposition by the members of the opposite party, to the exercise of such a right, cannot justify an action being taken by the Magistrate u/s 142 of the Code of Criminal Procedure. The power conferred by that section cannot be invoked at the instance of those who threaten to take the law into their own hands and for the purpose of stifling the lawful activities in the exercise of the legal rights of the others. If a breach of the peace is anticipated as a result of the clash between these two forces, the proper course to be adopted would be to take action against the potential law-breakers, and not against the peaceful

citizens engaged in their lawful activities and whom the law-breakers threaten to molest.

5. In discussing the scope of Section 144 of the Indian Code of Criminal Procedure it has been pointed out in *Murari Naicken v. Aiyasami Naicken* AIR (10) 1923 Mad. 15 that it is the duty of the Magistrate in taking steps to preserve peace.

to take action only against those who are infringing the rights of others and protect those who wish to exercise their rights and not prohibit the latter's lawful enjoyment of rights.

The same view has been expressed in *Haji Mohammad Ismaid Vs. Munshi Barkat Ali and Others*, where it was ruled that:

the proper course that the Magistrate ought to follow is to find out which party is wrong and if he finds on the evidence that the second party is in the wrong and is interfering unnecessarily with the exercise of the legal powers of the first party, he ought to bind down the second party restraining them from committing any act which may lead to a breach of the peace.

In *R.E. Blong Vs. The King-Emperor*, the scope of Section 144 has been explained in the following words:

Section 144, Criminal Procedure Code, is not intended to restrict the liberty of an individual if there is no apprehension of a breach of the peace on account of any act to be done by him. Its object is to enable a Magistrate in cases of emergency to make an immediate order for the purpose of preventing an immediate breach of the peace; but it is not intended to relieve him of the duty of making a proper enquiry into the circumstances which make it likely that such breach of the peace will occur if it is found that a man is doing that which he is legally entitled to do and that his neighbour chooses to take offence, threat and to create a disturbance in consequence; it is clear that the duty of the Magistrate is not to continue to deprive the first of the exercise of his legal right but to restrain the second from illegally interfering with that exercise of legal right.

To the same effect is the ruling in *Francis Duke Cobridge Sumner, Offg. Deputy Secretary, Port Commissioners and Others Vs. Jogendra Kumar Roy and Another*, where the cautious manner in which a Magistrate should proceed in taking action u/s 144 has been stressed in the following terms:

The legislature by Section 144 of the Code has conferred very large powers upon Magistrates who have to deal with urgent cases of nuisance or apprehended danger. The larger is the power, the greater is the necessity to be cautious about its exercise. And the exercise of the power should be guided by having the following principles in view viz; (1) Courts civil as well as criminal, exist for the protection of rights and therefore the authority of a Magistrate should ordinarily be exercised in defence of rights rather than in their suppression; (2) when an order in suppression of lawful rights has to be made, it ought not to be made

unless the Magistrate considers that other action that he is competent to take is not likely to be effective; and (3) the order, if made, should never be disproportionate to but should always be, as far as possible, commensurate with the exigencies of any particular situation.

Examined in the light of these principles, it is clear that the prohibitory order impugned in this case was passed by the District Magistrate by misdirecting the jurisdiction conferred on him by Section 142 of the Travancore Code of Criminal Procedure. Even if the emergency of the situation had necessitated the passing of such an order in the first instance, the Magistrate should have rescinded that order when the revision petitioners against whom that order had been issued, appeared before him and drew his attention to the fact that they were only exercising their lawful right in a peaceful manner and that therefore action, if any, had to be taken against the others who threatened to commit a breach of the peace by resorting to force in opposing the exercise of such lawful right. The order passed by the Magistrate on 1.8.1124 confirming the prohibitory order passed against the revision petitioners shows that the Magistrate was convinced of the legality of the right of these petitioners to use the modern type of nets for fishing in the coastal waters from Vettoor to Chilakkoor. All the same he seems to have been under the impression that in spite of the existence of such a right in their favour it is incumbent on him to issue an order against them u/s 142 restraining them from the exercise of such right so as to prevent any breach of the peace. The Magistrate has obviously lost sight of the fact that it was the opposite party who threatened to commit a breach of the peace in opposing by forceful means the activities of the revision petitioners in the exercise of their lawful right. The situation undoubtedly called for action being taken against those persons who openly threatened to commit a breach of the peace. Instead of taking such action against those who were in the wrong, the Magistrate has practically yielded to their threats by passing the order suppressing the exercise by the revision petitioners of their lawful right. The Magistrate has undoubtedly misconceived his Jurisdiction u/s 142.

6. The District Magistrate is no doubt bound to maintain peace and tranquillity within his District. But that object is to be achieved not by suppressing the exercise of the lawful rights of the citizens. When it is seen that breach of the peace is threatened by the potential lawbreakers, appropriate action has to be taken against them for restraining them from committing any breach of the peace. To take action by way of suppressing the lawful activities of the peaceful citizens on account of threatened opposition by such law-breakers, would in effect be yielding to such threats and encouraging lawlessness. This is what has happened in the present case. The District Magistrate has wrongly exercised his jurisdiction u/s 142 of the Code of Criminal Procedure in confirming the prohibitory order issued against these revision petitioners. The undesirable and illegal effect of that order has been perpetuated by the subsequent notification published by Government under Clause 6 of Section 142 by which the duration of the prohibitory order was indefinitely extended. The order is unsustainable in law

and is unwarranted by the facts and circumstances brought to light at the enquiry conducted by the Magistrate. The order is therefore liable to be quashed.

7. In the result these three revision petitions are allowed and the prohibitory order issued by the District Magistrate against these petitioners and others on 4.6.1124 and which was confirmed On 1.8.1124 and subsequently extended by Government Notification No. R.O.C. 723/49 LAB. dated 23.4.1949, is set aside.