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**(2013) 11 DEL CK 0254**

**In the Delhi High Court**

**Case No :** Writ Petition (C) 8127 of 2012 and CM Application 20198 of 2012

Anand K. Mishra

APPELLANT

Vs

Delhi Police and Others

RESPONDENT

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**Date of Decision :** 27-11-2013

**Acts Referred:**

Constitution of India, 1950 — Article 19

Criminal Procedure Code, 1973 (CrPC) — Section 144

**Citation :** (2013) 11 DEL CK 0254

**Hon'ble Judges :** N.V. Ramana, C.J;Manmohan, J

**Bench :** Division Bench

**Advocate :** Rajesh Mahajan, ASC and Mr. Aditya Singla, Satyam Thareja and Mr. Sanbah Rumoy, Advocate for Delhi Police. Mr. Neeraj Chaudhari, CGSC and Mr. Akshay Chandra, Advocate for UOI, Mr. Pawan Kumar, ACP/Conn. Place, Insp. Rajesh Kumar, SHO PS Tilak Marg and SI Pradeep Kumar, PS Tilak Marg, Delhi, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Manmohan, J.—Present writ petition has been filed in public interest seeking a direction to quash the order dated 22nd December, 2012 promulgating Section 144 of Criminal Procedure Code, 1973 (hereinafter referred to as "Cr.P.C.") in India Gate, Central Vista lawns, Rajpath & Connaught Place as unconstitutional, illegal and ultra vires on the ground that it imposed an unreasonable restriction on the public. Petitioner also prays that the Court should issue/frame guidelines for imposition of restrictions u/s 144 Cr.P.C. Petitioner who appears in person submits that the impugned order dated 22nd December, 2012 issued by the respondent No. 1 is arbitrary and not in conformity with the Article 19 of the Constitution of India as it is based on the ground of "obstruction to traffic", which according to him is not a ground recognised either under Cr.P.C. or under the Constitution to impose Section 144 Cr.P.C.

2. In support of his submission, petitioner relies upon Ramlila Maidan Incident Vs. Home Secretary, Union of India (UOI) and Others, . He states that the Apex

Court in the said judgment has held that the State has a duty to provide security and protection to persons who wish to attend an assembly at the invitation of a person who is exercising his right of freedom of speech and expression. He contends that the Apex Court has clarified that an activity which affects "law and order" may not necessarily affect "public order" and an activity which might be prejudicial to "public order" may not necessarily affect "security of the State". Relying on the said judgment, he submits that the State has a duty to protect and distinguish the peaceful protestors from the violent protestors rather than using force against everyone including girls and old women.

3. Having heard the petitioner, this court is of the view that impugned order dated 22nd December, 2012 passed by the Assistant Commissioner of Police is valid and legal. In our opinion the reasoning in the impugned order i.e. "likely to cause obstruction to traffic, danger to human safety and disturbance of public tranquillity" are cogent, sound and rational grounds for passing an order u/s 144 of the Cr.P.C.

4. Further, this Court is of the opinion that the judgment in Ramlila Maidan Incident, In re (supra) has no application to the present public interest litigation as in the aforesaid case the State action u/s 144 Cr.P.C. was passed while a demonstration was already in progress. Moreover, the said dharna/rally was held to be peaceful in nature causing no inconvenience to the public. However, in the present case the order u/s 144 was passed as a preventive measure. Further as mentioned above such an immediate step was taken to ensure human safety and to see that there was no disruption of traffic on one of the arterial roads of Delhi, which would have brought the traffic movement to a standstill and caused inconvenience to the public at large.

5. In regard to the prayer for setting up of guidelines for imposition of restrictions u/s 144 Cr.P.C., this court is bound by the judgment in State of Karnataka and Another Vs. Dr. Praveen Bhai Thogadia, wherein the Supreme Court has observed as under:-

16. During the course of the hearing the learned counsel for the parties submitted that the prohibitory orders should not be allowed to be passed at the ipse dixit of the executive officials concerned. There must be transparent guidelines applicable. Since different fact situations warrant different approaches, no hard-and-fast guidelines which have universal application can be laid down or envisaged.

(emphasis supplied)

In the event any police excess was committed during the period u/s 144 Cr.P.C. was in vogue, the petitioner is free to initiate appropriate action in an apposite forum. Consequently the present public interest litigation and application are dismissed but with no order as to costs.