

(1979) 04 AP CK 0023
In the Andhra Pradesh High Court

Bijinibemula Linga Murthy Reddy and Others	APPELLANT
Vs	
Binji Hussain Saheb and Another	RESPONDENT

Date of Decision : 03-04-1979

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 111, 144, 482

Citation : (1979) CriLJ 1147

Hon'ble Judges : Venkateswara Rao, J

Bench : Single Bench

Judgement

Venkateswara Rao, J.—These petitions are filed u/s 482 Cr. P.C. by the respondents in M. C. Nos. 1 and 2 of 1979 on the file of the Sub-divisional Magistrate, Nandyal, for quashing the orders made against them under Sections 144 and 111 of the Code on 2-1-1979 and 3-1-1979 respectively. The parties to both the petitions are the same.

2. The Sub-divisional Magistrate (Executive), Nandyal, purporting to act u/s 144 Cr. P.C. issued an order in M. C. No. 1/1979 on 2-1-1979 directing the petitioners herein not to obstruct Binji Hussain Saheb, the first respondent in these cases, from taking water to his land from S. No. 533 belonging to the petitioners. The very next day i. e. on 3-1-1979 he issued another order u/s 111 Cr. P.C. calling upon the petitioners to show cause why they should not be asked to execute bonds for Rupees 1000/- with two sureties each for a like sum to keep the peace for one year on the ground that he had credible information that they were bent upon obstructing Binji Hussain Saheb from taking water from their land which is likely to cause breach of peace and tranquillity in and around the limits of Kanala village. Sri Ayyapu Reddy, learned Counsel for the petitioners contends that the order referred to above made by the Sub-divisional Magistrate in M. C. 1 of 1979 is without jurisdiction besides being illegal as it was passed in utter disregard of the provisions of Section 144 of Cr. P.C. and in violation of a temporary injunction granted by a Civil Court and that the order made u/s 111 Cr. P.C. being only a sequel to the earlier order u/s 144 of the Code, is also bad and cannot be

sustained. It is on the other hand argued for the first respondent that the impugned orders are unimpeachable, that the remedy sought by the petitioners is misconceived as they should have approached the Sub-divisional Magistrate himself with a request to rescind the order as provided in Section 144(5) of the Code and that in any view, no relief could be claimed by the petitioners in Cr. M.P. No. 80/79 since the order sought to be quashed is no longer in force and had worked itself out by efflux of time. The order made in M. C. No. 1/79 u/s 144 Cr. P.C. reads as under:

Whereas credible information is laid before me that the complainant has been irrigating his lands in S. Nos. 481 and 535 of Kanala village of Nandyal Taluk, within the local jurisdiction of this Court, through the K. C. C. water supplied through S. No. 533. that the respondents herein jointly and severally with an ulterior motive to grub the lands of the complainant under the mortgage of Rule 1 have obstructed the flow of water causing annoyance and threat to the complainant to part with the lands and that the enquiry had upon it made me to appear that the respondents herein jointly and severally obstructed the free flow of water to the fields of the complainant has a right to enjoy under field to field irrigation system of M. K. C. C.

Therefore I do hereby order you not to obstruct the complainant from taking water to his fields and do prohibit you all not to interfere directly or indirectly with the right of the complainant to irrigate his lands through S. No. 533.

3. There is no gainsaying that the aforesaid order spent itself out having been made more than two months back as Sub-section (4) of Section 144 of the Code lays down that no order under that section shall remain in force for more than two months from the making thereof, but this by itself is not sufficient to reject Crl. M.P. 80/79 as contended for the respondents. The High Court will not of course generally interfere where order of the Magistrate has ceased to remain in force by efflux of time save in exceptional cases involving questions of jurisdiction but it is the petitioners' contention in these cases that the impugned order was made without jurisdiction. If it were to be found ultimately that the order is made without jurisdiction, the power of the High Court to quash it notwithstanding that it has spent itself out cannot be doubted.

4. There is, likewise, no force in the plea urged for the respondent that the remedy is misconceived by the petitioners and that they ought to have applied to the Sub-Divisional Magistrate himself for rescission of the order as provided in Sub-section (5) of Section 144. Sub-section (5) of Section 144 is not the only remedy in a case where the very jurisdiction of the Sub-divisional Magistrate to make the order is sought to be questioned nor can that provision take away the jurisdiction of the High Court to quash the order if such action is warranted by the circumstances of a particular case.

5. The grounds urged to say that the impugned order is one made without jurisdiction and is illegal are that the essential factors which give jurisdiction to

the Sub-divisional Magistrate to act u/s 144 Cr. P.C. are conspicuously absent in his order and that it does not also contain anything to justify the denial of an opportunity to the petitioners to be heard before making the order. Section 144 finds place in Chapter X of the Code dealing with maintenance of public order and tranquillity. The important conditions necessary to justify action u/s 144, as can be seen from the provisions thereof, are that the Magistrate must be satisfied about the necessity for immediate prevention of an act by the person or persons in possession of property, which in his judgment is likely to cause obstruction, annoyance or injury to any person lawfully employed, danger to human life, health or safety, or disturbance of the public tranquillity or a riot, or an affray. It is the urgency of the case calling for a speedy remedy or immediate preventive action that invests the Magistrate with jurisdiction to act u/s 144. It can also be seen from the marginal heading that Section 144 is intended to clothe the Magistrate with powers to issue orders in urgent cases of nuisance or apprehended danger. So, if there is neither urgency calling for the application of a speedy remedy or preventive action nor apprehension of danger to human life, health or safety etc. resulting from obstruction, annoyance or injury to any person lawfully employed, the Magistrate cannot clutch at jurisdiction for issuing an order u/s 144 Cr. P.C. A mere statement in the order that the Magistrate considers it necessary to take urgent action is not sufficient if the facts show that, in reality, there is no such urgency for the preventive action. However, not only is there no reference to the need for immediate prevention or a speedy remedy in the impugned order: but there was in fact no such urgency since the information placed before the Sub-divisional Magistrate simply showed that the respondent, with an ulterior motive to grab the lands of the complainant Binji Hussain Saheb, obstructed the flow of water to his lands from S. N. 533 belonging to them, thus causing annoyance and threat to the complainant. So it is not as the act alleged against the respondents was such as would endanger human life, health or safety or would result in disturbance of public tranquillity to call for a speedy remedy or urgent preventive action. If it is come in mind that the land through which Binji Hussain Saheb claimed the right to take water to his own lands admittedly belongs to the respondents, it can easily be seen that this is pre-eminently a matter for decision by a Civil Court. Except a bald statement that Hussain Saheb has a right to unobstructed flow of water through S. No. 533 to his lands under field to field irrigation system of K. C. Canal, there is nothing else in the impugned order indicating whether the alleged right is based on easement, grant or contract or whether it is a natural right. When it is not in dispute that S. No. 533, over which the right in question was claimed by Hussain Saheb admittedly belongs to the respondents, the effect of the order under challenge would be suppression of their legal rights even for a temporary period and should not have been made unless the action was absolutely necessary to avert a breach of peace. But it was already seen that there was absolutely no justification for apprehension of any breach of peace or danger to human life, health or safety. The motive attributed to the respondents (petitioners) for causing the alleged obstruction of flow of water through their lands is to coerce

Hussain Saheb into submission and grab his lands as can be seen from the order in this case. But even assuming that the respondents (petitioners) were actuated by some such motive, it is unthinkable that their action in obstructing the flow of water through their lands, even if true, was such as would forthwith or in the near future lead to a breach of peace by causing annoyance to the complainant. The section does not confer arbitrary power and the power in question being discretionary, should be used only when it is really called for in order to prevent danger to human life, health or safety or disturbance of public peace. But as already stated, there is nothing in the impugned order suggesting that the material available before the Sub-Divisional Magistrate in this case was sufficient to justify action u/s 144 Cr. P.C. and it must therefore, be said that it is an order made without jurisdiction.

6. Yet another infirmity from which the order in question suffers according to Sri Ayyapu Reddy is that it was made in flagrant violation of a temporary injunction granted by a civil court. The respondents (petitioners) filed O. S. No. 104 of 1978 in the District Munsif's Court, Nandyal on 18-4-1978 and obtained an ad interim injunction on the same day restraining Binji Hussain Saheb and his men from digging a channel in their field evidently for the purpose of taking water to his lands through that channel and that injunction was later on made absolute on receipt of the report of a Commissioner appointed in the case. It was averred in paragraph 1 of the petition that the Sub-Divisional Magistrate was aware of the injunction granted by the District Munsif, Nandyal as a notice was issued to him on 1-1-1979 and this averment remains uncontroverted since no counter has been filed on behalf of the respondents. When once a competent civil court granted an injunction restraining Hussain Saheb from interfering with the rights of the respondents in relation to their lands, the Sub-divisional Magistrate had no jurisdiction to make the order in contravention or violation of that injunction.

7. Even assuming for a moment that there was need for some preventive action in the opinion of the Sub-divisional Magistrate he ought not to have made the impugned order without giving an opportunity of being heard to the respondents. Section 144(2) Cr. P.C. provides for an ex parte order being made only in cases of emergency or where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed. Ordinarily, therefore, an order should not be made u/s 144 without affording an opportunity to the person against whom it is proposed to be made, to show cause against the same and if no notice is issued, the magistrate should record his reasons to show that the occasion is considered to be one of emergency, failing which the order made ex parte cannot be sustained. Since the High Court has power to interfere where the order is made without jurisdiction and the proceedings are judicial in nature, the order should not be bald but should contain at least some reasons to show that the magistrate has applied his mind and was satisfied about the existence of factors necessary for action u/s 144, Cr. P.C. For the reasons stated above, I must agree with the petitioners that the impugned order is one made without jurisdiction and is, therefore liable to be quashed.

8. As already stated, the order passed by the Sub-divisional Magistrate u/s 111 Cr. P.C. which is the subject-matter of CrI. M.P. 82/1979 is only a sequel to the order made by him u/s 144, Cr. P.C. The grounds set out in the order u/s 111 are the same as those referred to in the order u/s 144 of the Code made just the previous day as it was already seen that the order made in M. C. 1/1979 being illegal and without jurisdiction, is liable to be quashed, it follows that this order u/s 111, Cr. P.C. made in M. C. 2/79 cannot also be allowed to stand.

9. In the result, therefore, both the petitions CrI. M.P. Nos. 80 and 82 of 1979 are allowed and the orders made in M. C. Nos. 1 and 2 of 1979 on the file of the Sub-divisional Magistrate, Nandyal, are quashed.