
(1951) 11 KAR CK 0015
In the Karnataka High Court

Biligiri Naika and Others

APPELLANT

Vs

Sidda Setty and Another

RESPONDENT

Date of Decision : 16-11-1951

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144, 144 (5)

Citation : (1953) CriLJ 1271

Hon'ble Judges : Balakrishnaiya, J

Bench : Single Bench

Judgement

Balakrishnaiya, J.—This petition arises from a final order u/s 144, Criminal P.C., passed by the Special First Class Magistrate, Nanjangud prohibiting absolutely the celebration of "Konda" (Fire-treading) festival connected with the annual observance of a feast to propitiate the Deity, known as Mari or Pattaladamma of Tagadur village. On the report of the police that party feelings and high tension between the Parivar and Ganigar communities did exist in respect of the celebration of the said festival and that there might be a likelihood of breach of public peace and tranquillity if the celebration is permitted, the learned Magistrate issued an order ex parte on 15.2.1951 prohibiting the function for a period of two months from that date.

2. The petitioners-first party belonging to the Parivar community applied u/s 144(5), Criminal P.C., to the Magistrate to rescind the ex parte order. The respondents representing the Ganigar community filed objections. No evidence was recorded. The learned Magistrate, however, heard arguments and made the preliminary order absolute on 22.3.1951. This petition is filed for revising the final order.

3. The case for the petitioners is that the "Konda" function is religious in nature and connected with the annual celebration of the feast to propitiate the Deity known as Mari or Pattaladamma, that it is their fundamental right to follow their own religious observances without any impediment, that the Parivar community people have been celebrating the said feast year after year for the last many

years and that they have absolutely no objection to persons belonging to other communities taking part in the least if they so desire. They have produced the licenses in original granted by the authorities for celebration during the years 1922, 1923, 1931, 1932, 1933 and 1950. The respondents pleaded that the "Konda" function is not a part of the religious ceremony. They characterised the function as only a harvest pastime or sport or amusement and that it was being performed on a co-operative basis by all the communities. They do not, however, deny the right of the Parivars but state that the function being a relic of the village community sport and the Parivar community having refused to co-operate with the bulk of the villagers as usual, there is no other alternative than to have as many "Kondas" as there are communities and, at any rate, another "Konda" function by them jointly by Ganigars and Uppaligars.

4. The Magistrate found that the first party members, Parivars, are the actual persons who have been obtaining licenses to celebrate the Mari festival and performing the incidental "Konda" function in the past years in Tagedur village in front of the temple of Sri Ankanatheswara and Pattaladamma and that people of other communities of the said village including Arasus, Ganigars and others participated in the performance of the said function on a co-operative basis. The second party members while admitting that they were not attempting to prevent the first party members from holding the "Konda" function stated that they would like to have their own "Konda" function since according to them, the first party have refused to co-operate with the second party. The Magistrate was, however, of opinion that the second party members have not come out with their real grievances and their attitude appeared as if they were itching for a quarrel by non-co-operating with the festival and observed that

every individual has a right to worship and equality before Law. But while in the act of observing that freedom of worship and equality, if the conduct of the parties happens to be riotous or leads to the disturbance of public peace, it is the duty of the Law Courts, to safeguard the interest of the public at large by putting timely checks on the conduct and behaviour of the concerned parties....

He, however, concluded that there was an emergency on account of the high tension prevailing between the two parties which if the celebration is permitted may lead inevitably to the disturbance of public peace and hence, he rejected the application, made the ex parte order absolute and dismissed the petition of the first party in toto.

5a. It is contended by Sri Nittoor Srinivasa Rao that the final order of the Magistrate is illegal and ultra vires and the learned Magistrate has misconceived the scope of the section and misdirected himself in totally prohibiting the "Konda" function and that the Magistrate, having come to the conclusion that a long established right existed in the first party as confirmed by the documentary evidence, ought to have taken action to protect rather than suppress the right. It is urged for the respondent that the Magistrate has jurisdiction u/s 144, Criminal P.C., to pass the order in question and that it should not ordinarily be interfered

with in revision.

5b. I am unable to agree with the contention that the orders of the Magistrate are not revisable. The High Court has ample powers to revise the order and set aside if it is erroneous. The power conferred on the Magistrate u/s 144 is of an extraordinary nature and it should be used to meet grave emergency. The maintenance of public peace being of paramount consideration, the Magistrate is the sole judge to determine the emergency and take action under that section. Indeed, he is perfectly justified in having passed an order ex parte when acting on the police report; but the function of the Magistrate does not cease with the ex parte order. Under Clauses 4 and 5 of Section 144, it is the duty of the Magistrate to investigate into the respective claims of the parties and alter or rescind the order already passed so as to give protection for the exercise of rights possessed by any person and for that purpose to take action against others likely to interfere with the exercise of such rights. Ordinarily, persons, engaged in the exercise of lawful rights should have a right to the support of the authorities responsible for law and order. It is the obvious duty of the executive to give protection for exercise of the rights of any party.

5c. In the present case, the police have failed in their duty in giving such protection and appear to have followed the line of least resistance in applying to the Magistrate to prohibit the function from being celebrated on the ground that there existed tension between the parties which might lead to breach of public peace. After hearing the parties, the Magistrate has come to the conclusion that the first, party has established a right by long usage to celebrate the function in question and the second party had no objection for such exercise and their attitude disclosed as if they were itching for a quarrel by non-co-operating with the festival. In such circumstances, the obvious duty of the Magistrate ought to be to exercise the powers in defence of the rights rather than in their suppression. In effect, the ex parte order which was in the nature of a temporary injunction when made absolute is rendered into a permanent injunction restraining for ever both the parties from celebrating the function.

5d. The function is an annual feature which cannot be stopped for ever. It was open to the Magistrate to have permitted both the parties to celebrate the festival for themselves in separate places, as requested by the second party members, or, in the alternative, when the Magistrate came to the conclusion that one of the parties has established its rights, his clear duty was to enable the party having the right to exercise the same and, if need be, to restrain the other party by binding them over to keep peace by exercising powers vested in the Magistrate under the Code. The Magistrate should have exhausted other powers vested in him under the Code before resorting to Section 144. He has failed to do so. The final order is clearly beyond the scope of the section as it is not warranted by the circumstances. The order of the learned Magistrate is erroneous and unsustainable. Though the period covered by the order has long expired, the question will likely recur in the next season. I am of opinion that the

order should not be allowed to remain on record.

6. The order under consideration is, therefore, set aside and this petition is allowed.