
(1976) 10 AHC CK 0064
In the Allahabad High Court
Case No : Criminal Misc. No. 3577/1 of 1975

Mohd. Shafi Khan

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 08-10-1976

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 107, 116, 144, 482

Citation : (1977) ACR 102 : (1976) RD 303

Hon'ble Judges : H.N. Kapoor, J

Bench : Single Bench

Final Decision : Allowed

Judgement

H.N. Kapoor, J.—This is an application u/s 482 Code of Criminal Procedure for quashing the notice dated 8-7-1975 issued to the Petitioners u/s 144 Code of Criminal Procedure and subsequent proceeding on the basis of this notice. The allegations of the Petitioners are that Mohd. Shan Khan Petitioner is the bhumidhar of plots nos. 178, 179 and 189 situate in village Butrara district Muzaffarnagar and that he is having a cattle market on those plots in partnership with Israil, Petitioner no. 2 since 1951. Recently, the Zila Parishad had started another cattle market in village Butrara and had given the same to the kadar. The Zila Parishad and the kadar are interested in closing the cattle market of the Petitioners in the interest of their newly opened market. They resorted to several proceedings with a view to interfere with the holding of the cattle market by the Petitioners and so the Petitioners filed a civil suit and obtained an interim injunction against the Zila Parishad and the kadar on 3-3- 1975. Subsequently the Zila Parishad succeeded in getting the District Magistrate interested who was the Ex Chairman of the Zila Parishad and at his instance the Sub-Divisional Magistrate passed orders u/s 144 Code of Criminal Procedure, against the Petitioners. An earlier order u/s 144 Code of Criminal Procedure was passed on 18-3-1975 when Mohd. Shan Khan filed a Gr. Misc. Petition No. 1608 of 1975 u/s 482 Code of Criminal Procedure praying for quashing that order. Meanwhile, Israil

had filed a revision before the Sessions Judge. That revision was allowed and the order had been quashed. Petition No. 1608 of 1975 was therefore, dismissed on 9-5-1975 as having become infructuous. But it was observed by this Court that it was open to the Petitioners to move a fresh petition if they felt aggrieved by any further order. Proceedings u/s 107/116 Code of Criminal Procedure were subsequently started against the Petitioners and others on 28-5-1975. The impugned notice for taking proceedings u/s 144 Code of Criminal Procedure was issued on 8-7-1975. This petition was then filed and stay order was passed on 17- 7- 1975 staying further proceedings in pursuance of the notice dated 8-7-1975. A supplementary affidavit was filed by the Petitioners saying that proceedings u/s 107/116 Code of Criminal Procedure were quashed by the Sessions Judge in the revision by his order dated 11-2- 1976.

2. learned Counsel for the Petitioners has argued that the Magistrate concerned has wrongly taken recourse to the proceedings u/s 144 Code of Criminal Procedure with a view to preventing the Petitioners from holding their cattle market in their plots which they could legally do. It was further argued that in case there was any apprehension of breach of the peace, the proper course was for initiating proceedings u/s 107/116 Code of Criminal Procedure and not u/s 144 Code of Criminal Procedure.

3. Lastly, it was argued that an order u/s 144 Code of Criminal Procedure is to be passed for two months only and thereafter it can be extended for a further period of six months by the State Government but it is not the intention of the legislature to allow the Magistrate to pass orders after orders u/s 144 Code of Criminal Procedure and to circumvent the provisions of Section 144 Code of Criminal Procedure. In support of his contention, he has placed reliance on the case of Sri Ram Das Gaur Vs. The City Magistrate, Varanasi, . In that case, D.S. Mathur, J. (as he then was) had deprecated the practice of issuing orders u/s 144 Code of Criminal Procedure in quick succession. He made the following observations :

The Magistrate shall be deemed to be promulgating an order for a period exceeding two months an order which would be beyond his jurisdiction. It is a settled law that one cannot do an act indirectly which he could not do directly, or that one cannot flout the express provisions of an enactment. A colourable act on the part of a public officer shall not be accepted on its face value and one shall have to look into the facts to find out whether such an set was done in good faith, or indirect method was adopted to get over the provisions of law.

These observations apply on all fours to the facts of the present case. There can be no doubt that the Magistrate concerned is resorting to Section 144 Code of Criminal Procedure with the object of preventing the Petitioners from holding their cattle market. In the counter affidavit, it is stated that it is wrong that the cattle market was being held by the Petitioners since 1951 and that the Petitioners did not hold the cattle market before 13- 3-1975. It was also stated that Mohd. Shafi Khan is the bhumidhar of plots nos. 178, 179 and 189 but he

could use the, land for agricultural purpose and not as he liked that is, for holding any cattle market. If so, it may be open to the authorities concerned to take proper action against the Petitioners according to law so that they may not hold the cattle market in plots nos. 178, 179 and 189 in case they are not legally entitled to do so. A civil suit has already been filed by the Petitioners which is still pending. Such a defence can be taken in that suit also. But certainly, it is not proper for the Magistrate concerned to take recourse to Section 144 Code of Criminal Procedure for achieving that object. It is certainly a "colourable act" on the part of the Magistrate concerned. It was also improper that fresh proceedings u/s 144 Code of Criminal Procedure should have been taken by the Magistrate soon after the previous order passed by him u/s 144 Code of Criminal Procedure was quashed by the Sessions Judge. In any view of the matter the order u/s 144 Code of Criminal Procedure on the basis of the notice dated 8-7- 1975 could have been in force for a period of two months only and not thereafter. Much time has elapsed now. For this reason also it is not proper that any order should be passed on the basis of the notice dated 8-7-1975 at this stage.

4. In the result the petition is allowed and the notice dated 8-7-1975 u/s 144 Code of Criminal Procedure and the subsequent proceedings on the basis of this notice are quashed.