

(1932) 01 MAD CK 0001
In the Madras High Court

Ramnad Zamin Devasthanam Tahsildar and Others	APPELLANT
Vs	
Kadar Meera Ambalam and Others	RESPONDENT

Date of Decision : 19-01-1932

Acts Referred:

Citation : 138 Ind. Cas. 354

Hon'ble Judges : Sundaram Chetty, J

Bench : Single Bench

Judgement

Sundaram Chetty, J.—These two are connected revision petitions filed against the orders of the Second Class Magistrate, Mudukulathur, in

Miscellaneous Cases Nos. 11 and 13 of 1931 on his file. In the exercise of the powers vested in him under s 144, Criminal Procedure Code, he

passed an order on 12th October, 1931, restraining both the Hindus and the Muhammadans of Kamudi (styled as A party and B party) from

taking any kind of procession, Bacular or religious, through the streets of Kamudi town or taking any part in such a procession. On 22nd

December, 1931, he passed another order in similar terms but making an exception in the case of bona fide marriage and funeral precessions, sb

to which he put another restriction, namely, that licenses should be obtained in good time from the Police u/s 30, Clause 2 of the Police Act V of

1861.

2. Owing to the tension of feelings between the Muhammadans and the Hindus of Kamudi in the matter of taking proe ceseicne, both secular and

religious, through the streets of this town, the Sub-Inspector of Police made a report on 14th June, 1931, and thereupon, the Sub-Magistrate of

Mudukulathur thought it necesBaivy to paes an emergent ex parte, order u/s 144,

Criminal Procedure Code, prohibiting any kind of processions through the streets of this town either by the Hindus or by the Muhammadans, as he apprehended a riot or breach of the peace. He passed this order on 15th June, 1931, as an emergent measure, but however permitted the parties to appear with their witnesses and recorded before him on 18th June, 1931, to show cause why this ex parte order should not be made absolute. In accordance with that direction both parties filed statements in support of their respective claims, and the Nadar Hindus and non-Nadar Hindus of the A party and also the Muhammadans of the B party adduced some oral evidence before him. The Sub-Inspector of Police was also examined. The immediate cause of the dispute seems to be that the Hindus wanted to take their processions through the Mela Street (West Street) of Kamudi which is inhabited both by Muhammadans and Hindtis, and this was objected by the Moslems. The Hindus contend that according to immemorial usage they have a right to take their processions accompanied with music through the public streets of Kamudi including the West Street; whereas, the Muhammadans contend that by reason of the beating of drums and other attendant music the votaries in the mosque, which is about 50 yards from the West Street, would be disturbed in their prayers, as also the women and the old and the infirm who have to worship in their houses in that street. After setting forth these contentions in his order, the Magistrate brushed aside the evidence adduced by the parties with the remark that it is beside the point, as in his opinion he was not competent to give a finding as to the rights of the respondent parties to pass through any street with processions. The only points which he thought he should take into consideration are, the existence of strained relations between the Muhammadans and the Hindus in the matter of taking processions through the street question and the likelihood of a serious breach of peace if an order u/s 144 is not passed. Holding that there were sufficient grounds for proceeding u/s 141 and also thinking that immediate prevention was necessary, he made the original ex parte order absolute on 20th July, 1931. On 19th August, 1931, a petition was put in by the Hindus to the Joint Magistrate, Ramnad, u/s 147, Criminal Procedure Code, for causing an enquiry to be made as regards the matters in dispute and declaring the right of the Hindus to carry procession with

music along the street in question in accordance with the long established usage and prohibiting interference with the exercise of such natural rights.

But this petition was dismissed by the Joint Magistrate on 2nd September, 1931, stating that no action was necessary as the Sub-Magistrate

reported that there was no likelihood of a breach of the peace. On 17th September, 1931, the Joint Magistrate in dealing with the petition of the

Hindus presented under Clause (4) of Section 144, Criminal Procedure Code, against the order of the second Glass Magistrate aforesaid, passed

in Miscellaneous Case No. 8 of 1931, upheld the view taken by the Second Class Magistrate in his order dated 20th July, 1931, that it was not his

province to deal with the question of the rights of the respective parties to take processions through public streets, and dismissed the petition. On

24th September, 1931, one of the Musliois filed a petition praying for an order u/s 144 prohibiting the Nadar-Hindus of Kamudi from taking their

God in procession through the Mela Street known also as Muhammadan Street. In connection with this petition, the Second Glass Magistrate

passed an order on 12th October, 1931, preventing both parties from taking any kind of procession in Kamudi town through any of the streets. He

declined to reconsider this order and dismissed the petition of the Hindus on 17th October. The Joint Magistrate to whoai a petition was put in

under Clause (4) of this section for rescinding or altering the order of the Second Class Magistrate dated 12th October, declined to interfere. He

seems to be of opinion that in a proceeding u/s 144 any discussion as to the rights set up by the parties in the matter of carrying on processions in

public streets would be irrelevant and a consideration of the same would not be the legitimate function of a Magistrate. This order was passed by

him on 22nd November 1931. On the eve of the expiration of two months from 12th October, 1931 the date of the order of the Second Class

Magistrate u/s 144, the Sub Inspector of Police again applied for an order u/s 144 prohibiting procesaioas in Kamudi town and in connection with

that report a fresh order was passed by the Second Class Magistrate on 2nd December 1931, restraining both parties from taking processions in

the street except bona fide marriage and funeral processions, for which license should be obtained from the Police in due time.

3. It is now contended on behalf of the petitioners in these revision cases, that the aforesaid orders of the Sub-Magistrate u/s 144 are illegal and

ultra vires and that the learned Magistrate has taken an incorrect view of the scope of his functions under this section and misdirected himself in

assuming that he had no concern at all with the rights of the parties. It is further contended that such repeated ex parte orders passed in quick

succession, at the same time refusing to hold any enquiry as to the rights set up by the parties practically operate as a permanent injunction

restraining them from exercising the natural rights of citizens in public streets and are wholly illegal.

4. In view of the circumstances of this case set forth above, I should think that an order in such general terms would be justifiable as an ex parte

order, which the Magistrate has to pass in view of the urgency and on account of the necessity for an immediate prevention of any riot or breach of

the peace. But in view of the provisions of Clauses (4) and 6 M. 203 of Section 144, it can be stated that the function of the Magistrate does not

stop with the passing of the ex parte order, but it is his duty to give an early opportunity to any person or persons aggrieved by that order to

appear and show cause against it, in order to see whether such order has to be rescinded or altered. For such a purpose, he has to consider

whether the claims advanced by one or other of the parties are within or in excess of their legal and natural rights and whether any alterations or

restrictions to the order already passed are reasonably necessary in order to obviate undue hardship to one or the other of the parties and to see

that protection is given to the persons who act within the bounds of their legal and natural rights without being molested by the breakers of law,

having at the same time due regard to the paramount necessity of preserving public tranquillity. The observations of the learned Judges in the case

reported as in the matter of *Abdool v. Lucky Narain Mundul* 5 C. 132 as regards the scope of the Magistrate's functions u/s 518 of the Code of

1932 (which corresponds to the present Section 144) are pertinent to the present case. It is stated at page 134 Page of 5 C.--[Ed.] that, though

this section enables a Magistrate in cases of emergency to make an immediate order for the purpose of preventing a breach of the peace, 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,

it is the duty of the Magistrate to hold an enquiry into the circumstances and determine whether as a matter of fact the act prohibited as likely to

lead to a breach of the peace is within or in excess of the legal right of the person forbidden to do it. The learned Judge then proceeds to say:

If it is found that a man is doing that which he is legally entitled to do, and that his neighbour, chooses to take offences thereat, 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 rights.

5. These principles have been followed and applied in a case, decided by the Patna High Court which is reported in 82 Ind. Cas. 42 Blong v.

Emperor 82 Ind. Cas. 42. In view of these authorities, and on a liberal construction of the provisions of Clauses (4) and (5) of Section 144,

Criminal Procedure Code, I have to hold that the view taken by the Second Class Magistrate as also by the Joint Magistrate is too narrow,

probably due to a misconception of the scope of the functions of a Magistrate under this section. It is not to be understood that a Magistrate acting

under this section should usurp the functions of a Civil Court which alone is competent to finally decide the rights of parties. But for the purpose of

passing a proper and reasonable order, he has to take into consideration the nature of the claims set up by the parties in order to see whether or

not it is possible to afford protection to those who seek only the lawful exercise of any legal and natural right. An absolute prohibition of all

processions in all streets, secular and religious, without even fixing any time limit during day or night is prima facie unreasonable, and if such orders

are passed repeatedly (in this case three times within the course of six months; without making any sort of enquiry as to the relative rights of the

parties, it would be clutching at a more extensive jurisdiction by issuing a permanent injunction restraining the parties from taking processions for a

pretty long time and such a course has been held to be an indirect evasion by the Magistracy of the law as laid down in Section 144: Vide Govinda

Chetti v. Perumal Chetti 30 Ind. Cas. 453 : 38 M. 489 : 16 Cri.L.J. 629. In this case, the main dispute seems to have been in respect of the

Western Street. But the order is a prohibition in respect of all the streets in the town. It is true that persons who assemble in a mosque or other

religious institution for offering their prayers should be protected from disturbance and it is equally necessary that processions, religious or secular,

should be allowed to be taken along the public streets in accordance with the immemorial custom or usage, but suitable restrictions should be

placed in the exercise of such rights so as not to invade the rights of persons belonging to other religions in the performance of worship. The duties

of a Magistrate in dealing with situations like these have been considered by the learned Judges of this Court in two important decisions reported

as *Iluthialu Chetti v. Bapun Saib* 2 M. 140 and *Sundaram v. Queen--Ponnusami v. Queen* 6 M. 203. These cases are very instructive as laying

down the fundamental principles in a clear and lucid manner. Suffice it to refer to the following observations of Sir Charles Turner, C.J., at pages

220 and 221. Page of 8 M.--[Ed.]

Where rights are threatened, the persons entitled to them should receive the fullest protection the law affords them and circumstances admit of. It

needs no argument to prove that the authority of the Magistrate should be exerted in the defence of rights rather than in their suspension, in the

repression of illegal rather than in interference with lawful acts. If the Magistrate is satisfied that the exercise of a right is likely to create a riot, he

can hardly be ignorant of the persons from whom disturbance is to be apprehended, and it is his duty to take from them security to keep the peace.

6. The same view is expressed by Mr. Justice Abdur Rahim in the case reported as *In re Guruswami Nadar* 13 Ind. Cas. 831 : 22 M.L.J. 251 :

(1912) M.W.N. 47 : 11 M. L.T. 32 : 13 Cr.L.J. 143. In the two cases *In re Venkatasubba Reddi* 100 Ind. Cas. 709 : 25 L. W. 375 : 52 M.L.J.

298; AIR 1927 Mad. 368 : 28 Cr.L.J. 325 and *Venkatasubbayya v. Muhammad Falauddin Khaji* 101 Ind. Cas. 893 : 52 M.L.J. 651 : AIR 1927

Mad. 611 : 28 Cri. L. J. 509 it has been held that orders u/s 144, Criminal Procedure Code, should not be used as a means of depriving persons

of their lawful rights which have been finally declared by competent Civil Courts. But in the present case, the matters in dispute between the parties

do not seem to have been the subject of adjudication by any Civil Court. The fact that the Civil Courts have not decided these questions cannot be

made a pretext for shelving all consideration of those questions and brushing aside the evidence taken in respect of these rights as altogether beside

the point. If the Magistrate had only a proper conception of the scope of his functions u/s 144, he would have tried to come to some conclusion as

to the nature of the rights set up by the parties, in order to see whether the ex parte orders passed by him need any amendments or alterations. If

he has only paid some attention to the right claimed by the parties and to the inconvenience or hardship caused to either party by a complete

banning of the processions through all the streets without even fixing some particular hour or hours for carrying on such processions, there would

have been a chance of the parties becoming satisfied. In the latest order passed by the Second Class Magistrate, the condition of obtaining licence

from the Police in due time is fixed even for funeral processions; but this may be a great hardship, as it would entail unreasonable delay in the

removal of the corpse.

7. The order dated the 12th of October, 1931, has now ceased to be operative and the order dated the 22nd of December, 1931, will remain in

force for about a month more. The cancellation of this later order by this Court would enable the parties at once to take their processions as they

please, without any restrictions, and this may result in a breach of the peace which has to be avoided in any event. In this view, I do not propose to

set aside the orders sought to be revised, but I would impress upon the Magistrate the necessity of his taking action even on his own motion under

Clause (4) of Section 144, Criminal Procedure Code. In adopting that procedure, he will have due regard to the observations made by me in this

order on the strength of the authorities adverted to above, and either rescind or alter his order in a suitable way having due regard to the legal and

natural rights of the parties and the duty of the Magistracy and the Police of protecting such rights and taking the appropriate steps against those

who unlawfully interfere with the exercise of those rights and thus become law-breakers, having in view of course the prime necessity of adopting

the best means for the preservation of peace.

8. With these remarks, I dismiss both these petitions.