
(1984) 04 BOM CK 0035
In the Bombay High Court
Case No : Criminal Appeal No. 115 of 1981

State of Maharashtra

APPELLANT

Vs

George Fernandez and Others

RESPONDENT

Date of Decision : 19-04-1984

Acts Referred:

Bombay Police Act, 1951 — Section 163, 37(3)

Citation : (1985) 1 BomCR 693

Hon'ble Judges : M.S. Jamdar, J

Bench : Single Bench

Advocate : S.B. Patil, P.P, for the Appellant; S.B. Naik and Ranji C. Bhanu, for the Respondent

Final Decision : Dismissed

Judgement

M.S. Jamdar, J.—The State has filed this appeal, being aggrieved by the order acquitting the respondents of the offences u/s 143 IPC and section 135 of the Bombay Police Act for forming an unlawful assembly and holding a public meeting in breach of the prohibitory order issued u/s 37(3) of the Bombay Police Act by the District Magistrate, Nasik on 8th November, 1980. It was the prosecution case that inspite of the prohibitory order prohibiting holding of public meetings the respondents held a meeting at about 9.15 a.m.... at Ravivar Karanja at Nasik on 14th November, 1980 without obtaining permission and respondent No. 1 addressed the meeting.

2. Respondent No. 1 expressed ignorance about ban on meetings. According to him not only no Police Officer told him not to hold the meeting but he was escorted by policemen. Respondent No. 2 stated that he had submitted an application for permission. Respondent Nos. 4 to 8 stated that they were merely spectators. All the respondents contended that the prohibitory order was not duly promulgated.

3. The learned trial Magistrate held that respondent Nos. 4 to 8 merely attended

the meeting which was held only by respondents 1 to 3. He further held that the prohibitory order issued by the District Magistrate u/s 37(3) of Bombay Police Act was not duly publicly promulgated in the manner prescribed by section 163 of the Bombay Police Act and hence the respondents cannot be guilty of the offence u/s 135 of the Bombay Police Act for contravention of the said prohibitory order. He also rejected the prosecution case that the respondents formed an unlawful assembly. Consequently he acquitted the respondents of the offences complained of. It is this order of acquittal which is sought to be challenged in this appeal by the State.

4. It is in evidence that on 14-11-1980 respondent No. 1 George Fernandez addressed a public meeting organised by the respondents at the place known as Ravivar Karanja at Nasik and declared his intention of taking out a morcha to the office of the Collector. According to the prosecution the action of the respondents in holding the meeting on 14-11-1980 was in contravention of the prohibitory order Exhibit 5 issued by the District Magistrate, Nasik u/s 37(3) at the Bombay Police Act. The said order was as follows :---

"No. POL-1-16-3-80 whereas it is necessary to issue this order to maintain public peace, I Arunkumar Mago District Magistrate, Nasik under the powers vested in me vide section 36(3) of the B.P. Act. (Act XXII, 1951) do hereby prohibit the forming of a mob of five or more than five persons, or procession with effect from 9th November, 1980 from 0-24 hours to 15th November, 1980 up to 0-24 hours, within the whole Nasik District without the prior permission of the Police Inspector, Police Sub-Inspector or the Executive Magistrate.

This order does not apply to religious function, Taluka weekly Bazar or funeral procession.

Given under my hand and the seal of the Court, the 8th day of November, 1980.

(Arunkumar Mago) District Magistrate, Nasik."

The endorsement No. 6 below the order mentions that the copies of this order were forwarded to the editors of the dailies "Gavkari", "Bhramar", "Deshdoot" and "Apla Maharashtra" for publication. Police Inspector Deshpande who produced a copy of the order stated that the order was published in local newspapers, Deshdoot, Gavkari and Bhramar. He also produced the daily issue of Bhramar dated 9-11-1980. It will be seen from this issue of the newspaper that the order was published as a news item. The editor of "Deshdoot" Shri Suresh Narayan who was examined as a defence witness also stated that he had received a copy of the order, but as there was no obligation to publish it, he directed his assistance to publish it as a news item and that accordingly it was published in the daily issue of "Deshdoot" on 10-11-80 as a news item and not as an advertisement. Police Officers, P. I. Deshmukh and P. I. Bennegiri have not stated a word about any other mode in which the order Exhibit 5 was promulgated.

5. Section 37 of the Bombay Police Act empowers the Commissioner of Police and the District Magistrate to prohibit certain acts for prevention of disorder. These authorities can exercise the power conferred by section 37 by notification publicly promulgated or addressed to individuals. Sub-section (1) of section 37 contemplates prohibition of the acts enumerated in Clauses (a) to (f) of said sub-section for the preservation of public peace or public safety while sub-section (3) of section 37 empowers the aforesaid authorities to prohibit any assembly or procession whenever and for so long as is considered necessary for the preservation of the public order.

6. As mentioned above, the prohibitory order was not addressed individually to any of the respondents. It was therefore, necessary that it should have been publicly promulgated. The word "promulgated" is not defined in the Bombay Police Act, nor by the Criminal Procedure Code. According to Murray's Dictionary, to promulgate means to "make known by public declaration, to publish; especially to disseminate (some creed or belief) or to proclaim (some law, decree, tiding)". The meaning according to Webster's International Dictionary is "to make known by open declaration as law decree, to proclaim, to publish abroad" (See the law Lexicon by T. P. Mukherjee & K. K. Singh, Vol. 2 page 319)

7. What in essence the word "promulgate" connotes was stated by the Allahabad High Court in State Vs. Sm. Tugla,

"In essence the word connotes two ideas; (1) making known of an order, (2) and the means by which the order is made known must be by something done openly and in public, private information will not be "promulgation". But the law does not prescribe any particular mode in which an order is made known openly and publicly. It may be by beat of drum; it may be by publication in Gazette; it may be by reading out an order openly in public."

The same connotation was given to the word by the Calcutta High Court in the case Nandalal Mitra Vs. State,

8. Though the Bombay Police Act does not define the word "promulgation", it prescribes the mode in which public promulgations is expected to be made. Section 163 of the Bombay Police Act, which is the relevant provision reads as under :---

"Any public notice required to be given under any of the provisions of the Act shall be in writing under the signature of a Competent Authority and shall be published in the locality to be affected thereby, by affixing copies thereof in conspicuous public places or by advertising the same with beat of drum, or by advertising the same in such local newspapers-English or regional language or Hindi as the said authority may deem fit or by any two or more of these means and by any other means it may think suitable."

9. There is no evidence in this case to show that the order was published in the locality to be affected thereby affixing copies thereof in conspicuous public places

or by proclaiming the same by beat of drum. As mentioned above the substance of the order in question was published by the newspapers to whom the order was sent for publication. Shri Patil, learned Public Prosecutor tried to contend that as the order was sent to this newspapers for publication its publication as a news item amounts to advertisement within the meaning of section 163 of the Bombay Police Act. It is difficult to accept this contention. Advertising an order is materially different from publishing a news about it. Publication of a news item by the newspapers cannot amount to advertising in newspaper. It was necessary that the order should have appeared in newspapers in the form in which it was issued and as an advertisement inserted by the concerned authority. There should have been an advertisement of the order. A news item containing substance of the order can never amount to an advertisement. There is basic difference between an advertisement and a news item. The responsibility for publishing the news item is of the editor while responsibility in respect of an advertisement is of the person who inserts it. It is true that the object of an advertisement is generally to bring the particular matter to the notice of the public. But unless the matter is brought to the notice of the public by an advertisement, it cannot amount to advertising. This is the very essence of the definition of the "advertise". The learned trial Magistrate, was, therefore, perfectly right in holding that the prosecution failed to prove that the order in question was publicly promulgated as contemplated by section 163 of the Bombay Police Act.

10. Sub-section (3) of section 37 contemplates prohibition of any assembly or procession whenever and so long as is necessary for preservation of the public order. The order in question was issued by the District Magistrate to maintain "public peace". Shri Naik, learned Advocate for the respondents contended that the order is per se bad as preservation of public peace or public safety is different from the preservation of public order. It is difficult to accept the submission because "public order" is synonymous with "public peace" or "public safety". In the case, *The Superintendent, Central Prison, Fatehgarh Vs. Dr. Ram Manohar Lohia, Subba Rao, J.* who spoke for the Court observed as follows:

"In that limited sense, particularly in view of the amendment, it can be postulated that "public order" is synonymous with public peace, safety and tranquillity. It is the absence of disorder involving breaches of local significance in contradistinction to national upheavals, such as revolution, civil strife and war, affecting the security of State."

This position was reiterated by Hidaytullah, J. (as he then was) in the case *Dr. Ram Manohar Lohia Vs. State of Bihar and Others*, and also by the Division Bench of this Court consisting of Kantawals, C J. and Tulzapurkar, J, in *N.P. Nathwani v. Commissioner of Police* 78. Bom.L.R. 9. The use of phrase "public peace" in place of "public order" therefore, would not be fatal to the order. It can at the most be said that this is a case of non-application of mind on the part of the authority, issuing the order.

11. The order issued by the District Magistrate, Nasik was bad for another reason. It exceeded limits of the power conferred on the District Magistrate u/s 37(3) of the Bombay Police Act. As held in N.P. Nathwani's case (citation supra), it is one of the essential ingredients of section 37(3) that the Commissioner of Police must consider the extent of prohibition qua an assembly or procession proposed to be imposed by him as having rational and proximate connection or nexus with the necessity for the preservation of "public order". Such a nexus is missing, when a blanket ban is imposed. The order in question in this case is in substance identical with the order, validity of which fell for consideration of the Division Bench in N.P. Nathwani's case. Moreover, as mentioned above the order was not duly promulgated as contemplated by section 37(3) r.w. section 163 of the Bombay Police Act. Rightly the learned trial Magistrate came to the conclusion that the respondents cannot be held responsible for breach of the said order.

12. For the same reason the respondent's action in holding a meeting in defiance of the said order would not make them members of an unlawful assembly. Admittedly prohibitory order was not served on the respondents personally. The complainant P.I. Deshpande admitted that he was present at the meeting for bandobast. Admittedly respondents No. 2 had applied for permission (vide Exhibit 8). But there is nothing to show that the permission was refused. No order appears to have been passed by the District Magistrate below the application. P.I. Deshpande tried to say that he had told respondent No. 2 that permission was refused and hence the meeting should not be held. But the complaint is conspicuously silent about it. It can, therefore, be said that the meeting was allowed to be held.

13. The result, therefore, is that the impugned order of acquittal deserves to be maintained. The appeal is dismissed. The order of acquittal passed in favour of the respondents by the Judicial Magistrate, 1st Class, Nasik is confirmed.