

(2024) 02 CAL CK 0044
In the Calcutta High Court
Case No : WPA No. 3869 Of 2024

Taher Ali Sheikh & Anr.

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 13-02-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 144

Citation : (2024) 02 CAL CK 0044

Hon'ble Judges : Jay Sengupta, J

Bench : Single Bench

Advocate : Bikash Ranjan Bhattacharyya, Samim Ahammed, Tapas Maity, Bikram Banerjee, Siddhartha Sankar Mondal, Arnab Sinha, Nazimuddin Siddiqui, Aniruddh Singh, Saloni Bhattacharyya, Arka Ranjan Bhattacharyy, Gulsanwara Parvin, Kishore Dutta, Amitesh Banerjee

Final Decision : Disposed Of

Judgement

This is an application praying for quashing of an order dated 9th February, 2024 imposing restrictions under Section 144 of the Code of Criminal Procedure in Sandeskhali Police Station area, lifting ban on internet services imposed on 10th February, 2024 in the Sandeskhali II CD Block, direction upon the respondent authorities not to prevent the movement of the villagers from one area to another and to ensure that the accused mentioned in the complaint dated 8th February, 2024 and all other complaints do get access to justice.

Leave was earlier granted to move the application without complying with the requirement of prior service to the respondents.

Affidavit of service filed on behalf of the petitioners is taken on record.

A copy of the prayer made before the concerned Sub-Divisional Officer for issuing an order under Section 144 of the Code, as filed in Court, is also taken on record.

Learned Senior Counsel representing the petitioners submits as follows. The petitioners are the residents of Sandeskhali II Development Block. They are

aggrieved with the highhanded and arbitrary action of the police and the civil administration depriving their fundamental rights like access to justice, right to livelihood, freedom of movement, etc. For quite some time now, three notorious criminals of the locality namely, Sk. Shajahan, Shiba Prasad Hazra and Uttam Sardar, all belonging to the ruling political dispensation, had been torturing the inhabitants of the area in various ways. They would forcibly grab the agricultural land belonging to the local residents, introduce salt water into such land and use the same to form illegal fisheries. They would, thereafter, force the local people to work at those fisheries and most of the times the latter would not be paid proper wages. The miscreants would take away women from the locality in the midst of night to their offices and sexually exploit them. No complaint was taken by the local police authorities. In fact, often the police would refer the complainant to the said Shiba Prasad Hazra. Recently, the womenfolk of the locality decided to demonstrate against the unauthorised misrule of the three criminals. This prompted the police administration to arbitrarily impose restrictions on their movement by having an order issued under Section 144 of the Code in respect of the whole area under Sandeskhali Police Station. Only two incidents of attack, on a house and a poultry farm, have been reported. At best Section 144 of the Code could have been invoked for such local areas. But, the police want to make the local inhabitants live at the mercy of those criminals so that the latter can regain control over them and any voice of protest can be shout out. Even otherwise, the order promulgating Section 144 of the Code suffers from gross illegality. The parameters necessary for issuing such an order are absent in the said order. In this regard, reliance is placed on the decisions in *Anuradha Bhasin Vs. Union of India & Ors.*, reported at (2020) 3 SCC 637 and on an unreported decision of this Court dated 24th August, 2023 passed in *Rajib Samanta Vs. The State of West Bengal & Ors*, WPA 20520 of 2023. In stead of arresting the accused, especially the three persons who are the masterminds behind all the illegalities in the area, the police are picking up the husbands and other male relatives of the protesting women from their houses on a complaint filed by the same Shiba Prasad Hazra. It was only after much persuasion and media pressure that one accused namely, Uttam Sardar was arrested. Internet was also banned. But, the ban has now been lifted. If all the three accused are not arrested, the victims in the area will not have the courage to file complaints.

Learned Advocate General representing the State submits as follows. Most of the contentions as raised by the petitioners during their argument do not find support in the writ petition. The situation in the Sandeskhali area deteriorated over the last couple of days as would appear from the prayer made by the Officer-in-Charge of Sandeskhali Police Station to the Sub-Divisional Officer on 7th February, 2024. Two scuffles took place between two groups and three FIRs had to be registered. The following day i.e., on 8th February, 2024, in the morning some miscreants set on fire on a poultry farm of said Shiba Prasad Hazra. Later, a group of 70 or 80 women gathered with lathis and started sloganeering against the police. Some of them marched towards Sandeskhali Police Station. Two FIRs

were registered. After this, some miscreants set on fire to one "alaghar" beside the "bheri" of one Susanta Sardar @ Uttam Sardar. Again a group of 70 or 80 women gathered in front of Police Station and protested. The women were stopped at last at the gate of the Police Station. As many as 12 FIRs have been lodged on 7th February, 2024 and 12th February, 2024 and thereafter, four more FIRs had to be registered. In fact on a complaint, filed from the petitioner's sides being FIR No. 4 of 2024, one of the alleged prime accused Uttam Sardar was arrested. Already an officer in the rank of DIG, CID has been deputed in the area to receive complaints from the local residents. There is no illegality in the order promulgating Section 144 of the Code. Reliance is placed on the decision in Re: Ramlila Maidan Incident, reported at 2012 (5) SCC (Cri) 241.

The atrocities on the villagers by three prime miscreants belonging to the ruling political dispensation, as alleged, are absolutely repulsive and heart wrenching.

Before going into the question of legality of the order passed under Section 144 of the Code, one needs to, at least, place the matter in the proper perspective.

Non-arresting of the prime miscreants and their accomplices coupled with restriction on free movement of the villagers, at least in terms of Section 144 of the Code, may pose undue harassment to the inhabitants of the area and make them more vulnerable to further atrocities, especially in view of the peculiar geography of the place.

The police need to address this issue with better care and circumspection.

It further appears that unless a sense of confidence can be instilled in the minds of the local people they would not be able to come up with their complaints. Simply deputing any officer of any rank to receive complaints may not suffice.

The ban of Internet is usually invoked in places where the disturbance relates either to anti-national activities or communal strife, lest such evils might spread to the other parts of the country. One wonders what could the purpose of restricting the internet in this area. However, fortunately the ban has been lifted from mid night, yesterday.

Now, for a better exposition of the question of promulgation of an order under Section 144 of the code, let me quote the order passed as under:-

"Whereas information is being received from the Officer-in-charge, Sandeshkhali Police Station that a tension is prevailing on Sandeshkhali Police Station area within Sandeshkhali Police Station Jurisdiction on 09.02.2024.

And

Whereas it is also reported that a large nos. of people shall gather in front of Sandeshkhali Police Station with ulterior motive.

And

Whereas it is also brought to my notice that a tension is prevailing in the locality

and it may cause serious breach of peace.

Hence, in exercise of power conferred upon me u/s 144 Cr.P.C. I, Sri Ashish Kumar, IAS, Sub-Divisional Magistrate, Basirhat in the District North 24 Parganas upon being satisfied, proceed to promulgate an order prohibiting assembly of five or more persons except police personnel on duty from 9.30 p.m. on 09.02.2024 to maintain peace and tranquility in Sandeshkhali Police Station area."

This order merely and broadly refers to a tension prevailing in the police station area and a reporting that a large number of people shall gather in front of police station. The exact nature of alleged illegality, committed or apprehended or the exact area that has to be covered have not been mentioned or discussed in the order. It only makes a bald and ritualistic reference to the possibility of breach of peace.

In this regard it may be germane to rely on certain portions of the decision in *Anuradha Bhasin* (supra):-

"141. In a situation where fundamental rights of the citizens are being curtailed, the same cannot be done through an arbitrary exercise of power; rather it should be based on objective facts. The preventive/remedial measures under Section 144 Cr.P.C. should be based on the type of exigency, extent of territoriality, nature of restriction and the duration of the same. In a situation of urgency, the authority is required to satisfy itself of such material to base its opinion on for the immediate imposition of restrictions or measures which are preventive/remedial. However, if the authority is to consider imposition of restrictions over a larger territorial area or for a longer duration, the threshold requirement is relatively higher.

142. An order passed under Section 144 Cr.P.C. should be indicative of proper application of mind, which should be based on the material facts and the remedy directed. Proper reasoning links the application of mind of the officer concerned, to the controversy involved and the conclusion reached. Orders passed mechanically or in a cryptic manner cannot be said to be orders passed in accordance with law."

A Constitution Bench of the Hon'ble Supreme Court in *Babulal Parate*, AIR 1961 SC 884, held as under:-

"25. The language of Section is somewhat different. The test laid down in the section is not merely "likelihood" or "tendency". The section says that the Magistrate must be satisfied that immediate prevention of particular acts is necessary to counteract danger to public safety etc. The power conferred by the section is exercisable not only where present danger exists but is exercisable also when there is an apprehension of danger."

No proper satisfaction to such effect has been recorded here. Even specific facts are absent. Therefore, this test could not be satisfied in the facts of the present case so as to promulgate an order under Section 144 of the Code. Such

promulgation has to be done by exercising more care and circumspection and surely, with a better reasoning. After all we are dealing with the rights of the citizens of the country.

Even on facts, no material has been placed before this Court to justify as to why the entire area under the Sandeskhali Police Station should be covered under an order passed in terms of 144. As was held in *Anuradha Bhasin* (supra), if a larger area is to be covered, better should be the reasoning provided.

In view of the above discussions, the impugned order of promulgation of the order under Section 144 of the Code cannot be sustained either in law or on facts and therefore, is quashed and set aside.

However, considering the situation prevailing in the area, the State shall be at liberty to pray for promulgation of any such order in respect of the exact area of disturbance, as for instance, at the two places allegedly attacked along with a radius of a few meters.

All concerned are directed to exercise restraint.

However, instead of exhausting all their efforts to quell protests by, at best lathi-weilding village women, the police authorities need to fix their priorities better and look for the two alleged prime perpetrators of crime. Only if they are hauled up, can the tortured women of the village muster enough courage to lodge all their complaints. If such complaints are made, the respondent authorities shall also inquire to the wrongdoings of the concerned police personnel as well, whether for abetment of such crimes or for destruction of evidence.

The police authorities shall also keep a sharp vigil at the locale, deploy more armed personnel in the area for keeping peace and use modern technology like Drone Cameras to conduct surveillance.

With the above observations, the writ petition is disposed of.

As affidavits were not called for, the allegations are deemed not to have been admitted. Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

Parties shall act on a server copy downloaded from the official website of this Court.