

(2009) 04 MAD CK 0128

In the Madras High Court

Case No : Writ Petition (MD) No. 2278 of 2009 and M.P. (MD) No. 1 of 2009

V. Mohan Ambalam

APPELLANT

Vs

The Tahsildar-cum-Executive Magistrate and Others

RESPONDENT

Date of Decision : 06-04-2009

Acts Referred:

Constitution of India, 1950 — Article 17, 226

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

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 6(20), 63

Citation : (2010) CriLJ 248

Hon'ble Judges : K.K. Sasidharan, J

Bench : Single Bench

Advocate : S.S. Sundar, for the Appellant; K.M. Vijayakumar, Additional Government Pleader for RR-1 to 3, R. Alagarsamy, for R-4 and T. Lajapathi Roy, for R-5, for the Respondent

Judgement

K.K. Sasidharan, J.—The legality and correctness of the successive orders issued u/s 144 of the Criminal Procedure Code is the core

question to be decided in this Writ Petition.

Factual Matrix:

Petitioner's Version:

2. The petitioner is a member of Kallar community residing in Therkutheru Village in Melur Taluk of Madurai District. There is a well known

temple in the said village known as ""Arulmigu Manthai Veeranasamy Temple"" and the said temple is managed by the members of the five families

belonging to the Kallar community. They have been managing the administration of the temple from time immemorial and the temple was treated as

a private temple for all these years. There was a proceeding in O.A.No.89 of 1978 before the Deputy Commissioner of Hindu Religious and

Charitable Endowments Department u/s 63(a) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. In the said original

application preferred by the members of Kallar community (Ambalakarar), an order has been passed to the effect that the temple is a private

temple belonging to the five families and it was not a public temple as defined u/s 6(20) of the Tamil Nadu Hindu Religious and Charitable

Endowments Act, 1959.

3. The members of Kallar community has been celebrating the rituals, like Kappukattu and Pookuzhi in the temple and those rituals were

exclusively performed by the members of Kallar community without the intervention or participation by any other community. In the course of time,

the members belonging to the Adi Dravidar Community started claiming rights to participate in the religious affairs at the instance of politicians.

Since they have been making untenable claims before the revenue officials with respect to the temple, the members of the Kallar community filed a

suit in O.S. No. 403 of 2004 before the Principal District Munsif, Madurai for a decree of permanent injunction restraining the members of Adi

Dravidar Community from interfering with their peaceful possession and enjoyment of the temple as well as its administration and conduct of

festivals. The suit was filed in a representative capacity and the petitioner was the first plaintiff in the said suit. There was an interlocutory injunction

during the pendency of the suit and the same was confirmed in a revision filed before this Court. The suit was contested by the members of Adi

Dravidar community residing at Therkutheru Village and it was their contention that the temple was a public temple and their predecessors-in-

interest were the main Samiyadis of the temple.

4. The suit in O.S. No. 403 of 2004 was decreed as per judgment and decree dated 24.01.2007. There was a specific finding in the said

judgment that the temple is in the administration of the Kallar community from 1885 onwards and that the defendants have not established their

right as claimed by them. The said judgment was confirmed in A.S. No. 64 of 2007 by the learned First Additional Sub Judge, Madurai. There

was no further appeal and as such, the judgment and decree has become final.

5. In the meantime, the members of Adi Dravidar community has been giving petitions before the police as well as before the first respondent

seeking permission to participate in the Pookuzhi festival. In the year 2006, there was a demand from the said community to participate in the Pookuzhi festival to be conducted in March 2006. Since there were rival claims for the conduct of the festival, the first respondent summoned the members of both the communities and ultimately, an order was passed u/s 144 of the Criminal Procedure Code to the effect that five or more members should not assemble in the temple premises from 27.02.2006 to 29.03.2006. Since the first respondent was not prepared to cancel the order, the petitioner and his community people filed a criminal revision before this Court in Crl.R.C.No.286 of 2006 and the said revision was disposed of as per order dated 28.03.2006 directing the first respondent and the police to provide adequate security to the petitioner for performing the festival in a peaceful manner without disturbing the tranquility of the locality. The people belonging to the rival community were also permitted to worship the deity.

6. Accordingly, the first respondent passed an order on 28.03.2006 to the effect that the members of Adi Dravidar community have no right in the temple and its affairs, but they were permitted to worship the deity during the time allotted to them by the Inspector of Police, Melur. The said order was challenged in Crl.R.C.No.306 of 2006 before this Court and the revision was dismissed as per order dated 12.04.2006 with an observation that the rituals of Pookuzhi and Kappukattu have been performed only by the members of the Kallar community for all these years and the Adi Dravidars were never allowed to perform the same within the premises of the temple, since it was declared as a private temple. In the said order also, the members of Adi Dravidar community were given the liberty to visit the temple and worship the deity.

7. Though the claim of the members of the Adi Dravidar community was negated in the civil suit in O.S. No. 403 of 2004 as per judgment and decree dated 24.01.2007, they have been making unreasonable claims before the first respondent and it was repeated during the year 2008 also which made the first respondent to pass an order u/s 144 of the Criminal Procedure Code preventing both the parties from conducting the temple festival for the said year. The said order was challenged by the petitioner and his community people in Crl.R.C.No.327 of 2008 and the revision

petition was disposed of by this Court with a direction to the authorities to ensure the conduct of festival in a peaceful manner. In the said order, it was indicated that the festival has to be conducted in the very same manner, as it was done in the previous years. It was also indicated in the said order that the Adi Dravidar community people, while entering the temple for worship, should not be prevented. Accordingly, the festival was celebrated by the petitioner and his community members as before, without the intervention or participation of the members of Adi Dravidar community.

8. While so, the first respondent passed an order in proceedings No. Na.Ka.No.A2/3327/09, dated 22.02.2009 invoking Section 144 of the Criminal Procedure Code, whereby it was directed that both the parties should not assemble in the temple premises from 22.02.2009 to 21.03.2009. Since the said order was passed without taking into consideration the judgment and decree of the civil Court, the petitioner filed a petition before the first respondent requesting to cancel the order and to give protection to the members of his community to conduct the temple festival and more particularly, Kappukattu and Pookuzhi festival to be held between 26.03.2009 and 08.04.2009. However, without cancelling the said order, another order was passed on 21.03.2009 extending the prohibitory order from 21.03.2009 to 19.04.2009. Aggrieved by the said order, the petitioner has filed the Writ Petition.

9. When the matter came up on 26.03.2009, I have issued notice to the respondents. I have also indicated to the learned Counsel for the petitioner that he has to take steps to implead the members of the Adi Dravidar community in a representative capacity. Accordingly, M.P.(MD).No.2 of 2009 was filed to implead a prominent member of Adi Dravidar Community as fourth respondent in the writ petition and the said application was allowed and he was impleaded as a party to the proceeding. After the matter was heard and posted for orders, M.P.(MD). No. 3 of 2009 was filed to implead another member of the Adi Dravidar Community and the said application was also allowed and he was impleaded as fifth respondent and the learned Counsel representing the newly impleaded fifth respondent was also heard.

10. The first respondent has filed a counter-affidavit, wherein it was stated that

though the temple is a private temple and the right of the petitioner

and his community was declared by the civil Court, they are not expected to deny the right of the Adi Dravidar community to worship the deity.

According to the first respondent, the temple is located in a Natham poramboke and as such, the five families in the village do not have the

exclusive ownership over the temple. The decree of the civil Court as well as the appellate decree in the declarative suit filed by the petitioner were

also referred to in the counter-affidavit. According to the first respondent, both the groups were preparing for a show down in the forthcoming

masi festival, which made him to pass the impugned order with a view to safeguard the public peace and tranquility in the locality.

11. By consent of the Counsel for the parties, the writ petition was taken up for final disposal.

Submissions:

12. Thiru. S.S. Sundar, learned Counsel appearing for the petitioner contended that the first respondent has been successfully passing orders u/s

144 of the Criminal Procedure Code without any regard to the declarative decree passed by the civil Court, wherein the right of the petitioner and

his community to conduct the festival has been recognized. According to the learned Counsel, the issuance of an order u/s 144 of the Criminal

Procedure Code has become a routine affair, so far as the first respondent is concerned and without taking any steps to implement the orders of

civil the Court, the first respondent has been adopting a practice of preventing the petitioner and his community from celebrating the festival.

13. Thiru. Mr. R. Alagarsamy, learned Counsel for the fourth respondent contended that the members of Adi Dravidar community had been

functioning as the main Samiyadis of the temple from time immemorial and as such, it cannot be said that they have no part to play in the temple

festival.

14. Thiru. T. Lajapathi Roy, learned Counsel appearing on behalf of the fifth respondent fairly conceded that the members of the Adi Dravidar

Community has no right in the administration of the temple and it was the prerogative of the Kallar community to administer the temple. However,

the Adi Dravidars are also having the right to participate in the temple festival and such rights cannot be denied. The learned Counsel further

contended that though permission was given to the fifth respondent and the members of his community to worship the deity, as per the earlier

orders of this Court, the same was not complied with and the community members were arrested during the time of festival. According to the

learned Counsel, the denial of the right to participate in the rituals amounts to discrimination on the ground of caste and as such, is violative of the

provisions of the constitution and more particularly Article 17 of the Constitution.

Analysis:

15. The documents produced in the typed-set of papers and more particularly, the civil Court judgment and decree shows the declaration of status

of the petitioner and his community with respect to the "'Arulmigu Manthai Veeranasamy Temple'". The judgment proceeds on the basis that the

temple has been in the administration of the petitioner's community from 1885 onwards and that the Adi Dravidars failed to establish their right on

the basis of documents. Admittedly, the judgment and decree was confirmed in first appeal and it is nobody's case that a further appeal has been

preferred against the judgment of the first appellate Court. Therefore, the decree in O.S. No. 403 of 2004 has become final.

16. The first respondent has passed the impugned order on the factual premise that there was a possibility of breach of peace and tranquility in the

village and a possible threat to the life and property. The prohibitory order issued originally on 22.02.2009 was subsequently renewed as per order

dated 21.03.2009. The very same respondent has issued similar orders earlier on 09.03.2005, 27.02.2006 and on 07.02.2008. The earlier orders

issued by the first respondent u/s 144 of the Criminal Procedure Code was the subject matter of criminal revision petitions before this Court.

17. When the order dated 09.03.2005 was challenged, this Court issued a direction to the first respondent to ensure the conduct of festival as

done earlier. The said order would read thus:

Under the stated circumstances, the Revenue Divisional Officer concerned was summoned to appear before this Court and accordingly, he is

present at 3.00 p.m. before this Court today. After hearing him as to the assessment of the situation, this Court is of the considered opinion that the

Pookuzhi Festival, which is scheduled to be performed on 25.03.2005, is to be performed as scheduled, in the manner and way, in which the said

festival was conducted last year. Both the parties have also agreed for the said course. In such circumstances, there is no impediment to direct the

Revenue Divisional Officer concerned, who is present before this Court today, to see that the Pookukzhi Festival takes place on 25.03.2005 in a

peaceful manner, without being the peace and tranquility disturbed in the locality and also to see that the festival is conducted in a manner and way,

in which it was conducted last year. Accordingly, a direction is issued to Revenue Divisional Officer concerned and this petition is ordered.

18. The order passed by the first respondent u/s 144 of the Criminal Procedure Code dated 27.02.2006 was the subject matter in

Crl.R.C.No.286 of 2006. This Court, as per order dated 28.03.2006, directed the first respondent as well as the police to provide adequate

security to the writ petitioner for the smooth conduct of the festival. The said order would read thus:

On consideration of the rival contentions and perusal of the materials available on record, I find that the order passed by the first respondent

requires certain clarification. As the festival has been scheduled to commence from 29.03.2006, it is hereby directed that the respondents 1 to 3

shall provide adequate security to the petitioners for performing the festival in peaceful manner without disturbing the tranquility of the locality.

However, the people belong to the community of the respondents 4 to 14 may also visit the temple and worship the deity. The proceedings, which

are pending before the first and second respondent are not disturbed.

19. The first respondent has passed a consequential order dated 28.03.2006 on the basis of the order passed by this Court in Crl.R.C. No. 286

of 2006 and the said order was challenged by the members of Adi Dravidar community in Crl.R.C.No.306 of 2006 and while dismissing the said

revision, as per order dated 12.04.2006, this Court observed thus:

I have considered the rival contentions and perused the materials available on record. The rituals of Pookuzhi and Kappukattu have been

performed by the respondents 4 to 8 all these years. The petitioners were never allowed to perform the same within the premises of the temple

since it has been declared as a private temple for respondents 4 to 8 by the HR&CE. Injunction has been granted against the petitioners by the

civil Court and it has been made absolute. Under such circumstances, though the

petitioners have been given liberty to visit the temple and worship

the deity, making an attempt to enlarge the scope of 145 proceedings is not permissible under law.

20. The judgment and decree of the civil Court as well as the orders passed by this Court in the criminal revision petitions clearly shows that the

rituals of Pookuzhi and Kappukattu have been performed only by the petitioner and his community members and the members of the Adi Dravidar

community were only permitted to worship the deity. There is nothing on record to show that the respondents 4 and 5 and the people belonging to

their community were also associated with the petitioner and his community people in celebrating the Pookuzhi and Kappukattu festival. The first

respondent, while passing the impugned order, very strangely omitted to consider the judgment of the civil Court as well as the orders of this Court

in the criminal revision cases referred to above. The first respondent has been successfully issuing orders u/s 144 of the Criminal Procedure Code

as a routine measure.

Proceedings u/s 144 of the Criminal Procedure Code - Extent of Judicial Review:

21. The Supreme Court in *Gulam Abbas and Others Vs. State of Uttar Pradesh and Others*, held that an order passed u/s 144 of the Criminal

Procedure Code would be amenable to the writ jurisdiction of High Courts under Article 226 of the Constitution of India, if it violates or infringes

any of the fundamental rights.

22. In *Madhu Limaye Vs. Sub-Divisional Magistrate, Monghyr and Others*, the Supreme Court reiterated the legal position that a writ petition

would be maintainable in respect of proceedings u/s 144 of the Criminal Procedure Code.

23. In the present case, the right of the petitioner and his community members to conduct the rituals of Pookuzhi and Kappukattu and the related

celebrations in the temple were effected on account of the impugned order passed by the first respondent. The order also has no reference to the

judgment and decree of the civil Court rendered in favour of the petitioner. The order is a mechanical reproduction of the orders issued by the first

respondent in the year 2005, 2006 and 2008 and this Court has interfered in all those orders by issuing directions for the conduct of festival as

before. Therefore, necessarily this Court has to exercise the power of judicial

review in the interest of justice.

24. In *Gulam Abbas and Others Vs. State of Uttar Pradesh and Others*, , the issue before the Supreme Court was regarding the dispute between

the Shia community and the Sunnis and the undue restrictions imposed on the Shia community by issuing an order u/s 144 of the Criminal

Procedure Code by the Executive Magistrate of Varanasi. The members of the Shia community claimed their right to perform the religious rites,

practices, observances and functions on the basis of their customary rights which were recognized by the civil Courts. According to the Shia

community, by issuance of the prohibitory order u/s 144 of the Criminal Procedure Code, the Sunni community had very little to lose, but it was

only their community that suffered most. The Supreme Court found that the Shias have proved their existing customary rights to perform their

religious ceremonies and functions on the concerned plots and structures thereon and restrained the Sunnis from interfering with the exercise of

such rights by the Shias, and observed that it was only in an extremely extraordinary situation, when other measures are bound to fail, that a total

prohibition or suspension of such rights could be resorted to by the Executive Magistrate. In the said factual context, the scope of Section 144 of

the Criminal Procedure Code was considered in extenso by the Supreme Court and it was held thus:

26. The entire basis of action u/s 144 is provided by the urgency of the situation and the power thereunder is intended to be availed of for

preventing disorders, obstructions and annoyances with a view to secure the public weal by maintaining public peace and tranquillity. Preservation

of the public peace and tranquillity is the primary function of the Government and the aforesaid power is conferred on the executive magistracy

enabling it to perform that function effectively during emergent situations and as such it may become necessary for the Executive Magistrate to

override temporarily private rights and in a given situation the power must extend to restraining individuals from doing acts perfectly lawful in

themselves, for, it is obvious that when there is a conflict between the public interest and private rights the former must prevail. It is further well

settled that the Section does not confer any power on the Executive Magistrate to adjudicate or decide disputes of civil nature or questions of title

to properties or entitlements to rights but at the same time in cases where such disputes or titles or entitlements to rights have already been

adjudicated and have become the subject matter of judicial pronouncements and decrees of Civil Courts of competent jurisdiction then in the

exercise of his power u/s 144 he must have due regard to such established rights and subject of course to the paramount consideration of

maintenance of public peace and tranquility the exercise of power must be in aid of those rights and against those who interfere with the lawful

exercise thereof and even in cases where there are no declared or established rights the power should not be exercised in a manner that would give

material advantage to one party to the dispute over the other but in a fair manner ordinarily in defence of legal rights, if there be such and the lawful

exercise thereof rather than in suppressing them. In other words, the Magistrate's action should be directed against the wrong-doer rather than the

wronged. Further more, it would not be a proper exercise of discretion on the part of the Executive Magistrate to interfere with the lawful exercise

of the right by a party on a consideration that those who threaten to interfere constitute a large majority and it would be more convenient for the

administration to impose restrictions which would affect only a minor Section of the community rather than prevent a larger Section more

vociferous and militant.

25. The Judgment in Gulam Abbas's case was later followed with approval in Abdul Jalil and Others Vs. State of U.P. and Others, .

26. The Scope of Section 144 of the Code of Criminal Procedure was considered by the Supreme Court in Madhu Limaye's case cited supra,

and it was observed thus:

24. The gist of action u/s 144 is the urgency of the situation, its efficacy in the likelihood of being able to prevent some harmful occurrences. As it is

possible to act absolutely and even ex parte it is obvious that the emergency must be sudden and the consequences sufficiently grave. Without it the

exercise of power would have no justification. It is not an ordinary power flowing from administration but a power used in a judicial manner and

which can stand further judicial scrutiny in the need for the exercise of the power, in its efficacy and in the extent of its application. There is no

general proposition that an order u/s 144, Criminal Procedure Code cannot be

passed without taking evidence: see Mst. Yagrupa Kumari v.

Chobey Narain Singh which in our opinion is correct in laying down this proposition. These fundamental facts emerge from the way the occasions

for the exercise of the power are mentioned. Disturbances of public tranquillity, riots and affray lead to subversion of public order unless they are

prevented in time. Nuisances dangerous to human life, health or safety have no doubt to be abated and prevented. We are, however, not

concerned with this part of the Section and the validity of this part need not be decided here. In so far as the other parts of the Section are

concerned the key-note of the power is to free society from menace of serious disturbances of a grave character. The Section is directed against

those who attempt to prevent the exercise of legal rights by others or imperil the public safety and health. If that be so the matter must fall within the

restrictions which the Constitution itself visualizes as permissible in the interest of public order, or in the interest of the general public. We may say,

however, that annoyance must assume sufficiently grave proportions to bring the matter within interests of public order.

25. The criticism, however, is that the Section suffers from over broadness and the words of the Section are wide enough to give an absolute

power which may be exercised in an unjustifiable case and then there would be no remedy except to ask the Magistrate to cancel the order which

he may not do. Revision against his determination to the High Court may prove illusory because before the High Court can intervene the mischief

will be done. Therefore, it is submitted that an inquiry should precede the making of the order. In other words, the burden should not be placed

upon the person affected to clear his position. Further the order may be so general as to affect not only a particular party but persons who are

innocent, as for example when there is an order banning meetings, processions, playing of music etc.

27. The first respondent has been exercising his powers u/s 144 of the Criminal Procedure Code right from 2005 onwards. Initially, there was no

civil Court decree declaring the status of the petitioner and his community in respect of the temple. Even after passing a judgment and decree by

the civil Court, which was confirmed in appeal, the first respondent has been passing similar orders disregarding the binding judgment. This Court

has also directed the first respondent time and again to give protection for the smooth functioning of the festival and the fourth and fifth respondents

and their community members were also permitted to worship the deity.

28. The Executive Magistrate exercising the power u/s 144 of the Criminal Procedure Code has no jurisdiction to decide a dispute of a civil nature

between two Sections of people, which is in the realm of private law. Attempt should be made before passing an order u/s 144 of the Criminal

Procedure Code to consider the factual matrix involved in the matter including the claim of the respective parties. The Executive Magistrate is not

expected to invoke the power u/s 144 of the Criminal Procedure Code in a routine manner. There must be materials before him to show that a

situation has come which requires immediate action to prevent the breach of peace. The order u/s 144 of the Criminal Procedure Code is only by

way of a temporary measure and no rights are decided by the Executive Magistrate while passing such orders. The attempt of the Executive

Magistrate should be to ensure law and order and to prevent breach of peace but not to justify the contention of a party whose claim was

negated by the civil Court. When there is a civil Court judgment declaring the rights of a particular section, the endeavour of the Executive

Magistrate should be to strike a balance between the exercise of such right by the said party with the demand made by the opposite party. Under

the guise of breach of peace, the Executive Magistrate is not expected to curtail the declared rights of a particular community.

29. The first respondent has been passing series of orders u/s 144 of the Criminal Procedure Code, whereby members of both the communities

were prevented from taking part in the temple festival. Since the jurisdiction u/s 144 of the Criminal Procedure Code was exercised in a very

casual and mechanical manner, both the petitioner as well as the respondents 4 and 5 and their community members were compelled to approach

this Court time and again to redress their grievances. In case the respondents 4 and 5 were aggrieved on account of the decision of the civil Court,

their remedy was only to prosecute the civil suit to its logical end. It would also enable the first respondent, being the Executive Magistrate of the

area, to call the parties before a negotiating table and to make an attempt to reconcile the rights of both the parties. The first respondent very

conveniently thought it fit to invoke the power u/s 144 of the Criminal Procedure Code and thereby, to shirk his responsibility of maintaining law

and order. Section 144 of the Criminal Procedure Code is intended to be used only in an extra-ordinary situation. The provision cannot be used as

a short cut to avoid the performance of duty or to run away from a factual situation.

30. When the first respondent found that the members of the petitioner's community armed with the civil Court decision was taking steps to

conduct the temple festival and the related rituals, like Kappukattu and Pookuzhi, and a claim to participate in the said rituals were made by the

other community represented by the respondents 4 and 5, an order Section 144 of the Criminal Procedure Code was immediately issued. There is

nothing on record to show that the Executive Magistrate has considered the rights of the petitioner and his community members to perform the

rituals, before taking recourse to the prohibitive power u/s 144 of the Criminal Procedure Code. When the petitioner has pleaded to rescind the

order made u/s 144 of the Criminal Procedure Code and to permit the members of his community to perform the rituals on the basis of the

customary practice, recognized also by the Court of law, the Executive Magistrate was bound to consider the matter with an open mind and in the

event of satisfying himself about the legality of the claim, to ascertain the feasibility of granting protection for exercising such rights.

31. While extending the prohibitive order for a fresh period also, there was no attempt made by the Magistrate to review the situation. It was a

mechanical extension even without complying with the mandate of Section 144(5) of the Criminal Procedure Code. The successive and repeated

issuance of orders u/s 144 of the Criminal Procedure Code had the effect of interference in the civil Court decree, inasmuch as the the petitioner

was prevented in executing the decree.

32. While the petitioner has been taking efforts to conduct the rituals every year, the first respondent has been issuing prohibitive orders u/s 144 of

the Criminal Procedure Code every year as a ritual.

33. The power u/s 144 of the Criminal Procedure Code has to be used ordinarily for the purpose of affording protection to those who exercise

their legal rights. It should not be the other way for suppression of the

performance of such rights. However, things would be different in case under the pretext of exercising such rights, there was a deliberate attempt on the part of those who assert such rights to cause breach of peace. The Executive Magistrate cannot be a silent spectator in such cases, and action could be taken in such urgent cases of apprehended danger to public tranquility. There cannot be a universal rule governing all such situations and each of the urgent cases of nuisance or apprehended danger to tranquility has to be handled by the Executive Magistrate depending upon the gravity of the situation. It is true that the satisfaction arrived at by the Executive Magistrate has to be given due weight, and by exercising the power of judicial review, this Court cannot substitute its views as an appellate authority. However, in cases wherein, the interference in the exercise of legal rights by passing an order u/s 144 of the Criminal Procedure Code was done as a matter of course, it would require an examination by the Court, of the materials available on record, which made the Executive Magistrate to take the preventive measures. The prohibitory orders can be passed only in an emergent situation and there should be an imminent need to take such extra-ordinary measures. In short, those actions have to be resorted to only in exceptional circumstances, and not as a matter of course.

34. The order u/s 144 of the Criminal Procedure Code is a preventive action rather than punitive. As observed by the Supreme Court in State of M.P. Vs. Kedia Leather and Liquor Ltd. and Others, , the proceedings u/s 144 of the Criminal Procedure Code is more in the nature of a civil proceeding than a criminal proceeding.

35. The learned Counsel for the fifth respondent relied on a judgment of the Supreme Court in State of Karnataka Vs. Appa Balu Ingale and others, , wherein the thrust of Article 17 of the Constitution of India was indicated. The relevant portion of the said judgment would read thus:

36. The thrust of Article 17 and the Act is to liberate the society from blind and ritualistic adherence and traditional beliefs which lost all legal or moral base. It seeks to establish new ideal for society-equality to the Dalits, at par with general public, absence of disabilities, restrictions or prohibitions on grounds of caste or religion, availability of opportunities and a sense of being a participant in the main stream of national life.

36. India is a land of multiple religions. We have so many religions, so many communities, castes and sub-castes in our secular country. Each community has got its own custom and practices as well as religious belief. Everybody has got the freedom to worship their God or to exercise their religious rights. It is not permissible for a member of one community to interfere in the religious rights of another community. There should be communal harmony and the attempt of each community should be to respect the religious sentiments or communal sentiments of the other religion and community.

37. The issue raised in the present writ petition is really a social issue which has to be resolved at any cost at the village level itself. As observed by the Hon"ble Supreme Court in Appa Balu Ingale's case cited supra, we should respond to the human situations to meet the felt necessity of the time and sufficient needs, meaningful right to life and give effect to the constitution.

38. The petitioner and the respondents 4 and 5 and the members of their respective communities are residing in the very same village. They live in proximity. In the name of caste and community, an artificial barrier has been put up in between them and the same is carried on from generation to generation. It is not possible to change the mind set through a judgment of the Court. The change should come from one's own heart.

Unfortunately, in the name of God, two Sections of the community are, at logger heads, fighting one against another.

39. The Pookuzhi and Kappukattu celebrations in the temple is scheduled to be held on 08.04.2009. The Executive Magistrate, Inspector of Police, Melur and members of both the communities were present in Court along with their Counsel, during the time of hearing. I have tried to convince the Counsel on either side about the necessity to maintain law and order in the locality. I have also called upon them to come to an agreement with regard to the conduct of Pookuzhi and Kappukattua celebration in the temple. The Counsel on either side also tried their level best to convince both the parties and the matter was passed over on a number of occasions during the morning as well as in the afternoon session on 2nd April, 2009 so as to enable the learned Counsel to discuss each of the points with their clients. However, both the petitioner as well as the

respondents 4 and 5 stick to their position and they were not agreeable for any kind of adjustments.

40. While deciding the legality and correctness of the decision taken by the first respondent, the back ground facts of the case and the chequered

history of the litigation between the two communities have to be taken into consideration. There is a binding judgment of the civil Court in favour of

the petitioner and his community members. There was also a finding in the earlier round of litigation challenging the proceedings u/s 144 of the

Criminal Procedure Code that it was not the practice of the Adi Dravidar Community members to perform the rituals of Pookuzhi and

Kappukattu. There was no change of circumstances to take a different view of the matter.

41. The Supreme Court has clarified the legal position in Madhu Limaye's case 1970 (3) SCC 746 that Section 144 of the Criminal Procedure

Code is directed against those who attempt to prevent the exercise of legal rights by others.

42. During the course of his submissions, the learned Counsel for the petitioner explained the difficulties in permitting the members of the other

community to perform the rituals, in addition to the objection on account of the rituals having been conducted only by the members of the petitioner

community for all these years. According to the learned Counsel those, who wish to take part in the ritual, have to undergo fasting for a particular

duration and they have also to observe certain customary practices during the period. They are not expected to stay in their houses. They have to

perform daily rituals, poojas and recitations and this constitutes an essential part of their religious practice, and on performing those rituals, and

undergoing the fasting, they acquire the right to perform the rituals of Pookuzhi and Kappukattu. In short, only those who have complied with the

mandatory religious practices, alone would be permitted to perform the final rituals on the date of festival.

43. The members of Kallar community were permitted to perform the rituals and to conduct the festival earlier as per the orders of this Court in

modification of the Orders passed by the first respondent u/s 144 of the Criminal Procedure Code. The members of Adi Dravidar Community

were permitted to visit the temple and worship the deity. The order passed by this Court was implemented in its letter and spirit and there was no

untoward incident reported during the conduct of festival. Therefore, on a careful consideration of the matter, I am of the view that the festival has

to be conducted on 08.04.2009 in the manner indicated in the earlier orders passed by this Court.

44. Accordingly, to honour the civil Court judgment and decree and to afford protection to those who seek only the lawful exercise of their legal,

natural and customary rights, and to preserve public peace, the following directions are issued:

(i) The respondents 1 to 3 are directed to permit the conduct of festival and performance of the rituals of Pookuzhi and Kappukattu in ""Arulmigu

Manthai Veeranasamy Temple"" on 08.04.2009 as performed in the manner and the way in which it was conducted earlier and as indicated in the

orders of this Court dated 09.03.2005, 28.03.2006 and 12.04.2006 in Crl.M.P. No. 1899 of 2005 in Crl.R.C. No. 227 of 2005,

Crl.R.C.Nos.286 of 2006 and 306 of 2006 and as observed by the learned Principal District Munsif, Madurai in the judgment and decree dated

24.01.2007 in O.S. No. 403 of 2004, as confirmed by the judgment and decree dated in A.S. No. 64 of 2007 on the file of the learned First

Additional Sub Judge, Madurai;

(ii) While conducting the festival and performing the rituals, there should be no attempt on the part of the petitioner and his community members to

offend the sentiments of the members of Adi Dravidar Community;

(iii) The members of the Adi Dravidar community are entitled to visit the temple and worship the deity without any reservations. The petitioner and

his community people, being the majority in the Village, should be magnanimous and they should not do anything which would interfere with the

rights of the respondent Nos. 4 and 5 and their community members, to enter the temple for the purpose of worship;

(iv) There should be no interference in the conduct of the rituals of Pookuzhi and Kappukattu by the respondent Nos. 4 and 5 and the members of

their community. This limitation on their right should not be construed as an act of discrimination, in view of the binding judgment of the civil court in

O.S. No. 403 of 2004;

(v) The respondents 1 to 3 are empowered to regulate the visiting rights of Adi Dravidars during the time of performance of rituals of Pookuzhi and

Kappukattu. This regulation is only for the smooth conduct of the rituals and would be operative only during the performance of rituals;

(vi) The respondent Nos. 1 to 3 must ensure the peaceful conduct of festival and rituals. They should also ensure that the Adi Dravidars are

permitted to enter the temple and worship the deity in connection with the festival;

(vii) The third respondent is directed to post sufficient police force for the smooth conduct of the festival;

(viii) Police force should also be posted in the residential areas of Kallars and Adi Dravidars in the village and adjacent to the temple in particular;

(ix) The third respondent should personally monitor the security arrangements;

(x) The participants to the festival or rituals should not carry weapons, wooden bars, metal bars/rods or any other kind of instruments/weapons, capable of inciting violence;

(xi) The directions of the Executive Magistrate and police officers issued for the smooth conduct of the festival, performance of rituals and visiting rights of the Adi Dravidars should be scrupulously followed; and

(xii) The third respondent or a senior police officer entrusted by him along with the first respondent should be personally present in the temple premises on 08.04.2009 to oversee the security arrangements and to ensure the compliance of the above directions.

45. The crying need of the hour is social harmony and communal amity.

46. The impugned order is modified as indicated above.

47. The writ petition is disposed of with the above directions. Consequently, the connected miscellaneous petition is closed. No costs.