

IN THE HIGH COURT OF BOMBAY AT GOA.

Criminal Writ Petition No. 23/2015

Pramod Mutalik s/o Hanmant Rao Mutalik
 aged 60 years,
 Occupation :Social Service
 Residing at C/o Gourishankar Mot,
 D Block, 3rd floor, T. B. Revankar Complex,
 Court Circle, Hubli-580029.

Petitioner

Versus

- 1] The State of Goa,
 Department of Home,
 Through. Public Prosecutor
 High Court.

- 2] The District Magistrate,
 South Goa
 Opp. Municipal Garden,
 Margao-403 601.

- 3] The District Magistrate,
 North Goa
 Collectorate Building,
 Panaji-403 001.

Respondents

....

Mr. Nagesh Takbhate, Advocate with Mr. Sanjiv Punakekar, Advocate
 for the petitioner.

Mr. S.R. Rivankar, Public Prosecutor for the respondents.

...

CORAM : K.L. WADANE, J.

Date of reserving the Judgment : 16/06/2015.

Date of pronouncing the Judgment : 02nd July, 2015.

JUDGMENT:

- 1] Heard Mr. Nagesh Takbhate, learned Advocate for the

petitioner and Mr. S.R. Rivankar, learned Public Prosecutor for the respondents.

2] Rule. Rule returnable forthwith. By consent, heard forth. The learned Public Prosecutor waives notice on behalf of the respondents.

3] The present petition is filed by the petitioner challenging the orders passed by the respondents and thereby banned the entry of the petitioner in the State of Goa. Hence, the present petition under the provisions of Article 226 of the Constitution of India.

4] The brief facts of the case may be summarized as follows:-

The petitioner is the leader of the organization namely “Sri Ram Sene”. Prior to the ban, the petitioner had been to Goa for several times and during his stay at Goa, he visited temples in Goa to seek blessings from the Almighty.

5] The petitioner is doing social activities in a peaceful manner which has irked certain individuals and organizations who cherished in tolerance towards the very right raising such issues.

6] No criminal complaint or any other proceeding is pending against the applicant in the State of Goa with reference to the law and order problem.

7] In the month of August 2014 there was news that the Government of Goa would ban the entry of the petitioner - “Sri Ram Sene” in the State of Goa. At that time, one Tousif Shaikh has come out with Tiatr (“Konkani drama”) “Akantwadi Goent Naka” and the public advertisement of the said Tiatr claimed that the same was based on “Mutalik”. Apprehending that Tousif Shaikh and his associates were attempting to malign the image of the petitioner by projecting him in a bad image. It is specifically submitted that the petitioner's organization did not resort to any illegal, unconstitutional or improper way.

8] The petitioner further submits that the exposure of the petitioner and his organization to the debate over Tiatr and the intensive interactions that the petitioner had with the people of Goa during the debate over the aforesaid Tiatr have inspired the petitioner to pen down a Tiatr on a social theme relating to inter-faith marriage and in near future a team of local artists from Goa would come out with public show of Tiatr written by the petitioner. Thus, the petitioner believes

in answering to the opponents in a constitutional manner and would not take the law in his hands.

9] In the aforesaid circumstances and, particularly, in the context that the petitioner was resorting to legitimate means to defend and enforce his legal right. The petitioner learnt from the newspapers that the orders banning the petitioner from entering in the State Goa was passed by the District Magistrate, South Goa and District Magistrate, North Goa. Thereafter the petitioner through his Advocate submitted an application to both the District Magistrates to allow the petitioner to enter into the State of Goa for a particular period. The request of the petitioner was turned down by both the District Magistrates. Subsequently, the orders issued by the District Magistrate South Goa and North Goa were extended for 60 days and thereafter the ban was extended by the State Government for six months. Hence, the present petition.

10] On behalf of the respondent no.1 Shri Harish N. Adconkar, Under Secretary(Home) Government of Goa filed his affidavit and has denied the contents of the petition and has disclosed the circumstances/grounds on which the District Magistrate have banned the entry of the petitioner in the State of Goa and subsequently the

State Government has extended the ban up to 15/7/2015.

11] Considering the averments in the petition and after hearing both the sides, the following points arise for my determination:-

<u>Points</u>	<u>Findings</u>
(i) Whether the order passed by respondent nos.2 and 3 under the provisions of Section 144 of the Code of Criminal Procedure and extended by the respondent no.1 is legal, proper and correct?	<u>Yes</u>
(ii) What order?	... <u>Petition is dismissed.</u>

12] I have heard the arguments of Mr. Takbhate, the learned Advocate appearing for the petitioner and Mr. Rivankar, the learned Public Prosecutor for the respondents-State.

13] At the outset, it is material to note that the orders passed by the respondents under the provisions of Section 144 of the Code of Criminal Procedure, 1973 are under challenge. Therefore, it is necessary to refer the provisions of Section 144 of the Code of Criminal Procedure, which reads as under:-

“Section 144 in The Code Of Criminal Procedure, 1973

144. Power to issue order in urgent cases of nuisance of apprehended danger.

(1) In cases where, in the opinion of a District Magistrate, a Sub- divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by section 134, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquility, or a riot, or an affray.

(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed ex parte.

(3) An order under this section may be directed to a particular individual, or to persons residing in a particular place or area, or to the public generally when frequenting or visiting a particular place or area.

(4) No order under this section shall remain in force for more than two months from the making thereof: Provided that, if the State Government considers it necessary so to do for preventing danger to human life, health or safety or for preventing a riot or any affray, it may, by notification, direct that an order made by a Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which the order made by the Magistrate would have, but for such order, expired, as it may specify in the said notification.

(5) Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section, by himself or any Magistrate subordinate to him or by his predecessor- in-office.

(6) The State Government may, either on its own motion or on the application of any person aggrieved, rescind or alter any order made by it under the proviso to sub-section (4).

(7) Where an application under sub- section (5) or sub-section (6) is received, the Magistrate, or the State Government, as the case may be, shall afford to the applicant an early opportunity of appearing before him or it, either in person or by pleader and showing cause against the order; and if the Magistrate or the State Government, as the case may be, rejects the application wholly or in part, he or it shall record in writing the reasons for so doing”.

14] On a plain reading of the aforesaid provisions, it appears that the respondent nos.2 and 3 are empowered to issue preventive order by way of speedy remedy directing any person to abstain from a certain act. The respondent nos.2 and 3 can pass *ex parte* order in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed. As per the Clause (4) of Section 144 of the Code of Criminal Procedure, the respondent no.1-the State Government is empowered to extend such order for a period not exceeding than six months from the date of the order passed by the District Magistrate. So, on a bare perusal of the above provisions, it is very clear that the respondent nos.2 and 3 have powers to make a certain order preventing any person from doing certain activities and the respondent no.1 has authority to extend its period up to six months.

15] Mr. Takbhate, the learned Advocate appearing for the petitioner has argued that there is absolutely no record of whatsoever in

nature, against the petitioner showing that he has involved in the illegal or criminal activities within the State of Goa. Therefore, the orders passed by respondent nos. 1 to 3 are arbitrary, illegal which caused injustice to the petitioner. Such orders are passed by the respondents without there being any material indicating the circumstances/ground on which the entry of the petitioner in the State of Goa can be banned.

16] Admittedly, the petitioner is a leader of a organization namely “Sri Ram Sene” and, in this context, Mr. Rivankar, the learned Public Prosecutor, has argued that the entry of the petitioner in the State of Goa is likely to breach the public tranquility and the orders passed by the learned District Magistrate i.e. respondent nos. 2 and 3 are well reasoned, based upon the evidence by way of the report of the Superintendent of Police, North Goa and South Goa. The affidavit on behalf of the respondent no.1 filed on record discloses that the orders passed by the respondent nos. 2 and 3 are issued for the purpose of maintaining public order which is in the larger interest of the society. Therefore, according to the respondents, it does not violate the fundamental right of the petitioner under Articles 14, 19, 21 and 25 of the Constitution of India and which are not absolute right but subject to law, particularly, maintenance of a public order. The affidavit further discloses that the petitioner is a founder of the organization known as

“Sri Ram Sene” and having a track record of indulging and making provocative and inflammatory speeches, inciting hatred between religious groups causing breach of peace in society at large. Presently, the petitioner is operating from the State of Karnataka and there are several reports indicating that he and members of his organization are involved in creating breach of peace problems in the State of Karnataka since the year 2000 till date. From the reports, it is revealed that there are several FIRs registered against the petitioner in the State of Karnataka particularly under Section 153A of the Indian Penal Code for promoting enmity between different groups on the ground of religion, race etc. and under Section 295 and 296A for the offences relating to religion etc. Further affidavit discloses that in the year 2009 the petitioner along with his group entered into a pub styled as “Ammensia-the Lounge” at Mangalore and beat up group of young men and women claiming that the women were violating the traditional Indian values, against which an F.I.R. has been registered under Crime No.22/2009 under Sections 143, 147, 323, 444, 504, 354, 506, 341, 342, 10 (b) read with Section 149 of the Indian Penal Code at Bangalore Bander Police Station (Karnataka) which is still pending. The affidavit further discloses that the petitioner and his organization has expanded their illegal activities of insisting hatred between the religious groups and around 48 criminal cases are pending against him

in the State of Karnataka and his entry was banned in Malebennur in Harihar Taluka of Davangare District in February 2000. He was also banned from entering the Mangalore District for attacking political party workers in Mangalore.

17] From the contents of the affidavits based upon the record, it appears that there are number of offences registered against the petitioner in the State of Karnataka as he resides in the State of Karnataka and his entry in a particular places were banned for some time. This leads me to infer that the record of the petitioner in reference to the crime is not clear. No doubt, no material is placed on record to show that the petitioner has been convicted in any of the offences registered against him. Still one cannot lost sight of registration of number of crimes against the petitioner. For a limited purpose, so to see whether the orders passed by the respondents are based upon the circumstances or the grounds by which one can say that the apprehension of the respondents that due to the entry of the petitioner in the State of Goa certainly leads to breach of peace and public tranquility. In this behalf, it is material to mention that in the affidavit on behalf of the respondent no.1, it has been clearly mentioned that the petitioner had attended Akhil Bhartiya Hindu Adhivaitan at Ramnathi, Ponda, Goa, between 10.6.2012 to 14.6.2012

and addressed the followers of Hindu organization thereby giving provocative and inflammatory speeches condemning other religions and expressed establishing “Sri Ram Sene”, branch in Goa against which various organizations have raised objection, particularly in Press Conference addressed in Ponda on 26.6.2014 by Youth Congress Leaders affirming that they will not allow “Sri Ram Sene” to spread its roots in the State of Goa. Similarly, several other fronts have also expressed the anguish against the entry of “Sri Ram Sene” in the Goa through media.

18] The report submitted by Superintendent of Police, North Goa and South Goa as well as C.I.D. Special Branch and thereby expressed their concern over the entry of the petitioner and his organization in the State of Goa apprehending maintenance of law and order, causing communal tension and violence. Looking to the averments in the affidavit, it appears that the above referred incident is just happened before passing of the order by the respondents. The concerned Police Officers are apprehending that the entry of the petitioner in the Goa State is likely to breach peace and public tranquility and it is likely to create a law and order problem. From the affidavit, it is further seen that one Shri Tousif Shaikh resident of Navelim, Salcete, Goa lodged a complaint at Margao Town Police

Station on 7.8.2014 that on his mobile he received threatening call to stage his Konkani drama. The said Tousif Shaikh again received phone call informing that he is belong to “Sri Ram Sene” and threatened him not to hold Karnataka drama. So, according to the respondents, all these events and the circumstances are sufficient to prevent entry of the petitioner in the State of Goa.

19] Mr. Taksande, the learned Advocate appearing for the petitioner has relied upon the observations in the case reported in **1988 (4) BomCR116 (Manohar Gajanan Joshi Vs. S.B. Kulkari and others).**

20] I have gone through the facts and observations of the above case and mainly the orders passed against the petitioner in that petition was set aside by the High Court on the ground that there was no apprehension to disturb public peace or tranquility because the petitioner was intending to enter Aurangabad City in connection with the filing of the Election Petition challenging the election of Mayor and Deputy Mayor of Aurangabad. Therefore, on that background, Court has observed thus:

“...Mere filing of a petition and pendency of the same in the High Court can by no stretch of imagination lead to the

conclusion that the presence of the petitioner in Aurangabad District would lead to disturbance of public tranquility or riots. If the District Magistrate reaches such conclusion, then it is obvious that wholly irrelevant circumstances have been taken into consideration. Filing of a writ petition to challenge the election is perfectly legal action and it is difficult to understand how such action can be disturbed the public tranquility. It is not permissible for the District Magistrate to exercise powers for preventing disturbances by resorting to such irrelevant circumstances”.

21] The above observations of this Court are not applicable to the facts of the present case because from the affidavit it is seen that before passing the preventive order against the petitioner, the petitioner had been to Goa and gave provocative speech. Hence, there are instances/circumstances by which a public peace or tranquility is likely to be disturbed.

22] It is well settled principle that the exercise of the fundamental right under Article 25 and 26 of the Constitution is not an absolute right but must yield or give way to the maintenance of public order as laid down by the Apex Court in **Gulam Abbas & Ors Vs. State of U.P. And Ors. (1982 SCR (1) 1077).**

23] Looking to the legal position in the matters of Article 25 and 26 of Constitution and the scope of the orders under Section 144 of the Code of Criminal Procedure, I am of the opinion that if the personal liberty comes at risk of disturbing public tranquility then preference has to be given to the public tranquility.

24] It is argued by Mr. Rivankar, the learned Public Prosecutor that the *ex-parte* orders are passed against the petitioner and the respondents were unable to serve personally because of the fact that the petitioner is a residence of Karnataka State. Therefore, the respondents were unable to serve the notices as required. Therefore, the orders passed by the respondents are well within the scope of Section 144 of the Code of Criminal Procedure. Mr. Rivankar, the learned Public Prosecutor has therefore, rightly relied upon the observation in a case reported in **2004 SC 2081 (State of Karnataka and another Vs. Dr. Praveen Bhat Thogadia)**, which reads thus:-

“7.Courts should not normally interfere with matters relating to law and order which is primarily the domain of the concerned administrative authorities. They are by and large the best to assess and to handle the situation depending upon the peculiar needs and necessities, within their special knowledge. Their decision may involve to some extent an element of subjectivity on the basis of

materials before them”.

25] Considering the overall circumstances of the case and looking to the contents of the affidavit on behalf of the respondent no.1, I am of the opinion that there are grounds to believe that the entry of the petitioner in the State of Goa is likely to disturb communal harmony, public peace and tranquility. Therefore, the respondent nos. 2 and 3 have passed reasoned orders banning the petitioner from entering him to South Goa and North Goa and the respondent no.1 has rightly extended such orders till 15th July, 2015.

26] I do not find any illegality, improbability or incorrectness with the order passed by the respondents. Consequently, there is no merit in the Writ Petition. Therefore, the following order:-

Order

Criminal Writ Petition No.23/2015 stands dismissed.

Rule is discharged.

K.L.WADANE, J

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