

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2015

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Crl.R.C.No.677 of 2015

Laloo @ Lemon Anandaraj

... Petitioner

Vs.

The District Magistrate
Puducherry.

... Respondent

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of Code of Criminal Procedure, against the order passed under Section 144 Cr.P.C. in M.C.No.97 of 2015 dated 18.06.2015 passed by the District Magistrate at Puducherry.

For Petitioner : Mr.S.Doraisamy

For Respondent : Mr.Tamilvanan,
Public Prosecutor, Pondicherry.

O R D E R

Being aggrieved by the order passed in M.C.No.97 of 2015 dated 8.06.2015 by the District Magistrate, Puducherry under Section 144 Cr.P.C, this revision case is filed.

2. As it was suspected that the petitioner would indulge in unlawful activities, obstruction and disturbance of peace and tranquility causing damage to life and property and intimidation to general public, the learned District Magistrate, Puducherry, passed an order under Section 144 Cr.P.C. prohibiting the petitioner from entering into the Puducherry region for a period of two months from the date of that order or till any further orders of the Competent Authority revoking the prohibition as per law, whichever is earlier except when the petitioner is summoned to attend the cases in any one of the Courts in Puducherry. Challenging the said order, the present revision has been filed.

3. The main ground of attack of the learned counsel appearing for the petitioner is that the impugned order is an ex parte order and the learned District Magistrate, Puducherry, passed the impugned order without issuing notice to the petitioner and without affording him an opportunity of hearing. In this connection, the learned counsel appearing for the petitioner relied upon the judgment of this Court in Guna @ Vella Guna @ Gunasekaran V. District Magistrate reported in 2013 (1) CTC (Cri) 692. In such case, this Court has followed the decision of the Supreme Court in State of Karnataka V. Dr.Praveen Bhai Thogadia reported in (2004) 4 SCC 684. He would mainly contend that while passing an order under Section 144 Cr.P.C, the urgent cases of nuisance or apprehended danger should be clearly explained by the authority concerned. Here admittedly, no notice has been issued to the petitioner. In fact, the petitioner earlier faced an order u/s.144 Cr.P.C. and the same has been challenged before this Court in Crl.R.C.No.507 of 2011. While passing orders in such case, this Court imposed conditions requiring the petitioner to appear before the concerned authority. Therefore, it was contended that even in the alleged cases which are now cited in the order, in many of the cases, the petitioner has been acquitted. Therefore, he would contend that the impugned order is illegal.

4. The learned Public Prosecutor (Pondicherry) would contend that as per Section 144(5) Cr.P.C, the petitioner can approach the authority concerned. Without doing so, the petitioner came forward to file this revision.

5. Heard both sides.

6. At the outset, the order passed by the authority concerned without notice is an acceptable one. However, it has to be decided whether the authority has power to pass such an order without issuing preliminary notice to the petitioner. No doubt, the Supreme Court has very clearly stated that the authority has ample powers to pass an ex parte order when imminent situation arises. The impugned order clearly indicates prevailing of such an imminent situation. However, on a careful reading of the impugned order, this Court finds that except stating that the petitioner was involved in many other cases and that there was an imminent situation, no other valid reason was informed. This Court, in a similar situation, has held that unless there is specific need for urgency, the executive authority is not empowered to pass an ex parte order without issuing notice. This Court in the decision in Guna @ Vella Guna @ Gunasekaran V. District Magistrate reported in 2013 (1) CTC (Cri) 692 has held thus:

"13. The next aspect to be considered is the manner in which the order is passed. It is seriously contended before this Court by the learned counsel for the petitioners that the orders are passed ex parte by exercising the power under Section 144(2) Cr.P.C and the impugned orders are passed without any emergency circumstance warranting such ex parte orders as such the impugned orders passed without any notice to the person against whom it is intended to be passed and without preliminary enquiry is not only against, but also in violation of fundamental right.

.....

14. In this context, the Hon'ble Supreme Court in the same judgment, referred to above, cited on the side of the petitioners as well as on the side of the respondent directly dealt with the power of the authority concerned to pass an ex parte order under Section 144(1) Cr.P.C. In 2012(5) SCC 1 case cited supra it is observed in paragraph 229 that if one reads the entire provision of Section 144 Cr.P.C, then the legislature itself has drawn a distinction between the cases of urgency, where the circumstances do not admit the serving of a notice in due time upon the person against whom such an order is directed and the cases where the order could be passed after giving the notice to the affected party. It is left to the discretion of the executive authority to examine each case as to whether the situation is emergent or not, on its own merits. It is observed in paragraph 230 of the same judgment as any order under Section 144 of Cr.P.C affects the right vested in the said person, it will not be unreasonable to expect the authorities to grant adequate time to implement such orders, wherever the circumstances so permit and the enforcement of the order in undue haste may sometimes cause greater damage than the good that it expected to achieve. Again it is observed in paragraph 319 of the said Judgment that Section 144 Cr.P.C. deals with immediate prevention and speedy remedy and therefore, before invoking such a provision, the statutory authority must be satisfied regarding the existence of the circumstances showing the necessity of an immediate action. Thus it is well laid down that the sine qua non for an ex parte order under Section 144 Cr.P.C is urgency requiring an immediate and speedy intervention by passing of the ex parte order and the order must set out the material facts of such emergent situation as the provision can

be used only in grave circumstances for maintenance of public peace and that the efficacy of the provision is to prevent some harmful occurrence immediately and therefore, the emergency must be sudden and the consequences be sufficiently grave.

15. The next case in which the same legal stand is dealt with is 2004 (4) SCC 684 cited supra. The Hon'ble Supreme Court has in paragraph 10 of the said Judgment referred to Chapter X and the caption under Section 144 appears in Cr.P.C. It is referred to therein that Section 144 appears in Chapter X dealing with "Maintenance of Public Order and Tranquility" and is a part of Sub-Chapter 'C' in Chapter X which is titled as 'Urgent Cases of Nuisance or Apprehended Danger' and the emergent order can be passed only when immediate prevention or speedy remedy is desirable. It is observed in paragraph - 7 that ex parte order can only be passed when quick decision as well as swift action is necessitated and in such cases it may not be justifiable to permit the authorities to give prior opportunity or consideration at length, of the pros and cons, when there is imminent need to intervene instantly, having regard to the sensitivity and perniciously perilous consequences, which it may result in if not prevented forthwith and which cannot be lost sight of. It is further observed therein that it is under such grave situation, decision to take prohibition action must be left to the discretion of those entrusted with the duty of maintaining law and order.

18. As rightly argued by the learned counsel for the petitioners in both the cases, the impugned orders do not disclose any emergency situation to justify an ex parte order without serving any notice on or without giving an opportunity of being heard to the persons against whom the order is directed as contemplated under Section 144(1) Cr.P.C. Except stating that the accused is likely to indulge in unlawful activities, if he is allowed to reside within Pondicherry limits, Pondicherry region and the situation cannot be effectively handled by taking recourse to usual procedure, no other material factors based on which the ex parte order came to be passed is mentioned in both the impugned orders. As rightly argued by the learned counsel for the petitioners, the particulars furnished

herein regarding the number and nature of disposal of cases against the petitioners and the allegations raised therein and number of cases disposed of and pending and the stage of those cases would not justify the conclusion arrived at by the authority concerned as if the petitioners are habitual offenders and they are likely to indulge in unlawful activities, obstruction, disturbance of peace etc. The authority concerned expressed his opinion by reproducing the words used in the relevant provision of law without disclosing the material factors based on which the decision is arrived at by the executive authority. The fact that out of 8 and 9 cases respectively filed against the petitioners most of the cases are disposed of in favour of the petitioners and few cases are pending investigation or initial stage would by itself demonstrate the non-application of mind of the authority concerned into the facts relevant for consideration before passing one such impugned order. It is repeatedly laid down in the judgments above cited that such preventive order restricts the right of freedom of movement of individual as guaranteed under Constitution of India and such right cannot be lightly interfered with, except under due process of law by observing all the legal principles as well as principles of natural justice.

19. It is equally well laid down that jurisdiction under Section 144 Cr.P.C., can only be exercised sparingly and only when the situation is such as stated above and the same warrants imminent and emergent action to prevent any present danger leading to grave consequences. The Hon'ble Supreme Court has in the judgment in AIR 1961 SCC 884 cited supra categorically stated in paragraph 26 that the test laid down in the Section is not merely "likelihood" or "tendency" and the Magistrate must be satisfied that immediate prevention of particular act is necessary to counteract public safety etc. It is nowhere mentioned in either of the orders passed against both the petitioners that one such situation prevailed in the present case. In that event, the ex parte impugned orders passed without any emergency circumstance, are in violation of the principles of Fundamental Rights and is amenable to judicial review and is liable to be revised by this Court under the revisional jurisdiction.

7. The judgments of the Honourable Supreme Court, which had been relied upon by this Court in the above said decision, clearly reveal that no order u/s.144 Cr.P.C. could be passed unless imminent situation prevails and this Court, in exercise of revisional powers, has ample powers to review the order passed by the District Magistrate. In the case on hand, there is no dispute with regard to the fact that the petitioner has already faced an order u/s.144 Cr.P.C. and the same has been challenged before this Court in CrI.R.C.No.507 of 2011, wherein, this Court, under orders dated 07.04.2011, has been pleased to pass the following order:

"4. Considering the submissions of both sides and in view of the further condition imposed by the respondent herein to the effect that the petitioner shall report before the Station House Officer, Nettapakkam Police Station on everyday at 11.30 a.m and that polling of General Elections is fixed on 13.04.2011, this Court is constrained to state that it is suffice for the petitioner to comply with the condition of reporting before the Station House Officer, Nettapakkam Village everyday at 11.30 a.m. till 30.04.2011. It is made clear that the original order passed by the respondent herein dated 14.03.2011 is restricted to be in force till 30.04.2011. It is further made clear that in the event of the petitioner indulging in any activities resulting in breach of peace or endanger the life of public, it is open to the respondent to initiate appropriate action in the manner known to law."

8. Considering the facts and circumstances, this Court sets aside the impugned order only for the reason that the same was passed without issuing notice to the petitioner and without affording an opportunity of hearing. The matter is remitted back to the concerned authority to pass orders afresh, after issuing notice to the petitioner and after affording him an opportunity of hearing. At the same time, this Court finds that it is expedient to direct the petitioner to direct the petitioner to execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the learned Magistrate concerned and the petitioner shall stay at Ariyakuppam as agreed to by the petitioner's counsel and sign before the Ariyakuppam Police Station daily twice at 10.30 a.m. and 5.30 p.m. and he will also give an undertaking before this Court that he will not indulge in any unlawful activities and keep a good conduct and will also co-operate with the enquiry.

This Criminal Revision Petition is ordered accordingly.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vsm

To

- 1.The District Magistrate,
Puducherry.
- 2.The Inspector of Police,
Ariyakuppam Police Station,
Puducherry.

+1cc to Mr.S.Doraisamy, Advocate, S.R.No.35454
+1cc to the Senior Government Pleader - Cum - Senior Public
Prosecutor for Puducherry, High Court Buildings,
Madras, S.R.No.35668

Crl.R.C.No.677 of 2015

BVR(CO)
CA(30/09/2015)



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