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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 12.10.2017

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CRL.L.P. 508/2017

STATE OF NCT OF DELHI

..... Petitioner

Through: Ms.Aashaa Tiwari, APP for State
with SI Vikar Rana, PS Fatehpur
Beri, Delhi.

versus

BHANWAR SINGH

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J. (Oral)

1. This Leave to Appeal has been filed against the impugned judgment dated 12.02.2016 passed by the Court of MM-01, South District, Saket Courts, New Delhi in FIR no.47/15 whereby the respondent was acquitted for the offence punishable under Section 188 of the Indian Penal Code, 1860 (in short 'IPC').
2. Facts leading to the filing of the present Leave to Appeal are that on 22.01.2015 at about 5 PM, the respondent who is the landlord of house bearing no.203/1, Bhopa Mohalla, Fateh Beri under the jurisdiction of PS Fatehpur Beri was found to have not got verified the details of his tenant from the police in accordance with Order no.67397-496/SD(X) dated 22.12.2014

passed by Shri Prem Nath, DCP, South and therefore the FIR no.47/2015 was registered against the respondent under Section 188 of the IPC.

3. On filing of charge sheet, a notice under Section 251 of the Code of Criminal Procedure, 1973 (in short 'the Code') was framed on 15.12.2015 by the learned MM to which the accused pleaded not guilty and claimed trial. The prosecution examined one witness to bring home the guilt of the accused.
4. PW-1 ACP S.P Tyagi in his testimony proved on record the successive orders being order no.67731-67831/SD(X) dated 25.12.2013 passed by B.Shankar Jaiswal, DCP, South, Ex PW1/A, order no.9363-9463/SD(X) dated 21.02.2014 passed by Shri B.Shankar Jaiswal, DCP, South, Ex PW1/B, order no.21276-376/SD(X) dated 23.04.2014 passed by P.S Kushwah, officiating DCP, South, Ex PW1/C, order no.29727-29827/SD(X) dated 23.06.2014 passed by B.Shankar Jaiswal, DCP, South, Ex PW1/D, order no. 42198-42298/SD(X) dated 25.08.2014 passed by B.Shankar Jaiswal, DCP, South, Ex PW1/E, order no.54239-339/SD(X) dated 22.10.2014 passed by Prem Nath, DCP, South, Ex PW1/F and order no.67397-496/SD(X) dated 22.12.2014 passed by Prem Nath, DCP, South, Ex PW1/G. The MM found the order no. 67397-496/SD(X) dated 22.12.2014 passed by Shri Prem Nath, DCP, South to be illegal in view of the judgment of the Hon'be Supreme Court in **Acharya Jagdishwaranand Avadhuta &**

others v. Commissioner of Police, Calcutta & another, (1983) 4 SCC 522.

5. The learned APP for the State had argued that the impugned judgment is not based on a correct appreciation of law and therefore warrants interference.
6. The APP argued that the order no. 67397-496/SD(X) dated 22.12.2014 passed by Shri Prem Nath, DCP, South is not illegal as held by the MM as it was issued keeping in view the threat raised by terrorists seeking residence in the capital.
7. The APP further argued that the judgment of the Hon'ble Supreme Court in **Acharya Jagdishwarand's case (supra)** has become outdated as it does not envisage a situation where the country faces a threat due to terrorist activities and therefore such successive orders issued by the DCP become a necessity in the current facts and circumstances.
8. I have the learned APP for the State.
9. It is deemed appropriate to reproduce Section 188 of the IPC:-

“188. Disobedience to order duly promulgated by public servant.—

Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both;

and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.”

10. Referring to Section 144 of the Code is inevitable herein:-

“144. Power to issue order in urgent cases of nuisance or 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 tranquillity, 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.”

11. A 3 judges bench of the Hon’ble Supreme Court in **Acharya Jagdishwaranand Avadhuta’s case (supra)** had laid down the scope of the powers under Section 144 of the Code as under: -

“16. It is the petitioner’s definite case that the prohibitory orders under Section 144 of the Code are being repeated at regular intervals from August 1979. Copies of several prohibitory orders made from time to time have been

produced before us and it is not the case of the respondents that such repetitive prohibitory orders have not been made. The order under Section 144 of the Code made in March 1982 has also been challenged on the ground that the material facts of the case have not been stated. Section 144 of the Code, as far as relevant, provides: “(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....” It has been the contention of Mr Tarkunde that the right to make the order is conditioned upon it being a written one and the material facts of the case being stated. Some High Courts have taken the view that this is a positive requirement and the validity of the order depends upon compliance of this provision. In our opinion it is not necessary to go into this question as counsel for the respondents conceded that this is one of the requirements of the provision and if the power has to be exercised it should be exercised in the manner provided on pain of invalidating for non-compliance. There is currently in force a prohibitory order in the same terms and hence the question cannot be said to be academic. **The other aspect viz. the propriety of repetitive prohibitory orders is, however, to our mind a serious matter and since long arguments have been advanced, we propose to deal with it. In this case as a fact from October 1979 till 1982 at the interval of almost two months orders under Section 144(1) of the Code have been made from time to time. It is not disputed before us that the power conferred under this section is intended for immediate prevention of breach of peace or speedy remedy. An order made under this section is to remain valid for two months from the date of its making as provided in sub-section (4) of Section 144. The proviso to sub-section (4) authorises the State Government in case it considers it necessary**

so to do for preventing danger to human life, health or safety, or for preventing a riot or any affray, to direct by notification that an order made by a Magistrate may remain in force for a further period not exceeding six months from the date on which the order made by the Magistrate would have, but for such order, expired. The effect of the proviso, therefore, is that the State Government would be entitled to give the prohibitory order an additional term of life but that would be limited to six months beyond the two months' period in terms of sub-section (4) of Section 144 of the Code. Several decisions of different High Courts have rightly taken the view that it is not legitimate to go on making successive orders after earlier orders have lapsed by efflux of time. A Full Bench consisting of the entire Court of 12 Judges in *Gopi Mohun Mullick v. Taramoni Chowdhurani* examining the provisions of Section 518 of the Code of 1861 (corresponding to present Section 144) took the view that such an action was beyond the Magistrate's powers. Making of successive orders was disapproved by the Division Bench of the Calcutta High Court in *Bishessur Chuckerbutty v. Emperor*. Similar view was taken in *Swaminatha Mudaliar v. Gopalakrishna Naidu, Taturam Sahu v. State of Orissa, Ram Das Gaur v. City Magistrate, Varanasi* and *Ram Narain Sah v. Parmeshar Prasad Sah*. We have no doubt that the ratio of these decisions represents a correct statement of the legal position. The proviso to sub-section (4) of Section 144 which gives the State Government jurisdiction to extend the prohibitory order for a maximum period of six months beyond the life of the order made by the Magistrate is clearly indicative of the position that Parliament never intended the life of an order under Section 144 of the Code to remain in force beyond two months when made by a Magistrate. The scheme of that section does not contemplate repetitive orders and in case the situation so warrants steps have to be taken under other provisions of the law such as Section 107 or Section 145 of the Code

when individual disputes are raised and to meet a situation such as here, there are provisions to be found in the Police Act. If repetitive orders are made it would clearly amount to abuse of the power conferred by Section 144 of the Code.”

12. The Madhya Pradesh High Court in **Harish Arora v. District Magistrate, Shahdol, 2000 SCC OnLine MP 419** took a similar view in a situation where repetitive orders were passed by the District Magistrate. Hon’ble Mr. Justice Dipak Misra J. (as his Lordship then was and now adorning the post of Chief Justice of India) held as under: -

“5. In case of *Acharya Jagdishwaranand* (supra) a three Judge Bench of the Apex Court ruled thus:—

“The proviso to sub-section (4) of section 144 which gives the State Government jurisdiction to extend the prohibitory order for a maximum period of six months beyond the life of the order made by the Magistrate is clearly indicative of the position that Parliament never intended the life of an order under section 144 to remain in force beyond two months when made by a Magistrate. The scheme of that section does not contemplate repetitive orders and in case the situation so warrants steps have to be taken under other provisions of the law such as section 107 or section 145 of the Code, when individual disputes are raised. If repetitive orders are made it would clearly amount to abuse of the power conferred by section 144. The nature of the order under section 144 is intended to meet emergent situation and the order under section 144 is not intended to be either permanent or semi-permanent in character.”

From the aforesaid enunciation of law it is graphically clear that an order under section 144 of the Code cannot be passed to earn the status of permanent or semi permanent in character. On a proper scrutiny of the orders passed by the District Magistrate it is graphically clear that the orders are

semi permanent in nature. If orders are scrutinised on the envil of Acharya Jagdishwaranand Avadhuta (supra) the same do not withstand close scrutiny.”

13. PW-1 ACP S.P Tyagi proved the order no. 67387-496/SD(X) dated 22.12.2014 passed by Prem Nath, DCP, South for the violation of which the respondent was charge-sheeted. The previous 6 orders which were also proved by PW-1 were all relating to compulsory tenant verification and were clearly a repetition of the first order no.67731-67831/SD(X) dated 25.12.2013 passed by B.Shankar Jaiswal, DCP, South, New Delhi.
14. Section 144(4) clearly states that an order under this Section is to remain in force for a period of 2 months. An extension to this period can be granted by the State Government if it considers necessary to do so for preventing danger to human life, health or safety or for preventing a riot or any affray for a period not exceeding six months from the date from which the order made by the Magistrate would have expired. It clear from the ratio laid down in **Acharya Jagdishwaranand’s case (supra)** and **Harish Arora’s case (supra)** that an order of the Magistrate under this Section cannot assume a permanent or semi-permanent character and is to remain in operation only for a period of 2 months.

15. In the facts and circumstances of the case I find no infirmity in the judgment of the Trial Court and the present Leave Petition is accordingly dismissed.

(VINOD GOEL)
JUDGE

OCTOBER 12, 2017

