

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.2751 OF 2023

Ramesh Janardan Upade

...Petitioner

Versus

Pratap Baburao Palande & Ors

...Respondents

Mr. Chetan G. Patil, Advocate for Petitioner.

Mr. Atul Damle, Senior Advocate a/w Payal Vardhan h/f Vaibhav Ugle & Vikas Somawanshi, Advocate for Respondent No.1.

Mr. A. R. Patil, APP for State/Respondent Nos.2 & 3.

CORAM : SARANG V. KOTWAL, J.

DATE : 8th SEPTEMBER 2023

PC :

1. Heard Mr. Chetan G. Patil learned Counsel for the Petitioner, Mr. Atul Damle, Senior Advocate for the Respondent No.1 and Mr. A.R. Patil, APP for the Respondent Nos.2 and 3.

2. The Petitioner has challenged the order dated 12th January 2023 passed by the Sub-divisional Magistrate, Kanakavali in Criminal Revision Application No.1 of 2023.

3. The brief background of this case is that, there are two groups in the village Upale, Taluka Vaibhavwadi, district

Sindhudurg. There is a dispute between these two groups about the right to perform pooja in the two temples in the village. The Tehasildar acting as Special Executive Magistrate received a letter from the Police Officer in-charge of Vaibhavwadi Police Station that there was a dispute between these two groups and there was a possibility of disturbing law and order and/or the dispute causing disturbance in the village and therefore he prayed for Application of Section 144 of Cr.P.C. The Tehasildar considered the materiel before him and passed an order that the two festivals which were to be celebrated on 6th and 7th January 2023 must not be celebrated by both the parties. Both the parties were prevented from entering the area of 200 meters around one of the temples. He passed this prohibitory order under section 144 of Cr.P.C. on 5th January 2023. The order itself mentions that it operated from the midnight of 6th January 2023 till the midnight between 8th and 9th January 2023.

4. The said order of the Tehasildar was challenged by the Respondent No.1 herein before the Sub-divisional Magistrate. In those proceedings the impugned order was passed. The learned

Sub-divisional Magistrate set aside the order of the Tehasildar and permitted the sub-committee appointed by the Pashchim Maharashtra Devasthan Vyvasthapan Samiti to perform annual festivals in both these temples. The Petitioner's group was prohibited from causing disturbance. This order dated 12th January 2023 is under challenge in this Petition.

5. The main submission of the learned Counsel for the Petitioner is that the Sub-divisional Magistrate exceeded his jurisdiction. The order passed under Section 144 of Cr.P.C. operates only for maximum period of two months unless extended by the State Government for further period of maximum six months. Beyond this period, the order can not sustain. However in the present case, the impugned order actually extends the period perpetually. According to the learned Counsel, this was not permissible.

6. His other submission was that in any case, the order passed by the Tehasildar was operating between 6th to 9th January 2023 and hence the order operated completely by itself and it

could not have been interfered on 12th January 2023. He further submitted that the Petitioner's group has filed Civil Suit No.84 of 2022 before the Civil Judge Junior Division, Kanakavali for the declaration regarding the rights to perform pooja and other consequential reliefs. Ultimately, the rights would be decided by the Civil Court and therefore, the Sub-divisional Magistrate did not have any powers to decide the rights of the parties.

7. Learned Senior Counsel appearing for the Respondent No.1 very fairly accepted the legal submissions; however, he emphasized that the Respondent No.1 does have right to perform the pooja.

8. I have considered these submissions. As rightly submitted by learned Counsel for the Petitioner, the rights will be decided by the Civil Court in the aforesaid civil suit. As far as the present proceedings under Section 144 of Cr.P.C. are concerned, in my opinion, the order passed by the Sub-divisional Magistrate on 12th January 2023 is not sustainable. As rightly submitted, the order operated only between 6th to 9th January 2023 and after that

it could not have been interfered with. In any case, the maximum period for which the order can operate is for eight months in total, if the State Government considers it appropriate to extend it. Even that period is over. The State Government has not extended any period. Therefore, as of today, the order passed by the Tehasildar is completely exhausted and it can not be interfered at this subsequent stage. The relevant provision of Section 144 of Cr.P.C. is as follows:

“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.”

Thus, the legal submissions advanced by the learned Counsel for the Petitioner are in consonance with the provisions of Section 144 of Cr.P.C. and the order passed by the Sub-divisional Magistrate is liable to be set aside.

9. Hence, the following order:

ORDER

i) The Petition is allowed in terms of prayer clause

(A) which reads thus:

“(A) That this Hon’ble Court be pleased to issue writ of certiorari or any other appropriate writ, order or direction in the nature of a writ of certiorari thereby quashing and setting aside the impugned order dated 12th January 2023 passed by

respondent no.2 herein Exhibit H
hereto.”

ii) The contentions regarding the rights of the parties
are of course left open to be decided by the Civil
Court.

iii) The Petition is disposed of accordingly.

(SARANG V. KOTWAL, J.)