

Before Mr. Justice Mulla

EMPEROR *v.* SAT NARAIN AND ANOTHER\*

1939  
August, 16

*Criminal Procedure Code, section 144—Orders directed to the public generally and not when frequenting or visiting a particular place—Order prohibiting the general public from publishing or circulating false or alarmist reports or rumours—Ultra vires—Jurisdiction.*

No order under section 144 of the Criminal Procedure Code can be issued to the public generally except when frequenting or visiting a particular place. The terms of sub-section (3) of the section make it clear that this limitation has been placed by the law upon the power given to the Magistrate to issue an order to the general public under section 144, and any order which ignores this limitation is *ultra vires* and illegal.

So, an order purporting to be issued under section 144 to the general public, prohibiting the publication or circulation in Allahabad city of communally biassed and false or alarmist reports or rumours, was *held* to be bad in law, and a conviction under section 188 of the Indian Penal Code for violation of that order was set aside.

Sub-sections (1) and (2) of section 144 are confined to the case of an individual person or persons to whom an order may be issued and on whom the order has to be served in the manner provided by section 134; they do not invest the Magistrate with any power to issue an order to the general public.

Mr. M. L. Chaturvedi, for the applicants.

The Deputy Government Advocate (Mr. Sankar Saran), for the Crown.

MULLA, J.:—This is an application in revision by two persons Sat Narain and Munni Lal who have been convicted under section 188 of the Indian Penal Code. The first applicant was admittedly the editor of a paper styled the "*Punch*" which was being published in Allahabad in April, 1938, while the second applicant, Munni Lal, was the printer and publisher of the same paper. It is a matter of common knowledge that in the month of April, 1938, serious communal riots took place in Allahabad resulting in the deaths of several persons. The District Magistrate of Allahabad found

\*Criminal Revision No. 507 of 1939, from an order of Sheoharan Singh, Additional Sessions Judge of Allahabad, dated the 8th of March, 1939.

soon after those disturbances that some people were engaged in circulating false and alarmist reports which had the effect of promoting communal tension and causing fear and alarm to the public. He therefore thought it necessary to stop the publication of such reports and with that object in view he issued an order under section 144 of the Criminal Procedure Code in the following terms:

“To the General Public: Whereas in Allahabad city serious rioting resulting in the deaths of eleven persons and injuries to many others has just recently subsided, but communal ill-feeling and panic are still prevalent, and whereas irresponsible persons are circulating communally biased or alarmist or false reports and statements and false or alarmist rumours by words written or spoken, which are likely to cause fear or alarm to the public or some section of the public whereby any person may be induced to commit some offence against human life or against the public tranquillity, and whereas in my opinion there is sufficient ground for proceeding under this section and immediate prevention and speedy remedy are desirable: I hereby prohibit the printing or publication or circulation in Allahabad municipality and cantonment of any such report, statement or rumour by any written word, in newspapers or in leaflets, or by any other means.”

This order was promulgated all over the city of Allahabad by means of loudspeakers fixed to motor lorries. The fact that this order came to the knowledge of the applicant Sat Narain is not denied. The other applicant pleaded ignorance of this order but the point has not been raised in this Court and it may therefore be taken for granted that he also had notice of the order. In spite of this knowledge a statement appeared in an issue of the “*Punch*”, dated the 14th of April, 1938, setting out that a certain Hindu shrine had been destroyed and razed to the level of the ground. The shrine in question was in fact a very small temple about a cubit in

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height situated on a masonry platform under a pipal tree. It is not denied that this temple was destroyed but it is said that it was razed only to the level of the chabutra upon which it stood and not to the level of the ground as alleged in the statement published in the paper. The district authorities were of opinion that this statement was false and alarmist and also communally biased within the meaning of the order under section 144 referred to above and as the publication of the statement was a defiance of that order they filed a complaint against the applicants charging them with an offence under section 188 of the Indian Penal Code. The applicants were tried on that charge and were eventually convicted.

Two principal pleas were taken in defence; firstly that the District Magistrate had no jurisdiction to issue the order under section 144, and secondly that the statement contained in the paper to which objection had been taken was not false and hence it did not involve any disobedience of the order under section 144.

I shall confine myself to the first contention which is the real contention in the case. Upon a careful consideration of the terms of section 144 of the Criminal Procedure Code I am constrained to hold that the order under section 144 to which objection has been taken on behalf of the applicants did not conform to the provisions of the law, however desirable it may have been in view of the public situation. A careful perusal of the first two clauses of section 144 leaves no doubt in my mind that they are confined to the case of an individual person or persons to whom a notice may be issued directing them to refrain from a certain act or to take certain order with certain property in their possession or management. Under these two clauses no order can be issued to the general public. It is significant to note in this connection that the order is required to be "served in manner provided by section 134". Now section 134 provides for the service of the order in the "manner herein provided for the service of a summons", and

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makes a definite reference to "such person", showing thereby that some individual person or persons have to be served with the order. The incorporation of these provisions in sub-clause (1) of section 144 in relation to the service of an order passed thereunder leaves no doubt in my mind that the said clause confers no jurisdiction upon the Magistrate to issue any such order to the general public. The point is further clarified by reference to sub-clause (2) of section 144 which runs as follows: "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*." It is thus clear to my mind that the first two clauses of section 144 do not invest the Magistrate with any power to issue an order to the general public. A provision for such an order is, however, made in sub-clause (3) of section 144 which runs as follows: "An order under this section may be directed to a particular individual or to the public generally when frequenting or visiting a particular place." The obvious conclusion from the terms of this sub-clause is that no order under section 144 can be issued to the public generally except when "frequenting or visiting a particular place". This is a clear limitation placed by the law upon the power given to the Magistrate to issue an order to the general public under section 144 and any order which ignores this limitation must be held to be bad in law. I have therefore no hesitation in holding that the order passed by the learned District Magistrate of Allahabad in the present case was one which he had no power lawfully to promulgate within the meaning of section 188. It necessarily follows that the conviction of the applicants under section 188 of the Indian Penal Code is bad in law and must be set aside. My attention has not been drawn to any case decided by this Court either for or against the interpretation which I have placed upon the terms of section 144 of the Criminal Procedure Code.

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But I find that the view that I have taken is fortified by several decisions of other High Courts. I need only refer to the following cases: *Queen-Empress v. Lakhmidas Makandas* (1), *Emperor v. Bhagubhai Dwarkadas* (2), *Belvi v. Emperor* (3), *Motilal Gangadhar Kabre v. Emperor* (4), *Ashutose Roy v. Harish Chandra* (5), *Abdul Majid v. Nripendra Nath Mazumdar* (6) and *Ponnappa v. Vanamamalai Jeer* (7).

The result therefore is that I allow this application in revision and set aside the conviction of the applicants. The fine, if any, paid by them shall be refunded.

### MISCELLANEOUS CIVIL

*Before Mr. Justice Allsop*

IN THE MATTER OF THE BENARES BANK, LTD.\*

1939  
 August, 17

*Companies Act (VII of 1913), section 277N—Applicable when company is only temporarily embarrassed but is essentially solvent—Object of the report from the Registrar.*

A company is not entitled to an order under section 277N of the Companies Act for stay of actions and proceedings against the company unless it is established that the company is in an embarrassed position only temporarily and that although it is unable, for the time being, to meet its obligations its financial position is essentially solvent and secure. It is not the intention of that section that a company in an insolvent position should be allowed to continue its operations under the protection of the court and that those who had dealings with the company should be prevented under the orders of the court from seeking legal remedies to which they would otherwise have been entitled. The court could only undertake the responsibility of barring these legal remedies if it was certain within reasonable limits that people would not suffer any real loss by being stopped from claiming them.

The intention of obtaining the report from the Registrar, mentioned in sub-section (2) of section 277N, is that he should examine and lay before the court the true financial position of the company. Where the Registrar's report, in spite of his

\*Miscellaneous Case No. 553 of 1939.

(1) (1889) I.L.R. 14 Bom. 165.

(2) (1914) 16 Bom. L.R. 684.

(3) A.I.R. 1931 Bom. 325.

(4) A.I.R. 1931 Bom. 513.

(5) (1924) 29 C. W. N. 411.

(6) (1934) 38 C. W. N. 556.

(7) A.I.R. 1920 Mad. 847.