CRIMINAL REVISION.

Before Mr. Justice Ba U.

1939

Jan 3.

AUNG BALA

v.

THE DISTRICT MAGISTRATE, RANGOON.*

Public peace, breach of—Powers of the magistrate—Rights of the public—Ventilation of grievances—Curtailment of the right—Pretended apprehension of danger—Order not to be disproportionate to exigencies—Material facts of the case to be set out—Clarity and precision of prohibitory order—Prohibition of discussion on controversial matters—Application to set aside order—Procedure—Criminal Procedure Code, s. 144.

S. 144 of the Criminal Procedure Code deals with urgent cases of nuisance and apprehended danger of the breach of the public peace. The powers conferred on the magistrates enables them to suspend the lawful rights of the public in the interest of public peace and safety. Every citizen has a right to ventilate his grievances in public or in private and ask for redress, and this right ought not to be curtailed, so long as it is exercised in a lawful manner, on a pretended apprehension of the danger of the breach of the public peace. The order should not be disproportionate to the exigencies of a particular situation.

Abdul v. *Mundul*, I.L.R. 5 Cal. 132 ; *Francis Duke* v. *Roy*, 34 Cr. L.J. 334 ; *Hafiz-ud-Din* v. *Laborde*, I.L.R. 50 All. 414 ; *Sundaram* v. *The Queen*, I.L.R. 6 Mad. 203, referred to.

The material facts of the case must be set out in the order under s. 144 of the Criminal Procedure Code ; the failure to do so is fatal to its validity.

Emperor v. *Ganesh*, I.L.R. 55 Bom. 322 ; *Govinda Chetti* v. *Perumal Chetti*, I.L.R. 38 Mad. 489 ; *Karoolal* v. *Shyam Lal*, I.L.R. 32 Cal. 935, referred to.

The order should be clear and precise as to what the public are prohibited from doing. An order which requires the public not to discuss matters which may be a subject of controversy between different sections or classes is vague and indefinite.

Emperor v. *Batlivala*, 36 Bom. L.R. 1129, referred to.

If a person applies to have the order set aside, the magistrate must, under s. 144 (5) of the Criminal Procedure Code, give him an opportunity of being heard and the magistrate must record his reasons for rejecting the application.

Ba U for the applicant. An order to the public generally cannot be issued under s. 144 of the Criminal Procedure Code in very general terms. The order should be addressed to the public when frequenting

* Criminal Revision No. 636B of 1938 from the order of the District Magistrate of Rangoon in Cr. Misc. Case No. 223 of 1938.

or visiting a particular place. The area of operation should be clearly specified. It is vague and indefinite to say that the order applies to the whole of the Rangoon Town District, or that no subject shall be discussed which may be a subject of controversy between different classes of people. Further no reasons are given for promulgating the order. The magistrate must set out the material facts of the case in his order.

The applicant applied to the District Magistrate for cancellation of the order, but the District Magistrate, without giving the applicant any opportunity to support his application dismissed it. This is contrary to s. 144 (5) of the Code.

Queen-Empress v. *Lakhmidas* (1) ; *Vasant* v. *B. Khale* (2) ; *Emperor* v. *Bhagubhai* (3) ; *In re D. Belvi* (4) ; *Emperor* v. *Mohlal Kabre* (5) ; *Qamar-ud-Din* v. *Emperor* (6) ; *Ashutose Roy* v. *Harish Chandra* (7).

Thein Maung (Advocate-General) for the Crown. What is stated in the order itself is sufficient for the purpose of satisfying the requirements of s. 144 of the Code. It is drawn up in the form prescribed in Schedule V, 21. The cases cited by the applicant are all cases in which the Court was considering the application of s. 188 of the Penal Code to persons who had infringed the order. The applicant has brought this as a test case impliedly admitting that the subject he was going to discuss would fall within the order.

There is nothing indefinite about the phrase "Rangoon Town District." It is a well-defined administrative unit and is defined in s. 3 (49) of the General Clauses Act.

(1) I.L.R. 14 Bom. 165.
(2) I.L.R. 59 Bom. 27.
(3) 16 Bom. L.R. 684.
(4) 33 Bom. L.R. 673.
(5) 33 Bom. L.R. 1178.
(6) A.I.R. (1935) Lah. 679.
(7) 29 C.W.N. 411.

1939

AUNG BALA v. THE DISTRICT MAGISTRATE, RANGOON.

It has been recently held by the Lahore High Court that sub-section (3) does not control sub-section (1). *Abdul Karim* v. *The Crown* (1). See also *Abdul Ghafur* v. *Emperor* (2).

In *Vasant* v. *B. Khale* (3) the Court should have held not that the order was invalid, but that it was open to the accused in a prosecution under s. 188 of the Penal Code to show that it was not possible for him to know that when he committed the alleged offence he was in a prohibited area.

In *Queen-Empress* v. *Lakhmidas* (4) there was no specification of any place. In *Emperor* v. *Bhagubhai* (5) the order applied to the city of Surat and to places within 5 miles thereof and therefore was obviously vague. Section 144 is a preventive section and it would be stultifying the section to hold that no action can be taken till the offence is committed. When a magistrate acts in an emergency, as he does under s. 144, he cannot be expected to give elaborate reasons for the order.

BA U, J.—Applicant is a lower grade pleader and an honorary secretary of the General Council of Rate and Tax Payers Association, Rangoon.

He applies for the setting-aside of the order passed by the District Magistrate, Rangoon Town District, under section 144 of the Code of Criminal Procedure.

The Order is in the following terms :

"Whereas it appears to my satisfaction that the holding of public meetings within the Rangoon Town District for the purpose of discussing matters which may be a subject of controversy between different sections or different classes of public or which may excite public feeling is likely to cause riots and affrays or a disturbance of the public tranquillity thereby endangering life and

(1) I.L.R. 17 Lah. 515.
(2) 27 I.C. 670.
(3) I.L.R. 59 Bom. 27.
(4) I.L.R. 14 Bom. 165.
(5) 16 Bom. L.R. 684.

property and whereas immediate prevention is desirable, under the provisions of section 144 (3), Criminal Procedure Code, I, U Po Sa, District Magistrate, Rangoon, hereby order all members of the public generally to abstain from holding or taking part in or promoting any public meeting of the nature described above in the Rangoon Town District for a period of one month from the date of this order."

The learned advocate for the applicant submits that this order " is illegal and *ultra vires* " as it does not comply with the requirements of section 144 of the Code of Criminal Procedure.

Section 144 provides *inter alia* as follows :

" In cases where, in the opinion of a District Magistrate, a Sub-Divisional Magistrate, or of any other Magistrate not being a Magistrate of the third class specially empowered by the Governor or the District Magistrate to act under this section, 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 manner provided by section 134, direct any person to abstain from a certain act or to take certain order with 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, or risk of 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."

The section thus deals with urgent cases of nuisance and apprehended danger of the breach of the public peace. Where there is danger of the breach of the public peace apprehended and, in consequence thereof, an immediate prevention is necessary, Magistrates specially empowered in that behalf may issue instructions to individuals or the public in general to abstain from a certain act. The power thus conferred on the Magistrates is an extraordinary power. It enables them

1939

AUNG BALA v. THE DISTRICT MAGISTRATE, RANGOON.

BA U, J.

to suspend the lawful rights of the public if they think such a suspension will be in the interests of public peace and safety.

What, however, Magistrates should bear in mind is that every citizen has a right to ventilate his grievances either in public or in private and ask for redress. This right should not be curtailed so long as it is exercised in a lawful manner. It is an illegal assumption of power to issue an order under this section on a pretended apprehension of the danger of the breach of the public peace. The principle on which Magistrates should act in exercising the power under section 144 is, in my opinion, correctly laid down in *Francis Duke Cobridge Sumner* v. *Jogendra Kumar Roy* (1), wherein the learned Judge said :

> " Courts, civil as well as criminal, exist for the protection of rights, and, therefore, the authority of a Magistrate should ordinarily be exercised in defence of rights rather than in their suppression ; when an order in suppression of lawful rights has to be made it ought not to be made unless the Magistrate considers that other action that he is competent to take is not likely to be effective ; and the order, if made, should never be disproportionate to but should always be, as far as possible, commensurate with the exigencies of any particular situation."

The same principle is laid down in *Abdul* v. *Lucky Narain Mundul* (2), *Sundaram Chetti* v. *The Queen* (3), and *Hafiz-ud-Din* v. *Laborde* (4).

In order to prevent the abuse, or rather the misuse, of this section, the Legislature has in its wisdom laid down that the Magistrate must satisfy himself that there is sufficient ground for proceeding under section 144 and that when he is so satisfied he must set out the material facts of the case in his order. The reason for this is that the public should know why it is necessary

(1) 34 Cr. L.J. 334.
(2) (1879) I.L.R. 5 Cal. 132.
(3) (1883) I.L.R. 6 Mad. 203.
(4) (1927) I.L.R. 50 All. 414.

that their lawful rights should be suspended. The failure to set out the material facts of the case in the order is, in my opinion, fatal to its validity. See *Karoolal Sajawal* v. *Shyam Lal* (1), *Govinda Chetti* v. *Perumal Chetti* (2) and *Emperor* v. *Ganesh Vasudev Mavlankar* (3).

The learned Advocate-General does not seriously dispute the correctness of this proposition of the law ; but what he contends is that the order in question having been drawn up on the lines of Form 21 of Schedule V of the Code of Criminal Procedure, is a good and valid order. I regret that I do not agree. The form shows that material facts of the case must necessarily be set out in the order. In the order under review the material facts of the case are not set out. The order cannot therefore stand.

It cannot also stand on another ground. It is defective in that it does not state in clear and precise terms what it is which the public are prohibited from doing. All it says is that the public are not to discuss matters which may be a subject of controversy between different sections or different classes or which may excite public feeling. Any subject, however innocent, may be a subject of controversy. It is impossible to get several people to agree on the same subject. The order as it stands is vague and indefinite.

In *Emperor* v. *Sorab Shavaksha Batlivala* (4), Beaumont C.J. says :

" It has been held many times that, as section 144 empowers a Magistrate to interfere materially with the liberty of the subject, it is necessary that he should promulgate his order in terms sufficiently clear to enable the public, or persons affected by it, to know exactly what it is which they are prohibited from doing."

(1) (1905) I.L.R. 32 Cal. 935.
(2) (1913) I.L.R. 38 Mad. 489.
(3) (1930) I.L.R. 55 Bom. 322.
(4) 36 Bom. L.R. 1129, 1132.

1939

AUNG BALA v. THE DISTRICT MAGISTRATE, RANGOON.

BA U, J.

What the learned District Magistrate, in my opinion, had in mind when he issued the order in question was the outbreak of riots resulting in murder, arson, robbery and grievous hurt to persons lawfully employed, which took place in this city a few months ago as a result of the difference of opinion on religious questions, and, consequently he thought, apparently as a result of information which he had received, that if public meetings were held in this city for the purpose of discussing communal or comparative religious questions a breach of the public peace would again take place. If that was what was in his mind he should have set it out in his order.

There is also another point on which the present application for revision should be allowed. The point is this. A day after the order had been passed, the applicant applied to the District Magistrate to cancel it. Without giving an opportunity to the applicant to support his application, the learned District Magistrate dismissed it summarily, saying :

" I see no reason to cancel the order passed only yesterday. The application stands dismissed."

This is contrary to sub-section (5) of section 144, which states that :

" Where such an application is received, the Magistrate shall afford to the applicant an early opportunity of appearing before him either in person or by pleader and shewing cause against the order ; and if the Magistrate rejects the application wholly or in part, he shall record in writing his reasons for so doing."

This is a mandatory provision. If not for the fact that the order in question cannot stand for the reasons which I have already given above, the case would have to go back to the District Magistrate for disposal of the

applicant's petition in the light of the provisions of the aforesaid sub-section.

I do not propose to deal with the question as to what the expression "frequenting or visiting a particular place" as used in sub-section (3) of section 144, Criminal Procedure Code, means, as whatever I may say will not affect the merits of this case.

For all these reasons, I set aside the order of the District Magistrate.

1939

AUNG BALA
v.
THE DISTRICT MAGISTRATE, RANGOON.

BA U, J.