

APPELLATE CRIMINAL.

Before Mr. Justice N. J. Wadia and Mr. Justice Divatia.

VASANT B. KHALE (ORIGINAL ACCUSED), PETITIONER v. EMPEROR.*

1934
June 29

Criminal Procedure Code (Act V of 1898), section 144—Order by Magistrate—Order directed against the public generally—“Particular place”, interpretation of.

Under section 144, sub-section (3) of the Criminal Procedure Code, 1898, the word “place” does not necessarily mean a restricted locality like a market or a park but may include a part of a town provided that the part intended is sufficiently well defined so as to be easily distinguishable.

Even a ward of Municipality may be described as a “place within a specified boundary” provided the boundaries on all sides are clearly given so that the public may be under no misapprehension or doubt as to the prohibited area.

Queen-Empress v. Lakshmidas Makandus,⁽¹⁾ *Emperor v. Bhagubhai,*⁽²⁾ *In re D. V. Belvi,*⁽³⁾ and *Emperor v. Motilal Kabre,*⁽⁴⁾ discussed.

CRIMINAL APPLICATION for revision against the order passed by M. A. F. Coelho, Presidency Magistrate, Fifth Court, Bombay.

Disobedience of order.

On April 26, 1934, the Chief Presidency Magistrate of Bombay issued an order under section 144 of the Criminal Procedure Code, 1898, which was in terms as follows:—

“Whereas it has been made to appear to me that as a result of the dispute between the employers and workers in the textile industry in the city of Bombay there is serious unrest and disturbance among the said workers, and obstruction, injury and annoyance have been caused to persons, lawfully employed and whereas there is a danger of disturbance of public tranquillity or of riot or an affray and the likelihood of obstruction, annoyance or injury to persons lawfully employed.

Now therefore in the exercise of the powers vested in me under section 144 of the Criminal Procedure Code, I, Sir Hormuzdyar P. Dastur, Kt., Chief Presidency Magistrate of Bombay, direct that all persons frequenting or visiting the following wards in the City of Bombay namely D, E, F and G shall abstain from collecting, organizing, forming or taking part in any procession in any street or public place in the said wards except in the following streets, namely,

New Parbhadevi Road from Nagu Sayaji Wadi to Elphinstone Road,

*Criminal Revision Application No. 194 of 1934.

⁽¹⁾ (1889) 14 Bom. 165.

⁽³⁾ (1931) 33 Bom. L. R. 673.

⁽²⁾ (1914) 16 Bom. L. R. 684.

⁽⁴⁾ (1931) 33 Bom. L. R. 1178.

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Elphinstone Road and its continuation to Old Government House (Haffkine Institute).

Parel Government House Gate Road.

Arthur Road to its junction with Delisle Road.

Delisle Road South to its junction with Haines Road.

Haines Road from its junction with Delisle Road to its junction with Tank Pakhadi Street.

Tank Pakhadi Street.

Road through Parel Village from Government House Gate Road to and along the new road which leads from Parel Tank Road to Sewri New Road, as far as its junction with Sewri New Road."

On the morning of April 28, 1934, the accused with another led a procession of 300 millhands along Elphinstone Bridge. At the foot of Elphinstone Bridge, the road branched into two roads, namely, Sayani Road and Elphinstone Road. The procession along Elphinstone Bridge and Elphinstone Road was permitted under the order of the Chief Presidency Magistrate but the procession instead of following the road turned into Sayani Road which was within the prohibited area. The accused was, therefore, charged under section 188 of the Indian Penal Code for committing a breach of the order.

The case was heard by the Presidency Magistrate, Fifth Court, Dadar. He held that the order was neither wanton nor arbitrary nor unjust and did not contravene the provisions of sub-section (3) of section 144 of the Criminal Procedure Code.

His reasons for holding the latter were as follows :—

The present order covers what is in fact known as Mill area and having regard to the nature of the trouble and portions of the City affected thereby I do not consider that the area to which the Chief Presidency Magistrate's order regarding processions refers is too wide to be called a place within the meaning of clause 3 of section 144. The order mentions four out of seven wards in the City and in these four wards certain streets are excluded where processions can be held and the prohibited area is thus clearly defined. No doubt if more particulars as to time, place and persons were mentioned in the order, the order would have been more explicit and would have been less liable to attack from accused persons put up for disobedience of the order."

The accused was sentenced to two months' rigorous imprisonment.

The accused applied to the High Court.

M. C. Chagla and *Purshottamdas Tricumdas*, with Messrs. *Mamilal, Kher and Ambalal*, for the accused.

V. F. Taraporewalla, acting Advocate General, with *P. B. Shingne*, Government Pleader, for the Crown.

N. J. WADIA J. This is an application in revision against the conviction of the applicant under section 188 of the Indian Penal Code for disobeying an order passed under section 144 of the Criminal Procedure Code by the Chief Presidency Magistrate. On April 26, 1934, in consequence of a dispute between employers and workers in the textile industry and the existence of unrest among the workers, the Chief Presidency Magistrate passed an order under section 144 of the Criminal Procedure Code directing all persons frequenting or visiting Wards D, E, F and G of Bombay city to abstain from collecting, organising, forming or taking part in any procession in any street or public place in these wards excepting certain streets which were named. On April 28, 1934, the applicant led a procession of millhands along Sayani Road which was in one of the wards mentioned in the order and not one of the excepted roads. He was arrested and put up for trial under section 188 of the Indian Penal Code for disobeying the order, and was convicted by the Presidency Magistrate, Fifth Court, and sentenced, on May 5, 1934, to two months' rigorous imprisonment.

It is contended before us that the order of the Chief Presidency Magistrate, for disobeying which applicant was convicted, was illegal as it was not directed to the public generally when frequenting or visiting a particular place. It is argued that the words "particular place" in section 144 (3) cannot cover such a large area as four

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out of the seven wards of the city. The exact meaning to be attached to the word "place" in section 144 (3) has nowhere been laid down. In *Queen-Empress v. Lakmidas Makandas*⁽¹⁾ Scott and Jardine JJ. held that an order to the public of Broach to abstain from giving caste-dinners in the city owing to the prevalence of plague was illegal on the ground, among others, that it was not directed to the public when frequenting or visiting a particular place. In *Emperor v. Bhagubhai*⁽²⁾ Heaton and Shah JJ. held that an order directing the public to abstain from certain acts in Surat city and all places within five miles of Surat city was illegal as offending against sub-section (3) of section 144. Both these cases base the decision on the ground that the order was not directed to the public when frequenting or visiting a particular place. In *In re D. V. Belvi*⁽³⁾ Madgavkar and Murphy JJ. held that an order directing all members of the public of Belgaum city and cantonment to abstain from performing and participating in *prabhat pheris* or morning rounds was illegal as not being addressed to the public when frequenting or visiting a particular place. It was said that "to argue that though no such particular place is specified, all the streets in the city and cantonment of Belgaum are implied, would appear to defeat the objects of the section, prohibiting, as it does, the performance of acts, which would otherwise be lawful". In *Emperor v. Motilal Kabre*⁽⁴⁾ the same question arose and the three rulings to which I have referred above were considered and followed. It was held in that case that an order directing all the residents within the limits of Erandol-Dharangaon, and chiefly certain persons specified in the order, that they should, for eight days from the date thereof, not take any part in any procession at any public place within the limits of Erandol-Dharangaon, did not conform to the requirements of sub-section (3) of section 144 because that section gave no power to direct the public generally

⁽¹⁾ (1889) 14 Bom. 165.⁽²⁾ (1931) 33 Bom. L. R. 673.⁽²⁾ (1914) 16 Bom. L. R. 684.⁽⁴⁾ (1931) 33 Bom. L. R. 1178.

simpliciter. Rangnekar J. remarked in the judgment that “the order can be directed to the public generally only ‘when frequenting or visiting a particular place’, such, for instance, as a market or a park or other place within a specified boundary”.

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The learned counsel for the applicant has argued on the strength of these four decisions that the view taken by this High Court is that the word “place” in sub-section (3) of section 144 cannot refer either to the municipal limits of a whole town or even to a large area like a ward or several wards of the Municipality, but that it must mean a particular restricted locality like a market or a park. I have carefully considered this question in the light of the rulings referred to and have come to the conclusion that it is not possible to deduce from these rulings the inference that the word “place” must necessarily mean a restricted locality like a market or a park. The first two rulings, *Queen-Empress v. Lakhmidas Makandas*⁽¹⁾ and *Emperor v. Bhagubhai*,⁽²⁾ merely lay down that an order under section 144 directed against the public generally could not be directed to the public *simpliciter* but only to the public when frequenting or visiting a particular place. In both these cases and in the case dealt with in *Emperor v. Motilal Kabre*,⁽³⁾ the order was directed to all the residents of entire municipal areas and not to persons frequenting or visiting any particular place in or part of the towns. It was on this ground, in my opinion, that the orders were held not to comply with the requirements of section 144. In the first two rulings, *Queen-Empress v. Lakhmidas Makandas*⁽¹⁾ and *Emperor v. Bhagubhai*,⁽²⁾ there is nothing in the judgment to suggest that the word “place” in section 144 (3) necessarily meant a restricted locality like a market or a park, and that it could not include a part of the town provided that part was sufficiently well-defined so as to be easily distinguishable.

⁽¹⁾ (1880) 14 Bom. 165.

⁽²⁾ (1914) 16 Bom. L. R. 684.

⁽³⁾ (1931) 33 Bom. L. R. 1178.

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In the case of the order dealt with in *In re D. V. Belvi*⁽¹⁾ also there was no direction to the public when frequenting or visiting any particular part of Belgaum city. According to the judgment of Madgavkar J. in that case it could not be legitimately inferred that all the streets in the city and cantonment of Belgaum were included in the order by implication. But this judgment too does not say that the word "place" in section 144 could not be applied to a part of the municipal area provided that part was described by specific boundaries. In all the four cases that have been referred to the ground on which the order was held to be illegal was that the order related to the residents of municipal areas and not to those frequenting or visiting a particular place. I am not prepared to hold that these rulings support the contention of the applicant that according to the view taken by this Court the word "place" must necessarily mean a particular restricted area. Reliance is placed in support of this view on the judgment of Rangnekar J. in *Emperor v. Motilal Kabre*⁽²⁾ in which he says that an order under section 144 can be directed to the public generally "only when frequenting or visiting a particular place such, for instance, as a market or a park or other place within a specified boundary." The passage, however, does not support the interpretation which is sought to be put on it. Even a ward of a Municipality could be described as a "place within a specified boundary" provided the boundaries on all sides were clearly given so that the public could be under no misapprehension or doubt as to what the prohibited area was. It has been conceded before us that an order under section 144 could be directed against the public when frequenting or visiting a particular street. If so, I see no logical reason why it could not be directed against people frequenting or visiting a particular locality within a specified boundary. To interpret the section in the manner suggested by the applicant would render the use of the section

⁽¹⁾ (1931) 33 Bom. L. R. 673.⁽²⁾ (1931) 33 Bom. L. R. 1178.

impossible in many cases in which a riot or disturbance of the public tranquillity is feared, since it would rarely be possible to anticipate beforehand the exact spot where such a riot or disturbance might occur. The section is expressly intended to be used for the prevention, among other things, of such riots or disturbances. I am not prepared to put upon the section an interpretation which neither the language of the section nor the previous decisions of this High Court warrant, and which would to a considerable extent defeat the very object for which the section was intended.

An order under this section, however, especially when it is directed against the public generally, involves a considerable infringement upon the rights of the public and very often a considerable interference with the legitimate activities of the public. It is necessary, therefore, that the operation of such orders should be kept within the narrowest possible limits, and that the place or locality to which they are applied should be so clearly defined as to enable the public to know at once what the prohibited area is, and to obviate the possibility of people disobeying the order through ignorance of the place to which it is applied. The order in the present case applied to wards D, E, F and G with the exception of certain specified streets. The boundaries of the area covered by these four wards are not given, and the streets within the prohibited wards to which the order applies are not named. I doubt whether the members of the public can reasonably be expected to know whether any particular street or place is or is not within the prohibited wards. While, therefore, I do not accept the contention of the applicant that an order directed against the public frequenting or visiting a large area such as a ward or several wards of Bombay city is illegal because such a large area cannot be called a "place" within the meaning of that word in section 144 (3), I think that the order in the present case is not a valid order under that section inasmuch as the place or locality to which it has been applied has not been

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defined with sufficient clearness to enable it to be called a "particular place" within the meaning of that section. I set aside the conviction of the applicant under section 188 of the Indian Penal Code and the sentence passed upon him and direct that he should be set at liberty.

DIVANIA J. I concur in the conclusion as well as the reasons given by my learned brother. In my view, the expression "particular place" in sub-section (3) of section 144 of the Criminal Procedure Code implies that the place to which the restriction applies should be sufficiently particularised, i.e., specified in the order, so that the public might feel no vagueness or uncertainty about it. It has not so much to do with the area of the place as to its description. It is on this ground that our High Court has consistently held that the municipal limits of a town are not a particular place. On the same test, a municipal ward without any further description cannot be regarded as a particular place. In the present order, the excepted portions of the four wards are sufficiently specified but the rest of them to which the order applies are not described. This also, in my view, equally offends the test to be applied here. Whether a place is properly particularised or not would depend upon its description in the order but the mere mention of a municipal unit cannot be regarded as its sufficient specification especially for a penal provision. The area and boundaries of such a unit may shift from time to time and the general public have only a vague and rough idea as to their outlines. I, therefore, agree that the order is invalid and its disobedience, not an offence under section 188 of the Indian Penal Code.

*Conviction and sentence
set aside.*

J. G. R.