

In Re: Bandi Butchaiah

In Re: Bandi Butchaiah

SooperKanoon Citation : sooperkanoon.com/781344

Court : Chennai

Decided On : Aug-17-1951

Reported in : AIR1952Mad61; (1951)2MLJ176

Judge : Panchapakesa Ayyar, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 144

Appeal No. : Criminal Revn. Case No. 653 and Cr. Revn. Petn. No. 647 of 1951

Appellant : In Re: Bandi Butchaiah

Advocate for Pet/Ap. : V. Rajagopalachari and ;K. Suryanarayana, Advs.;Adv.
General and Public Prosecutor

Disposition : Revision allowed

Judgement :

ORDER

Panchapakesa Ayyar, J.

1. This is an important case from the point of view of Newspapers' Editors' public criticism of Government officers and their conduct relating to their discharge of their duties, and the propriety of stopping such criticism in newspapers by issuing a multifarious and omnibus order under Section 144, Criminal P. C., and an 'ex parte' order too, when there is no likelihood of a disturbance of the public

tranquillity, or of a riot or affray, or of obstruction, annoyance or injury to any person lawfully employed, or of danger to human life, health, or safety, as contemplated in Section 144 itself as a condition precedent for issuing an order under that section. The case has been argued ably, soberly and moderately by Mr. V. Rajagopalachari, the learned counsel for the petitioner, and by the learned Advocate General for the State. To understand the case, it will be necessary to quote the extracts from the annexure to the order under Section 144, Criminal P. C., passed by the Sub-Divisional Magistrate, Vijaya-wada, from the articles published by the petitioner, Bandi Butchiah, in his weekly paper called 'Mulukolu' published at Vijayawada. 'Mulukola dated 22-2-1951' : The Anti-smuggling Sub-Inspector 'hushed up the misappropriation of 40 bags of rice in' Bezwada rice pool, is 'corrupt ever since hit, appointment' as Anti smuggling Sub-Inspector. He 'conspired with the Civil Supplies department' and the rice pool authorities and arrived at 'an agreement for future misappropriations'. He threatened the lorry driver who carried the 40 bags of rice not to speak the truth. He behaved in a high-handed manner by abusing one Pachipulusu Subba Rao after dashing a car in front of his shop. 'Mulukola dated 1-3-1951' : The anti smuggling Sub-Inspector, Narasayya, is carrying on unlawful and unauthorised acts. The Anti Smuggling Sub-Inspector is 'making illegal arrests' and behaving in a highhanded manner. The following are the instances :

- (1) he has been checking the rice mills and premises of ryots unlawfully;
- (2) His duties do not warrant detection of smuggling within the district of Krishna;
- (3) He 'misappropriated the amount due to Nettaji Hotel', he has been associating with a rowdy gang. He approached the Deputy Collector, Narasayya Naidu to give a statement.

The Anti Smuggling Sub-Inspector drove a car without a licence, he sent reports direct to the D.S.O. against the discipline of the department. He interviewed the Deputy Collector without the permission of superiors. He arrested one Pacha Venkiah unlawfully.

'Mulukola dated 8-3-1951' : In the article under the caption 'Violation of police discipline' reiterated the allegations of corruption, against the Anti Smuggling Sub-Inspector 'The Dy. S.P. was indifferent and gave evasive replies' to me when I reported against the transport of rice in the bus.

'Mulukola dated 15-3-1951' : Reiteration of the allegations against the Anti Smuggling Sub-Inspector. The Deputy Superintendent of Police went to the scene to enquire into the dashing of the car of Pachipulusu Subba Rao with the Anti Smuggling Sub-Inspector at Vijayawada, but the Deputy Superintendent of Police went there for inspection even though the offence was proved against the A.S.S.I.; this is questionable. The Dy. S. of Police went with the record of enquiry to the house of the Special Duty Dy. S. P. Palaniappan, for scrutiny. 'The Special Duty Police officers are ruling the Krishna police'.

'Mulukola dated 1-4-1951': The A.S.S.I. is transferred. The officers of the Police Department down below the D.S.P. tried their best to save this man even against the departmental discipline. 'The fate of this district at the hands of such police officers can be very well imagined'. Narasayya, smuggling Sub-Inspector, is 'a cruel and dishonest person'; In the interests of the public he should not be in the department. 'In Krishna district Pidikiti Ramakotayya and Krishna district police officers are working together for mutual benefit, as thieves divide villages for thefts'.

Especially, Special Duty Dy. S. of Police Pataniappan, is a friend of Ramakotayya. It is learnt that 'both work for mutual benefit etc, etc. The A.S.S.I. has misappropriated about Rs. 450 due to Nethaji Hotel', and, as a result of the investigation into this he will be dismissed from service. E. X.X.P. Uamakotayya against whom a case was being investigated into by the police absconded from Vijaya-wada on 24-6-1951. C. J. Pinto, D.S.P. Krishna, was seen on the Vijayawada Railway platform talking with Pidikiti Ramakotayya. A gentleman told me (the editor) that he saw Ramakotayya coming from D.S.P.'s bungalow that afternoon. The D.S.P. through his subordinates, could have got Ramakotayya arrested. The Bezwada police 'will not investigate this case properly as they have already created many things in favour of Pidikiti' Ramakotayya etc. etc'. Further,

when a constable charged an overloaded bus belonging to this Ramakotayya six times, the D.S.P. has let off unlicensed rickshaws. 'Why should not the Dy. S.P. and the D.S.P. learn a sense of duty from this constable?'

'Mulukola dated 8-7-1951' : The public who want to expose Ramakotayya are hesitating to give evidence against him for two reasons. Unless the D.S.P. and Dy. S.P. are at least transferred from Bezwada and pardons to purchasers of iron and steel from P. Ramakotayya are given, free evidence will not come. We shall now ascertain the relationship between Ramakotayya and Bezwada police officers.

1. 'Anti communist front' : Bezwada police are blindly guided by Ramakotayya to decide who is a communist and who is not.
2. 'Bus route' : Bezwada police got Ramakotayya a bus route between Gudiwada and Bezwada. 'Gratitude must be like this'.
3. 'Cycle rickshaws' : The police, for the sake of Ramakotayya, removed restriction imposed on the number of rickshaws,
4. 'Over-load' : Bezwada police did not think it proper to cancel the bus route of Ramakotayya though the bus was found overloaded six times.
5. 'Unlicensed rickshaws' : When unlicensed rickshaws of Pidikoti Ramakotayya were detected by Vijayawada town police, they were released by phone instructions, and no cases were put up against the owners. I told Dy. S.P. Narayanaswami not to cooperate with such an anti-social man as Ramakotayya, but my advice was not cared for. That is why even unlicensed rickshaws are left free.
6. 'Iron black marketing' : I produced Bhu-pat Mall before the Dy- Superintendent of Police, B. N. Narayanaswami, as he purchased iron in black market from Ramakotayya but there was no use. I told the Dt. Supdt of Police, Mr. Pinto. That was also of no use. 'Bezwada police engrossed in the service of Pidikiti Ramakotayya, have forgotten about the prestige of the police department'. What is it that we are able to know from this? Considering from the duties of the police department, it has been established that 'Mr. Pinto, the Head of the Krishna

District Police, is unfit to be the D.S.P.' The existence of such officers who sympathise with such unsocial elements in the department is a slur to the reputation of the department. Hence the Government and the police department 'should immediately give adequate punishment to the Krishna Dt. Superintendent of Police etc. etc.'

2. It is obvious, even on the first reading of these extracted documents, that the news and comments of Bandi Buchiah, the petitioner on various police and other officers in Krishna district, have been exceedingly pungent, and even vitriolic and violent, and that they may reasonably be termed 'excessive' unless he can adduce sufficient evidence in support of his allegations. Thus, for instance, his comment in the issue of 15-4-1951 : 'In Krishna district, Pidikoti Ramakotayya and Krishna District police officers are working together for mutual benefit 'as thieves divide villages for thefts.' will require the fullest proof before any sane man will accept it as true regarding the present day police administration there. So too his terrible remarks on Anti-Smuggling Sub-Inspector Narasayya, D.S.P. Pinto, etc. Mr. Rajagopalachariar for the petitioner submitted that, though the comments appear at first sight to be extraordinarily wild and reckless, we are living in extraordinary times of corruption, irregularity and high handed action, and so, the comments need not necessarily be 'false or malicious', and, that, in any event, the petitioner is willing to stand a prosecution and prove his comments to be true to the hilt. The learned Advocate General submitted that he would have agreed that an order under Section 144, Criminal P. C., in the circumstances disclosed in this case, was a most extraordinary step to take against a newspaper and its 'future articles', especially when the acts prohibited are not merely attacks on the above officers, or even police officers in general, but 'all acts' termed 'excessive publications' against all gazetted and non-gazetted officers of the police department, and, indeed, of 'all other departments of the Government' regarding acts committed or purported to have been committed, in the discharge of their public functions or capacity as public servants. There is a rather curious clause in the order of the Sub-Divisional Magistrate evidently intended to cover the illegal nature of the order, that Bandi Butchaiah is permitted to edit, print and publish news which is 'not excessive', and which would not be unlawful, as the order did not want to take away his rights and privileges as editor, printer and publisher of the weekly! The

learned Advocate General submitted that the order would never have been passed but for the threat of Buchiah, the petitioner, in his issue dated 8-7-1951, that he would continue the half-finished article in the issue of 15-7-1951, and he assured me that the order will not be renewed after its lapse after two months. He frankly conceded that there was no prior instance in this state of an order under Section 144, Criminal P. C., having been passed to prevent a newspaper from publishing such articles in future. But he relied on a ruling of a Bench of the Bombay High Court, reported in 'Emperor v. Ganesh Vasudev', 55 Bom 322 for the position that the word 'annoyance' in Section 144, Criminal P. C., need not necessarily mean 'physical' annoyance and may include 'mental' annoyance also. That is so, and has always been so. Thus, for instance, if a full grown sane adult, in a fit of exhibitionism, goes along a crowded public street 'stark naked' in broad day light, causing annoyance to people living in the street, it will certainly amount to 'annoyance' within the meaning of Section 144, Criminal P. C., though no 'physical' annoyance may be caused by the act. So too, if a man harasses any people by calling them on the phone constantly and abusing them, or calls a young woman on the phone constantly and makes improper overtures to her, it will be 'annoyance' within the meaning of Section 144, even though there is only 'mental' annoyance. But the Bombay ruling will 'not help the learned Advocate General in his contention regarding the validity of the order under Section 144, Criminal P. C., in this case. It has been held by the High Courts over and over again that Section 144, Criminal P. C., provides for temporary orders in urgent cases of 'nuisance involving a danger' to public health or life, or 'apprehended danger of a breach of the peace', like a riot or affray, and that the urgency of a case of dangerous nuisance or apprehended danger of a breach of the peace is essential to the application of Section 141, and that orders under Section 144 are passed 'only in the general interests of society' (and 'not' in the interests of 'particular officers etc') and can interfere, within the limitations laid down, with private rights of enjoyment, of property and, that, therefore, the powers have to be exercised very carefully, and interference with private and public rights 'reduced to a minimum' and regulated by a full observance of the limitations imposed by the section itself. (See for example, 'Ramnarain Sah v. Parameswar Prasad', : AIR1942 Pat414). Even where an order under Section 144 deals with a 'nuisance' there must be a danger

to life or health involved, or of an affray or riot or breach of the peace. Mere defamatory statements, and even highly objectionable abusive articles against prominent officials, cannot be dealt with under Section 144, Criminal P. C., unless they are likely to lead to a breach of the peace or to a nuisance endangering life or health. Section 144 should not be abused by using it for dealing with abusive articles and defamation not likely to lead to a breach of the peace, for which there are other appropriate remedies under the law, as that will be making the 'medicine' the 'daily food'. A Bench of the Calcutta High Court, consisting of Harries C. J. and Das Gupta J. has held, in 'Hulasmulla v. Tulsi Shaw', 53 Cal. WN 344 that the powers given to a Magistrate under Section 144 are very wide, and that, for that very reason, they should be exercised with discretion and discrimination, and that Magistrates ought to remember that arbitrary use of these powers is not only unfair to the parties concerned but is very often calculated to defeat the purpose for which the orders are passed, and that an order under Section 144 should not be made without a searching investigation of the facts of the case and a strict compliance of the requirements of the section itself. The present case is an instance of the violation of those salutary directions. In an attempt to curb unjust attacks on officers, all attacks on officers, and even comments on the public acts of 'all' officers of all departments were prohibited in this order, while pretending to leave the privileges of this newspaper editor and his newspaper intact! That is a clear abuse of the powers given under Section 14_4. While Section 144 has the vital phrase "to abstain from 'a certain act'" the order here directed Buchiah to abstain from 'an untold number of acts of a very vague and uncertain nature', called 'excessive publication' violating this vital clause and the great safeguard it contains against such whimsical and arbitrary acts of magistrates. A Full Bench of the Lahore High Court consisting of Young C. J., and Bhide and Mahomed Munir JJ. has held in 'P. T. Chandra, Editor, Tribune v. Emperor', I.L.R. (1942) Lah 510 that the right of the public, to have news published is common to all countries where there is liberty of the press, and that it is the right of 'all newspapers equally' to publish news, provided it does not offend against any existing law, and that it is obvious, therefore, that the powers given to a magistrate under Section 144, Criminal P. C., to interfere with the liberty of the press should be used, very sparingly and only for good cause shown and that it is for that reason that Section

144, Criminal P. C., itself makes it obligatory for the Magistrate in any such order to indicate the material facts which justify such an order. It was held there further that not only is it necessary to state the material facts but there must also be urgency in the matter. It was also held that though the opinion of a magistrate expressed in an order under Section 144, is entitled to great weight, as the man on the spot and the officer responsible for the maintenance of peace and order in the locality, it is not to be accepted as absolutely correct in all circumstances, and that the High Court has, in proper cases, got full power to interfere with such orders. It was also held that 'there must be a causal connection' between the act prohibited and the danger apprehended to prevent which the order is passed. That decision, with which I wholly agree, 'shows clearly that an order under Section 144, Criminal P. C., can be passed against newspaper editors and newspapers also in' suitable cases warranting such an order. But it shows this order to be wrong in five 'ways', namely, in resorting to Section 144 lightly and in violation of its terms and in the absence of any nuisance involving danger to health or life or of a breach of the peace; interfering with the right of a newspaper and its editor to publish news and comments without any real need to take to such action, instead of resorting to other and appropriate sections of law to deal with the alleged offences; failing to establish a causal connection between the news and 'comments published by the petitioner in his newspaper and the alleged insubordination of subordinate officials, the alleged recrudescence of anti-social activity by communist and other turbulent elements, and the alleged creation of prejudice in the minds of the superior officers against the officers attacked by the petitioner in his paper; the failure to hold an investigation and satisfy himself that the news and comments 'offended against any existing law'; and the passing of an 'ex parte' order without any real urgency or justification. Merely annexing extracts from the vitriolic comments of the petitioner to the order under Section 144 will not cure these five grave defects. I shall now examine the reasons given in the Sub-Divisional Magistrate's order in detail.

3. The teamed Sub-Divisional Magistrate has given 'seven' main reasons for passing this order under Section 144 :

(1) That the comments of the petitioner in his paper tend to make the officers attacked, namely, the D.S.P. Mr. Pinto, Special Dy. S. P. Mr. Palaniappan, Anti

smuggling Sub-Inspector, Mr. Narasiah, and others, depressed and apathetic in the discharge of their duties, instead of enthusiastic as before. This is no reason for passing an order under Section

144. There is no reason also why these officers should take notice of the comments of this man in his weekly paper, of no great influence or standing, and take them to heart to such an extent as to get detailed and depressed and apathetic and unmindful of their duties, especially when the comments are alleged to have been false and malicious and fabricated and of a most frivolous and vexatious nature. Besides, Section 144 is not intended to be used in the case of such depression in Government servants when there is no danger of a breach of the peace or of a nuisance involving danger to life or health, and when there was no obstruction, annoyance or injury to any of these officers when they were lawfully employed in their duties. It was not alleged that this petitioner went to any of those officers while they were engaged in their legitimate duties and annoyed them by levelling such accusations against them, or even sent his newsboys to them with the issues containing these comments of his in order to cause them annoyance, or that he asked his readers to obstruct, annoy or injure these officers in the course of their lawful employment, when, of course, an order under Section 144 could have been lawfully passed against him, 'editor or no editor', as that would certainly have led to a breach of the peace or to a nuisance involving a disturbance to the public tranquillity;

(2) The superior officers of the officers attacked by this petitioner in his paper were said to be likely to become prejudiced against those officers by reason of these comments. I cannot see how the superior officers were likely to get 'prejudiced against the victims of these attacks, especially when the order itself says that the superior officers enquired into the allegations in the comments and found them to be false and malicious. Further, it is not one of the legitimate uses of Section 144, Criminal P. C., even if these superior officers are likely to gulp down these wild comments as gospel truth and get prejudiced against the victims of these attacks;

(3) It is said further that the subordinates of the D.S.P. Special Deputy S. P. etc., the officers attacked might become disgruntled, indisciplined and insubordinate by

reading these comments and taking them to be true! I cannot see why these subordinates should become disgruntled and insubordinate or indisciplined by reading that a constable was behaving better than the D.S.P., or Dy. S.P., and asking the D.S.P. and Dy. S.P. to learn a sense of duty from that constable. I do not consider that they will become so, merely by reading these comments and without even enquiring into their truth or otherwise. I think few subordinates will be influenced by such vitriolic news and comments upon the officers in question. Nor can the fact, even if true be a reason for using Section 144, Criminal P. C., for such a purpose against a newspaper when there is no danger to life or health or of a nuisance or a breach of the peace or of an annoyance while discharging duty;

(4) It is stated that the Krishna district is in a disturbed state now, owing to Communist trouble, that it has not yet come to normal, and that the anti social elements, which were about to settle down, owing to the efficient working of the Special Police staff under the direct control of the District Superintendent of Police, were becoming ready to restart their activities should the police get depressed and relax on account of the comments upon themselves. This is an extraordinary statement. I do not think that the police officers care two hoots for this man's comments. Nor is the alleged fact, even if true, a reason for using 'Section 144, Criminal P. C.', against a newspaper in the absence of the danger of a breach of the peace, etc. The particular difficulty of a district must be met by adopting the proper procedure laid down by law, and by booking the alleged offenders under the appropriate sections, and not by using Section 144, Criminal P. C., for a purpose for which it was never intended. The 'procedure' is as important as the 'booking of an offence'. Government officers cannot get a remedy not given to non-officials;

(5) It is stated further in the order that hatred and disaffection is being created among the public against the Government servants in general, and some State officials in particular, by reason of these comments in this weekly. I cannot bring myself to believe it. Tigers may create a panic among people, but rarely scorpions! Even if it is true, the remedy is to take appropriate proceedings. Prosecutions under the Penal Code and other substantive laws must be taken against individuals committing such acts, and not an order under Section 144, Criminal P.

C., which can be applied only within the strict limits mentioned there.;

(6) The sixth reason given is that Butchiah, in making these comments, was not actuated by any 'public good or public benefit', and was not acting in good faith, but was requesting favours from the Government officers concerned, and money payments from merchants, and that, when such favours were refused or such money payments were refused, he was attacking them by way of intimidation or blackmail. Even if that is so, the proper course is to put up Butchiah for attempted intimidation or blackmail or extortion or threatening Government servants, or others, under the Penal Code or any other appropriate section of law, but certainly not to pass an order under Section 144, Criminal P. C., when there was no danger of a breach of the peace or nuisance as contemplated under that section, or of annoyance to officers when lawfully employed;

(7) Finally, it was said that Buchiah was, by his false and malicious comments, aiming to achieve 'cheap popularity amongst the public' in view of the forthcoming adult suffrage elections and was making such comments wildly and recklessly as the public are always excited by such comments and mistake persons making such comments to be patriots and friends of the people. No doubt, election times see wild and reckless allegations and counter allegations made. And, of course, it is true that there are persons in India who want to become popular with the public in view of the forthcoming general elections on the basis of adult suffrage, and make all kinds of objectionable gestures, either by threatening to fast unto death, sometimes even for petty reasons, or by attacking Government servants or officers of companies or corporations falsely, or by shouting offensive slogans or by creating a disturbance in Courts when being tried, or by claiming to be friends of the poor and leading them on foolish hunger marches or looting of shops. All these evils exist not only in this country and at this time but have existed to some extent in every country and at every time. Extreme caution is required in dealing with these symptoms of election fever and hysteria. Before using the provisions of Section 144 Crl. P. C. such vague allegations, as aiming at cheap notoriety, will not do, and it must be proved that Section 144 Crl. P. C. can be applied to this case within the strict limits prescribed in the section itself. The learned Advocate General quoted the instance of Lakshmikantam and his obscene news and

comments on respectable people in his papers called the 'Hindu Nesan and Cinema Thoothu,' but he did not say that any order under Section 144 Crl. P. C. was passed against Lakshmikantam or that it was upheld by any Court. That extreme example itself takes the ground away from under his feet in this case. Indeed, in any stable and orderly society, such wild attacks and outbursts, even if false and malicious, will be allowed for the time being, and a long rope will be given to persons indulging in them, as the society is strong enough to book them in the end, and there is no need to short circuit such news and comments by illegal methods like passing an order under Section 144, Cr. P. C. against the newspapers and gag criticism even before it is made known. Of course, Section 144 Crl. P. C. can be used even against newspapers in proper cases of incitements to breaches of the peace or to commit nuisances, dangerous to life or health or to annoy officers lawfully employed, But, in the present case, there was admittedly no incitement to commit a breach of the peace or to commit nuisances constituting a danger to life or health, or to annoy officers lawfully employed, in anything this man actually wrote. Mere 'annoyance' caused to Government officials, when not actually employed in their task, by reckless or defamatory attacks on them not involving a breach of the peace or danger to life or health will, in my opinion, not do for invoking the powers under Section

144. It is impossible even to guess what the petitioner would have written them in the threatened issue of the 15th. He has only gained cheap notoriety by the Sub Divisional Magistrate's passing an order against him under Section 144 Crl. P. C., and preventing his publishing that much boosted 'continuation article'. I do not believe the heavens would have fallen if this boosted continuation article was allowed to be published, and he prosecuted later.

4. In the interests of the purity of public administration, and frank and free criticism of the activities of one and all, including Government servants, vested in all citizens and especially in the newspapers and their editors, I must set aside this order passed under Section 144 Crl. P. C., as it is in the circumstances disclosed, illegal and passed without jurisdiction, and entirely misconceived to meet a situation like this, though articles like these, if false and malicious, deserved to be booked in other and permissible ways. Admittedly, there was no danger of a

disturbance of public tranquillity in this case, as in the Bombay case, 'Emperor v. Ganesh Vasudev Mavlankar', 55 Bom 322 where the order was held to be valid finally only because there was the likelihood of a disturbance of public tranquillity; nor is there any danger of an affray in this case, as the police and other officers attacked are not likely to fight Bandi Buchiah in the public streets and create an affray; nor is there any danger to human life or health or safety involved in these attacks to Buchiah. Nor is there any real obstruction, annoyance or injury, to any officer, when lawfully employed in the discharge of his duty, by Bandi Buchiah. I would have certainly upheld the order under Section 144, Criminal P. C. if Bandi Buchiah had not merely published such news and comments, but had also gone and annoyed the officers when engaged in their lawful duties, or had asked the public to go and attack the District Superintendent of Police, and other officers or to resist or obstruct them in the searches, etc. I am not concerned here with the submission of Mr. Raja-gopalachariar, counsel for the petitioner, that actually the Madras Government itself has instituted enquiries against the Anti-smuggling Sub-Inspector Narasayya, and P. Ramakotayya, and that Bandi Buchiah's attacks and comments are thus proved to have had a kernel of truth in them, and were not merely 'false and malicious' as the learned Sub Divisional Magistrate alleged in his order.

5. The order was also passed 'ex parte' without any proper enquiry or real urgency. There was, in my opinion, no need or justification for its being passed 'ex parte'. I am not satisfied with the contention that Bandi Butchiah could not be found before the 'ex parte' order was passed, though he was diligently searched for. He strikes me as a person who would have welcomed any chance for publicity and would have been only too willing to appear and support his statements, and who could have been found very easily if really searched for. Such persons rarely hide their lights under a bushel. Further there was no danger to public tranquillity or human life or safety, to justify an urgent 'ex parte' order. The Sub Divisional Magistrate could have waited and heard this man before passing an 'ex parte' order under Section 144, Criminal P. C. against him and his newspaper. It may be that the newspaper 'Mulukola' may not be a first class newspaper following the high ethical codes of well established news-papers, like 'The Hindu', the 'Statesman', the 'Mail', the 'Indian Express' etc., but even an obscure paper, like

'Mulukola', is entitled to the enjoyment of rights and privileges conferred on newspapers in general, just as even Harijans must have their rights, and not merely the upper classes. The phrase 'it is the right of all newspapers equally' in the Full Bench decision in I.L.R. (1942) Lah 510 is significant

6. I must add before closing that this petition has been filed in this Court because the District Magistrate of Krishna, admittedly said at a Press conference, on July 15th, 1951, that, he fully agreed with this prohibitory order under Section 144, Criminal P. C. passed by the Sub Divisional Magistrate: that being so, the petitioner's learned counsel said that he saw no use in putting in an application before the District Magistrate, Krishna. I may also add that three prosecutions for substantive offences have been launched against Bandi Butchiah regarding his allegations and comments in his newspaper, and are pending trial, and that he has also applied to this Court for the transfer of the cases outside the Krishna District owing to the District Magistrate of Krishna having spoken at the Press Conference, as stated above, though he is willing to be tried by the Assistant Sessions Judge, Vijayawada. Needless to say, such prosecutions for substantive offences are the Correct steps to take in such cases, and not orders under Section 144, Criminal Procedure Code. I may add that, as elections are approaching, such comments are likely to become more and more numerous, and that it is advisable for Magistrates to know what particular sections of law they should apply, and what not, to stop irresponsible or malicious or false criticisms. Of course, an item of a news or comment must be held to be false or malicious or irresponsible only after an enquiry including a questioning of the person making it, and getting his explanation for the news or comments and not merely 'ex parte' after hearing only the persons attacked, as in this case. It may be desirable for Parliament to amend Section 500, I. P. C. and make the offence of defamation punishable also with rigorous imprisonment if attacks of a very grievous nature, as here, are made against responsible officials or non-officials and are found to be false, defamatory and contrary to the public interests and deserving of rigorous imprisonment. 'At present only simple imprisonment can be awarded for defamation, under Section 500, I. P. C. and people can make any allegations, however grave or irresponsible and can, if convicted and sent to jail, peacefully eat the bread of idleness at public expense.

7. In the end, therefore, I set aside the order under Section 144, Criminal P. C., passed by the learned Sub-Divisional Magistrate of Vijayawada, as I consider that an order under Section 144, Criminal P. C. was not warranted or called for or justified in the circumstances proved in this case.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com