

In Re: Devatha Sriramamurty

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Court : Chennai

Decided On : Aug-11-1930

Reported in : 131Ind.Cas.649; (1931)60MLJ370

Judge : Pandalai, J.

Appellant : In Re: Devatha Sriramamurty

Judgement :

ORDER

Pandalai, J.

1. This is a petition, to revise an ea- parte order, dated 14th June, 1930, made under Section 144, Criminal Procedure Code, by the Stationary Sub-Magistrate, Rajahmundry, which on application dated 16th June by the petitioner that the Magistrate by his order dated 14th July declined to rescind, The order of 14th June is as follows:

Order under Section 144, Criminal Procedure Code: Whereas from information given by the Police it has been made to appear to me that in Rajahmundry the hoisting of tri-coloured flags on the residential and other buildings is giving room to certain rowdies and men of bad character to think that they can safely molest them under a wrong belief that no notice would be taken by those responsible for law and order and that for the preservation of peace and tranquillity the removal of such flags is necessary and emergent, I.P. Mallikharjuna Row, B.A., Second Class

Magistrate, Rajahmundry, hereby prohibit under Section 144, Criminal Procedure Code, the placing or hoisting of such flags or continuing to keep them on any building in general and on the building of Messrs. (1) Devatha Sreeramamurthi, (2) Dr. Veerbhadraswami 27 Ind. Cas. 670 : 18 O.C. 70 : 16 Cr. L.J. 190 Burra Suryaprakasa Row, (4) Uppala Satyama and (5) Polayya Naidu of Rajahmundry in particular for a period of two months from to-day, 14th June 1930, and strictly warn and enjoin the public of Rajahmundry including individual members of Congress organization and Satyagraha volunteers residing in Rajahmundry not to take part in any such demonstrations or keeping such flags on their buildings during the said period.

2. The order is issued under Clause (2), Section 144, Criminal Procedure Code, as the circumstances do not admit of the service of notices on the persons concerned in due time.

3. The circumstances in which this order came to be passed were these. On 10th June the District Magistrate of East Godavari made two orders under Section 144, one prohibiting the public including certain named persons and other officers and members of Congress organizations from holding meetings and processions in any public place or thoroughfare or other place frequented by the public within the town of Rajahmundry and within a radius of seven miles from Rajahmundry, the other prohibiting one Mallikharjuna Row and other Congress volunteers residing in particular premises from residing there. These orders were passed in view of the campaign of civil disobedience movement, which had broken out in Rajahmundry and they broke up the base of operations of the Congress volunteers and stopped demonstrations in public places in sympathy with them. They did not and could not interfere with anything done in private houses and buildings, for example, the flying of the national flags in them. The authorities had no power to interfere with such flags but were naturally dissatisfied with their being flaunted from house-tops after they were driven away from the streets. On 13th June the Police went about and succeeded in getting a great many of these flags removed. As no Police Officer gave evidence in these proceedings we have no means of knowing their own version of how this was done. But witness No. 3 for the counter-petitioners who was examined in support of the Police and who appears to be a respectable

man having been an Honorary Magistrate speaks of the Police pulling down the flags and of himself closing his shop-door when the Police were pursuing the people assembled in crowds. However that may be, on the morning of 14th June, the Police went to the house of the petitioner, a Pleader and asked him to remove the flag from his house. He refused and the Police not having legal authority to enforce their demand withdrew for the time. Later in the day on this becoming known, many of those whose flags had been removed the previous day put them up again and, therefore; most of the work of the previous day was undone. In these circumstances the Deputy Superintendent of Police applied to the Magistrate for an order under Section 144 prohibiting these flags, stating as the ground for action under that section that they gave room for certain rowdies and men of bad character to think that they can safely molest or attack the places where the flags were flying under a wrong belief that no notice would be taken by those responsible for law and order and that in the interests of peace and tranquillity it was necessary to remove the flags. Thereupon the Magistrate made an ex parte order as above.

4. The order is addressed to five named persons including petitioner and the Police. On 16th June the petitioner applied to the Magistrate to cancel his order stating that the ground for action as stated in the order was both untrue in fact and insufficient in law to justify action, that the flag in the petitioner's house had been there several months and there never was any attack nor apprehension of any attacks by rowdies on his or any other house by reason of the flag, in short that there was no urgent or in fact any apprehension of danger to the public peace such as to justify, the order and that so far as the order on the public was concerned, it was invalid as it purported to prohibit them from hoisting flags on private houses where they do not frequent.

5. The Magistrate held an enquiry for the purpose of Section 144 (4) in which 11 witnesses were examined on the petitioner's side and three on that of the Police. No Police Officer went into the witness box. Before going further I ought to say that the Sub-Magistrate was wrong in having refused to the petitioner a copy of the information given to him on 14th June and on which his order of that date was based. Proceedings under this section are judicial: *Muthuswami v. Thangammal* :

AIR1930 Mad342 , and are subject to revision by 'this Court. The petitioner had a right to know what the information was on which the Magistrate acted in order to show that it was unfounded or insufficient. The petitioner's Advocate was, therefore, allowed access to the original by me. On a consideration of the evidence the Magistrate declined to rescind his order. Hence this petition.

6. The duty of this Court is to satisfy itself as to the correctness, legality or propriety of the order of the lower Court and to pass such orders as may be necessary. The powers of this Court in revision as described in Section 439 are general and their generality cannot be cut down by any decision. On this point I would respectfully adopt the words of Sir Lawrence Jenkins in *Emperor v. Bankatram Lachiram* 28 B. 533 : 6 Bom. L.R. 379 Page of 28 B.--[Ed.] where that learned Judge quoting another eminent English Judge said:

This controlling power of the Court is a discretionary power and it must be exercised with regard to all the circumstances of each particular case, anxious attention being given to the said circumstances, which vary greatly. For myself I say emphatically that, this discretion ought not to be crystallized as it would become in course of time by one Judge attempting to prescribe definite rules with a view to bind other Judges in the exercise of the discretion which the Legislature has committed to them. This discretion, like all other judicial discretions, ought, as far as practicable, to be left untrammelled and free so as to be fairly exercised according to the exigencies of each case.

7. I have ventured to refer to what may be considered common knowledge in this Court, because the learned Advocate-General at more than one point of his address stressed the point that in considering the propriety of orders under Section 144 this Court will not substitute its judgment on the facts for that of the lower Court which alone is responsible for the peace of the locality. The element of validity in this contention is that where the elements essential to action under the section are shown to exist upon materials legally before the Court, this Court will, in exercising its powers, respect the opinion of the local authorities both as to the gravity of the danger and as to the steps necessary for maintenance of peace. But this does not mean that, where those essential elements do not, upon a fair view

of the evidence exist, this Court will blindly uphold the order of the local Magistrate because he has chosen to say that they do exist. That would be for this Court to relinquish its function into the hands of the lower Courts, a course which will be as dangerous to the public peace. Instances of such interference abound in the reports. If it is the case that the grounds for action as stated in the order, are either unfounded in fact or insufficient in law or if it is shown that the order against the public as framed violates the conditions laid down by Section 144, it is the duty of this Court to interfere.

8. To take the second point first : the order consists of two parts one addressed to five individuals, the other to the public generally. So far as it is addressed to the public generally it is clearly a violation of the express terms of Section 144 (3), which states that an order under this section may be addressed to the public generally when frequenting or visiting a particular place. No order can be passed against the public without that limitation as to place, namely, that it must be one whether publicly or privately owned, which at the time when the prohibition operates, the public frequent or visit. They may have a right to frequent the place as in highways and places of public resort or they may be allowed or invited to visit it as at a public meeting held in private premises. But the place must be one which is open to the public as such. And this involves that the public cannot be prohibited from putting up flags in private houses, first, because those who put up the flags are owners or occupants of such houses, and second because the public as such neither frequent nor visit private houses. It is a misuse of language to call house-owners who use their houses members of the public for the purpose of this section and I have not been shown any instance of such a use of the section. The learned Advocate-General attempted to argue that an order to the public may be valid without the limitation above-mentioned. I consider that the words of the Statute are clearly against this contention. The only authority to which he referred was a decision, *Abdul Gafur v. Emperor* 27 Ind. Cas. 670 : 18 O.C. 70 : 16 Cr. L.J. 190 which is not only no authority in this Court but did not really decide the point as contended. I must hold that the order so far as it is directed to the public was misconceived and must be set aside.

9. So far as the order is directed to the petitioner himself the objection of substance is that on the materials before the Magistrate there was no evidence of urgent or indeed any apprehension of danger of breach of the peace or disturbance of the public tranquillity to justify the order. I have referred to the circumstances that judging from the order of events, the application for the order appears to have been prompted by the fact that owing to the petitioner's refusal to remove his flag, even those who had been induced to remove it on 13th reinstated the flags on 14th June, and the authorities had no power to enforce their wish to see the flags removed. But the ground stated to the Magistrate and stated by him in the order, was that hoisting of flags gave room to rowdies and men of bad character to think that they may safely molest the buildings carrying them under a wrong belief that no notice would be taken by those responsible for law and order. A great deal of argument was devoted on the petitioner's side to the proposition that if there were really such a situation at Rajahmundry it was the duty of the Police and the magistracy to protect the law-abiding persons who had flags and to restrain the rowdies and not as the Magistrate has done to restrain law-abiding persons and give encouragement to rowdies and men of bad character. On the other side it was argued by the learned Advocate-General that under this section it was quite legal to restrain legal acts in the interests of public safety and, therefore, that, if the authorities had not enough resources to restrain the rowdies and men of bad character, it was proper to prohibit the provocative flags. I do not think it profitable to enter into the abstract discussion to what extent and in what circumstances perfectly legal and innocent acts may have to be restrained in the interests of the public safety. For I have come to the definite conclusion that there is nothing in the evidence to support the allegation of a threatened attack on flag-bearing buildings by rowdies and men of bad character.

10. I have examined the evidence with care. If there were any such apprehension as alleged it is strange that no Officer of the Police who knew of it cared to go into the witness-box. The petitioner, P.W. No. 1, stated that the flag had been in his house from 1921 and that rowdies and bad characters had never done any mischief. He spoke to the demand of the Police in the morning of the 14th that the flag should be removed and his refusal and to its subsequent removal after the order was passed. Prosecution Witness No. 2, one of the persons prohibited by

the order from hoisting a flag, is a doctor with European qualifications and a man who had served in the Great War as temporary Captain in the I.M.S. He swore that he never had a flag either in his house or in his dispensary and, therefore, of course, had none to remove. Prosecution Witness No. 3 the brother of one of the persons, prohibited by the order says that at 6 p. M. on 13th June, eight members of the Reserve Police came with lathies and bamboo sticks to their house where there was a flag for five or six months and threatened him and climbed to the flag and broke it, and removed it and that no one else had molested them for having the flag. Prosecution Witnesses Nos. 4 to 9 give similar evidence about the removal of the flag from their houses by the Police on 13th June, and about there having been never any molestations from rowdies or bad characters on account of the flags. Prosecution Witness No. 10 is a stamp vendor who speaks to having received lathi blows when standing on a pial during the flag removing operations by the Police on 13th June and to his being under treatment for his injuries. The evidence on the side of the counter petitioner is of three witnesses, Crown Prosecution Witness No. 1 gives rather confused evidence about what happened before and after the order under Section 144, From his evidence it is clear that he heard the proclamation of this order on 14th June, by beat of tom-tom. But he says that after it no one removed the flags though in another place he said that in the evening after the tom-tom he did not see any flags. About the theory of molestation by rowdies and men of bad character, his attempt was to show that these were hungry coolies who were incensed at the frequent hartals with closing of shops whenever any congressman was arrested and who, therefore, might attack the buildings with flags which they would connect with the hartals. But the evidence of this and the other two witnesses for the counter-petitioner broke down hopelessly on this point. Although in one place he said he heard coolies and others say that shops are always closed on account of these flags and that they would remove them if the Police did not remove them, he admitted he did not know anyone who said so or even know their caste. Evidence of this character is worthless in view of the admitted fact that there is no evidence whatever of any looting of shops in Rajahmundry, owing to hartals or flags. Crown Prosecution Witness No. 2, a Muhammadan shopkeeper, says that he had been seeing the lags ever since April and the only connexion he can suggest between them and

attacks by rowdies is that some Madiga, shoe makers who work in front of his shop said that if the shops are closed on account of the advent of Swaraj they would loot the shops for which the witness reprimanded them. The witness swore that he is not aware of any looting on account of the hoisting of the flag. He was unable to name any of the Madigas who are supposed to have spoken as above. They were among the sight-seers in the street. Crown Prosecution Witness No. 3 was an Honorary Magistrate and is a respectable witness, His evidence affords probably the best proof in the case as to the real reason why the flag was sought to be removed by the authorities and the clearest refutation of the theory of looting by rowdies and bad characters now described as hungry coolies, Not only does he not say anything about any apprehension by anybody that the flags were liable to attack by bad characters or hungry coolies, but he describes the meaning of the flag in vivid terms when he says that the hoisting of the flag is itself revolution. That is an intelligible attitude. But it is not the case on which the order was passed and which had to be met. The learned Advocate-General did not, as well he could not, on the present state of the record support the order on the ground that the flag is a revolutionary emblem. It is sufficient to say that the evidence of this witness taken as a whole shows that the apprehension of danger stated in the order of the Magistrate did not in fact exist.

11. The evidence before the Magistrate did not show the existence of any urgency of apprehended danger and, therefore, the order against the petitioner was unauthorized.

12. In the result, the order of the Magistrate of 14th June is set aside so far as it is directed against the petitioner and the public generally. As the Magistrate's order will normally expire on the 14th instant this order cannot in any case have any adverse effect on the peace of Rajahmundry.

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