APPELLATE CRIMINAL

Before Falshaw and Kapur, JJ.

THE STATE,—*Appellant*

versus

MANSHA SINGH AND OTHERS,—*Respondents*

Criminal Appeal No. 469 of 1956.

1956

Oct., 23rd

Code of Criminal Procedure (V of 1898)—Sections 144, 247 and 537—Section 144, whether ultra vires *Article 14 of the Constitution of India—Orders having no connection with the maintenance of public order passed under section 144—Such orders, whether legal—Complaint by District Magistrate—Formal order dispensing with personal attendance of District Magistrate not passed—Effect of—Whether accused entitled to acquittal—Irregularity, whether curable under section 537.*

Held, that in so far as section 144 of the Code of Criminal Procedure empowers the District Magistrate to issue orders in the interest of public order the section is good law and *intra vires* the Constitution.

Held further, that although some orders passed merely for the purposes of preventing obstruction, annoyance, injury or risk of obstruction, annoyance, or injury to any person lawfully employed, might possibly have no connection with the maintenance of public order and may, therefore, be illegal, there are cases where the prevention of these things is intimately connected with the maintenance of public tranquillity and the District Magistrate can pass an order preventing particular persons or the public in general from acting in a certain way, simply because if persons do act in that manner and cause obstruction, annoyance or injury to persons lawfully employed about their business there is a danger that the persons so obstructed or annoyed may take the law into their own hands and thus cause breach of peace and public affray. The order cannot be held to be illegal simply because it refers to causing obstruction, annoyance or injury or risk of obstruction, annoyance or injury to any person lawfully employed or danger to human life, health or safety.

Held also, that the personal attendance of the District Magistrate was wholly unnecessary and the Magistrate ought to have passed a formal order dispensing with his presence. In any case the absence of such an order was an irregularity which could not possibly occasion any prejudice to the accused and it was curable under the provisions of section 537, Criminal Procedure Code, and the accused was not forthwith entitled to be acquitted under the provisions of section 247.

Natesa Naicker v. *Mari Gramani and another* (1). *Emperor* v. *Laxmi Prasad Tulsiram and others* (2), *Sudhir Kumar Neogi and another* v. *Emperor* (3), distinguished and *Arjandas-Tulsidas* v. *G. K. Bhagat* (4), not followed.

State Appeal from the order of Shri B. S. Randhawa, Magistrate, 1st Class, Rohtak, Camp District Jail Rohtak, dated the 1st September, 1955, acquitting the respondents.

S. M. SIKRI, Advocate-General, for Appellant.

H. S. GUJRAL, for Respondents.

JUDGMENT.

Falshaw, J.

FALSHAW, J.—This is an appeal filed by the State against the order of a Magistrate sitting at Rohtak acquitting the respondents Mansha Singh, Puran Singh and Arjan Singh who were prosecuted before him on a charge under section 188, Indian Penal Code, for defying an order passed under section 144, Criminal Procedure Code, by the District Magistrate at Amritsar on the 6th of April, 1955. The Government apparently made these cases, of which it is only one out of many, triable in other districts on account of the state of feelings in Amritsar.

The order of the District Magistrate at Amritsar, for defying which the accused were prosecuted reads as follows:—

"Whereas it has been made to appear to me that public order will be endangered by—

(1) A.I.R. 1948 Mad. 45.
(2) A.I.R. 1940 Nag. 357.
(3) A.I.R. 1942 Pat. 46.
(4) A.I.R. 1954 Ajmer 31(2).

The State
v.
Mansha Singh
and others

Falshaw, J.

(a) the shouting or display of slogans such as—

(1) Punjabi (or Maha Punjab) Suba Le Ke Rahenge or Ban Ke Rahega;

(2) Maha Punjab (or Punjabi Suba) Amar Rahe (or Zindabad and/or Murdabad);

(3) Seene Wich Goli Khawange, Punjabi (or Maha Punjab) Suba Banawange;

(4) Dhoti-Topi Jamna Par;

(5) Humara Nahra Maha Punjab (or Punjabi Suba) and other alike slogans provocative of communal feelings at any procession or demonstration; and

(b) by taking out processions or holding demonstrations in connection with claims and counter-claims relating to re-organisation of States;

thereby causing obstruction, annoyance or injury to persons lawfully employed or endangering the public tranquillity which may lead to a riot or any affray;

And whereas it is essential to take immediate necessary precautions in this behalf; Now, therefore, by virtue of the powers vested in me by section 144 of the Criminal Procedure Code, 1898, I, S.K. Chhiber, I.A.S., District Magistrate of Amritsar, do hereby prohibit—

(a) the shouting or display of any such slogans at any procession or demonstration; and

(b) the taking out of any procession or the holding of any demonstration in connection with claims and counter-

claims relating to the re-organisation of States in any public place within the limits of—

(1) Municipal Committee, Amritsar;

(2) Municipal Committee, Tarn Taran;

(3) Municipal Committee, Jandiala;

(4) Municipal Committee, Patti;

(5) Municipal Committee, Chheharta;

(6) Municipal Committee, Khem Karan;

(7) Town Committee, Ramdas;

(8) Town Committee, Majitha;

(9) Town Committee, Sur Singh;

(10) Town Committee, Sultanwind

for a period of one month and 10 days from the 6th of April, 1955. The previous order dated the 18th of March, 1955, hereby stands to be superseded by this order.

Given under my hand and the seal of the Court this 6th day of April, 1955."

It was alleged against the accused that on the 3rd of June, 1955, they formed a *jatha* in the neighbourhood of Shri Guru Ram Das Serai shouting slogans including those favouring the creation of the Punjabi-speaking State. The accused were tried according to the provisions of the Criminal Procedure Code for the trial of a summons case and when the prosecution case was put to them they admitted that they had been raising slogans and been caught by the police. Hence no further evidence was led, but they have been acquitted by the learned Magistrate on various legal grounds chiefly relating to the validity of the order of the District Magistrate which they admittedly defied.

The State
v.
Mansha Singh
and others

Falshaw, J.

However, the first of the grounds on which they have been acquitted has nothing to do with the legality of the order under section 144, Criminal Procedure Code, but relates to section 247, Criminal Procedure Code, which before the Code was amended this year used to read—

> "If the summons has been issued on complaint, and upon the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some other day;
>
> Provided that, where the complainant is a public servant and his personal attendance is not required, the Magistrate may dispense with his attendance, and proceed with the case".

The only effect of the amendment which came into force in January, 1956, is to enlarge the scope of the proviso by permitting the presence of complainants other than public servants to be dispensed with if the Magistrate thinks fit, the words being—

> "Provided that where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance, and proceed with the case."

The present accused were admittedly prosecuted on the complaint of the District Magistrate and it was not suggested that any request was formally made for dispensing with the presence of the District Magistrate or any order was passed dispensing with his presence

before the learned Magistrate proceeded to deal with the case, and the point taken was that in the absence of any such formal request or order the accused were forthwith entitled to be acquitted under the provisions of section 247. I can only confess that the attitude of the learned Magistrate in taking this point in his judgment and holding it to be a ground for acquitting the accused astonishes me, since once the matter was brought to his notice, as presumably it must have been in the course of the arguments of the defence counsel, it passes my comprehension why the Magistrate did not then and there record a formal order dispensing with the presence of the District Magistrate and, if he thought it to be necessary, record the statements of the accused afresh. Obviously the personal attendance of the District Magistrate in a case of this kind is wholly unnecessary and the whole object of the proviso as it originally stood was to enable Magistrates to proceed with cases like this in the absence of the complainant and, as I have said, the scope has now been enlarged so that a Magistrate can even dispense with the presence of a non-official complainant in suitable cases. In any case even if the Magistrate had convicted the accused and this point had been raised in appeal or revision, I should have had no hesitation in holding that the absence of a formal order dispensing with the presence of the District Magistrate was an irregularity which had not, and could not possibly have, occasioned any prejudice to the accused and it was curable under the provisions of section 537, Criminal Procedure Code.

The main attack, however, was on the legality of the order of the District Magistrate under section 144, Criminal Procedure Code, in the course of which it was even argued that section 144, as a whole, was *ultra vires* of the Legislature as contravening the provisions of Article 19 of the Constitution. The learned Magistrate, however, held, as he was bound to, in view of the

The State
v.
Mansha Singh
and others

Falshaw, J.

decision of this Court in Criminal Writ No. 43 of 1951 decided by Bhandari and Khosla, JJ., on the 20th of December, 1951, and later upheld by the Supreme Court, to the effect that in so far as section 144, Criminal Procedure Code, empowers the District Magistrate to issue orders in the interest of public order, the section is good law and *intra vires* the Constitution. He has, however, held that the order itself is illegal on various grounds.

The first of these was that although section 144, Criminal Procedure Code, was *intra vires* in so far as it related to the orders passed for the maintenance of the public order, it was otherwise *ultra vires,* and in the impugned order of the District Magistrate, certain provisions which were *ultra vires* had been invoked. In this he referred to the passage "thereby causing obstruction, annoyance or injury to persons lawfully employed or endangering the public tranquility which may lead to a riot or an affray". The second paragraph of sub-section (1) of section 144 reads—

> "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 tranquility, or a riot, or an affray."

It seems to me, however, that although some orders passed merely for the purpose of preventing obstruction, annoyance, injury, or risk of obstruction, annoyance or injury to any person lawfully employed might

possibly have no connection with the maintenance of public order, and may therefore be illegal, there are cases like the present one where the prevention of these things is intimately connected with the maintenance of public tranquillity. Indeed, the underlying idea of passing these orders under the section appears to be that the District Magistrate can pass an order preventing particular persons, or the public in general, from acting in a certain way, simply because if persons do act in that manner and cause obstruction, annoyance or injury to persons lawfully employed about their business, there is a danger that the persons so obstructed or annoyed may take the law into their own hands and thus cause a breach of the peace and a public affray. I should, therefore, not be prepared to hold that the present order is illegal simply because it refers to those particular words in the section.

Another ground taken was that the order was bad because it did not, within the meaning of the section, state the material facts of the case. I cannot imagine, however, how anybody who perused the order as a whole could possibly remain under any doubt as to why it had been passed and what was its object. The rivalry of the political groups, striving respectively for the establishment of a Punjabi-speaking State and a United Punjab in Amritsar, was notorious at the time when the order was passed, and the order makes it quite clear that in the opinion of the District Magistrate demonstrations by the supporters of these rival groups, and the shouting of slogans and counter-slogans in favour of their causes, were producing an imminent danger of breaches of the public tranquillity and the risk of public affrays, and I do not consider that the order leaves a slightest doubt regarding, either why it was passed or what it was intended to obviate. Connected with this is also

The State
v.
Mansha Singh
and others

Falshaw, J.

another ground that the order was vague in that after setting out certain of the most popularly used slogans and counter-slogans, it also prohibited the use of like slogans. The slogans and counter-slogans which have been cited verbatim in the order leave no doubt as to their meaning and I cannot imagine who could possibly remain under any misapprehension regarding what was meant by "like" slogans.

A further objection taken was that the order was promulgated *ex parte* and without giving notice to the persons affected to register their objections. It is not, however, contended that the order was not adequately promulgated and brought to the notice of the public, and I do not think there can be any question of the fact that the accused were wilfully defying the order knowing of its existence, and sub-section (2) itself permits the passing of an order *ex parte* in case of emergency. It would indeed be absurd if a District Magistrate feeling the danger of breaches of the peace to be imminent, should have to announce beforehand his intention of promulgating an order like this to the general public and inviting their objections. It was, however, contended that there could be no emergency in this case, since the order itself shows that it was in supersession of a previous order of a somewhat similar kind. I do not, however, consider that this makes the order illegal, since an emergency is not necessarily a momentary state of affairs but may be a continuing state of affairs, as it evidently was in this case.

I thus consider that there is no force in any of the grounds on which the learned Magistrate has held the order of the District Magistrate which was defied by the accused to be illegal, and I would accordingly accept the appeal and convict the respondents under section 188, Indian Penal Code. It is, however, conceded by the learned Advocate-General that the State

has brought this appeal, and others of a like nature, mainly for the purpose of establishing the principle of law involved, and that the State is not particularly anxious for any punishment to be imposed on the respondents at this late date. I would accordingly, while convicting the respondents under section 188, Indian Penal Code, simply release them with an admonition under section 562(1A), Criminal Procedure Code.

The State
v.
Mansha Singh
and others

Falshaw, J.

KAPUR, J.— I agree and because the subject is of some importance I would like to add my reasons.

Kapur, J.

The learned Magistrate acquitted the accused firstly on the ground of the non-appearance of the District Magistrate who was the complainant in the case and he has done so under section 247, Criminal Procedure Code. No doubt under that section, as it stood before the present amendment, the consequence of non-appearance of a complainant was the acquittal of the accused, but there was a proviso that in cases where the complainant was a public servant and his personal attendance was not required, the Magistrate "may dispense with his attendance, and proceed with the case." In the present case, the case was taken up by the learned Magistrate on the 20th of August, 1955, when the accused appeared and they pleaded that they had raised prohibited slogans and were arrested by the police. Thereafter the Magistrate recorded the statement of one witness A. S. I. Sansar Singh P. W. 1 who stated that the accused had been garlanded and in spite of the fact that the Magistrate had informed them that the raising of slogans was prohibited by the order of the District Magistrate, the accused defied the order and there was every likelihood of breach of peace, riot or affray as people had collected there and some Hindus were feeling annoyed over it. This

The State
v.
Mansha Singh
and others

Kapur, J.

witness was not cross-examined. The prosecution then closed its case and the accused stated that they admitted all the allegations of the prosecution and did not produce any defence. By his order dated the Ist of September, 1955, which has been written with unusual elaborateness, the Magistrate acquitted the accused. It is not quite clear as to the stage at which the objection as to the non-appearance of the District Magistrate was raised. The wording of the proviso to section 247, Criminal Procedure Code, was present in the mind of the learned Magistrate as also the significance of the word "may" in that proviso and merely because no application was made by the District Magistrate is in my opinion no reason for the learned Magistrate using the punitive provisions of section 247. No objection was taken by anyone on the first date of hearing, nor is it clear from the Magistrate's order as to whether any objection was taken on the 31st of August and there seems to be no reason why, when a request was made to the learned Magistrate by the prosecuting Sub-Inspector for condoning the absence of the District Magistrate, no formal order was passed by him. In the proviso the words "and his personal attendance is not required" are of some importance. In the present case the District Magistrate's personal attendance was certainly not required and in my opinion the learned Magistrate has mis-directed himself in regard to the interpretation of section 247 in this case.

One should not lose sight of the fact that this punitive provision has been incorporated in regard to summons cases in order that the accused persons may not be unnecessarily harassed by private prosecutors. In the present case there was no such element and the learned Magitrate should have known that the presence of the District Magistrate could not add to the orderly subservence of the process of law.

The learned Magistrate has relied on *Natesa Naieker* v. *Mari Gramani and another,* (1), it is not clear that that was a case of a public servant. The next case relied on by the learned Magistrate is *Emperor* v. *Laxmi Prasad Tulsiram and others,* (2). There again the complainant was not a public servant. He has then relied on the judgment of Fazl Ali, J., in *Sudhir Kumar Neogi and another* v. *Emperor,* (3). That again is a case of a private complainant. He has also relied on a judgment of the Ajmer Judicial Commissioner in *Arjandas Tulsidas* v. *G. K. Bhagat,* (4). In that case the complainant was the City Magistrate and he was examined, but on the next hearing he was absent and an application was presented asking the Magistrate to try the case as a warrant case, which was rejected, and the Magistrate then dismissed the complaint and acquitted the accused. But that case is distinguishable on the ground that the complainant, although a public servant, had to be examined in that case and had been examined. With respect I am unable to accept the correctness of this decision because on principle it does not seem to be correct. If the attendance of the public servant was not necessary then the Magistrate could dispense with his attendance and dismissal of the complaint in circumstances such as those was in my opinion not correct.

I would like to add that even if the District Magistrate in the present case was not present, section 537, Criminal Procedure Code, would be applicable.

It was next submitted that section 144, Criminal Procedure Code, has become *ultra vires* because of article 19(1)(a) of the Constitution of India, but in the amended article the words "public order" have been added in clause (2) and therefore it has to be

(1) A.I.R. 1948 Mad. 45.
(2) A.I.R. 1940 Nagpur 357.
(3) A.I.R. 1942 Pat. 46.
(4) A.I.R. 1954 Ajmer 31(2).

The State
v.
Mansha Singh
and others

Kapur, J.

seen whether the section is *ultra vires* because of any inconsistency between this section and the fundamental rights guaranteed by article 19(1)(a) as amended by the First Amendment Act, 1951. In a judgment of this Court in Criminal Writ No. 43 of 1951 this Court has held that in so far as section 144 empowers a District Magistrate to issue orders in the interest of public order the section is good and is *intra vires*, and the learned Magistrate has followed, as indeed he was bound to, the law laid down by this Court. But I would like to add that the following words in sub-section (1) of section 144, which have been quoted by my learned brother, do not necessarily make the section *ultra vires*:—

> "to prevent, or * * * * * * * * * * 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";

because it cannot be said that anything falling within these words is not likely to disturb public tranquillity or interfere with public order. If a determined part of the community were to take into their head to stop a public highway by creating obstruction on it, it may lead to public disorder. Similarly one can think of many acts of annoyance in public which may lead to disorder. If a man were to do an act which would seriously injure the religious susceptibilities of another set of people, this may lead to public disorder. Therefore it cannot be said that the portion of the Act is *intra vires* which uses the words "or a disturbance of the public tranquillity, or a riot, or an affray" and the rest is not.

In America the question has been discussed under the heading of social control of speech and of the press and whether it is *ultra vires* because of the due pro-

cess of law clause. The Supreme Court of America dealing with the words has held that words may give rise to unlawful acts when there is a clear and present danger that they will cause such acts (*see* page 498 of Willis on Constitutional Law). Similarly it has been held there that beating of drums may be prohibited, though it is a part of the religious ceremony of such organizations as the Salvation Army (*see* Willis on Constituional Law, page 504). Even where communication with departed spirits is a part of an established religion, such practice can be prohibited if inimical to the good order and general welfare of the community (Willis on Constitutional Law, pp. 504-505). Liberty of speech and action guaranteed under the clauses of the Chapter dealing with fundamental rights guarantees liberty of opinions, but it gives no protection against unsocial action.

It was then submitted and it was emphasized that the order made by the District Magistrate was bad because it did not state the material facts of the case. The order has been quoted *in extenso* in the judgment of my learned brother which makes it quite clear that it had been made to appear to the District Magistrate that public order would be endangered by the shouting or display of slogans which are therein mentioned and the order also mentions the taking out of processions or holding of demonstrations in connection with claims and counter-claims relating to reorganisation of States which would cause obstruction, annoyance or injury to persons lawfully employed or endanger the public tranquillity which may lead to a riot or an affray. The record of the case also shows that there was a deliberate attempt to flout the law and that there was a likelihood of the danger of the peace, obstruction, riot and affray as people had collected there and a portion of them were feeling annoyed over it. This shows quite clearly that not only

The State
v.
Mansha Singh
and others

Kapur, J.

was there no defect on the ground that the order did not state material facts but in this particular case the arrest had taken place because there was, as a matter of fact, danger of imminent disturbance of public tranquillity.

The next line of attack against the order promulgated by the District Magistrate was that it was vague. I am unable to accept this contention either because in my opinion it is neither vague nor unintelligible, but it is couched in clear language and mentions the slogans and counter-slogans which were likely to result in the breach of the peace and in my opinion a reading of the order could not possibly leave one in doubt as to what the order prohibited.

It is really unnecessary to deal with the objection as to the *ex parte* nature of the order made because the section (section 144, Criminal Procedure Code) itself contemplates its being passed *ex parte,* and there was no indication by the accused that they were challenging the emergent nature of the case and the accused could have had no cause of grievance as they themselves had stated that knowing the order they were bent upon defying it, and no attempt was made at any stage by any one of the accused or a person belonging to that school of thought to approach the Magistrate to rescind the order.

It is not necessary for me to go into any other question because the main defence in the present case was that the order was *ultra vires* and was bad because of vagueness.

I therefore agree in setting aside the order of the learned Magistrate, convicting the accused under section 188 of the Indian Penal Code and releasing them with an admonition under section 562(1A) of the Criminal Procedure Code.