Reserved on : 19.11.2025
Pronounced on : 25.11.2025

IN THE HIGH COURT OF KARNATAKA DHARWAD BENCH

DATED THIS THE 25TH DAY OF NOVEMBER, 2025

R

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.108686 OF 2025 (GM - RES)

BETWEEN:

SRI ADRUSHYA KADESHWARA SWAMIJI
S/O GURU MUPPINA KADESHWARA SWAMIJI
AGED ABOUT 63 YEARS
ADDRESS: KANERI MATHA/MUTT
KOLHAPUR, DISTRICT: KOLHAPUR
MAHARASTRA STATE – 416 234

... PETITIONER

(BY SRI VENKATESH P.DALWAI, ADVOCATE A/W
SRI GANAPATI M.BHAT, ADVOCATE)

AND:

THE DEPUTY COMMISSIONER
OFFICE OF THE DEPUTY COMMISSIONER
DHARWAD DISTRICT
DHARWAD – 580 007.

... RESPONDENT

(BY SRI GANGADHAR J.M., AAG A/W
SRI T.HANUMAREDDY, AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO A) A WRIT IN THE NATURE OF CERTIORARI BY QUASHING THE ORDER DATED. 04/11/2025 PASSED BY THE RESPONDENT HEREIN NO. MAG-1/Sha Su/Va Hi-257/2025-26 PRODUCED AT ANNEXURE-C IN THE INTREST OF JUSTICE AND EQUITY.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 19.11.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner - Pontiff of Kaneri Mutt, Kolhapur District, Kolhapur, is at the doors of this Court calling in question a prohibitory order dated 04.11.2025, passed against him invoking Section 163(4) of the BNSS, 2023. By virtue of the said order, the petitioner has been forbidden from entering the territorial limits of Dharwad district, for the period commencing from 05.11.2025 and extending upto 03.01.2026.

2. Facts adumbrated, are as follows:

The petitioner - Pontiff is said to have accepted Sanyasa and is called as 'Adrushya Kadeshwara Swamiji' and becomes the 49th Matadhipathi of Kaneri Mutt. It is the claim of the petitioner that he

has by following certain traditions and teachings of Saint Basavanna, is said to have involved in social projects ranging from free education, scientific and organic agriculture. The Government of Karnataka is said to have arranged and organised Basava Samskruthi Abhiyan Convention and at the said meeting, the Lingayat leaders have passed a Five-Point Resolution to identify the Lingayat in terms of religion and Indian in terms of nationality. The campaign also demanded to identify the Lingayat as a separate religion and community members to be identified as Lingayat in State's socio-economic and educational survey. The petitioner responded by making certain statements.

2.1. When things stood thus, the Vijayapura District Administration passes an order – prohibitory order, on the score that the law and order in the area is threatened and therefore, the petitioner should not be permitted to enter Vijayapura District. The said prohibitory order comes about on 15.10.2025. The petitioner questions the said prohibitory order before the Kalaburagi Bench of this Court in W.P.No.203149 of 2025. The writ petition comes to be dismissed on 17.10.2025. The said order is challenged before the Apex Court in SLA. (Crl.) No.17121 of 2025, which also comes to be

dismissed on 29.10.2025. The Apex Court is said to have clarified that the impugned order therein should not form the basis for passing fresh orders.

2.2. It is the claim of the petitioner that the petitioner is invited to religious programs across the State of Karnataka by the disciples or his followers as the case would be. One organization by name Jagathika Lingayat Mahasabha, Annigeri Branch, Dharwad, submits a representation on 31.10.2025, alleging that the petitioner cannot attend the function at Dharwad, between 05.11.2025 and 07.11.2025 and such requests were squarely based upon the dismissal of the earlier writ petition and the order of the Apex Court. The State passes an order on 04.11.2025, restricting the entry of the petitioner into Dharwad District from 05.11.2025 to 03.01.2026. The prohibitory order is passed invoking Section 163 of the BNSS. It is this that has driven the petitioner - Pontiff to this Court in the subject petition.

3. Heard Sri Venkatesh P. Dalwai along with Sri Ganapati M. Bhat, learned counsel for the petitioner and Sri Gangadhar J.M.,

learned Additional Advocate General along with Sri T. Hanumareddy, learned Additional Government Advocate for the respondent.

SUBMISSIONS:

PETITIONER:

4. Sri Venkatesh P. Dalwai, learned counsel appearing for the petitioner would vehemently contend that the power to pass a prohibitory order under Section 163 of the BNSS, is used by the State with mala fide intention and extraneous considerations and without any notice to the petitioner as to the basis on which the prohibitory orders would be passed. He would submit that the Apex Court has clearly held that the order passed *qua* Vijayapura District must not be used as a foundation for passing fresh orders. The impugned order refers to the order passed by the learned Single Judge quoted *supra* and the order of the Apex Court quoted *supra*, which is in blatant violation of what the Apex Court observes. Apart from the said contention, the learned counsel would submit that the prohibitory order takes away the fundamental right of movement of the petitioner and therefore, it cannot be passed without any rhyme or reason and the order suffers from non-application of mind. He would submit that the order is in violation of the principles of natural

justice and is high-handed without even looking into the fact that the representation to stop the entry of the petitioner into Dharwad District was only on dates between 05.11.2025 and 07.11.2025 and the two days has become two months without any basis. He would seek quashment of the order.

THE STATE:

5. *Per contra*, the learned Additional Advocate General would put up vehement opposition contending that his submission may be taken as objections. He would contend by taking this Court through the order passed by the learned Single Judge in W.P.No.203149 of 2025 at the Kalaburgi Bench of this Court to contend that what the petitioner spoke and what had become is the subject matter of the aforesaid order, which still subsists as the petitioner, notwithstanding the order of the Apex Court continues to speak in the same manner that he has spoken earlier. Therefore, as a matter of abundant caution, apprehending that he would generate disharmony amongst the people of the locality, the prohibitory order is passed. The State is well within its power to pass a prohibitory order on the basis of the report obtained from the hands of the jurisdictional police and there cannot be fetter on the power of the

State to pass a prohibitory order owing to the aforesaid apprehension of law and order situation. The learned Additional Government Advocate would further contend that the impugned order is an independent order passed after enquiry by the learned Magistrate based on the report of the Superintendent of Police. He would seek dismissal of the petition.

6. Learned counsel for the petitioner would join issue by placing reliance upon plethora of judgments on the issue, all of which would bear consideration *qua* the relevance in the course of the order.

7. I have given my anxious consideration to the submissions made by the learned counsel for the petitioner and the learned Additional Advocate General representing the respondent – State.

CONSIDERATION:

8. The afore-narrated facts are not in dispute. The position of the petitioner, a Pontiff, is again a matter of record. The prohibitory order comes to be passed against the petitioner by Vijayapura District Administration on 15.10.2025. The petitioner immediately calls that in question before the High Court of Karnataka, Kalaburagi

bench in W.P.No.203149 of 2025. The coordinate bench by the following order dismisses the writ petition:

> "5. The short question that arises for consideration in this petition is—
>
> *"Whether the prohibitory order dated 15.10.2025, restraining the petitioner from entering Vijayapura District, warrants interference in exercise of the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India?"*
>
> 6. Before this delves into the matter, it would be apposite to extract the statement made by petitioner, the same is extracted as under;
>
> "ಉಲ್ಲೇಖ (1) ರನ್ವಯ ಪೊಲೀಸ್ ಅಧೀಕ್ಷಕರು, ವಿಜಯಪುರ ಇವರು, "ಇತ್ತೀಚೆಗೆ ಮಹಾರಾಷ್ಟ್ರದ ಜತ್ತ ತಾಲೂಕಿನ ಬೀಳೂರು ಗ್ರಾಮದ ಸಮಾರಂಭದಲ್ಲಿ ಕನೇರಿ ಮಠದ ಅದೃಶ್ಯ ಕಾಡಸಿದ್ದೇಶ್ವರ ಸ್ವಾಮೀಜಿಯವರು. *ಗುಡ್ಡಾಗ ಹೋಗಬ್ಯಾಡ್ರಿ ಗುಡ್ಯಾಗ ಹೋಗಬ್ಯಾಡ್ರಿ ಅಂತಾ ಪ್ರಚಾರ ನಡೆದೈತಿ, ತಿಂಗಳ ದೀಡ್ ತಿಂಗಳ ಹಿಂದೆ ಮಾಡಿದ್ರಪ್ಪಾ, ಮುಖ್ಯಮಂತ್ರಿಗಳ ಕೃಪಾಪೋಷಕ ಲಿಂಗಾಯತ ಮಠಾಧೀಪತಿಗಳ ಒಕ್ಕೂಟ ಕಲಾವಿದರಿಂದ ಕೂಡಿಕೊಂಡತಹ ಬಸವ ಸಂಸ್ಕೃತಿ ಅಭಿಯಾನ ಎನ್ನುವ ನಾಟಕವನ್ನ ತೆಗೆದುಕೊಂಡು ಇಡಿ ಕರ್ನಾಟಕ ರಾಜ್ಯದ ತುಂಬ ತಿರುಗಾಡಿ ದೇವರು ಗುಡಿಯಾಗ ಇಲ್ಲ, ಗುಡ್ಯಾಗ ಹೋಗಬ್ಯಾಡ್ರಿ, ಮನ್ಯಾಗಿನ ದೇವ್ರಗಳನ್ನು ತಗೊಂಡು ಹೊಳ್ಳಾಗ ಹಾತ್ರಿ, ಹೋಟೆಲ್‌ದಾಗ ಹೋಗ್ರಿ ದಾರು ಕುಡಿರಿ, ಅರಾಮಾಗಿರಿ, ಮಾಂಸಾ ತಿನ್ನರಿ, ಅವರನ್ನ ಮುಂದೆ ಕುದ್ರಸ್ಕೊಂಡ ಆ ಸುಳೆ ಮಕ್ಕಳಿಗೆ ಬುದ್ದಿ ನಾನೇ ಹೇಳಬೇಕು. ಹಿಡಿದು ಮೆಟ್ಟಿಲೇ ಹೊಡಿಬೇಕ ಅವಿಗೆ, ಮೆಟ್ ಮೆಟ್ಲಿ ಹೊಡಿದ್ರುನು ಕಡಿಮನೇ" ಅನ್ನುವಂತಹ ಹೇಳಿಕೆಯನ್ನು ಕೊಟ್ಟಿದ್ದು. ಆ ಹಿನ್ನೆಲೆಯಲ್ಲಿ ಗದಗ, ವಿಜಯಪುರ, ಬೀದರ, ಸಿಂಧನೂರು, ಕೂಡಲಸಂಗಮ. ದಾವಣಗೇರೆ ಮುದ್ದೇಬಿಹಾಳ, ಬಸವಕಲ್ಯಾಣ, ಹೊಸದುರ್ಗ, ಬೆಳಗಾವಿ, ಚಿಟಗುಪ್ಪ ಹಾಗೂ ರಾಜ್ಯದ ವಿವಿಧ ಭಾಗಗಳಲ್ಲಿ ಸಾರ್ವಜನಿಕರು ಮತ್ತು ಮಠಾಧೀಶರು ಪ್ರತಿಕೃತಿಗಳನ್ನು ದಹಿಸಿ. ತಮ್ಮ ಆಕ್ರೋಶ ಹಾಗೂ ಪ್ರತಿಭಟನೆ ಮಾಡಿ ಆಕ್ರೋಶ ವ್ಯಕ್ತಪಡಿಸಿ, ಮನವಿ ಪತ್ರಗಳನ್ನು ಸಲ್ಲಿಸಿರುತ್ತಾರೆ"
>
> (Emphasis supplied by me)
>
> 7. It is no doubt unfortunate that differences have arisen between two revered spiritual leaders, and the petitioner, being a pontiff commanding considerable public following, is expected to exhibit composure, tolerance, and restraint even in the face of provocation. **However, the material placed before this Court reveals that the petitioner's reaction to the remarks made by another pontiff was not confined to a**

dignified rebuttal, but degenerated into use of threatening and abusive language, including statements suggestive of physical assault. Such conduct, by any measure, is wholly inconsistent with the moral and spiritual discipline expected of a religious head and erodes the dignity attached to his office. A person who chooses to respond in such an intemperate and provocative manner cannot, merely by virtue of his ecclesiastical position, claim immunity from the ordinary application of law or seek indulgence under the guise of religious freedom.

8. While this Court is informed about the petitioner's revered stature, it cannot overlook the fact that his utterances have already resulted in public protests and created palpable tension among devotees. In such circumstances, the preventive measures adopted by the District Administration, based on credible intelligence inputs, cannot be said to be arbitrary or disproportionate. The right to movement under Article 19(1)(d) carries with it the obligation to ensure that its exercise does not imperil public peace. The petitioner, instead of asserting his right in defiance of prevailing circumstances, ought to demonstrate spiritual maturity by voluntarily deferring his visit in the larger interest of maintaining public order.

9. **The scope of the fundamental right guaranteed under Article 19(1)(d) of the Constitution, which confers upon every citizen the right to move freely throughout the territory of India, is not absolute and is subject to reasonable restrictions under Article 19(5) in the interests of the general public. The Hon'ble Supreme Court in *Dr. N.B. Khare v. State of Delhi AIR 1950 SC 211,* has held that freedom of movement or expression cannot be exercised in a manner that disturbs public order or offends communal harmony. Similarly, in *Himat Lal K. Shah v. Commissioner of Police AIR 1973 SC 87*, it has been reiterated that while citizens have a right to move freely and assemble peacefully, the State is equally empowered to regulate such rights to prevent breach of peace.**

10. In the present case, the impugned prohibitory order has been issued on the basis of credible intelligence inputs indicating that the petitioner's visit to Basavana Bagewadi is likely to trigger protests and disturb public tranquillity. **The materials on record, including the statements made by the**

petitioner, reveal the use of abusive and derogatory language wholly unbecoming of a person claiming spiritual status. When such conduct is capable of inflaming religious sentiments and provoking unrest, the preventive measures adopted by the District Administration cannot be termed arbitrary or excessive. The restriction imposed is narrowly tailored to prevent imminent disorder and does not permanently curtail the petitioner's right under Article 19(1)(d).

11. It is expected of a person holding the exalted position of a spiritual head or pontiff to act with restraint, humility, and a sense of responsibility befitting the faith and reverence reposed in him by the followers. A saint or religious leader occupies a place of moral influence and spiritual guidance in society, and therefore his words and actions carry far-reaching consequences on the conduct of devotees. **The petitioner, being a pontiff of considerable following, ought to be conscious that any statement or act perceived as provocative or derogatory can have a cascading effect on public peace and order. In the present case, the record discloses that the petitioner's previous utterances contained language that was clearly abusive and unbecoming of a spiritual leader, which has already led to widespread protests across the State. When such an atmosphere of tension prevails, prudence demands that the petitioner should voluntarily defer or avoid his proposed visit to Basava Bagewadi, keeping in view the larger interest of maintaining communal harmony and public tranquillity.**

12. The right guaranteed under Article 19(1)(d) of the Constitution cannot be claimed in isolation, divorced from the corresponding duty to ensure that its exercise does not endanger peace or public order. A spiritual leader, more than any other citizen, is expected to exemplify tolerance and self-restraint, and to rise above personal grievances in order to promote harmony and mutual respect among communities. Therefore, when the impugned prohibitory order is based on credible intelligence inputs and aims to prevent potential unrest, this Court finds no ground to interfere, as the petitioner, by refraining from such visit, would in fact be upholding the true spirit of his calling and setting a noble example for his followers.

13. In ***Dr. Praveen Togadia v. State of Karnataka, (2004) 4 SCC 684***, the Hon'ble Supreme Court upheld a similar prohibitory order restraining entry into a district, holding that when credible material indicates the likelihood of breach of peace, preventive action by the administration constitutes a reasonable restriction under Article 19(1)(d). The Court observed that the right to movement must yield to the paramount interest of maintaining public order and tranquillity.

14. In contrast, reliance on ***Anuradha Bhasin v. Union of India, (2020) 3 SCC 637,*** is misplaced, as that case dealt with region-wide restrictions affecting the general public and examined the proportionality of continuing limitations on movement and communication. The present case, however, involves a narrowly tailored preventive measure directed against an individual whose own abusive and provocative utterances have already led to protests and tension among devotees. The impugned order, based on concrete intelligence inputs, is thus a legitimate and proportionate exercise of power under Section 163 of the Bharatiya Nyaya Sanhita, 2023, intended solely to prevent imminent disturbance to public order.

15. The scope of judicial review of an order passed by an Executive Magistrate under Section 163 of the Bharatiya Nagarik Suraksha Sanhita, 2023 is necessarily limited. Such orders are preventive and administrative in nature, issued on the basis of subjective satisfaction formed from material placed before the authority regarding an apprehended breach of peace. The Court, while exercising jurisdiction under Article 226 of the Constitution, does not sit in appeal over the satisfaction of the Executive Magistrate or substitute its own opinion for that of the competent authority. **Interference is warranted only where the order is shown to be patently without jurisdiction, vitiated by mala fides, based on no material, or suffers from manifest arbitrariness. So long as the order is founded upon relevant and credible inputs, supported by contemporaneous reports of the law enforcement agencies, and the satisfaction recorded is not demonstrably perverse or irrational, the Court would be slow to interfere. The judicial focus in such review is confined to examining the decision-making process rather than the decision itself, thereby maintaining the delicate balance between individual liberty and the necessity of preventive action in the interest of public order. Hence,**

the restriction falls within the ambit of Article 19(5) and does not call for interference.

16. On overall consideration, this Court finds that the impugned prohibitory order is based on relevant material and is neither arbitrary nor excessive. The order represents a legitimate preventive measure issued in the interest of maintaining public order. No ground is made out to warrant interference in exercise of writ jurisdiction."

(Emphasis supplied)

This is challenged by the petitioner before the Apex Court. The Apex Court disposes the special leave to appeal – SLA (Cri.) No.17121 of 2025, without interfering with the order, but on certain clarifications. The order passed by the Apex Court reads as follows:

"1. Heard Mr. Raghavendra S. Srivatsa, learned senior counsel for the petitioner and Mr. Vikas Singh, learned senior counsel appearing for the respondent-State.

2. The Deputy Commissioner, Vijayapura District, ordered for the externment of the petitioner from the District for a period of two months i.e. from 16.10.2025 to 14.12.2025 under Section 163(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023. This order has been passed on the basis of the inputs received from the Police and the Administrative Department.

3. The High Court has upheld the aforesaid order.

4. In the facts and circumstances, we are not inclined to interfere with the impugned order in exercise of our power under Article 136 of the Constitution of India but clarify that the petitioner would be free to enter the District after 14.12.2025 until and unless there is specific order restraining his entry.

5. It is also made clear that the order impugned dated 15.10.2025 passed by the Deputy Commissioner,

Vijayapura District would not form the basis of externment of the petitioner from any other District.

6. The special leave petition stands disposed of in the above terms.

7. Pending application(s), if any, shall stand disposed of."

(Emphasis supplied)

The Apex Court observes that it was not inclined to interfere with the impugned order but would clarify that the petitioner would be entitled to enter the district after 14.12.2025, until and unless there is a specific order restraining his entry. The Apex Court again made it clear that the prohibitory order dated 15.10.2025, passed by the Vijayapura District Administration would not form the basis of externment of the petitioner from any other District. Thus, ended the said episode.

THE PRESENT CONUNDRUM:

9. When things stood thus, certain program is said to have been arranged in Dharwad District from 05.11.2025 to 07.11.2025. The petitioner is invited. A representation springs on 30.10.2025 that the petitioner should not be permitted to enter Dharwad District. The representation reads as follows:

“ಕ್ರಮಸಂ.ಜಾ.ಲಿಂ.ಮ/09/2025-26 ದಿನಾಂಕ:30-10-2025

ತುರ್ತು ಕ್ರಮಕ್ಕಾಗಿ ಮನವಿ

ಇವರಿಂದ,
ಧಾರವಾಡ ಜಿಲ್ಲೆಯ ಬಸವಪರ ಸಂಘಟನೆಗಳು
ಹಾಗೂ ಜಿಲ್ಲೆಯ ಸಮಸ್ತ ಲಿಂಗಾಯತರಿಂದ

ಇವರಿಗೆ,
ಮಾನ್ಯ ಜಿಲ್ಲಾಧಿಕಾರಿಗಳು ಹಾಗೂ ಜಿಲ್ಲಾ ದಂಡಾಧಿಕಾರಿಗಳು
ಧಾರವಾಡ ಜಿಲ್ಲೆ, ಧಾರವಾಡ,

ಮಾನ್ಯರೇ,

ವಿಷಯ: ಮಾಹಾರಾಷ್ಟ್ರದ ಕನ್ನೇರಿ ಕಾಡಸಿದ್ದೇಶ್ವರ ಮಠದ ಸ್ವಾಮಿಗಳು ಧಾರವಾಡ ಜಿಲ್ಲೆಯನ್ನು ಪ್ರವೇಶಿಸದಂತೆ ಪ್ರತಿಬಂಧಕ ಆಜ್ಞೆಯನ್ನು ಜಾರಿ ಮಾಡುವುದು.

ಉಲ್ಲೇಖ: **1)** ದಿನಾಂಕ **17.10.2025**ರಂದು ಪ್ರತಿಭಟನೆ ಮಾಡಿ ಕಾನೂನಾತ್ಮಕ ಕ್ರಮ ಜರುಗಿಸಲು ಸಲ್ಲಿಸಿದ ಮನವಿ**.**

2) ಕರ್ನಾಟಕದ ಉಚ್ಚ ನ್ಯಾಯಾಲಯ ಹಾಗೂ ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯದ ಆದೇಶಗಳು**.**

3) ಹಳ್ಳಿಕೇರಿ ಗ್ರಾಮದ ಅಮಂತ್ರಣ ಪತ್ರಿಕೆ**.**

ಉಲ್ಲೇಖ 1ರ ಮನವಿ ಪ್ರಕಾರ ವಿವರಗಳನ್ನು ನೀಡಿ ಒಟ್ಟು ಮೂರು ಕ್ರಮಗಳನ್ನು ಜರುಗಿಸಲು ಮತ್ತು ಈ ಕುರಿತು ಜಾಗತಿಕ ಲಿಂಗಾಯತ ಮಹಾಸಭಾದ್ದರ ಧಾರವಾಡ ಜಿಲ್ಲಾ ಘಟಕಕ್ಕೆ ತಿಳಿಸಲು ವಿನಂತಿಸಲಾಗಿತ್ತು. ಇಲ್ಲಿಯವರೆಗೆ ಕ್ರಮಗಳನ್ನು ಜರುಗಿಸದ್ದರ ಬಗ್ಗೆ ತಾವು ತಿಳಿಸಿರುವುದಿಲ್ಲ. ಇದು ನಮಗೆ ಅಸಮಾಧಾನವನ್ನುಂಟು ಮಾಡಿದೆ. (ಉಲ್ಲೇಖ 1ರ ಪ್ರತಿಯನ್ನು ಇದರೊಂದಿಗೆ ತಮಗೆ ಪುನಃ ಸಲ್ಲಿಸಿದೆ.) ಕಾರಣ ನಮ್ಮ ಮನವಿಯನ್ನು ಸರಿಯಾಗಿ ಪರಿಶೀಲಿಸಲು ವಿನಂತಿಸಿದೆ.

ಇದೇ ವಿಷಯದ ಕುರಿತು ಮಾನ್ಯ ಜಿಲ್ಲಾಧಿಕಾರಿಗಳು ಹಾಗೂ ಜಿಲ್ಲಾ ದಂಡಾಧಿಕಾರಿಗಳು ವಿಜಯಪುರ ಇವರು ಜಿಲ್ಲೆಯನ್ನು ಪ್ರವೇಶಿಸಬಾರದು ಎಂದು ಆದೇಶ ಮಾಡಿದ್ದನ್ನು ಉಚ್ಚ ನ್ಯಾಯಾಲಯ ಒಪ್ಪಿಕೊಂಡು ಜಿಲ್ಲಾದಂಡಾಧಿಕಾರಿಗಳ ಆದೇಶವನ್ನು ಪುರಸ್ಕರಿಸಿ ಆದೇಶಿಸಿದೆ.

ಕರ್ನಾಟಕದ ಉಚ್ಚನ್ಯಾಯಾಲಯದ ಆದೇಶದ ವಿರುದ್ಧ ಸಲ್ಲಿಕೆಯಾದ ಅರ್ಜಿಯನ್ನು ಭಾರತದ ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯವು ತಿರಸ್ಕರಿಸಿದೆ ಎಂದು ತಿಳಿದುಬಂದಿದೆ. ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯವು ತನ್ನ ಆದೇಶದಲ್ಲಿ ಈ ಕೆಳಗಿನಂತೆ ಅಭಿಪ್ರಾಯನ್ನು ವ್ಯಕ್ತಪಡಿಸಿರುವುದನ್ನು ತಾವು ಗಮನಿಸಲೇ ಬೇಕಾಗಿದೆ.

"ಕನ್ನೆರಿ ಮಠದ ಸ್ವಾಮೀಜಿ ಕೀಳುಮಟ್ಟದ ಹೇಳಿಕೆ ನೀಡಿರುವುದು ಸರಿಯಲ್ಲ. ಪ್ರಚೋದನಕಾರಿ ಹೇಳಿಕೆ ನೀಡಿರುವುದು ನಿಮ್ಮ ಘನತೆಗೆ ತಕ್ಕುದಲ್ಲ. ನೀವು ಸ್ವಾಮೀಜಿಯಾಗಿ ಗಂಭೀರವಾಗಿರಬೇಕು, ನೀವು ಒಳ್ಳೆಯ ಪ್ರಜೆಯಲ್ಲ, ಅವ ಹೇಳನಕಾರಿ ಭಾಷೆ ಬಳಸಿದ್ದೀರಿ. ವಾಕ್ ಸ್ವಾತಂತ್ರ್ಯ ವ್ಯಾಪ್ತಿಯಲ್ಲಿಲ್ಲ. ನೀವು ಮಾತನಾಡುವುದು ನಿಲ್ಲಿಸಿ, ಮೌನವಾಗಿ ಮಠದಲ್ಲಿ ಧ್ಯಾನ ಮಾಡಿ"."

(Emphasis added)

The representation is from Jagathika Lingayat Mahasabha, Dharwad District. The representation is on the basis of the order passed by the coordinate bench, which is upheld by the Apex Court. Immediately thereafter, the impugned order is passed. The impugned order reads as follows:

".... ....

ಉಲ್ಲೇಖ-1ರನ್ನಯ, ದಿನಾಂಕ 30-10-2025 ರಂದು ಅಧ್ಯಕ್ಷರು, ಜಾಗತಿಕ ಲಿಂಗಾಯತ ಮಹಾಸಭಾ, ಧಾರವಾಡ ಜಿಲ್ಲಾ ಘಟಕ, ಧಾರವಾಡ ಹಾಗೂ ಇವರೊಂದಿಗೆ 10

ಜನ ಈ ಕಾರ್ಯಾಲಯಕ್ಕೆ ಆಗಮಿಸಿ, ಮನವಿ ನೀಡಿ, ಸದರ ಮನವಿಯಲ್ಲಿ ಧಾರವಾಡ ಜಿಲ್ಲಾ ಅಣ್ಣಿಗೇರಿ ತಾಲ್ಲೂಕಾ ಹಳ್ಳಿಕೇರಿ ಗ್ರಾಮದಲ್ಲಿ ದಿನಾಂಕ 05-11-2025 ರಿಂದ 07-11-2025 ರವರೆಗೆ ಜರುಗುವ ಶ್ರೀ ಸ.ಸ.ಸಹಜಾನಂದ ಮಹಾರಾಜರ ಸಪ್ತಾಹದ ಕಾರ್ಯಕ್ರಮ ಜರುಗಲಿದೆ. ಸದರಿ ಕಾರ್ಯಕ್ರಮಕ್ಕೆ ದಿನಾಂಕ 07-11-2025 ರ ಕಾರ್ಯಕ್ರಮದಲ್ಲಿ ಮಹಾರಾಷ್ಟ್ರದ ಕನ್ನೇರಿ ಕಾಡಸಿದ್ಧೇಶ್ವರ ಮಠದ ಸ್ವಾಮಿಗಳು ಭಾಗವಹಿಸಲಿದ್ದಾರೆಂದು ಆಮಂತ್ರಣ ಪತ್ರಿಕೆಯಲ್ಲಿ ಪ್ರಕಟಿಸಲಾಗಿದೆ. ಈ ಗ್ರಾಮದ ಕಾರ್ಯಕ್ರಮಗಳು ನಡೆಯಲಿ, ಯಶಸ್ವಿಯಾಗಲಿ ತಮ್ಮ ತಕರಾರು ಇಲ್ಲ. ಆದರೆ ಈ ಕಾರ್ಯಕ್ರಮದಲ್ಲಿ ಈ ಸ್ವಾಮಿಗಳು ಭಾಗವಹಿಸಲು ಹಾಗೂ ಧಾರವಾಡ ಜಿಲ್ಲೆಯನ್ನು ಪ್ರವೇಶಿಸಲು ತಮ್ಮ ವಿರೋಧವಿದೆ. ಧಾರವಾಡ ಜಿಲ್ಲೆ ಪ್ರವೇಶಿಸಿದರೆ ಅಶಾಂತತೆ, ಗಲಭೆ ಮತ್ತು ಲಿಂಗಾಯತರ ಪ್ರತಿಭಟನೆ ಉಂಟಾಗುತ್ತವೆ. ಕಾರಣ ಮುನ್ನೆಚ್ಚರಿ ಕ್ರಮಗಳು ಕೈಗೊಳ್ಳುವುದು ಅವಶ್ಯವಾಗಿದೆ. ಆದ್ದರಿಂದ ಕನ್ನೇರಿ ಮಠದ ಸ್ವಾಮಿಗಳು ಧಾರವಾಡ ಜಿಲ್ಲೆ ಪ್ರವೇಶಿಸಬಾರದು ಎಂದು ಶಾಶ್ವತವಾಗಿ ಆದೇಶ ಮಾಡಲು ಮನವಿಯಲ್ಲಿ ವಿನಂತಿಸಿಕೊಂಡಿರುತ್ತಾರೆ.

ಈ ಕುರಿತು ಸದರಿ ಮನವಿ ಬಗ್ಗೆ. ಕಾನೂನು ಸುವ್ಯವಸ್ಥೆ ಕಾಪಾಡುವ ದೃಷ್ಟಿಯಲ್ಲಿ ವಿಚಾರ ಮಾಡಿ ವರದಿ ಸಲ್ಲಿಸಲು ದಿನಾಂಕ 30-10-2025 ರಂದು ಪೊಲೀಸ್ ಅಧಿಕ್ಷಕರು, ಧಾರವಾಡ ಜಿಲ್ಲೆ ಧಾರವಾಡ ಇವರಿಗೆ ತಿಳಿಸಲಾಗಿತ್ತು. ಅದರಂತೆ ಉಲ್ಲೇಖ-2ರನ್ವಯ ದಿನಾಂಕ 03-11-2025 ರಂದು ವಿಚಾರಣೆ ಮಾಡಿ ಸಲ್ಲಿಸಿದ ತಮ್ಮ ವರದಿಯಲ್ಲಿ ದಿನಾಂಕ 05-11-2025 ರಿಂದ 07-11-2025 ರವರೆಗೆ ಧಾರವಾಡ ಜಿಲ್ಲಾ ಅಣ್ಣಿಗೇರಿ ತಾಲೂಕ ಹಳ್ಳಿಕೇರಿ ಗ್ರಾಮದಲ್ಲಿ, ನಡೆಯುವ ಶ್ರೀ ಸದ್ಗುರು ಸಮರ್ಥ ಸಹಜಾನಂದ ಮಹಾರಾಜರ ಸಪ್ತಾಹದ ಅಂಗವಾಗಿ ಮಠದಲ್ಲಿ ಭಜನೆ, ಧ್ಯಾನ, ಜಾಗರಣೆ ಹಾಗೂ ಧರ್ಮದ ಸಭೆಯಂತಹ ಧಾರ್ಮಿಕ ಕಾರ್ಯಕ್ರಮಗಳು ಹಮ್ಮಿಕೊಂಡಿದ್ದು, ಈ ಕಾರ್ಯಕ್ರಮದಲ್ಲಿ ಶ್ರೀ ಅದೃಶ್ಯ ಕಾಡಸಿದ್ದೇಶ್ವರ ಮಠ ರವರು ಆಗಮಿಸುತ್ತಿದ್ದು ಈ ಹಿನ್ನೆಲೆಯಲ್ಲಿ ಗುಪ್ತ ಮಾಹಿತಿ ಸಂಗ್ರಹಿಸಿದಾಗ ದಿನಾಂಕ **09-10-2025** ರಂದು ಮಹಾರಾಷ್ಟ್ರ ರಾಜ್ಯದ ಜತ್ತ ತಾಲೂಕಿನ ಬೀಳೂರು ಗ್ರಾಮದಲ್ಲಿ ನಡೆದ ಸಭೆಯಲ್ಲಿ ಶ್ರೀ ಅದೃಶ್ಯ ಕಾಡಸಿದ್ಧೇಶ್ವರ ಮಠದ ಸ್ವಾಮೀಜಿ ಕನ್ನೇರಿ ಮಠ ಇವರ ಭಾಷಣದಲ್ಲಿ ಲಿಂಗಾಯತ ಮಠಾಧೀಶರ ಸ್ವಾಮೀಜಿಗಳ ಕುರಿತು ಅವಮಾನಕರ, ಅವಹೇಳನಕಾರಿ, ಮಾನ ಹಾನಿಕರ ಮತ್ತು ಧರ್ಮದ ಹೆಸರಿನಲ್ಲಿ ವಿಭಜನ

ಮಾಡಬಹುದಾದ ಅಸಮಾಧಾನಕರ, ಅಶ್ಲೀಲ ಶಬ್ದ ಬಳಸಿದ್ದು ಕನ್ನೇರಿ ಸ್ವಾಮೀಜಿ ಇವರ ಹೇಳಿಕೆಗಳು ಧಾರ್ಮಿಕ ಸಹಿಷ್ಣುತೆಗೆ ಧಕ್ಕೆ ತರುವುದಲ್ಲದೇ ಸಮಾಜದಲ್ಲಿ ಉದ್ರೇಕ ಮತ್ತು ದ್ವೇಷವನ್ನು ಹರಡಿಸಲು ಕಾರಣವಾಗುತ್ತದೆ. ಅಲ್ಲದೇ ಲಿಂಗಾಯಿತ ಧರ್ಮದವರು ರೊಚ್ಚಿಗೇಳುವ ಸಂಭವವಿರುತ್ತದೆ. ಈ ಹಿನ್ನಲೆಯಲ್ಲಿ ರಾಜ್ಯದ ಬೇರೆ ಬೇರೆ ಕಡೆ ತೀವ್ರ ಆಕ್ರೋಶ ವ್ಯಕ್ತವಾಗಿರುತ್ತದೆ. ಸ್ವಾಮೀಜಿಯ ಹೇಳಿಕ ವಿರುದ್ಧ ಪ್ರತಿಭಟನೆಗಳು ನಡೆಯುತ್ತಾ ಇದ್ದು ಇನ್ನು ಮುಂದಿನ ದಿನಗಳಲ್ಲಿಯೂ ಸಹ ಎಲ್ಲ ಕಡೆ ಪ್ರತಿಭಟನೆಗಳು ಜರುಗುವ ಸಂದರ್ಭವನ್ನು .....ಆಕ್ರೋಶಕ್ಕೆ ಕಾರಣವಾಗಿರುತ್ತಾರೆ ಎಂದು ಪೊಲೀಸ್ ಅಧೀಕ್ಷಕರು, ಧಾರವಡ.....

ಮೇಲ್ಕಂಡ ವಿಷಯದ ಹಿನ್ನೆಲೆಯಲ್ಲಿ ಶ್ರೀ ಅದೃಶ್ಯ ಕಾಡಸಿದ್ಧೇಶ್ವರ ಮಠದ ಸ್ವಾಮೀಜಿ ಕನ್ನೇರಿ ಮಠ ರವರು ಶ್ರೀ ಸದ್ಗುರು ಸಮರ್ಥ ಸಹಜಾನಂದ ಮಹಾರಾಜರ ಸಪ್ತಾಹದ ಕಾರ್ಯಕ್ರಮದಲ್ಲಿ ಪಾಲ್ಗೊಳ್ಳಲು ದಿನಾಂಕ 05-11-2025 ರಿಂದ 07-11-2025 ರಂದು ಧಾರವಾಡ ಜಿಲ್ಲಾ ಅಣ್ಣಿಗೇರಿ ತಾಲೂಕ ಹಳ್ಳಿಕೇರಿ ಗ್ರಾಮಕ್ಕೆ ಭೇಟಿ ನೀಡಲಿದ್ದು ಭೇಟಿ ನೀಡಿದ ಸಂದರ್ಭದಲ್ಲಿ ಕಾರ್ಯಕ್ರಮಕ್ಕೆ ಅಡ್ಡಿಪಡಿಸುವ, ಜನರ ಧಾರ್ಮಿಕ ಭಾವನೆಗಳಿಗೆ ಧಕ್ಕೆ ಉಂಟು ಮಾಡುವ ಮತ್ತು ಕಾನೂನು ಸುವ್ಯವಸ್ಥೆಗೆ ಧಕ್ಕೆ ಬರುವಂತಹ ಎಲ್ಲ ಸಾಧ್ಯತೆಗಳಿವೆ. ಆದ್ದರಿಂದ ಕಾಡಸಿದ್ಧೇಶ್ವರ ಸ್ವಾಮೀಜಿಯವರ ಭೇಟಿಯು ಜಿಲ್ಲೆಯ ಕಾನೂನು ಸುವ್ಯವಸ್ಥೆಗೆ ಧಕ್ಕೆ ಬರದ ಹಾಗೆ ಮಾಡಲು ಸದರಿ ಸ್ವಾಮೀಜಿಯವರನ್ನು ದಿನಾಂಕ **05-11-2025** ರಿಂದ **03-01-2026** ರವರೆಗೆ ಧಾರವಾಡ ಜಿಲ್ಲೆಯಾದ್ಯಂತ ಶ್ರೀ ಅದೃಶ್ಯ ಕಾಡಸಿದ್ಧೇಶ್ವರ ಮಠದ ಸ್ವಾಮೀಜಿ ಕನ್ನೇರಿ ಮಠ ಇವರು ಭೇಟಿ ನೀಡುವುದನ್ನು ನಿಷೇಧಿಸಿ ಬಿಎನ್ಎಸ್ಎಸ್ **163** ಕಲಂ ಅಡಿಯಲ್ಲಿ ಆದೇಶ ಹೊರಡಿಸುವುದು ಅವಶ್ಯವೆಂದು ಪೊಲೀಸ್ ಅಧೀಕ್ಷಕರು ಧಾರವಾಡ ಇವರ ವರದಿಯಲ್ಲಿ ಕೋರಿರುತ್ತಾರೆ.

ಈ ಕುರಿತು ಪರಿಶೀಲಿಸಲಾಗಿ, ಪೊಲೀಸ್ ಅಧೀಕ್ಷಕರು, ಧಾರವಾಡ ಇವರ ವರದಿಯನ್ನು ಅವಲೋಕಿಸಿದೆ. ಸದರಿ ಕಾರ್ಯಕ್ರಮವು ದಿನಾಂಕ: **05-11-2025** ರಿಂದ **03-01-2026** ರವರೆಗೆ ಭಾರತೀಯ ನಾಗರೀಕ ಸುರಕ್ಷಾ ಸಂಹಿತೆ**-2023** ರ ಕಲಂ.**163 (1), (2)** ಮತ್ತು **(3)** ರ ರನ್ವಯ ಜಿಲ್ಲೆಯಲ್ಲಿ ಸಾರ್ವಜನಿಕ ಶಾಂತತೆ, ಸುವ್ಯವಸ್ಥೆಗೆ ಧಕ್ಕೆಯಾಗದಂತೆ ಮುಂಜಾಗ್ರತಾ ಕ್ರಮ ಕೈಕೊಳ್ಳುವುದು ಸೂಕ್ತವೆಂದು ಅಭಿಪ್ರಾಯಪಟ್ಟು ಈ ಕೆಳಗಿನಂತೆ ಆದೇಶ ಮಾಡಲಾಗಿದೆ.

ಆದೇಶ

ಪ್ರಸ್ತಾವನೆಯಲ್ಲಿ ವಿವರಿಸಿರುವ ಅಂಶಗಳ ಮೇಲಿಂದ ದಿವ್ಯ ಪ್ರಭು, ಜಿ.ಆರ್.ಜೆ., ಭಾ.ಆ.ಸೇ., ಜಿಲ್ಲಾಧಿಕಾರಿ ಹಾಗೂ ಜಿಲ್ಲಾ ದಂಡಾಧಿಕಾರಿಗಳು, ಧಾರವಾಡ ಜಿಲ್ಲೆ ಧಾರವಾಡ ಆದ ನಾನು ಭಾರತೀಯ ನಾಗರೀಕ ಸುರಕ್ಷಾ ಸಂಹಿತೆ 2023 ರ ಕಲಂ 163 (1), (2) ಮತ್ತು (3) ರ ಪ್ರಕಾರ ಪ್ರದತ್ತವಾದ ಅಧಿಕಾರವನ್ನು ಚಲಾಯಿಸಿ ಶ್ರೀ ಅದೃಶ್ಯ ಕಾಡಸಿದ್ಧೇಶ್ವರ ಮಠದ ಸ್ವಾಮೀಜಿ ಕನ್ನೇರಿ ಮಠ ಬೀಳೂರು ಗ್ರಾಮ ತಾಲೂಕ ಜತ್ತ ಮಹಾರಾಷ್ಟ್ರ, ರಾಜ್ಯ ಇವರನ್ನು ಧಾರವಾಡ ಜಿಲ್ಲೆಯಲ್ಲಿ ಸಾರ್ವಜನಿಕ ಶಾಂತತೆಗೆ ಧಕ್ಕೆ ಉಂಟಾಗದಂತೆ ಮುಂಜಾಗೃತಾ ಕ್ರಮವಾಗಿ ದಿನಾಂಕ 05-11-2025 ರಿಂದ 03-01-2026 ರವರೆಗೆ ಧಾರವಾಡ ಜಿಲ್ಲೆಗೆ ಪ್ರವೇಶಿಸದಂತೆ ಪ್ರತಿಬಂಧಿಸಿ ಆದೇಶಿಸಿರುತ್ತೇನೆ.

ಈ ಆದೇಶವನ್ನು ಇಂದು ದಿನಾಂಕ:04-11-2025 **ರಂದು ನನ್ನ ಸಹಿ ಮತ್ತು ಮೊಹರಿನೊಂದಿಗೆ ಹೊರಡಿಸಲಾಗಿದೆ.**"

(sic)

(Emphasis added)

The order quoted hereinabove refers to a representation of the Lingayat Mahasabha dated 30th October 2025. The order indicates that Dharwad District Unit is wanting a week-long programme of a Matha which is slated to be held between 05.11.2025 and 07.11.2025 in Hallikeri village, Anigeri Taluk, Dharwad District wherein several Swamijis' from Kaneri Math, Maharashtra would come and participate. The Mahasabha has no objection to the programme but it is opposed to the petitioner participating in the programme and in this regard a representation is submitted. In the

impugned order, it is indicated that the Superintendent of Police was directed to enquire into the said representation.

10. The impugned order notices a report dated 03.11.2025 of the Superintendent of Police and as per confidential information collected on 09.10.2025, the petitioner had made a speech insulting or using objectionable language about the Lingayat Matadhisha. Therefore, it was opined that the petitioner's speech, if made, would cause anger and hatred in the society *qua* the Lingayat community. Therefore, the petitioner should be stopped from visiting Dharwad District not only for those three days *i.e.,* 05.11.2025 and 07.11.2025 but from 05.11.2025 for two months upto 03.01.2026. The Deputy Commissioner on the said report observes in the impugned order that the programme is for about two days, but as a precautionary measure to prevent public disorder in exercise of power conferred under Section 163(1)(2) and (3) of the BNSS issues prohibitory order against the petitioner from entering Dharwad District from 05.11.2025 to 03.01.2026. The afore-noted is what the impugned order contains.

THE STATUTE:

11. The power invoked is under Section 163 of the BNSS. Section 163 of the BNSS is Section 144 of the earlier regime, the Cr.P.C. Section 163 of the BNSS and Section 144 of the Cr.P.C., read as follows:

SECTION 163 OF BNSS	**SECTION 144 OF CRPC**
"C.—Urgent cases of nuisance or apprehended danger	"C.—*Urgent cases of nuisance or apprehended danger*
163. Power to issue order in urgent cases of nuisance or apprehended danger.—(1) In cases where, in the opinion of a District Magistrate, a Sub-divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by Section 153, direct any person to abstain from a certain act or to take certain order with respect to 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 to any person lawfully employed, or danger to human life, health or safety or a	**144. Power to issue order in urgent cases of nuisance or apprehended danger.—(1) In cases where, in the opinion of a District Magistrate, a Sub-Divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by Section 134, direct any person to abstain from a certain act or to take certain order with respect to 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 to any person lawfully**

disturbance of the public tranquillity, or a riot, or an affray.	**employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or an affray.**
(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed *ex parte*.	**(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed ex parte.**
(3) An order under this section may be directed to a particular individual, or to persons residing in a particular place or area, or to the public generally when frequenting or visiting a particular place or area.	**(3) An order under this section may be directed to a particular individual, or to persons residing in a particular place or area, or to the public generally when frequenting or visiting a particular place or area.**
(4) No order under this section shall remain in force for more than two months from the making thereof:	(4) No order under this section shall remain in force for more than two months from the making thereof:
Provided that if the State Government considers it necessary so to do for preventing danger to human life, health or safety or for preventing a riot or any affray, it may, by notification, direct that an order made by a Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which the order made by the Magistrate would have, but for such order, expired, as it may specify in the said notification.	Provided that, if the State Government considers it necessary so to do for preventing danger to human life, health or safety or for preventing a riot or any affray, it may, by notification, direct that an order made by a Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which the order made by the Magistrate would have, but for such order, expired, as it may specify in the said notification.
(5) Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section by himself or any Magistrate subordinate to him or by his predecessor-in-office.	(5) Any Magistrate may, either on his own motion or on the application of any person aggrieved,
(6) The State Government may, either on its own motion or on the application of any person aggrieved,	

rescind or alter any order made by it under the proviso to sub-section (4). (7) Where an application under sub-section (5) or sub-section (6) is received, the Magistrate, or the State Government, as the case may be, shall afford to the applicant an early opportunity of appearing before him or it, either in person or by an advocate and showing cause against the order; and if the Magistrate or the State Government, as the case may be, rejects the application wholly or in part, he or it shall record in writing the reasons for so doing."	rescind or alter any order made under this section, by himself or any Magistrate subordinate to him or by his predecessor-in-office. (6) The State Government may, either on its own motion or on the application of any person aggrieved, rescind or alter any order made by it under the proviso to sub-section (4). (7) Where an application under sub-section (5) or sub-section (6) is received, the Magistrate, or the State Government, as the case may be, shall afford to the applicant an early opportunity of appearing before him or it, either in person or by pleader and showing cause against the order; and if the Magistrate or the State Government, as the case may be, rejects the application wholly or in part, he or it shall record in writing the reasons for so doing."

(Emphasis supplied)

Section 163 of the BNSS is thus, verbatim similar, to Section 144 of the earlier regime – the Cr.P.C.

JUDICIAL LANDSCAPE:

12. It is, therefore, necessary to notice the law as laid down by the Apex Court or several High Courts interpreting Section 144 of the Cr.P.C. and all clauses of Section 144 of the Cr.P.C.

INTERPRETATION BY THE APEX COURT:

12.1. The Apex Court in the case of **BABULAL PARATE v. STATE OF MAHARASHTRA**[1], interprets Section 144 of the Criminal Procedure Code, 1898, which is similar to Section 144 of the Cr.P.C. and Section 163 of the BNSS. The Apex Court observes as follows:

> **"18.** Thirdly, according to learned counsel sub-section (1) of Section 144 does not require the Magistrate to make an enquiry as to the circumstances which necessitate the making of an order thereunder. **It is true that there is no express mention anywhere in Section 144 that the order of the Magistrate should be preceded by an enquiry. But we must construe the section as a whole. The latter part of sub-section (1) of Section 144 specifically mentions that the order of the Magistrate should set out the material facts of the case. It would not be possible for the Magistrate to set out the facts unless he makes an enquiry or unless he is satisfied about the facts from personal knowledge or on a report made to him which he prima facie accepts as correct. Clearly, therefore, the section does not confer an arbitrary power on the Magistrate in the matter of making an order."**
>
> (Emphasis supplied)

The Apex Court holds that though Section 144 of the Criminal Procedure Code, 1898, does not expressly mention that the order of the Magistrate should be preceded by an enquiry, but it would not

---

[1] **1961 SCC OnLine SC 48**

be possible for the Magistrate to pass an order on the material facts of the case without an enquiry, *qua* the facts obtaining therein.

12.2. The Apex Court in the case of **MADHU LIMAYE v. SUB-DIVISIONAL MAGISTRATE**[2] upholds the prohibitory order passed against Madhu Limaye, the petitioner therein, but certain observations made therein, by the Apex Court while upholding the constitutionality of Section 144 of the Cr.P.C. would become necessary to be noticed. The Apex Court observes as follows:

> **"22.** We first take up for consideration Section 144 of the Code. It finds place in Chapter XI which contains one section only. It is headed "Temporary Orders in urgent cases of nuisance or apprehended danger". The section confers powers to issue an order absolute at once in urgent cases of nuisance or apprehended danger. Such orders may be made by specified classes of Magistrates when in their opinion there is sufficient ground for proceeding under the section and immediate prevention or speedy remedy is desirable**. It requires the Magistrate to issue his order in writing setting forth the material facts of the case and the order is to be served in the manner provided by Section 134 of the Code.** The order may direct:
>
> **"(*a*) any person to abstain from a certain act,**
>
> or
>
> (*b*) to take certain order with certain property in his possession or under his management.
>
> The grounds for making the order are that in the opinion of the Magistrate such direction
>
> (*a*) is likely to prevent
>
> or
>
> (*b*) tends to prevent,

---

[2] (1970) 3 SCC 746

(*i*) obstruction (*ii*) annoyance or (*iii*) injury, to any person lawfully employed or (*iv*) danger to human life, health or safety or (*v*) a disturbance of the public tranquillity or (*vi*) a riot or (*vii*) an affray.

Stated briefly the section provides for the making of an order which is either (*a*) prohibitory or (*b*) mandatory as shown above. Its efficacy is that (*a*) it is likely to prevent or (*b*) it tends to prevent, some undesirable happenings.

The gist of these happenings are

(*i*) obstruction, annoyance or injury to any person lawfully employed;

or

(*ii*) danger to *human* life, health or safety;

or

(*iii*) a disturbance of the public tranquillity or a riot or an affray."

23. The procedure to be followed is next stated. **Under sub-section (2) if time does not permit or the order cannot be served, it can be made ex parte. Under sub-section (3) the order may be directed to a particu**lar individual or to the public generally when frequenting or visiting a particular place. Under subsection (4) the Magistrate may either suo motu or on an application by an aggrieved person, rescind or alter the order whether his own or by a Magistrate subordinate to him or made by his predecessor-in-office. Under sub-section (5) where the Magistrate is moved by a person aggrieved he must hear him so that he may show cause against the order and if the Magistrate rejects wholly or in part the application, he must record his reasons in writing. This sub-section is mandatory. An order by the Magistrate does not remain in force after two months from the making thereof but the State Government may, however, extend the period by a notification in the Gazette but, only in cases of danger to human life, health or safety or where there is a likelihood of a riot or an affray. But the second portion of the sub-section was declared violative of Article 19 in *State of Bihar* v. *K.K. Misra.* It may be pointed out here that disobedience of an order lawfully promulgated is made an offence by Section 188 of the Penal Code, 1860, if such disobedience causes obstruction, annoyance

or injury to persons lawfully employed. It is punishable with simple imprisonment for one month or fine of Rs 200 or both.

24. The gist of action under Section 144 is the urgency of the situation, its efficacy in the likelihood of being able to prevent some harmful occurrences. As it is possible to act absolutely and even ex parte it is obvious that the emergency must be sudden and the consequences sufficiently grave. Without it the exercise of power would have no justification. It is not an ordinary power flowing from administration but a power used in a judicial manner and which can stand further judicial scrutiny in the need for the exercise of the power, in its efficacy and in the extent of its application. There is no general proposition that an order under Section 144, Criminal Procedure Code cannot be passed without taking evidence: see *Mst Jagrupa Kumari* v. *Chobey Narain Singh* [37 Cr LJ 95] which in our opinion is correct in laying down this proposition. These fundamental facts emerge from the way the occasions for the exercise of the power are mentioned. Disturbances of public tranquillity, riots and affray lead to subversion of public order unless they are prevented in time. Nuisances dangerous to human life, health or safety have no doubt to be abated and prevented. We are, however, not concerned with this part of the section and the validity of this part need not be decided here. In so far as the other parts of the section are concerned the key-note of the power is to free society from menace of serious disturbances of a grave character. **The section is directed against those who attempt to prevent the exercise of legal rights by others or imperil the public safety and health. If that be so the matter must fall within the restrictions which the Constitution itself visualizes as permissible in the interest of public order, or in the interest of the general public. We may say, however, that annoyance must assume sufficiently grave proportions to bring the matter within interests of public order**."

(Emphasis supplied)

12.3. Later, the Apex Court in the case of **GULAM ABBAS v. STATE OF U.P.**[3] holds as follows:

"…. …. ….

> **24.** Turning to the 1973 Code itself the scheme of separating Judicial Magistrates from Executive Magistrates with allocation of judicial functions to the former and the executive or administrative functions to the latter, as we shall presently indicate, has been implemented in the Code to a great extent. Section 6 provides that there shall be in every State four classes of criminal courts, namely, (*i*) Courts of Session, (*ii*) Judicial Magistrates of the First class and, in any metropolitan area, Metropolitan Magistrates;(*iii*) Judicial Magistrates of the Second Class; and (*iv*) Executive Magistrates; Sections 8 to 19 provide inter alia for declaration of metropolitan area, establishment of Courts of Session, Courts of Judicial Magistrates, Courts of Metropolitan Magistrates and appointments of Sessions Judges, Additional Sessions Judges, Assistant Sessions Judges, Chief Judicial Magistrates, Judicial Magistrates, Chief Metropolitan Magistrates and Metropolitan Magistrates together with inter se subordination, but all appointments being required to be made by the High Court, while Sections 20, 21, 22 and 23 deal with appointments of District Magistrates, Additional District Magistrates, Executive Magistrates, Sub-Divisional Magistrates and Special Executive Magistrates and their respective jurisdictions in every district and metropolitan area together with inter se subordination, but appointments being made by the State Government. Chapter III comprising Sections 26 to 35 clearly shows that Executive Magistrates are totally excluded from conferment of powers to punish, which are conferred on Judicial Magistrates; this shows that if any one were to commit a breach of any order passed by an Executive Magistrate in exercise of his administrative or executive function he will have to be challenged or prosecuted before a Judicial Magistrate to receive punishment on conviction. Further, if certain sections of the present Code are

---

[3] (1982) 1 SCC 71

compared with the equivalent sections in the old Code it will appear clear that a separation between judicial functions and executive or administrative functions has been achieved by assigning substantially the former to the Judicial Magistrates and the latter to the Executive Magistrates. For example, the power under Section 106 to release a person on conviction of certain types of offences by obtaining from him security by way of execution of bond for keeping peace and good behaviour for a period not exceeding three years — a judicial function is now exclusively entrusted to a Judicial Magistrate whereas under Section 106 of the old Code such power could be exercised by a Presidency Magistrate, a District Magistrate or Sub-Divisional Magistrate; but the power to direct the execution of a similar bond by way of security for keeping peace in other cases where such a person is likely to commit breach of peace or disturb the public tranquillity — an executive function of police to maintain law and order and public peace which was conferred on a Presidency Magistrate, District Magistrate, etc. under the old Section 107 is now assigned exclusively to the Executive Magistrate under the present Section 107; Chapter X of the new Code deals with the topic of maintenance of public order and tranquillity and in that Chapter Sections 129 to 132 deal with unlawful assemblies and dispersal thereof, Sections 133 to 143 deal with public nuisance and abatement or removal thereof, Section 144 deals with urgent cases of nuisance and apprehended danger to public tranquillity and Sections 145 to 148 deal with disputes as to immovable properties likely to cause breach of peace — all being in the nature of executive ("police") functions, powers in that behalf have been vested exclusively in Executive Magistrates whereas under equivalent provisions under the old Code such powers were conferred indiscriminately on any Magistrate, whether Judicial or Executive. In particular it may be stated that whereas under the old Section 144 the power to take action in urgent cases of nuisance or apprehended danger to public tranquillity had been conferred on "a District Magistrate, a Chief Presidency Magistrate, a Sub-Divisional Magistrate or any other Magistrate, specially empowered by the State Government", under the present Section 144 the power has been conferred on "a District Magistrate, a Sub-Divisional Magistrate or any other

Executive Magistrate specially empowered by the State Government in that behalf". Having regard to such implementation of the concept of separation of judicial functions from executive or administrative functions and allocation of the former to the Judicial Magistrates and the latter to the Executive Magistrates under the Code of 1973, it will be difficult to accept the contention of the counsel for Respondents 5 and 6 that the order passed by a District Magistrate, Sub-Divisional Magistrate or any other Executive Magistrate under the present Section 144 is a judicial or quasi-judicial order, the function thereunder being essentially an executive (police) function. Under the new Code the designation of District Magistrate or Sub-Divisional Magistrate has been statutorily used in relation to officers performing executive functions only in recognition of the concept of separating Executive Magistrates from Judicial Magistrates. **It is true that before passing the order the District Magistrate, Sub-Divisional Magistrate or the Executive Magistrate gives a hearing to parties except in cases of emergency when ex parte order can be made under Section 144(2) by him without notice to the person or persons against whom it is directed**, but in which cases on an application made by any aggrieved person he has to give hearing to such person under Section 144(5) and thereupon he may rescind or alter his earlier order. It is also true that such an order made by the Executive Magistrate is revisable under Section 397 of the Code because under the Explanation to that section all Magistrates, whether Executive or Judicial or whether exercising appellate or original jurisdiction, are deemed to be inferior courts for purposes of the revisional power of the High Court or Court of Session. But the fact that the parties and particularly the aggrieved party are heard before such an order is made merely ensures fair play and observance of audi alteram partem rule which are regarded as essential in the performance of any executive or administrative function and the further fact that a revision lies against the order of the Executive Magistrate either to the Sessions Court or to the High Court removes the vice of arbitrariness, if any, pertaining to the section. In fact, in the three decisions of this Court which were relied upon by counsel for Respondents 5 and 6 namely *Babulal Parate case* [AIR 1961 SC 884 : (1961) 3 SCR

423] , *K.K. Misra case* [(1969) 3 SCC 337 : AIR 1971 SC 1667 : (1970) 3 SCR 181 : (1971) 1 SCJ 621] and *Madhu Limaye case* [(1970) 3 SCC 746 : AIR 1971 SC 2486 : (1971) 2 SCR 711 : 1971 Cri LJ 1721] where the constitutionality of Section 144 of the old Code was challenged on the ground that it amounted to unreasonable restriction on the fundamental right of a citizen under Article 19(1) of the Constitution, the challenge was repelled by relying upon these aspects to be found in the provision. **In our view, however, these aspects cannot make the order a judicial or quasi-judicial order and such an order issued under Section 144 of the present Code will have to be regarded as an executive order passed in performance of an executive function where no lis as to any rights between rival parties is adjudicated but merely an order for preserving public peace is made and as such it will be amenable to writ jurisdiction under Article 32 of the Constitution. We would like to mention in this context that the power conferred upon Section 144 CrPC, 1973 is comparable to the power conferred on the Bombay Police under Section 37 of the Bombay Police Act, 1951, — both the provisions having been put on the statute-book to achieve the objective of preservation of public peace and tranquillity and prevention of disorder and it has never been disputed that any order passed under Section 37 of the Bombay Police Act is subject to writ jurisdiction of the High Court under Article 226 of the Constitution on the ground that it has the effect of violating or infringing a fundamental right of a citizen. The nature of the power under both the provisions and the nature of function performed under both being the same by parity of reasoning an order made under Section 144 CrPC, 1973 must be held to be amenable to writ jurisdiction either under Article 32 or under 226 of the Constitution if it violates or infringes any fundamental right. The contention raised by counsel for Respondents 5 and 6 therefore, has to be rejected.**

25. Having come to the conclusion that the order under Section 144 CrPC, 1973 is amenable to writ jurisdiction under

Article 32, the same being in exercise of executive power in performance of executive function the next question that we have to deal with is whether the petitioners could be said to have made out any ground for challenging the impugned order passed by the City Magistrate, Varanasi on November 24, 1979 prohibiting both Shia and Sunni communities from holding their Majlises and imposing other restrictions on the occasion of celebration of Moharram festival at the Baradari in Mohalla Doshipura. As already stated the challenge to this order was incorporated in the writ petition by way of an amendment which had been allowed by the Court. Since however, that impugned order has by now exhausted itself by efflux of time it would not be proper for us to go into either the grounds of challenge urged by the petitioners or the materials justifying the same put forward by the respondents for determining its legality or validity. Since however, occasions or situations arise even during a year as well as year after year making it necessary for the executive magistracy of Varanasi to take action under Section 144 and since it has been the contention of the petitioners, — though stoutly disputed by all the respondents — that the exercise of the power under the said provision has invariably been perverse and in utter disregard of the lawful exercise of their legal rights to perform their religious ceremonies and functions on the plots and structures in question it will be desirable to make general observations by way of providing to the local authorities requisite guide-lines with a view to ensure a correct and proper exercise thereof with a brief reference to few decided cases on the point.

26. Without setting out verbatim the provisions of Section 144 of the 1973 Code, we might briefly indicate the nature of power thereunder and what it authorises the executive magistracy to do and in what circumstances. In urgent cases of nuisance or apprehended danger, where immediate prevention or speedy remedy is desirable, a District Magistrate, a Sub-Divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf may, by a written order stating the material facts of the case, direct a particular individual, or persons residing in a particular place or area,

or the public generally when frequenting or visiting a particular place or area, (*i*) to abstain from a certain act or (*ii*) to take certain order with respect to certain property in his possession or under his management, if he considers that such direction is likely to prevent or tends to prevent obstruction, annoyance or injury to any other person lawfully employed, or danger to human life, health or safety, or a disturbance of public tranquillity, or a riot or an affray. As stated earlier sub-section (2) authorises the issuance of such an order ex parte in cases of emergency or in cases where circumstances do not admit of the serving in due time of a notice upon the person or persons against whom the order is directed but in such cases under sub-section (5) the Executive Magistrate, either on his own motion or on the application of the person aggrieved after giving him a hearing, may rescind or alter his original order. Under sub-section (4) no order under this section shall remain in force for more than two months from the making thereof unless under the proviso thereto the State Government by notification directs that such order shall remain in force for a further period not exceeding six months.

27. The entire basis of action under Section 144 is provided by the urgency of the situation and the power thereunder is intended to be availed of for preventing disorders, obstructions and annoyances with a view to secure the public weal by maintaining public peace and tranquillity. Preservation of the public peace and tranquillity is the primary function of the Government and the aforesaid power is conferred on the executive magistracy enabling it to perform that function effectively during emergent situations and as such it may become necessary for the Executive Magistrate to override temporarily private rights and in a given situation the power must extend to restraining individuals from doing acts perfectly lawful in themselves, for, it is obvious that when there is a conflict between the public interest and private rights the former must prevail. **It is further well settled that the section does not confer any power on the Executive Magistrate to adjudicate or decide disputes of civil nature or questions of title to properties or entitlements to rights but at the same**

> **time in cases where such disputes or titles or entitlements to rights have already been adjudicated and have become the subject-matter of judicial pronouncements and decrees of civil courts of competent jurisdiction then in the exercise of his power under Section 144 he must have due regard to such established rights and subject of course to the paramount consideration of maintenance of public peace and tranquillity the exercise of power must be in aid of those rights and against those who interfere with the lawful exercise thereof and even in cases where there are no declared or established rights the power should not be exercised in a manner that would give material advantage to one party to the dispute over the other but in a fair manner ordinarily in defence of legal rights, if there be such and the lawful exercise thereof rather than in suppressing them. In other words, the Magistrate's action should be directed against the wrong-doer rather than the wronged.** Furthermore, it would not be a proper exercise of discretion on the part of the Executive Magistrate to interfere with the lawful exercise of the right by a party on a consideration that those who threaten to interfere constitute a large majority and it would be more convenient for the administration to impose restrictions which would affect only a minor section of the community rather than prevent a larger section more vociferous and militant."
>
> (Emphasis supplied)

The Apex Court reiterates that Section 144 of the Cr.P.C. is provided to meet the urgency of the situation and the power thereunder is to be exercised for preventing disorder, obstruction and annoyance with a view to secure public weal by maintaining public peace and tranquillity. The Apex Court further holds that an Order passed under Section 144 of the Cr.P.C. being an administrative or executive order is amenable to writ jurisdiction

under Article 226 if it violates the fundamental rights of the person against whom it is passed.

12.4. In **ACHARYA JAGDISHWARANAND AVADHUTA v. COMMISSIONER OF POLICE**[4]**,** the Apex Court holds as follows:

> **"16.** It is the petitioner's definite case that the prohibitory orders under Section 144 of the Code are being repeated at regular intervals from August 1979. Copies of several prohibitory orders made from time to time have been produced before us and it is not the case of the respondents that such repetitive prohibitory orders have not been made. The order under Section 144 of the Code made in March 1982 has also been challenged on the ground that the material facts of the case have not been stated. Section 144 of the Code, as far as relevant, provides: "(1) In cases where in the opinion of a District Magistrate, a Sub-Divisional Magistrate, or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by Section 134, direct…." It has been the contention of Mr Tarkunde that the right to make the order is conditioned upon it being a written one and the material facts of the case being stated. Some High Courts have taken the view that this is a positive requirement and the validity of the order depends upon compliance of this provision. In our opinion it is not necessary to go into this question as counsel for the respondents conceded that this is one of the requirements of the provision and if the power has to be exercised it should be exercised in the manner provided on pain of invalidating for non-compliance. There is currently in force a prohibitory order in the same terms and hence the question cannot be said to be academic. The other aspect viz. the propriety of repetitive prohibitory orders is, however, to our mind a serious matter and

---

[4] (1983) 4 SCC 522

since long arguments have been advanced, we propose to deal with it. In this case as a fact from October 1979 till 1982 at the interval of almost two months orders under Section 144(1) of the Code have been made from time to time. **It is not disputed before us that the power conferred under this section is intended for immediate prevention of breach of peace or speedy remedy.** An order made under this section is to remain valid for two months from the date of its making as provided in sub-section (4) of Section 144. The proviso to sub-section (4) authorises the State Government in case it considers it necessary so to do for preventing danger to human life, health or safety, or for preventing a riot or any affray, to direct by notification that an order made by a Magistrate may remain in force for a further period not exceeding six months from the date on which the order made by the Magistrate would have, but for such order, expired. The effect of the proviso, therefore, is that the State Government would be entitled to give the prohibitory order an additional term of life but that would be limited to six months beyond the two months' period in terms of sub-section (4) of Section 144 of the Code. Several decisions of different High Courts have rightly taken the view that it is not legitimate to go on making successive orders after earlier orders have lapsed by efflux of time. A Full Bench consisting of the entire Court of 12 Judges in *Gopi Mohun Mullick* v. *Taramoni Chowdhrani* [ILR 5 Cal 7: 4 CLR 309: 2 Shome LR 217 (FB)] examining the provisions of Section 518 of the Code of 1861 (corresponding to present Section 144) took the view that such an action was beyond the Magistrate's powers. Making of successive orders was disapproved by the Division Bench of the CalcuttaHigh Court in *Bishessur Chuckerbutty* v. *Emperor* [AIR 1916 Cal 472: 20 CWN 758: 1916 (17) Cri LJ 200]. Similar view was taken in *Swaminatha Mudaliar* v. *Gopalakrishna Naidu* [AIR 1916 Mad 1106: 1915 (16) Cri LJ 592], *Taturam Sahu* v. *State of Orissa* [AIR 1953 Ori 96] , *Ram Das Gaur* v. *City Magistrate, Varanasi* [AIR 1960 All 397 : 1960 Cri LJ 865] , and *Ram Narain Sah* v. *Parmeshar Prasad Sah* [AIR 1942 Pat 414 : 1942 (43) Cri LJ 722] . We have no doubt that the ratio of these decisions represents a correct statement of the legal position. The proviso to sub-section (4) of Section 144 which gives the State Government jurisdiction to extend the prohibitory order for a maximum period of six months beyond the life of the order made by the Magistrate is clearly indicative of the position that Parliament never intended the life of an order under Section 144 of the Code to remain in force beyond two months when made

by a Magistrate. **The scheme of that section does not contemplate repetitive orders and in case the situation so warrants steps have to be taken under other provisions of the law such as Section 107 or Section 145 of the Code when individual disputes are raised and to meet a situation such as here, there are provisions to be found in the Police Act. If repetitive orders are made it would clearly amount to abuse of the power conferred by Section 144 of the Code.** It is relevant to advert to the decision of this Court in *Babulal Parate* v. *State of Maharashtra* [AIR 1961 SC 884: (1961) 3 SCR 423, 437: 1961 (2) Cri LJ 16] where the vires of Section 144 of the Code was challenged. Upholding the provision, this Court observed:

> "Public order has to be maintained in advance in order to ensure it and, therefore, it is competent to a legislature to pass a law permitting an appropriate authority to take anticipatory action or place anticipatory restrictions upon particular kinds of acts in an emergency for the purpose of maintaining public order...."

It was again emphasized:

> "But it is difficult to say that an anticipatory action taken by such an authority in an emergency where danger to public order is genuinely apprehended is anything other than an action done in the discharge of the duty to maintain order...."

This Court had, therefore, appropriately stressed upon the feature that the provision of Section 144 of the Code was intended to meet an emergency. This postulates a situation temporary in character and, therefore, the duration of an order under Section 144 of the Code could never have been intended to be semi-permanent in character.

17. Similar view was expressed by this Court in *Gulam Abbas* v. *State of U.P.* [(1982) 1 SCC 71 : 1982 SCC (Cri) 82 : AIR 1981 SC 2198 : (1982) 1 SCR 1077 : (1981) 2 Cri LJ 1835, 1862] where it was said that (SCC p. 109, para 27) **"the entire basis of action under Section 144 is provided by the urgency of the situation and the power thereunder is intended to be availed of for preventing disorders, obstructions and annoyances with a view to secure the public weal by maintaining public peace and tranquillity**

> **…".** Certain observations in *Gulam Abbas* [(1982) 1 SCC 71 : 1982 SCC (Cri) 82 : AIR 1981 SC 2198 : (1982) 1 SCR 1077 : (1981) 2 Cri LJ 1835, 1862] *decision* regarding the nature of the order under Section 144 of the Code — judicial or executive — to the extent they run counter to the decision of the Constitution Bench in *Babulal Parate case* [AIR 1961 SC 884 : (1961) 3 SCR 423, 437 : 1961 (2) Cri LJ 16**] may require reconsideration but we agree that the nature of the order under Section 144 of the Code is intended to meet emergent situation. Thus the clear and definite view of his Court is that an order under Section 144 of the Code is not intended to be either permanent or semi-permanent in character. The consensus of judicial opinion in the High Courts of the country is thus in accord with the view expressed by this Court.** It is not necessary on that ground to quash the impugned order of March 1982 as by efflux of time it has already ceased to be effective."
>
> (Emphasis supplied)

The Apex Court holds that an order under Section 144 of the Cr.P.C. is only intended to meet emergency situations and is not intended to be permanent or semi-permanent in nature.

12.5. While considering the entire spectrum and every clause of Section 144 of the Cr.P.C. the Apex Court in the case of **RAMLILA MAIDAN INCIDENT, IN RE**[5]**,** holds as follows:

> "…. …. ….
>
> **50.** This concept came to be illustratively explained in the judgment of this Court in *Ram Manohar Lohia* [AIR 1966 SC 740 : 1966 Cri LJ 608] wherein it was held that : (AIR p. 758, para 51)

---

[5] (2012) 5 SCC 1

> "*51*. … When two drunkards quarrel and fight, there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order."

However, where the two persons fighting were of rival communities and one of them tried to raise communal passions, the problem is still one of "law and order" but it raises the apprehension of public disorder. The main distinction is that where it affects the community or public at large, it will be an issue relatable to "public order". **Section 144 CrPC empowers passing of such order in the interest of public order equitable to public safety and tranquillity. The provisions of Section 144 CrPC empowering the authorities to pass orders to tend to or to prevent the disturbances of public tranquillity is not ultra vires the Constitution.**

51. In *State of Karnataka* v. *Praveen Bhai Thogadia* [(2004) 4 SCC 684 : 2004 SCC (Cri) 1387] (SCC p. 691, para 6), this Court, while observing that each person, whatever be his religion, must get the assurance from the State that he has the protection of law freely to profess, practice and propagate his religion and the freedom of conscience, held more emphatically that the

> "courts should not normally interfere with matters relating to law and order which is primarily the domain of the administrative authorities concerned. They are by and large the best to assess and handle the situation depending upon the peculiar needs and necessities within their special knowledge".

52. The scope of Section 144 CrPC enumerates the principles and declares the situations where exercise of rights recognised by law, by one or few, may conflict with other rights of the public or tend to endanger public peace, tranquillity and/or harmony. The orders passed under Section 144 CrPC are attempted to serve larger public interest and purpose. As already noticed, under the provisions of CrPC complete procedural mechanism is provided for examining the need and merits of an order passed under Section 144 CrPC. If one reads the provisions of Section 144 CrPC along with other constitutional provisions and the judicial pronouncements of this Court, it can undisputedly be stated that Section 144 CrPC is a

power to be exercised by the specified authority to prevent disturbance of public order, tranquillity and harmony by taking immediate steps and when desirable, to take such preventive measures. Further, when there exists freedom of rights which are subject to reasonable restrictions, there are contemporaneous duties cast upon the citizens too. The duty to maintain law and order lies on the authority concerned and, thus, there is nothing unreasonable in making it the initial judge of the emergency. All this is coupled with a fundamental duty upon the citizens to obey such lawful orders as well as to extend their full cooperation in maintaining public order and tranquillity.

53. The concept of orderly conduct leads to a balance for assertion of a right to freedom. In *Feiner* v. *New York* [95 L Ed 295 : 340 US 315 (1951)] the Supreme Court of the United States of America dealt with the matter where a person had been convicted for an offence of disorderly conduct for making derogatory remarks concerning various persons including the President, political dignitaries and other local political officials during his speech, despite warning by the police officers to stop the said speech. The Court, noticing the condition of the crowd as well as the refusal by the petitioner to obey the police requests, found that the conduct of the convict was in violation of public peace and order and the authority did not exceed the bounds of proper State police action, held as under : (L Ed p. 300)

> "… It is one thing to say that the police cannot be used as an instrument for the suppression of unpopular views, and another to say that, when as here the speaker passes the bounds of argument or persuasion and undertakes incitement to riot, they are powerless to prevent a breach of the peace. Nor in this case can we condemn the considered judgment of three New York courts approving the means which the police, faced with a crisis, used in the exercise of their power and duty to preserve peace and order. The findings of the State courts as to the existing situation and the imminence of greater disorder coupled with petitioner's deliberate defiance of the police officers convince us that we should not reverse this conviction in the name of free speech."

54. Another important precept of exercise of power in terms of Section 144 CrPC is that the right to hold meetings in public

places is subject to control of the appropriate authority regarding the time and place of the meeting. Orders, temporary in nature, can be passed to prohibit the meeting or to prevent an imminent breach of peace. Such orders constitute reasonable restriction upon the freedom of speech and expression. This view has been followed consistently by this Court. To put it with greater clarity, it can be stated that the content is not the only concern of the controlling authority but the time and place of the meeting is also well within its jurisdiction. **If the authority anticipates an imminent threat to public order or public tranquillity, it would be free to pass desirable directions within the parameters of reasonable restrictions on the freedom of an individual. However, it must be borne in mind that the provisions of Section 144 CrPC are attracted only in emergent situations. The emergent power is to be exercised for the purposes of maintaining public order.**

55. It was stated by this Court in *Romesh Thappar* [AIR 1950 SC 124 : (1950) 51 Cri LJ 1514] that the Constitution requires a line to be drawn in the field of public order and tranquillity, marking off, may be roughly, the boundary between those serious and aggravated forms of public disorder which are calculated to endanger the security of the State and the relatively minor breaches of peace of a purely local significance, treating for this purpose differences in degree as if they were different in kind. The significance of factors such as security of State and maintenance of public order is demonstrated by the mere fact that the Framers of the Constitution provided these as distinct topics of legislation in Entry 3 of the Concurrent List of the Seventh Schedule to the Constitution.

56. Moreover, an order under Section 144 CrPC being an order which has a direct consequence of placing a restriction on the right to freedom of speech and expression and right to assemble peaceably, should be an order in writing and based upon material facts of the case. This would be the requirement of law for more than one reason. Firstly, it is an order placing a restriction upon the fundamental rights of a citizen and, thus, may adversely affect the interests of the parties, and secondly,

under the provisions of CrPC, such an order is revisable and is subject to judicial review. Therefore, it will be appropriate that it must be an order in writing, referring to the facts and stating the reasons for imposition of such restriction. In *Praveen Bhai Thogadia* [(2004) 4 SCC 684 : 2004 SCC (Cri) 1387] , this Court took the view that the Court, while dealing with such orders, does not act like an appellate authority over the decision of the official concerned. It would interfere only where the order is patently illegal and without jurisdiction or with ulterior motive and on extraneous consideration of political victimisation by those in power. Normally, interference should be the exception and not the rule.

57. A bare reading of Section 144 CrPC shows that:

(*1*) It is an executive power vested in the officer so empowered;
(*2*) There must exist sufficient ground for proceeding;
(*3*) Immediate prevention or speedy remedy is desirable; and
(*4*) An order, in writing, should be passed stating the material facts and the same be served upon the person concerned.

These are the basic requirements for passing an order under Section 144 CrPC. Such an order can be passed against an individual or persons residing in a particular place or area or even against the public in general. Such an order can remain in force, not in excess of two months. The Government has the power to revoke such an order and wherever any person moves the Government for revoking such an order, the State Government is empowered to pass an appropriate order, after hearing the person in accordance with sub-section (7) of Section 144 CrPC.

58. Out of the aforestated requirements, the requirements of existence of sufficient ground and need for immediate prevention or speedy remedy is of prime significance. In this context, the perception of the officer recording the desired/contemplated satisfaction has to be reasonable, least invasive and bona fide. The restraint has to be reasonable and further must be minimal. Such restraint should not be allowed to exceed the constraints

of the particular situation either in nature or in duration. The most onerous duty that is cast upon the empowered officer by the legislature is that the perception of threat to public peace and tranquillity should be real and not quandary, imaginary or a mere likely possibility.

59. This Court in Babulal Parate [AIR 1961 SC 884 : (1961) 2 Cri LJ 16 : (1961) 3 SCR 423] had clearly stated the following view : (AIR p. 890, para 26)

> **"26. The language of Section 144 is somewhat different. The test laid down in the section is not merely 'likelihood' or 'tendency'. The section says that the Magistrate must be satisfied that immediate prevention of particular acts is necessary to counteract danger to public safety, etc. The power conferred by the section is exercisable not only where present danger exists but is exercisable also when there is an apprehension of danger."**

The abovestated view of the Constitution Bench is the unaltered state of law in our country. However, it needs to be specifically mentioned that the "apprehension of danger" is again what can inevitably be gathered only from the circumstances of a given case.

60. Once an order under Section 144 CrPC is passed, it is expected of all concerned to implement the said order unless it has been rescinded or modified by a forum of competent jurisdiction. Its enforcement has legal consequences. One of such consequences would be the dispersement of an unlawful assembly and, if necessitated, by using permissible force. An assembly which might have lawfully assembled would be termed as an "unlawful assembly" upon the passing and implementation of such a preventive order. The empowered officer is also vested with adequate powers to direct the dispersement of such assembly. In this direction, he may even take the assistance of officers concerned and armed forces for the purposes of dispersing such an assembly. Furthermore, the said officer has even been vested with the powers of arresting and confining the persons and, if necessary, punishing them in accordance with law in terms of Section 129 CrPC. An order under Section 144 CrPC would have an application to an "actual" unlawful assembly

> as well as a "potential" unlawful assembly. This is precisely the scope of application and enforcement of an order passed under Section 144 CrPC."

(Emphasis supplied)

The Apex Court in the afore-quoted judgment has emphatically held that the very object and purport of Section 144 of the Cr.P.C. is to enable for issuance of temporary orders in situations of urgent necessity, particularly, where nuisance or apprehended danger requires immediate prevention or prompt remedial response. The Apex Court further underscores that any such order must disclose material facts for constituting the basis for its issuance and must be served in the manner prescribed under Section 134 of the Cr.P.C. and when the person does not admit service, an order can be passed ex-parte. In **RAMLILA MAIDAN** *supra,* the Apex Court delineates the essential postulates governing the exercise of power under Section 144 of the Cr.P.C. It reiterates the power is executive in character and for its exercise, there must exist sufficient grounds warranting recourse to the said provision; that circumstances must demand immediate prevention or a speedy remedy. The Apex Court holds that these are the basic requirements of passing an order under Section 144 of the Cr.P.C

and such an order against an individual or persons should not remain in force, not beyond two months. The Apex Court further holds that an order under Section 144 of the Cr.P.C. would have an application to an actual unlawful assembly as well as a potential unlawful assembly. This is precisely the scope of application and enforcement of an order under Section 144 of the Cr.P.C. What would unmistakably emerge from the afore-quoted judgment is that Section 144 of the Cr.P.C. does not confer such power that can be exercised in arbitrary manner. There must be sufficient ground for proceeding and the order must set out material facts of the case in the written order unless the Magistrate has personal knowledge or a report that is placed before him. He must opine that it is prima facie necessary. The Apex Court has also held that the restraint order cannot be allowed to exceed the constraints of a particular situation either in nature or in duration.

12.6. The Apex Court in the case of **ANURADHA BHASIN v. UNION OF INDIA**[6]**,** holds as follows:

---

[6] (2020) 3 SCC 637

"…. …. ….

39. It has been argued by the counsel for the petitioners that the restrictions under Article 19 of the Constitution cannot mean complete prohibition. In this context, we may note that the aforesaid contention cannot be sustained in light of a number of judgments of this Court wherein the restriction has also been held to include complete prohibition in appropriate cases. [*Madhya Bharat Cotton Assn. Ltd.* v. *Union of India* [*Madhya Bharat Cotton Assn. Ltd.* v. *Union of India*, AIR 1954 SC 634] , *Narendra Kumar* v. *Union of India* [*Narendra Kumar* v. *Union of India*, (1960) 2 SCR 375 : AIR 1960 SC 430] , *State of Maharashtra* v. *Himmatbhai Narbheram Rao* [*State of Maharashtra* v. *Himmatbhai Narbheram Rao*, (1969) 2 SCR 392 : AIR 1970 SC 1157] , *Sushila Saw Mill* v. *State of Orissa* [*Sushila Saw Mill* v. *State of Orissa*, (1995) 5 SCC 615] , *Pratap Pharma (P) Ltd.* v. *Union of India* [*Pratap Pharma (P) Ltd.* v. *Union of India*, (1997) 5 SCC 87] and *Dharam Dutt* v. *Union of India* [*Dharam Dutt* v. *Union of India*, (2004) 1 SCC 712] .]

40. The study of the aforesaid case law points to three propositions which emerge with respect to Article 19(2) of the Constitution. (*i*) Restriction on free speech and expression may include cases of prohibition. (*ii*) There should not be excessive burden on free speech even if a complete prohibition is imposed, and the Government has to justify imposition of such prohibition and explain as to why lesser alternatives would be inadequate. (*iii*) Whether a restriction amounts to a complete prohibition is a question of fact, which is required to be determined by the Court with regard to the facts and circumstances of each case. [Refer to *State of Gujarat* v. *Mirzapur Moti Kureshi Kassab Jamat* [*State of Gujarat* v. *Mirzapur Moti Kureshi Kassab Jamat*, (2005) 8 SCC 534] .]

41. The second prong of the test, wherein this Court is required to find whether the imposed restriction/prohibition was least intrusive, brings us to the

question of balancing and proportionality. These concepts are not a new formulation under the Constitution. In various parts of the Constitution, this Court has taken a balancing approach to harmonise two competing rights. In *Minerva Mills Ltd.* v. *Union of India* [*Minerva Mills Ltd.* v. *Union of India*, (1980) 2 SCC 591] and *Sanjeev Coke Mfg. Co.* v. *Bharat Coking Coal Ltd.* [*Sanjeev Coke Mfg. Co.* v. *Bharat Coking Coal Ltd.*, (1983) 1 SCC 147] , **this Court has already applied the balancing approach with respect to fundamental rights and the directive principles of State policy**.

…. …. ….

148. Before parting we summarise the legal position on Section 144 CrPC as follows:

148.1. The power under Section 144 CrPC, being remedial as well as preventive, **is exercisable not only where there exists present danger, but also when there is an apprehension of danger. However, the danger contemplated should be in the nature of an "emergency" and for the purpose of preventing obstruction and annoyance or injury to any person lawfully employed.**

148.2. The power under Section 144 CrPC cannot be used to suppress legitimate expression of opinion or grievance or exercise of any democratic rights.

148.3. An order passed under Section 144 CrPC should state the material facts to enable judicial review of the same. The power should be exercised in a bona fide and reasonable manner, and the same should be passed by relying on the material facts, indicative of application of mind. This will enable judicial scrutiny of the aforesaid order.

148.4. While exercising the power under Section 144 CrPC, the Magistrate is duty-bound to balance the rights and restrictions based on the principles of proportionality and thereafter apply the least intrusive measure.

148.5. Repetitive orders under Section 144 CrPC would be an abuse of power."

(Emphasis supplied)

The Apex Court while succinctly summarizing the governing principles under Section 144 of Cr.P.C., has held that the exercise of power must confirm to the doctrine of proportionality, employing only those measures that are least intrusive and no more restrictive than what the circumstances demand. The order must disclose the material facts forming its foundation so as to permit meaning judicial scrutiny. The Authorities must act in a bona fide reasonable and duly informed manner demonstrably reflecting application of mind to the facts before it. The Apex Court further examines the scope of administrative power in the context of exigent circumstances that may justify passing an ex-parte order under Section 144 of the Cr.P.C., reiterating that the touchstone of such action is the urgency of the situation. The efficacy of invoking Section 144 of the Cr.P.C., the Court holds, lies in its ability to avert and imminent or apprehended harm without which the exercise of such extraordinary power would stand bereft of justification.

12.7. On a coalesce of the principles enunciated by the Apex Court from **BABU LAL PARATE** *supra* to **ANURADHA BHASIN** *supra* what unmistakably emerges is that the power under Section 144 of the Cr.P.C. is to be invoked solely for the purposes of preventing nuisance, addressing apprehended danger, ensuring immediate prevention and securing speedy remedy – these are the causes that animate the said provision. Correspondingly when the State proceeds to pass an ex-parte order, the State is to record a reasoned and speaking order setting out material facts and demonstrating that the action is necessitated to forestall a rationally apprehended situation. These are the broad principles laid down by the Apex Court in the afore-mentioned cases.

INTERPRETATION BY DIFFERENT HIGH COURTS:

13. Several High Courts have interpreted Section 144 of the Cr.P.C. Therefore, I deem it appropriate to consider a few.

13.1. The **HIGH COURT OF CALCUTTA** in the case of **PRODYOT KUMAR MUKHERJEE v. R. GERSAPPE, REGIONAL MANAGER, BANK OF INDIA**[7]**,** has held as follows:

---

[7] 1973 SCC OnLine Cal.135

"14. I will now proceed to consider the four dimensions of the arguments raised on behalf of the second party-petitioners. The first dimension of Mr. Bose's arguments consists of two parts. The first part relates to the necessity of holding an enquiry before passing an order under Section 144, Criminal Procedure Code. It is quite true, as the Supreme Court held in the case of *Babulal Parate* v. *State of Maharashtra* reported in AIR 1961 SC 884 : ((1961) 2 Cri LJ 16) **that Section 144, Criminal Procedure Code does not confer an arbitrary power and the latter part of Section 144(1) makes the same clear. It would not be possible for the Magistrate to hold that "there is sufficient ground for proceeding" and set out "the material facts of the case" in the written order unless he makes an enquiry or is satisfied about the facts from personal knowledge or on a report made to him which he prima facie accepts as correct. The opinion or satisfaction of the Magistrate, as mentioned in the Section, is therefore a mixed concept — partly subjective and partly objective. The order impugned clearly shows however that the learned Chief Presidency Magistrate perused the petition filed before him and on being satisfied upon the materials disclosed that the situation called for an order he passed the same. This cannot be taken to be an arbitrary exercise of discretion.** The Statute allows it and it would neither be expedient nor proper for this Court, to go behind this satisfaction at this stage. The answer to the second part of the submission relating to the requirement for stating the material facts of the case in the written order is again twofold. Firstly, the material facts are substantially there, though not in details in the order impugned, and is evident from the reference to the perusal of the petition and the situation disclosed thereby, and at this stage for the purpose of a prima facie satisfaction, the same is sufficient enough. The order as passed does refer to a petition disclosing a situation pin-pointing urgency and calling for an interim order. It should not be overlooked that the back-drop of the order is Chapter XI, Criminal Procedure Code relating to temporary orders in urgent cases of nuisance or apprehended danger and an assessment of such an order cannot be oblivious of that. Secondly in any event, such a statement of "the material facts of the case" is not the sine qua non of an order passed ex parte under sub-section (2) to Section 144, Criminal Procedure Code**, the dominant consideration whereof is emergency, excepting a**

reference to the same. The words used in the Statute therefore do not lend assurance to Mr. Bose's contention.

… … ….

18. Mr. Bose then referred to the case of *P.T. Chandra, Editor Tribune* v. *Emperor* reported in AIR 1942 Lahore 171 : (43 Cri LJ 747) (Full Bench) wherein Chief Justice Young delivering the judgment of the Court held at p. 172 that

> **"In this order no material facts, which would justify the order, have been given. To justify an order under Section 144 there must be a causal connexion between the act prohibited and the danger apprehended to prevent which the order is passed."**

(Emphasis supplied)

13.2. The **HIGH COURT OF ANDHRA PRADESH** in the case of **BIJINIBEMULA LINGA MURTHY REDDY v. BINJI HUSSAIN SAHEB**[8], has held as follows:

"…. …. ….

6. The grounds urged to say that the impugned order is one made without jurisdiction and is illegal are that the essential factors which give jurisdiction to the Sub-divisional Magistrate to act under Sec. 144 Cr. P.C. are conspicuously absent in his order and that it does not also contain anything to justify the denial of an opportunity to the petitioners to be heard before making the order. **Section 144 finds place in Chapter X of the Code dealing with maintenance of public order and tranquillity.** The important conditions necessary to justify action under Sec. 144, as can be seen from the provisions thereof, are that the Magistrate must be satisfied about the necessity for immediate prevention of an act by the person or persons in possession of property, which in his judgment is likely to cause obstruction, annoyance or injury to any person lawfully employed, danger to human life, health or safety, or disturbance of the public

[8] **1979 SCC OnLine AP 213**

tranquillity or a riot, or an affray. It is the urgency of the case calling for a speedy remedy or immediate preventive action that invests the Magistrate with jurisdiction to act under Sec. 144. It can also be seen from the marginal heading that Sec. 144 is intended to clothe the Magistrate with powers to issue orders in urgent cases of nuisance or apprehended danger. **So, if there is neither urgency calling for the application of a speedy remedy or preventive action nor apprehension of danger to human life, health or safety etc. resulting from obstruction, annoyance or injury to any person lawfully employed, the Magistrate cannot clutch at jurisdiction for issuing an order under Sec. 144 Cr. P.C. A mere statement in the order that the Magistrate considers it necessary to take urgent action is not sufficient if the facts show that, in reality, there is no such urgency for the preventive action.** However, not only is there no reference to the need for immediate prevention or a speedy remedy in the impugned order: but there was in fact no such urgency since the information placed before the Sub-divisional Magistrate simply showed that the respondent, with an ulterior motive to grab the lands of the complainant Binji Hussain Saheb, obstructed the flow of water to his lands from S.N. 533 belonging to them, thus causing annoyance and threat to the complainant. **So it is not as the act alleged against the respondents was such as would endanger human life, health or safety or would result in disturbance of public tranquillity to call for a speedy remedy or urgent preventive action. If it is borne in mind that the land through which Binji Hussain Saheb claimed the right to take water to his own lands admittedly belongs to the respondents, it can easily be seen that this is pre-eminently a matter for decision by a Civil Court.** Except a bald statement that Hussain Saheb has a right to unobstructed flow of water through S. No. 533 to his lands under field to field irrigation system of K.C. Canal, there is nothing else in the impugned order indicating whether the alleged right is based on easement, grant or contract or whether it is a natural right. When it is not in dispute that S. No. 533, over which the right in question was claimed by Hussain Saheb admittedly belongs to the respondents, the effect of the order under challenge would be suppression of their legal rights even for a temporary period and should not have been made unless the action was absolutely necessary to avert a breach of peace. But it was already seen that there was absolutely no justification for apprehension of any breach of peace or danger to human life,

health or safety. The motive attributed to the respondents (petitioners) for causing the alleged obstruction of flow of water through their lands is to coerce Hussain Saheb into submission and grab his lands as can be seen from the order in this case. But even assuming that the respondents (petitioners) were actuated by some such motive, it is unthinkable that their action in obstructing the flow of water through their lands, even if true, was such as would forthwith or in the near future lead to a breach of peace by causing annoyance to the complainant. **The section does not confer arbitrary power and the power in question being discretionary, should be used only when it is really called for in order to prevent danger to human life, health or safety or disturbance of public peace. But as already stated, there is nothing in the impugned order suggesting that the material available before the Sub-Divisional Magistrate in this case was sufficient to justify action under Sec. 144 Cr. P.C. and it must therefore, be said that it is an order made without jurisdiction."**

(Emphasis supplied)

13.3. The **HIGH COURT OF BOMBAY** in the case of **MANOHAR GAJANAN JOSHI v. S.B. KULKARNI, UPPER DISTRICT MAGHISTRATE, AURANGABAD**[9] has held as follows:

"…. …. ….

7. Article 19(1)(d) confers a fundamental rights upon the citizens to move freely throughout the territory of India. Article 19(5) *inter alia* prescribes that confirmation of right will not prevent the State from making any law imposing reasonahle restrictions on the exercise of the right either in the interest of the general public or for protection of the interests of Scheduled Tribe. The provisions of section 144 of the Code encroaches upon the fundamental right of the citizen to move freely throughout the territory of India. Section 144 forms part of Chapter X of the Code, which deals with "Maintenance of Public

[9] **1988 SCC OnLine Bom 250**

Order and Tranquility", and the heading of section 144 is "Urgent cases of nuisance or apprehended danger". Section 144(1) and of the Code reads as under:—

> "144. (1) In cases where, in the opinion of a District Magistrate, a Sub-divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by section 134, direct any person to abstain from a certain act or to take certain order with respect to 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 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,"

8. The plain reading of this section makes it clear that the powers can be exercised by the Magistrate directing any person to abstain from a certain act, provided the Magistrate finds sufficient ground for proceeding under the section and immediate prevention by speedy remedy is desirable. The section confers power on the Magistrate with a view to prevent nuisance or apprehended danger. Sub-section (4) of section 144 sets out that no order under this section shall remain in force for more than two months from the making thereof, and the order can be extended to a period not exceeding six months provided the State Government considers it necessary and issues a notification to that effect. The power being preventive in nature, obviously cannot remain in operation for a considerably long time. Though sub-section (1) of section 144 does not specifically provide that powers can be exercised by the District Magistrate only after due notice to the person to be affected, provisions of sub-section (2) and sub-sections (5), (6) and (7) make it crystal clear that, that is the basic requirement before exercise of the powers. Sub-section (2) provides that the District Magistrate may in case of emergency or in cases where circumstances do not admit of serving in due time of a notice upon the person aggrieved, may pass order *ex parte*. Sub-sections (5) and (6) enable the aggrieved person to apply to the Magistrate or the State Government and request to rescind or alter any order under this section. Sub-section (7) provides that Magistrate or

the State Government, where such an application is made, shall afford to the applicant an early opportunity of being heard, either in person or by pleader and showing cause against the order.

9. The combined reading of sub-section (2) and sub-sections (5), (6) and (7) leaves no manner of doubt that the District Magistrate cannot exercise powers and restrain person from entering in area without prior service of notice to show cause. Indeed the service of a notice on a person to be adversely affected is a basic requirement and also the principles of natural justice and it is not necessary for the Legislature to so specifically state in the section. **The Legislature was fully conscious that the District Magistrate may be required to exercise the powers under section 144 in cases where the situation is so emergent that the District Magistrate cannot wait to give hearing to the person to be adversely affected. There may also be cases where the person to be adversely affected cannot be easily served with show cause notice. In these kind of cases the Legislature has conferred power on the District Magistrate to pass *ex parte* orders. It is therefore obvious that an *ex-parte* order can be passed provided the requirement of sub-section (2) are satisfied and not only with a view to bye pass the basic requirement of service of a show cause notice on the person to be adversely affected it would be colourable exercise of powers under sub-section (2) if the anxiety is to deny right to the person to be adversly affected to show cause to the proposed action it is incumbent upon the District Magistrate to be satisfied that the case is one of emergency and the cirumstances do not admit of serving within due time show cause notice upon the person against whom the order is to be passed.**

… … …

11. The criticism levelled by Shri Pradhan in respect of exercise of powers under sub-section (2) of section 144 of the Code on orders dated June 18, July 7 and July 22, 1988 is justified. The perusal of order dated June 18, 1988 indicates that there were no not on the date of passing of the order and in fact situation was fast returning to normalcy. The only reason given by the District Magistrate in the order is that the Shiv Sena Organization had filed writ petition in High Court, Aurangabad Bench, challenging the election of Mayor and

Deputy Mayor and the hearing is not over. The order dated July 7, 1988 refers to the dismissal of the petition and the alleged press conference of Professor Madhok and the fact that Bakari-Id and Ashadhi Ekadashi was being celebrated on July 25, 1988. The order dated June 18, 1988 prevented the petitioner from entering within the limits of Aurangabad District for a period of 12 days, while order dated July 7, 1988 restrained the petitioner for a period of 20 days. The order dated July 22, 1988 was to remain in operation for 14 days and therefore the three orders together prevented the petitioner from entering Aurangabad District for a period of one month and sixteen days. The complaint of Shri Pradhan that exercise of powers under sub-section (2) of section 144 of the Code while passing these three orders was colourable is correct and deserves acceptance. Neither the order nor the return filed by Shri S.B. Kulkarni, Additional District Magistrate, Aurangabad, sworn on August 2, 1988 reflects as to how the situation was so emergent and the time available was not enough to serve show cause notice on the petitioner. **It is not permissible to ignore the requirement of service of notice before passing adverse order against a citizen by taking resort to sub-section (2) of section 144 and passing *ex-parte* orders Shri Barday was unable to explain why it was not possible to serve show cause notice on the petitioner and pass order under sub-section (1) of section 144. The danger of permitting the District Magistrate to pass *ex parte* orders one after another under sub-section (2) is to enable the authority to travel beyond the limits fixed by sub-section (4), that the order shall not remain in force for more than two months. The liberty to pass *ex parte* orders, one after another, without the existence of requirement under sub-section (2) would enable the District Magistrate to contravene provisions of sub-section (4) and restrain a citizen from entering certain area in excess of period of two months. Exercise of such powers would therefore obviously be colourable and misuse of the powers conferred under section 144 of the Code**. In the present case, on the material placed before us on behalf of the State Government, we have no hesitation in concluding that there was no difficulty for the District Magistrate to serve show cause notice on the petitioner before passing orders in June and July 1988, and therefore, resort to passing *ex-parte* orders under sub-section (2) was clearly uncalled for. **The District Magistrate by passing these orders under sub-section (2)**

has denied a substantive right to the petitioner to show cause and therefore these three orders cannot be upheld. Shri Barday suggested that it was open for the petitioner to move the District Magistrate or the State Government against these *ex-parte* orders under sub-section (5) or (6), but we are unable to see any merit in the submission. **The mere fact that the petitioner had a remedy to approach the District Magistrate is no answer to the complaint that the exercise of powers under sub-section (2) was wholly incorrect. It cannot be contended that the District Magistrate would exercise powers when there is no occasion to do so, and then the person adversely affected had no remedy to complain against that order, but only to go back to the District Magistrate and request him to alter or rescind the same. The aggrieved citizen is entitled to approach this Court and complain that the District Magistrate has exercised powers *malafide* and without satisfying that the conditions to pass *ex parte* orders existed.** The three orders dated June 18, July 7 and July 22, 1988, therefore, are clearly illegal and without jurisdiction and are required to be struck down."

(Emphasis supplied)

13.4. The **HIGH COURT OF KERALA** in the case of **UMMULKULUS v. EXECUTIVE MAGISTRATE**[10] has held as follows:

"5. S. 144 of the Crl. P.C. gives wide power among others to the Executive Magistrate specially empowered by the State Government. In cases where, in the opinion of a Sub Divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in that behalf, there is sufficient ground for proceeding under the section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case direct any person to abstain from certain acts, if he considers that

[10] **1990 SCC OnLine Ker.409**

such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or an affray. The section empowers the Magistrate to take action in urgent cases. He gets jurisdiction if he is satisfied that an immediate prevention or speedy remedy is desirable. His opinion as to the existence or sufficient ground for proceeding under section is the foundation for the proceedings and the satisfaction that the direction is needed to prevent nuisance or disturbance of public tranquillity is the requisite of the section. The Magistrate should resort to S. 144 only if there is no time or opportunity for any other course. The order must set out the material facts of the case. But if there are materials on the record justifying such an order, the order will not be vitiated. The Magistrate, no doubt, should not usurp the functions of a civil court. But the Magistrate will not be precluded from considering the nature of the claims set up by the parties. **Sub-section (2) of S. 144 states that in cases of emergency or in cases where the circumstances do not permit of the serving in due time of a notice upon the person against whom the order is directed, orders can be passed ex-para**"

(Emphasis supplied)

13.5. The **HIGH COURT OF ALLAHABAD**, in the case of, **KISHAN LAL CHOUHAN v. STATE OF U.P.**[11], has held as follows:

> **"23.** The main tenor of the argument of the State is that the Magistrate is to be subjectively satisfied for initiating a proceeding under Section 144 Cr. P.C. and once that satisfaction is arrived at on the basis of reports the same is not to be interfered with as it was an executive order and not a judicial or quasi-judicial order. It was further stated that when alternative remedies were available to challenge the order the extraordinary and inherent powers would not be exercised. In this context the case laws have already been referred and although the Supreme

---

[11] **1998 SCC OnLine All 662**

court had ruled that the order recorded under Section 144 Cr. P.C. is neither judicial nor quasi-judicial, it had also observed that the power under Section 144 Cr. P.C. was to be exercised by senior Magistrates who have to set down the material facts, in other words to make an enquiry in exercise of judicial power with reason for the order. Section 482 Cr. P.C. provides exercise of the inherent powers to make such orders as may be necessary:

(1) to give effect to any order under the Code,

(2) to prevent abuse of the process of any court, and

(3) otherwise to secure the ends of Justice.

24. We may confine to the second aspect, i.e. to prevent abuse of the process, of any court. It is true that the new Cr. P.C. of 1973 separates the powers between the executive and the Judiciary and in that sense, as observed by the Supreme court, the functions of the Magistrates are police functions in recording an order under Section 144 Cr. P.C. But under the frame of the Cr. P.C., in Chapter II, the executive Magistrates also form a class of criminal courts. Thus, when an action under the Code, to be precise under Section 144 Cr. P.C. is taken by an executive Magistrate, it is an order by a court and by norm and practice and by law as well we have kept those orders open to revision before a competent Court. Thus the order recorded by a Magistrate for action under Section 144 Cr. P.C. is always open to judicial scrutiny by all higher courts, and that was precisely stated by the Supreme Court in paragraph 29 of *Madhu Limay's case*.

25. This Section 144 Cr. P.C. appears in Chapter X covering maintenance of public order and tranquility and in part C thereof this Section is the only provision under the heading of "urgent cases of nuisance or apprehended danger". The language also speaks that in cases where in the opinion of the executive Magistrate there is sufficient ground for proceeding under this Section and immediate prevention or speedy remedy is desirable such Magistrate may by an urgent order stating the material facts of the case direct any person to abstain from certain act or to take certain order with respect to 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 to any person lawfully employed or danger to human life, health or safety or a disturbance of public tranquility, riot or affray.

26. The Magistrate is certainly to form his opinion before proceeding under this section. The opinion or satisfaction may not be a subjective one as the section itself requires that there should be sufficient ground and the Magistrate is to state the material facts of the case. Together with these requirements, there is the scope of judicial review by higher courts and that suggests that the opinion or satisfaction cannot but be objective. It is the urgency of a case of apprehended danger that gives a jurisdiction to a Magistrate to proceed under Section 144 Cr. P.C. and not a remote probability of apprehension of breach of peace or a farfetched link between the action prohibited and a probable breach of peace.

27. If there be a lack of material to read this urgency from the face of the averments, certainly the Magistrate will be deemed not to have a jurisdiction under this section. Once the order suffers from initial lack of jurisdiction, it must be open to intervention under Section 482 Cr. P.C. despite there being avenues for getting it rescinded. The powers under Section 144(5)(6) could be invoked when there is an order within the jurisdiction but when an order is without jurisdiction the powers under Section 482 Cr. P.C. cannot be barred simply for existence of an alternative remedy."

(Emphasis supplied)

13.6. The **HIGH COURT OF GAUHATI** in the case of **PREMODA MEDHI v. GAUHATI ROLLER FLOUR MILLS LIMITED**[12]**,** has held as follows:

"8. It is settled law that the Magistrate is authorised to act under section 144(1) and (2) Cr.P.C.

---

[12] 2002 SCC OnLine Gau.237

only when he is satisfied as regards the existence of such emergent or urgent circumstances and such urgency must be reflected in the order itself with reasons thereof. A mere statement that he is satisfied that there is every possibility for serious breach or peace between the parties as well as public tranquility, is not sufficient to exercise power under section 144(1) and (2) of the Cr.P.C. A duty is cast upon the Magistrate to project the factual situation pertaining to urgent and emergent circumstances in rendering the ex-parte order."

(Emphasis supplied)

13.7. Again, the **HIGH COURT OF ALLAHABAD** in the case of **D.S. JOSEPH V. STATE OF U.P.[13],** has held as follows:

"…. …. ….

6. Furthermore, there must be an objective basis and concrete material before the City Magistrate to reach his conclusion that public order was threatened in respect of both the issues which constitute the basis of this order. One, that there was a dispute between the two Christaian bodies, i.e. the Church situated in the Mission Compound and the Mount Carmel school. In this connection in the affidavit filed by the petitioner in support of this Criminal Revision, the petitioner has stated that there was no civil or criminal dispute or litigation of any kind between the Mission Compound Church and Mount Carmel School. Two, there must be objective material that one of the bodies was engaging in unlawful conversions. **This decision could not be based on the mere ipse dixit, subjective impression or surmises of a particular police officer or other official. Subject to reasonable restrictions which can be made by law for maintaining public order and for some other objectives such as maintaining the sovereignty and integrity of India, decency or morality, Article 19(1)(b) of**

---

[13] 2004 SCC OnLine All 2061

the Constitution gives all citizens a right to assemble peaceably and without arms.

…. …. ….

12. However, there must be specific allegations and objective basis before the City Magistrate for reaching the conclusion that there has been an attempt at forcible or fraudulent conversions, and it should never be passed only in response to the exaggerated susceptibilities of organisations sponsoring a particular philosophy that they do are resentful of the practice or profession of their religion by members of another religion, and the public order must actually have been threatened because of the wrong doings of the believers of a particular faith, and not because of the unjustified response of another group. Such an order should never be passed on the mere opinion evidence of officials or individuals who may be entertaining certain prejudicies.

13. The City Magistrate could also consider whether it would be appropriate to pass the extreme order under Section 144, CrPC of preventing the concerned persons from assembling in numbers of five or more, or whether the lesser expedient of binding over quarrelling factions to maintain the peace would not suffice.

14. It should be remembered that this order was passed ex parte, without any opportunity or notice to the parties. The order itself observes that the police report was dated 5-8-2004, yet the order under Section 144, CrPC was passed after 14 days on 19-8-2004. The order does not indicate any fresh emergency or incident after 5-8-2004 justifying passage of the order on 19-8-2004 without giving any notice or opportunity to the affected parties, which was to remain in force for a month."

(Emphasis supplied)

13.8. Again, the **HIGH COURT OF BOMBAY** in the case of **JOAN MASCARENHAS E D'SOUZA V. STATE OF GOA[14],** has held as follows:

> **"13.** The main questions raised in this petition are as under:
>
> **(*a*) Whether there was any material before the District Magistrate which could form the basis for exercising jurisdiction under Section 144 CrPC for passing the impugned order?**
>
> **(*b*) On the assumption that there was enough of material against the petitioner and Domnic to exercise jurisdiction under Section 144 CrPC, whether the District Magistrate was within his jurisdiction bounds in passing the order to curb religious conversions or direct the petitioner to abstain from engaging in religious conversions as was done in the impugned order?**
>
> **(*c*) Whether the impugned order is in violation of the principles of natural justice and passed in violation of the petitioner's fundamental rights under Articles 19(1), 25 and 26 of the Constitution of India?**
>
> ....
>
> **16. The provision forms part of Chapter 10 of the Code which deals with maintenance of public order and tranquillity. Sub-section (1) of Section 144 requires the District Magistrate, whilst passing a written order, to state the material facts of the case, and the basis on which the Magistrate considers that directions are required to be issued against a person or group of people to prevent danger to human life, health, safety or a disturbance of public tranquillity or right.**
>
> **17. As mandated by sub-section (1) of Section 144, there appears to be no live material placed before the District Magistrate when passing the impugned order, much less material on the basis of which any conclusion could be drawn that recent acts of the petitioner could have resulted in disturbance of public tranquillity or caused a riot.**

[14] 2023 SCC OnLine Bom 1055

18. Sub-section (2) of Section 144 empowers the Magistrate to pass such an order ex parte, only in case of emergency or in a case where the circumstances do not admit of serving in due time a notice upon the person against whom such order is directed.

19. The impugned order does not make any reference to any incident or any material before the District Magistrate which was of emergent nature or which spelt out circumstances on the basis of which the District Magistrate could exercise jurisdiction under sub-section (2) of Section 144 to directly issue the order ex parte.

20. In the present case, the impugned order was passed, admittedly, without giving the petitioner any hearing, or affording her an opportunity of placing on record the material which has now been placed before us. The material placed before us in this petition, which includes details of cases from the year 2009 till 2022 against the petitioner and her husband Domnic, which have either ended in acquittal/discharge or filing of C summary reports, if were considered by the District Magistrate, would have obviously resulted in the District Magistrate refraining from passing the impugned order. There was clearly no material before the District Magistrate to proceed in terms of the provisions of Section 144 to record any subjective satisfaction. The impugned order is, therefore, passed contrary to the provisions of Section 144.

21. On the second question, clearly, there being no material-on-record of the District Magistrate to enable him to proceed under Section 144 of the Code, he would have no jurisdiction to exercise powers under that provision. A reading of the provisions of Section 144 of the Code would require certain facts to be placed before the District Magistrate which may be referred to as jurisdictional facts, to enable him to proceed to arrive at his subjective satisfaction that such facts would lead to disturbance of public tranquillity. There being no material of this nature on record, the impugned order was clearly one which was passed without jurisdiction and is, therefore, contrary to Section 144 of the Code.

22. We take note of the fact that there has been a tendency of late for the authorities to abuse and misuse the powers vested in them under the provisions of Section 144 of the Code, by passing preventive orders either concocted material or on the basis of reports which actually do not spell out any factual basis for exercising jurisdiction under Section 144 of the Code.

23. Whilst dealing with the scope of the provision of Section 144 of the Code and the exceptional nature of the provision of Section 144 of the Code, the Supreme Court in *Ramlila Maidan Incident, In re* [*Ramlila Maidan Incident, In re*, (2012) 5 SCC 1 : (2012) 2 SCC (Civ) 820 : (2012) 2 SCC (Cri) 241 : (2012) 1 SCC (L&S) 810] , has observed as under: (SCC pp. 90-91 and 94, paras 210, 212 and 225)

> "*210.* The order passed under Section 144CrPC does not give any material facts or such compelling circumstances that would justify the passing of such an order at 11.30 p.m. on 4-6-2011. There should have existed some exceptional circumstances which reflected a clear and prominent threat to public order and public tranquillity for the authorities to pass orders of withdrawal of permission at 9.30 p.m. on 4-6-2011. What weighed so heavily with the authorities so as to compel them to exercise such drastic powers in the late hours of the night and disperse the sleeping persons with the use of force, remains a matter of guess. Whatever circumstances have been detailed in the affidavit are, what had already been considered by the authorities concerned right from 25-5-2011 to 3-6-2011 and directions in that behalf had been issued. Exercise of such power, declining the permission has to be in rare and exceptional circumstances, as in the normal course, the State would aid the exercise of fundamental rights rather than frustrating them.
>
> ***
>
> *212.* There is some substance in this submission of Mr Ram Jethmalani. It is clear from Annexure 'J' annexed to the affidavit of the Police Commissioner that the letter of the Joint Deputy Director dated 3-6-2011 referring to threat on Baba Ramdev and asking the police to review and strengthen the security arrangements, was actually received on 6-6-2011 in the office of the Commissioner of Police and on 7-6-2011 in the office of the Joint Commissioner of Police. Thus, it could be reasonably inferred that this input was not within the knowledge of the officer concerned. I do not rule out the possibility of the intelligence sources having communicated this input to the police authorities otherwise than in writing as well. But that would not make much of a difference for the reason that as already held, the order under Section 144CrPC does not contain

material facts and it is also evident from the bare reading of the order that it did not direct Baba Ramdev or Respondent 4 to take certain actions or not take certain actions which is not only the purpose but is also the object of passing an order under Section 144CrPC.

***

225. There is some merit in the submissions of the learned amicus curiae. Existence of sufficient ground is the sine qua non for invoking the power vested in the executive under Section 144CrPC. It is a very onerous duty that is cast upon the empowered officer by the legislature. The perception of threat should be real and not imaginary or a mere likely possibility. The test laid down in this section is not that of 'merely likelihood or tendency'. The legislature, in its wisdom, has empowered an officer of the executive to discharge this duty with great caution, as the power extends to placing a restriction and in certain situations, even a prohibition, on the exercise of the fundamental right to freedom of speech and expression. Thus, in case of a mere apprehension, without any material facts to indicate that the apprehension is imminent and genuine, it may not be proper for the authorities to place such a restriction upon the rights of the citizen."

24. The observations of the Supreme Court in *Ramlila Maidan case* [*Ramlila Maidan Incident, In re*, (2012) 5 SCC 1 : (2012) 2 SCC (Civ) 820 : (2012) 2 SCC (Cri) 241 : (2012) 1 SCC (L&S) 810] **quite clearly set out that the existence of sufficient grounds to proceed is sine qua non for invocation of the powers vested under Section 144 of the Code, and mere likelihood or tendency that an incident might occur, does not empower an officer of the executive to proceed under those provisions. It was further held that a mere apprehension without any material facts to indicate that the apprehension is imminent would not permit a District Magistrate to invoke jurisdiction under Section 144 of the Code as the powers vested under that provision casts upon the Magistrate a onerous duty to balance the jurisdiction vested under the provision, with the rights guaranteed to the citizen of freedom of speech, gathering and propagating his thoughts and religion.**

25. Whilst discussing the powers vested in a District Magistrate under Chapter 10 of the Code, the Supreme Court in *Ramlila Maidan case* [*Ramlila Maidan Incident, In re*, (2012) 5 SCC 1 : (2012) 2 SCC (Civ) 820 : (2012) 2 SCC (Cri) 241 : (2012) 1 SCC (L&S) 810] has further held as under: (SCC pp. 39-40, paras 44 and 45)

"*44.* The distinction between 'public order' and 'law and order' is a fine one, but nevertheless clear. A restriction imposed with 'law and order' in mind would be least intruding into the guaranteed freedom while 'public order' may qualify for a greater degree of restriction since public order is a matter of even greater social concern. Out of all expressions used in this regard, as discussed in the earlier part of this judgment, 'security of the State' is the paramount and the State can impose restrictions upon the freedom, which may comparatively be more stringent than those imposed in relation to maintenance of 'public order' and 'law and order'. However stringent may these restrictions be, they must stand the test of 'reasonability'. The State would have to satisfy the court that the imposition of such restrictions is not only in the interest of the security of the State but is also within the framework of Articles 19(2) and 19(3) of the Constitution.

45. It is keeping this distinction in mind, the legislature, under Section 144CrPC, has empowered the District Magistrate, Sub-Divisional Magistrate or any other Executive Magistrate, specially empowered in this behalf, to direct any person to abstain from doing a certain act or to take action as directed, where sufficient ground for proceeding under this section exists and immediate prevention and/or speedy remedy is desirable. By virtue of Section 144-ACrPC, which itself was introduced by Act 25 of 2005 [Ed.: The Code of Criminal Procedure (Amendment) Act, 2005], the District Magistrate has been empowered to pass an order prohibiting, in any area within the local limits of his jurisdiction, the carrying of arms in any procession or the organising or holding of any mass drill or mass training with arms in any public place, where it is necessary for him to do so for the preservation of public peace, public safety or maintenance of public order. Section 144CrPC, therefore, empowers an executive authority, backed by these provisions, to impose reasonable restrictions vis-à-vis the fundamental rights. The provisions of Section 144CrPC provide for a complete mechanism to be followed by the Magistrate concerned and also specify the limitation of time till when such an order may remain in force. It also prescribes the circumstances that are required to be taken into consideration by the said authority while passing an order under Section 144CrPC."

26. In the present case, there was no material before the District Magistrate placed by the Superintendent of Police to enable him to come to a conclusion that there was any situation of public order envisaged by the acts allegedly committed by the petitioner, for passing prohibition orders under Section 144 of the Code. The reports placed before us, do not spell out any sufficient

grounds to proceed under this section, much less, arm the District Magistrate with the jurisdictional facts to proceed to pass any prohibitory/preventive orders against the petitioner.

27. Question no. 3 deals with the submission that the impugned order was passed in violation of the principles of natural justice, by denying the petitioner any right of hearing before the order was passed. **Admittedly, the petitioner was not heard before the impugned order was passed. The impugned order also does not refer to any material on the basis of which, the District Magistrate could conclude that there was an emergency or that this was a case where circumstances were made out in which delay in service of notice upon the petitioner would defeat the very purpose of passing the preventive order. There is no reference made in the order setting out reasons for the exercise of the powers vested in a District Magistrate under sub-section (2) of Section 144. There is also no date set out in the order to grant the petitioner any hearing. Clearly, therefore, the impugned order is violative of the principles of natural justice as it was passed without affording the petitioner any opportunity of rebutting the allegations or dealing with the contents of the report on the basis of which the same came to be passed.**

28. We now come to the forth question as to whether, irrespective of the jurisdiction of the Magistrate to act under Section 144 of the Code, passing of the impugned order in the nature of banning of the petitioner and her husband Domnic D'Souza from carrying out religious activities in their private space in House No. 302/4 would militate against petitioner's fundamental rights guaranteed under Articles 19(1), 25 and 26 of the Constitution of India.

29. Article 25 of the Constitution of India deals with the right to freedom of religion and reads thus:

> "25. *Freedom of conscience and free profession, practice and propagation of religion*.—
>
> (1) Subject to public order, morality and health and to the other provisions of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

(*a*) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; and

(*b*) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.— The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II.— In sub-clause (*b*) of clause reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly."

30. Article 26 of the Constitution of India confers on religious section or denomination the rights to establish religious institution and to acquire and administer property for that purpose. Article 26 reads as follows:

"26. *Freedom to manage religious affairs*.—

Subject to public order, morality and healthy every religious denomination or any section thereof shall have the right

(*a*) to establish and maintain institutions for religious and charitable purposes;

(*b*) to manage its own affairs in matters of religion;

(*c*) to own and acquire movable and immovable property; and

(*d*) to administer such property in accordance with law."

31. The article guarantees to all persons, the equal entitlement of freedom of conscience and the right to profess, practice and propagate religion. The right conferred upon a citizen to profess and propagate religion correspondingly casts a duty on the State and the executive to ensure that every person should be allowed to freely practise, preach or profess his belief. The State has a duty to extend all possible protection to its citizens, through free speech and the freedom of expression, enshrined in Article 19(1) of the Constitution of India to indulge in public discourse and to propagate religious practice. All persons have a fundamental right to form institution, purchase property for their use and to profess and propagate religion.

32. In *State of W.B.* v. *Jagadishwarananda Avadhuta* [*State of W.B.* v. *Jagadishwarananda Avadhuta*, (2004) 12 SCC 770] ,

whilst dealing with the question as to what would be the true meaning of professing, practicing and propagating religion, the Supreme Court has held thus: (SCC pp. 805-807, paras 85, 86, 87 and 88)

> "*85.* Religion is a social system in the name of God laying down the code of conduct for the people in society. Religion is a way of life in India and it is an unending discovery into the unknown world. People living in society have to follow some sort of religion. It is a social institution and society accepts religion in a form which it can easily practise. George Bernard Shaw stated, 'There is nothing that people do not believe if only it be presented to them as science and nothing they will not disbelieve if it is presented to them as religion.' Essentially, religion is based on 'faith'. Some critics say that religion interferes with science and faith. They say that religion leads to the growth of blind faith, magic, sorcery, human sacrifices, etc. No doubt, the history of religion shows some indications in this direction but both science and religion believe in faith. Faith in religion influences the temperament and attitude of the thinker. Ancient civilisation viz. the Indus Valley Civilisation shows faith of people in Siva and Sakthi. The period of Indus Valley Civilisation was fundamental religion and was as old as at least the Egyptian and Mesopotamian cultures. People worship Siva and the trishul (trident), the emblem of Siva which was engraved on several seals. People also worshipped stones, trees, animals and fire. Besides, worship of stones, trees, animals, etc. by the primitive religious tribes shows that animism viz. worship of trees, stones, animals was practised on the strong belief that they were abodes of spirits, good or evil. Modern Hinduism to some extent includes Indus Valley Civilisation culture and religious faith. Lord Siva is worshipped in the form of linga. Many symbols have been used in Hindu literature. Different kinds of symbols and images have different sanctity. Baring of chest, arms and other parts of body represent the weapons of symbols of Siva. Modern Hinduism has adopted and assimilated various religious beliefs of primitive tribes and people. The process of worship has undergone various changes from time to time.
>
> *86.* The expression 'religion' has not been defined in the Constitution and it is incapable of specific and precise definition. Article 25 of the Constitution guarantees to every person, freedom of conscience and right freely to profess, practise and propagate religion. No doubt, this right is subject to public order related to health and morality and other provisions relating to fundamental right. Religion includes worship, faith and extends to even rituals. Belief in religion is belief in practising a particular faith, to preach and to profess it. Mode of worship is an integral part of religion. Forms and observances of religion may extend to matters of food and dress. An act done in furtherance of religion is protected. A person believing in a particular religion has to express his belief in

such acts which he thinks proper and to propagate his religion. It is settled law that protection under Articles 25 and 26 of the Constitution extends guarantee for rituals and observances, ceremonies and modes of worship which form part and parcel of religion. Practice becomes part of religion only if such practice is found to be an essential and integral part. It is only those practices which are integral part of religion that are protected. What would constitute an essential part of religion or religious practice is to be determined with reference to the doctrine of a particular religion which includes practices which are regarded by the community as part and parcel of that religion. Test has to be applied by courts whether a particular religious practice is regarded by the community practising that particular practice as an integral part of the religion or not. It is also necessary to decide whether the particular practice is religious in character or not and whether the same can be regarded as an integral or essential part of religion, which has to be decided based on evidence.

87. It is not uncommon to find that those (sic) delve deep into scriptures to ascertain the character and status of a particular practice. It has been authoritatively laid down that cow sacrifice is not an obligatory over act for a Muslim to exhibit his religious belief. No fundamental right can be claimed to insist on slaughter of a healthy cow on Bakrid day. Performance of 'sharadha' and offering of 'pinda' to ancestors are held to be an integral part of Hindu religion and religious practice. Carrying 'trishul' or 'trident' and 'skull' by a few in a procession to be taken out by a particular community following a particular religion is by itself an integral part of religion. When persons following a particular religion carry trishul, conch or skull in a procession, they merely practise that which is part of their religion which they want to propagate by carrying symbols of their religion such as trishul, conch, etc. If the conscience of a particular community has treated a particular practice as an integral or essential part of religion, the same is protected by Articles 25 and 26 of the Constitution.

88. Therefore, Ananda Margis have the right to take out a procession in public places after obtaining necessary permission from the authorities concerned and they are also entitled to carry trishul or trident, conch or skull so long as such procession is peaceful and does not offend the religious sentiments of other people who equally enjoy the fundamental right to exercise their religious freedom. An Ananda Margi is entitled to transmit or spread religion by taking out procession in public places and also carry trishul, conch or skull. However, any religious right is subject to public order. The State has got ample powers to regulate the secular activities associated with religious practices. Religious activities are protected under Article 25 of the Constitution. No doubt, such religious freedom is subject to health and subject to

laws made for social welfare. Every person has got the right to follow, practise and propagate his religion."

33. On a reading of the material-on-record, we find no complaint or any reference to any act of the petitioner which would amount to using force, coercion or deception to convert any members of the public to a particular religion. The impugned order, other than making reference to the material considered by us in the earlier paragraphs, does not cite a single incident or particulars of forced conversion being indulged in by the petitioner. In any event, if such was the allegation on a complaint before the police authorities, there are other penal laws that could deal with such complaints against the petitioner, and that by itself could not be a cause for the District Magistrate to exercise jurisdiction under Section 144 of the Code. The conclusion that the petitioner and her husband are carrying out religious activities which have raised communal tension in the village or that they are involved in religious conversion by means of allurement or fraud, appears to be totally baseless, not founded upon any material-on-record and can, therefore, not form the basis for any subjective opinion that the acts of the petitioner would cause a disturbance of public tranquillity or be a matter of public order. The petitioner and her husband Domnic are within their rights to propagate their own religion and to profess it in any manner that they please though within the bounds of law, more so, when it is within their own private property. We are of the opinion, that by claiming to exercise jurisdiction under Section 144 of the Code and prohibiting the petitioner and Domnic from carrying out any religious activities in their property under Survey No. 221/8-A and House No. 302/4 at Tropawaddo, Sodiem, Siolim, is a direct violation of their fundamental rights enshrined in Articles 19(1), 25 and 26 of the Constitution of India, as it seeks to deny them both of their freedom of speech and expression and to their freedom of conscience and the right to freely profess, practice, propagate their religion or form religious institutions.

34. Since the impugned order is in direct breach of the petitioner's fundamental rights, we are of the considered opinion that even if the petitioner had an alternate remedy at law, there would be no fetters placed upon this Court

from exercising its jurisdiction under Article 226 of the Constitution of India to protect and uphold the petitioner's fundamental rights, which have been clearly breached by the passing of the impugned order.

35. Merely because the impugned order would have a validity of two months from the date it was passed, considering that it is in direct infringement of the petitioner's fundamental rights, the same is required to be specifically quashed and set aside, and cannot be considered to have been worked out, merely by the efflux of the period for which it would be valid.**"**

(Emphasis supplied)

13.9. Yet again, the **HIGH COURT OF ALLAHABAD** in the case of **RAJPUTANA REALTY (P) LTD. V. STATE OF W.B.**[15], has held as follows:

"34. The object of the provisions of Section 144 of the Cr. P.C. is to invoke only in grave circumstances for maintenance of public peace. The efficacy of this provision is to prevent some harmful occurrence immediately and therefore, the emergency must be sudden and the consequence sufficiently grave. The provision of Section 144 cannot be resorted to merely on imaginary or likely possibility or likelihood or tendency of a threat, as the executive power, to cause a restriction on a Constitutional right within the scope of Section 144 of the Cr. P.C. has to be used is sparingly and very cautiously."

(Emphasis supplied)

13.10. All the afore-quoted judgments of different High Courts would in one singular voice hold that urgent cases of nuisance or apprehended danger and the need for maintenance of public order

[15] 2024 SCC OnLine Cal 5577

and tranquillity are the most imperative factors to pass an order under Section 144 of the Cr.P.C.

13.11. In all those cases, particularly that of the High Court of Bombay in the case of **MANOHAR GAJANAN JOSHI** *supra*, the petitioner was prohibited from entering the District for a period of 10 days but still it was quashed on the ground that it did not depict any emergent situation. In the case at hand as well, if the impugned order as quoted hereinabove is noticed, it is passed for a period of two months. It is not only excessive but neither records any emergency due to which no notice could be issued to the petitioner. It was not that it had to be passed on the spur of the moment owing to an emergency.

13.12. Further, in the case of **JOAN MASCARENHAS** *supra,* the High Court of Bombay while quashing an order passed under Section 144 of the Cr.P.C. particularly takes note of the fact that there has been a growing tendency of the State authorities to misuse and abuse the powers vested in them under the provisions of Section 144 of the Cr.P.C., by passing preventive orders on either concocted material or on the basis of reports which actually do not

spell out any factual basis for exercising jurisdiction under Section 144 of the Code. The Bombay High Court also holds that the right conferred upon a citizen to profess and propagate religion correspondingly casts a duty on the State and the executive to ensure that every person should be allowed to freely practise, preach or profess his belief. The State has a duty to extend all possible protection to its citizens, through free speech and the freedom of expression, enshrined in Article 19(1) of the Constitution of India to indulge in public discourse and to propagate religious practice. All persons have a fundamental right to form institution, purchase property for their use and to profess and propagate religion. However, all hedged by reasonable restrictions.

14. The representation was submitted on 30th October, 2025. The order is passed on 04.11.2025. Therefore, 96 hours was available to issue a notice to the petitioner. A perusal of the order nowhere indicates any emergent situation that is going to create breach of peace and public tranquillity. Section 144 of the Cr.P.C. is an extraordinary power that can even be exercised *ex-parte* but it can be only on an emergent situation and on the basis of an apprehension in real time and not imaginary. The **HIGH COURT OF**

ORISSA in the case of **SWAMI ADHOKSHAJANANDA THIRTHJI v. STATE OF ORISSA**[16], has held as follows:

"…. …. ….

11. The writ petitioner has assailed the impugned order u/s. 144, Cr. P.C. mainly on the following grounds:

(i) **The apprehension recorded in the impugned order is wholly imaginary, without basis, partisan and not bona fide.**

(ii) The impugned order has been passed at the behest of Collector, Puri who has a bias and motive against the peti-tioner.

(iii) Assuming that the apprehension as recorded is reasonable the restriction imposed is disproportionate to the apprehension expressed.

(iv) The impugned order was passed ex parte without giving any opportunity of hearing to the petitioner. Even after the impugned order no post-decision opportunity of hearing was given. The impugned order is thus violative of the accepted principles of natural justice.

(v) Admittedly, whenever the petitioner wants to come to Puri prohibitory order u/s. 144, Cr. P.C. is being invariably issued to prevent him from staying at Puri and such successive orders u/s. 144, Cr. P.C. is not permissible and the same shows malice on the part of the administration towards the petitioner.

12. Principles relating to the nature of the power u/s. 144, Cr. P.C. and exercise thereof have been settled. As far back as in 1883 when India was under colonial rule and there was no Constitution guaranteeing fundamental rights, a Full Bench of Madras High Court observed

---

[16] 2000 SCC Online Ori 235

"I must nevertheless observe that this power (to suspend the exercise of legal rights on being satisfied about the existence of an emergency) is extraordinary and that the Magistrate should resort to it only when he is satisfied that other powers with which he is entrusted are insufficient. Where rights are threatened, the persons entitled to them should receive the fullest protection the law affords them and circumstances admit of. It needs no argument to prove that the authority of the Magistrate should be exerted in the defence of rights rather than in their suspension; in the repression of illegal rather than in interference with lawful acts. If the Magistrate is satisfied that the exercise of a right is likely to create a riot, he can hardly be ignorant of the persons from whom disturbance is to be apprehended, and it is his duty to take from them security to keep the peace."

13. The said observations of the Madras High Court was approvingly quoted by the Supreme Court by *Gulam Abbas* v. *State of U.P.* reported in (1982) 1 SCC 71 : A.I.R., 1981 S.C. 2198.

14. In 1932, Calcutta High Court in *Francis Duke Cobridge Sumner, Offg. Deputy Secretary, Port Commissioner, Calcutta* v. *Jogendra Kumar Roy* repotted in A.I.R. 1933 Calcutta 348, observed:—

".....Now there can be no doubt or dispute that the legislature by S. 144 of the Code has conferred very large powers upon Magistrates who have to deal with urgent cases of nuisance or apprehended danger xxxxxxxxx The larger is the power, the greater is the necessity to be cautious about its exercise. The statute itself has provided a safeguard in the shape of a time limit. Judicial decisions have also laid down certain principles which have to be borne in mind, and of these only a few may be mentioned here; Courts, civil as well as criminal, exist for the protection of rights, and therefore the authority of a Magistrate should ordinarily be exercised in defence of rights rather than in their suppression; when an order in suppression of lawful rights have to be made it ought not to be made unless the Magistrate considers that other action that he is competent to take is not likely to be effective; and the order, if made, should never be disproportionate to but should always be, as far as possible, commensurate with the exigencies of any particular situation."

15. In *Gulam Abbas* (supra) **the Supreme Court has explained the nature of the power u/s. 144, Cr. P.C. and has laid down certain salient principles required to be observed at the time of exercise of the powers**. The Supreme Court has said therein:

> "**Preservation of the public peace and tranquility is the primary function of the Government and the aforesaid power is conferred on the executive magistracy enabling it to perform that function effectively during emergent situations and as such it may become necessary for the Executive Magistrate to override temporarily private rights and in a given situation the power must extend to restraining individuals from doing acts perfectly lawful in themselves, for, it is obvious that when there is a conflict between the public interest and private rights the former must prevail. It is further well settled that the section does not confer any power on the Executive Magistrate to adjudicate or decide disputes of civil nature or question of title to properties or entitlements to rights but at the same time in cases where such disputes or titles or entitlements to rights have already been adjudi-cated and have become the subject-matter of judicial pronouncements and decrees of Civil Courts of competent jurisdiction then in the exercise of his power under sec-tion 144 he must have due regard to such established rights and subject of course to the paramount considera-tion of maintenance of public peace and tranquility the exercise of power must be in aid of those rights and against those who interfere with the lawful exercise thereof and even in cases where there are no declared or established rights the power should not be exercised in a manner that would give material advantage to one party to the dispute over the other but in a fair manner ordi-narily in defence of legal rights, if there be such and the lawful exercise thereof rather than in suppressing them. In other words, the Magistrate's action should be directed against the wrong-doer rather than the wronged. Further-more, it would not be a proper exercise of discretion on the part of the Executive Magistrate to interfere with the lawful exercise of the right by a party on a considera-tion that those who threaten to interfere constitute a large majority and it would be more convenient for the administration to impose restrictions which would affect only a minor section of the community rather than prevent a larger section more vociferous and militant." The Supreme Court has also unequivocally disapproved passing of successive orders u/s. 144, Cr. P.C.. In *Acharya Jagdishwarananda Avadhuta* v. *Commissioner of Police,***

***Calcutta*, reported in (1983) 4 SCC 522 : A.I.R. 1984 S.C. 51 the Supreme Court has referred to various decisions of different High Courts and concluded:**

> "We have no doubt that the ratio of these decisions represents a correct statement of the legal position. The proviso to sub-section (4) of section 144 which gives the State Government jurisdiction to extend the prohibitory order for a maximum period of six months beyond the life of the order made by the Magistrate is clearly indica-tive or the position that Parliament never intended the life of an order under section 144 of the Code to remain in force beyond two months when made by a Magistrate. The scheme of that section does not contemplate repeti-tive orders and in case the situation so warrants, steps have to be taken under other provisions of the law such as section 107 or section 145 of the Code when individual disputes are raised and to meet a situation such as here, there are provisions to be found in the Police Act. If repetitive orders are made it would clearly amount to abuse of the power conferred by section 144 of the Code.
>
> Xxx xxx xxx
>
> **Thus the clear and definite view of this Court is that an order under section 144 of the Code is not inten-ded to be either permanent or semi-permanent in character. The consensus of judicial opinion in the High Courts of the country is thus in accordance with the view expressed by this Court."**

16. The Supreme Court in *Smt. Maneka Gandhi* v. *Union of India* reported in (1978) 1 SCC 248 : A.I.R. 1978 S.C. 597 **has empha-sised the requirement of fair play in action and application of the principles of natural justice even in administrative actions. It has been laid down therein that if the situation does not permit a pre-decision opportunity of hearing, such opportunity is to be given at the earliest post-decision stage.**

…. …. ….

32. Moreover, the proposition that feeling of irritation by a section of the people is sufficient to interfere with the guaranteed fundamental right of peaceful residence is fraught with dangerous consequences. **In a democracy where different antagonistic political parties or groups function, visit or presence of a leader may be an irritant to the supporters of the rival groups or political parties. In India demonstration,**

showing of black- flag, holding of protest rallies against visit of leaders and even foreign dignitaries are not unusual. If feeling of irritation by a section of the public is regarded as sufficient to prohibit peaceful residence, most of the dignitaries and leaders cannot enjoy free-movement. The apprehension expressed in the police report did not call for the total prohibition inflicted by the impugned order. The impugned order was/is overhasty and ex facie disproportionate to the apprehension reported and satisfaction recorded. There was no such emergency justifying direction to throw out the writ petitioner outside the Puri subdivision immediately. Emergency, if any, could have been taken care of by imposing certain reasonable restrictions on the movement and activity of the writ petitioner in Puri and further order could have been passed depending on further development. If this kind of over-hasty and disproportionate order is allowed to survive the cherished freedom guaranteed by the Constitution will be meaningless. It is thus clear and apparent that the Executive Magistrate has failed to exercise his extra-ordinary power under section 144, Cr. P.C. in accordance with the settled legal principles as mentioned earlier.

33. Although this Court holds that the prohibition as imposed, was is unreasonable it accepts that materials on record make out a case for imposition of reasonable restrictions on the movement and activity of the writ petitioner during his stay at Puri.

34. This Court is unable to accept the allegation that impugned order was passed at the instance of the present District Magistrate and Collector, Puri as there is no material excepting his letter dated September 5, 1999 (Annexure-2) written to the Commissioner of Police, Baroda to arrive at such conclusion**. The said letter gives rise to some suspicion, but suspicion is no substi-tute for conclusive proof. At the same time this Court observes that such an official letter from the head of the district adminis-tration was not proper. This letter could be appreciated if it was written by Secretary or a devotee or disciple or admirer of the present Sankaracharya of Puri and not by the Collector of the district.**

35. As this Court has elaborately analysed the merit of the impugned order to examine its sustainability, it is not consi-dering the submission whether the order is bad due to non- obseivance of principles of natural justice, either before or after the impugned order.

36. Mr. Sovesh Ray, learned Advocate General, Mr. A. Mukherji and Mr. A.B. Misra, Senior Advocates have referred to various decisions and have submitted that the fundamental rights and legal rights of an individual can be curtailed where maintenance of peace, public order and tranquility demand such restriction. **There is no dispute about that proposition. Existence of power and exercise of power are two different things. Even where there is power, its exercise must be for achieving the object for which such power has been conferred. It is also equally settled that this extra-ordinary power under section 144, Cr.P.C. is to be exercised bona fide, judiciously and only to the extent the situation justifies. Arbitrariness and/or use of power for a co-laterial or oblique purpose is anathema to a democratic society governed by rule of law. It has been submitted that the admini-stration is the best judge of the prevailing situation as it is responsible for maintenance of public peace, law and order and the court of law should not substitute its opinion in place of the opinion in the administration. It is true that proper respect should be given to the perception of administration, but even such perception is subject to judicial review and when it is found that perception is imaginary or perceived threat has been blown out of proportion in order to make out a case for sweeping restrictions the High Court cannot shut its eyes to such improper use or misuse of power.**

37. It is a basic principle of rule of law that the admini-strative authorities exercising statutory powers and even discre-tions must act objectively, reasonably, fairly and justly because "discretion is a science or understanding to discern between falsity and truth, between wrong or right, between shadows and substance, between equity and colourable gloss and pretences and uot??? to do according to their wills and private affections" (*Administrative Law*, Wade and C.F. Fersyth, 7th Edition, Pages 387-388).

38. Applying the above formulation this Court is of the view, that the Executive Magistrate failed to exercise his discretion in a just, fair and objective manner and impugned order attracts judicial interference.

39. In the facts and circumstances as stated herein above, this Court is of the view that the impugned prohibition is unsus-tainable but the petitioner is liable to be made subject to some reasonable restrictions/prohibition proportionate to the apprehen-ded threat. Accordingly while setting aside the impugned prohibition this Court thinks it fit and proper to impose certain restrictions on the movement and activity of petitioner during his stay at Puri. However as life of impugned order is only two months from the date of order, the restrictions imposed by this order will be co-extensive with the life of the original order. In case it becomes necessary to pass any fresh order the concerned Magistrate and the other administrative authorities will bear in mind the principles stated and observations made in this judgment and act objectively and reasonably as the situation demands.

40. For the foregoing reasons the impugned order of prohibition dated July 15, 2000 passed by the Subdivisional Executive Magistrate, Puri is set aside subject to the following restrictions on the movement and activity of the writ petitioner during his stay at Puri.

(i) The writ petitioner is prohibited from going within a radius of 1000 meters from Gobardhana Pitha, the sacred seat of Sankaracharya, Puri.

(ii) The writ petitioner will not hold any public meeting or take out any procession during his stay in Puri,

(iii) During his stay at Puri the writ petitioner will not claim any right or privilege as Sankaracharya of Puri so long as his claim is not recognised and/or established in appropriate forum in accordance with law.

(iv) The writ petitioner will not issue any statement containing disparaging remarks or casting refletions on the present recognised Sankaracharya of Puri.

(v) Whenever the writ petitioner wants to move out of his place of stay in Puri outside the prohibited zone, he will inform the local police station in advance. The above restrictions and restraints will remain operative till the period of validity of the impugned order dated July 15, 2000. If the Subdivisional Executive Magistrate or any other appropriate authority decides to pass any fresh order he will keep in mind the enunciations and observations made in this judgment before passing any such order. ”

(Emphasis supplied)

The High Court of Orissa in the afore-quoted judgment holds that that power under Section 144 of the Cr.P.C. is an extraordinary power which can be exercised even ex-parte in an emergency on the basis of real apprehension, but restriction or prohibition should be confined to what is necessary to prevent the apprehended threat. Even the High Court of Orissa was considering an order passed under Section 144 of the Cr.P.C. against a Swamiji like in the case at hand. The High Court of Orissa quashed the notice on the ground that there was no recording of emergency or real apprehension.

15. A division bench of this Court in the case of **SOWMYA R. REDDY v. STATE OF KARNATAKA**[17] considers the power under Section 144 of the Cr.P.C. and importance of the word 'opinion' found in sub-section (1) of Section 144 of the Cr.P.C. The Division Bench holds as follows:

> **"21.** Thus, the satisfaction which is required to be recorded under sub-Section (1) of Section 144 of the said Code can be subjective, but the same has to be arrived at objectively by taking into consideration the relevant factors as are contemplated under Section 144 of the said Code.
>
> **22.** The entire law on the subject has been summarized in the recent decision of the Apex Court in the case of *Anuradha Bhasin*, (supra). In paragraph 70, it has been held that normally the least restrictive measures should be resorted to by the State. It is further held that even the Doctrine of Proportionality has to be applied to an order under sub-Section (1) of Section 144 of the said Code. Thirdly, it is held that power can be exercised only in urgent situations and in cases of apprehended danger. Paragraph 108 is most material. Clauses (a) and (b) of paragraph 108 read thus:
>
> > *"108. The aforesaid safeguards in Section 144, Cr.P.C. are discussed below and deserve close scrutiny.*
> >
> > *(a)* ***Prior Inquiry before issuing Order:*** *Before issuing an order under Section 144, Cr.P.C., the District Magistrate (for any authorised Magistrate) must be of the opinion that:*
> >
> > *i. There is a sufficient ground for proceeding under this provision i.e., the order is likely to prevent obstruction, annoyance or injury to any person lawfully employed or danger to human life, health or safety or disturbance to the public tranquility; and*
> > *ii. Immediate prevention or speedy remedy is desirable.*

[17] **2020 SCC OnLine Kar. 1527**

The phrase "opinion" suggests that it must be arrived at after a careful inquiry by the Magistrate about the need to exercise the extraordinary power conferred under this provision.

(b) ***Content of the Order:*** *Once a Magistrate arrives at an opinion, he may issue a written order either prohibiting a person from doing something or a mandatory order requiring a person to take action with respect to property in his possession or under his management. But the order cannot be a blanket order.* ***It must set out the "material facts" of the case. The "material facts" must indicate the reasons which weighed with the Magistrate to issue an order under Section 144, Cr.P.C."***

23. Thus, as held in Clause (a) of paragraph 108, there has to be formation of an opinion by the District Magistrate as specifically observed in sub-Section (1) of Section 144 of the said Code. Formation of opinion must be that immediate prevention is required. What is more important is that the Apex Court held that the use of the word "opinion" suggests that it must be arrived at after a careful inquiry. The Apex Court held that "careful inquiry'' is contemplated as the District Magistrate is about to exercise extraordinary power conferred under Section 144 of the said Code. Coming to the aspect of "careful inquiry," it must be stated here that the statement of objections filed by the State Government is not affirmed by the District Magistrate who passed the impugned order, but it is affirmed by an Assistant Commissioner of Police who has no personal knowledge whether any "careful inquiry" was held by the District Magistrate who passed the order. A perusal of the impugned order shows it is only a reproduction of what is stated in the reports submitted by the Deputy Commissioners of Police. There is not even a remote indication that any further inquiry was made by the District Magistrate. The Learned Advocate General submitted that no inquiry was called for as the District Magistrate who was the Commissioner of Police, had to believe the version of the officers working in the field. It is also an admitted position that some of the Deputy Commissioners of Police had themselves granted permissions to hold protests during the period the three days (19th to 21st December 2019) under the provisions of the said Order and the said material fact

was not mentioned in their reports submitted to the Commissioner of Police. The stand of the State Government is that no inquiry was necessary. That implies that no inquiry was held by the District Magistrate. The District Magistrate was under an obligation to make his own inquiry before arriving at the subjective satisfaction. It is not even the case of the State that the District Magistrate held even any telephonic discussion with the Deputy Commissioners who had submitted the reports about the source of their information. This is not a case where even some inquiry was made by the District Magistrate to arrive at subjective satisfaction about the necessity of passing the impugned order. The stand of the State is that the reports were submitted by the Deputy Commissioners of Police working in the field. But still an inquiry was called for, as held by the Apex Court. **The reason is what is relevant is the subjective satisfaction of the District Magistrate and formation of opinion by him. As stated earlier, there is not even a remote indication in the impugned order that there was any kind of inquiry made on the basis of the reports submitted by the Deputy Commissioners of Police, by the District Magistrate himself. As stated earlier, there is no affidavit filed by the District Magistrate.** It is virtually an admitted position that some of the Deputy Commissioners had already granted permissions to hold the protests on the very days (19th to 21st December 2019) after making due inquiry as per the said Regulation Order. But, the said fact was not disclosed in the reports. Secondly, except for setting out what the Deputy Commissioners of Police have stated in the reports, no facts have been set out in the impugned order. The material facts as held by the Apex Court must indicate the reasons weighed with the District Magistrate to issue the order."

(Emphasis supplied)

The Division Bench of this Court clearly holds that the word 'opinion' found in sub-section (1) of Section 144 of the Cr.P.C. has certain importance. The opinion found would be after an inquiry and arriving at an order. Orders under Section 144 of the Cr.P.C. cannot be bald. Power under Section 144 must be exercised only in urgent

cases of nuisance and apprehended danger. Formation of opinion by the District Magistrate must be that immediate prevention is required.

16. Long before the afore-quoted judgment in **SOWMYA REDDY** *supra*, a learned single Judge of this Court, in similar circumstances in the case of **PRAMOD MUTHALIK v. DISTRICT MAGISTRATE, DAVANAGERE**[18], while quashing an order passed under Section 144 of the Cr.P.C. on the grounds of non-issuance of any notice to the petitioner and absence of sufficient reasoning, holds as follows:

"…. …. ….

> **9. Drawing parallel to the facts, the Counsel for the petitioner submitted that in the present case, the restriction placed is highly excessive and more than the need.** In this regard the decision of the Supreme Court in *Rupinder Singh Sodhi* v. *Union of India* [(1983) 1 SCC 140.] also lays down a binding ratio in the following words in para 2.
>
> > "2. …… **But all such restraints on personal liberty, if at all, have to be commensurate with the object which furnishes their justification. They must be minimal and cannot exceed the constraints of the particular situation, either in nature or in duration. Above all, they cannot be used as engines of oppression, persecution, harassment or the like. The sanctity of person and of privacy has to be maintained at all costs and that cannot ever be violated under the guise of maintenance of law and order.**"

[18] 2003 SCC OnLine Kar 95

10. In the light of the ratio laid down in the decision of the Supreme Court and the Bombay High Court the material in the impugned order and the accompanying objection statement filed, show total absence of material to justify passing of an exparte order. **The impugned order does not contain how the situation is so emergent and does not admit compliance of rules of natural justice of providing opportunity to show cause before an order is made.**

11. The facts indicate that a murder had taken place on 31.12.2002. The accused were the people belonging to Muslim community, the funeral procession of the deceased were taken out by the activists of the B.J.P., Bhajarangadal, V.H.P. in greater numbers and that during the procession inciting and inflammatory slogans were raised against muslim community having a tendency of building up a communal tension in the town. **In fact the procession of the nature stated was taken out, there would have been a police escort and any violators of law contributing for communal tension should have been dealt with. The order does not indicate any such action having been taken and no case as such against any person registered to substantiate the said allegations. Immediately on the following days, no untoward incidents of any nature have happened. Therefore to say that the petitioner's visit would lead to worsening of law and order situation and would result in building of communal tension by his alleged inflammatory speeches appears to be farfetched reason.**

12. Assuming for the moment hypothetically that the visit of petitioner is likely to create communal tension by his inflammatory public speeches. The blanket order debarring the petitioner from entering the district of Davanagere appears to be too harsh, excessive and disproportionate to the need. It is evident from the order that by inflammatory speeches of the petitioner, it is likely that communal tension would build up resulting in breach of peace and public tranquility. If the act of delivering public speeches is alone to be the cause for the apprehended threat to public peace only to the extent of directing the petitioner not to address public rallies could have been a suffice solution. On the contrary, debarring the petitioner from entering the district for a period of one month by a blanket order is too excessive. The Magistrate

without resorting the debarring of the petitioner from entering Davanagere, could have directed the petitioner and all the political organizations from holding any rallies or meetings for some time in order to allow the event of murder to the down in the memories of the public.

13. The provisions of sub-sections 5, 6 and 7 provides a statutory in built protection to the aggrieved to apply to the Magistrate or to the Government as the case may be for rescinding or altering the order by showing the cause and in the event of such an application made under sub-section (5) it is mandatory obligation on the part of the authority to consider the objections and dispose of the same on merits by a written order supported by reasons. **It is also necessary to mention that the opportunity to be provided is not a illustory formality. The combind reading of the provisions of sub-section (1) and (2) and sub-sections 5, 6 and 7 would impliedly underlays the requirements of passing an order either under sub-section (1) of Section 144 Cr. P.C. or exparte order under sub-section (2) of Section 144 Cr. P.C. all the necessary details of facts and the incriminating material should form part of the order. Any allegations if borne out by a documentary material, it is necessary for the authority concerned to provide copies of such documentary material along with the order to enable the respondent to show cause against the order. Mere mention of the particulars of criminal cases does not be a sufficient compliance. It is necessary that the document relating to the cases mentioned have to be furnished. Some times it could happen that any of the incriminating material borne out by documents is made subject matter of the order and if the said incriminating material are to be obtained from far of places and not immediately accessible to the respondent, mere mention of case numbers in the indictment order would not be a sufficient opportunity in practical or real sense. The authority while acting upon such incriminating material necessarily would have with it the documentary material in that regard and necessary copies of the same have to be furnished along with the order. In the present case, I find although there is mention of registration of some cases elsewhere the copies of the FIR and other incriminating material have not been furnished. In the absence of such compliance, it**

cannot be said that there is proper compliance to enable the respondent to meet the case effectively."

(Emphasis supplied)

The learned Single Judge in the afore-quoted case holds that the blanket order passed under Section 144 of the Cr.P.C. debarring the petitioner from entering the entire District was too harsh, excessive and disproportionate and the Magistrate should have instead desisted the petitioner from holding any rallies or meetings. The Learned Single judge further holds that such restraints on personal liberty should be commensurate with the object of the order and it must be minimal and cannot exceed the constraints of the particular situation, either in nature or duration.

17. Later, another learned Single Judge of this Court, in similar circumstances in the case of **SHRI.PRAMOD v. THE DISTRICT EXECUTIVE MAGISTRATE[19],** following the afore-quoted judgment of the Co-ordinate Bench of this Court in **PRAMOD MUTHALIK** *supra*, holds as follows:

"…. …. ….

5. Learned counsel for the petitioner has submitted that the said order is illegal and it is against the principles of natural

[19] WRIT PETITION NO.112655/2015, DISPOSED ON 18-11-2015

justice. No notice or opportunity was given to the petitioner before passing such order. He has submitted that perusing the materials placed on record, there was no such emergency situation invoking Section 144 (2) of Cr.P.C in passing the order exparte. Hence, he has submitted that petition be allowed and the order passed by the respondent, which is challenged in this writ petition be set-aside.

In support of his contention, learned counsel for the petitioner has relied upon the decision reported in **ILR 2003 KAR 1953** in the case of **Pramod Muthalik vs. The District Magistrate, Davanagere**.

6. Per contra, learned HCGP has submitted that there are many criminal cases filed against the petitioner, he is the president of Shree Ramsena, Karnataka. In the earlier occasion also he gave the inflammatory speech, which affected the communal feelings of the Muslim communities and leads to breach of peace and public tranquility. Learned HCGP has also submitted that before passing such order, the respondent obtained the report from the competent Police Officers about the situation, after receiving the report and after applying the mind to the reports as well as the to the situation and as the situation demanded, the respondent proceeded to pass the exparte order in the matter.

It is also submitted that the order passed is in the interest of public at large. No illegality has been committed in the said order. Therefore, it does not call for any interference by this Court in this petition. The respondent authorised to pass such administrative orders and in this connection, learned HCGP has relied upon the decision of the Hon'ble Supreme Court reported in **AIR 2004 SC 2081** in the case of **State of Karnataka and another v. Dr.Praveen Bhai Thogadia**.

7. I have perused the averments made in the petition, the order passed by the respondent-District Executive Magistrate, which is produced as per Annexure-A and also the decisions relied upon by the learned counsel for the petitioner and the learned HCGP, which are referred above.

8. Looking to the materials placed on record and the order passed as per Annexure-A, it shows that before issuing such order, the respondent obtained the report from the Police

Officers on 23.10.2015 (as it is refereed in the order as per Annexure-A) and this order has been passed on 30.10.2015. But admittedly, even according to the respondent, before passing such order as against the petitioner, no show cause notice was issued to him, giving him an opportunity to show cause why such order should not be passed against him, for which, it is the contention of the respondent that there was an emergency situation and therefore, such an order has been passed.

I have carefully perused the entire order passed, which is at Annexure-A, consisting of 7 pages, nowhere it is mentioned that why such prior notice was not issued to the petitioner asking him to show cause about passing of the impugned order. In the said order also there is no specific mention that by issuing prior show cause notice, the very object of issuing the impugned order is going to be defeated or the situation will be worsened.

9. **I have perused the decision relied upon by the learned counsel for the petitioner reported in ILR 2003 KAR 1953 in the case of Pramod Muthalik vs.The District Magistrate, Davanagere wherein His Lordships laid down the proposition as under:**

> **CRIMINAL PROCEDURE CODE, 1973 (Central Act No.2 of 1974) – SECTION 144- –District Magistrate – Order debarring entry of petitioner in entire District –Apprehension that petitioner would address public gatherings to incite communal feelings and affect public peace and order opportunity to show cause not provided – Order found to be violative of natural Justice-blanket order debarring petitioner from entire district held to be too harsh, erassive and disproportionate to need.**

I have also perused the decision reported in 1989 CRI. L.J.1364 (Bombay High Court) in the case of Manohar Gajanan Joshi v. S.B.Kulkarni and others. Their Lordships have laid down the proposition as under:

> **(A) Criminal P.C.1973 (2 of 1974), S.144(2) – Ex parte order restraining petitioner from entering District – Neither order nor return filed by D.M. showing how situation was emergent and time available was not enough to serve show cause notice – Order is liable to be quashed.**

I have also perused Section 144 of Cr.P.C, Synopsis No.23 in the book by RATANLAL AND DHIRAJLALLAL on The Code of Criminal Procedure 19th enlarged edition, which reads as follows:

> **"23. Ex parte orders (sub-section (2)). – "Ex parte" orders can be passed only under two circumstances : (1) in cases of emergency; and (2) where the circumstances do not admit of personal service. A mere statement by the Magistrate that he is satisfied that there is every possibility for serious breach of peace between the parties as well public tranquillity is not sufficient to exercise power under S.144(1) and 144 (2) CrPC. But, ordinarily, an order under the section should not be made, without an opportunity being afforded to the person against whom it is proposed to make it, to show cause why it should not be passed.**
>
> **An ex parte order restraining a person from entering within the limits of the entire district, is not proper when the disturbances had taken place only in three towns in the district. Where there was agreement for sale of flat between the petitioner and opposite party builder, civil suit was also pending beween the parties, there was no evidence of any apprehension of breach of peace, the District Magistrate was not justified in passing an exparte prohibitory order under S.144 Cr.P.C on the basis of which the petitioner effected forcible entry in the flat. Under S.144(2), the Magistrate has no jurisdiction to disturb the possession of a party, or to direct the police to hand over possession of the disputed property in favour of any of the parties.**
>
> **A blanket order prohibiting entry of the petitioner leader of political organization in the district for a period of one moth, merely on the ground that his inflammatory speeches would create tension in the area, without providing material to the petitioner would be bad in law, and would be set aside."**

10. So considering these propositions of law, which mandates that before passing the said order, show cause notice is to be given and if in case of any exigency or

urgency and issuing of such notice is going to defeat the very purpose, same could have been mentioned in the order and the District Executive Magistrate or the competent authority can invoke Section 144 of Cr.P.C or any other for passing exparte orders.

But perusing the impugned order, which is challenged in this proceedings, there is no such specific mention throughout the said order, why such exparte order is going to be passed and why the show cause notice was not issued to the petitioner asking him to show cause in the matter.

The materials show that Police report was received on 23.10.2015 about the situation of tense and according to the respondent-District Executive Magistrate that situation was so immediate and it was the need of the hour, he could have proceeded to pass the order either on 23.10.2015 or on the next day, but materials show that he waited till 30.10.2015 i.e., for a period of seven days after receiving such a report from the concerned competent Police Officers, **so during this period of seven days nothing prevented the respondent to issue prior show cause notice to the petitioner and he could have very well taken the reply from the petitioner about the said situation, which is not done in this case.**

11. I have also perused the decision relied upon by the learned HCGP and the principles enunciated in the said decision, which is refereed above. But looking to the facts and circumstances in the said reported decision about issuance of the exparte order or issuing the show cause notice or obtaining the reply from the concerned person against whom the order is going to pass, this aspect is not discussed in the said decision and it was not the point before the said Court in the said decision. Therefore, looking to the facts and circumstances in the said reported decision and the facts and circumstances in the case on hand so far as passing of the exparte order invoking Section 144(2) of Cr.P.C, they are not exactly one and the same.

12. Right of speech and expression is a fundamental right given to every citizen of this country under Article 19 of the Constitution of India, but it is no doubt true such

right of speech and expression is not absolute right of the citizen, it is subject to reasonable restrictions as enumerated in the said Article 19 itself.

But when it is the apprehension of the respondent authorities that there is every likelihood that the petitioner is going to give such an inflammatory speech disturbing/exciting the communal feelings, more particularly, of Muslim community and thereby disturbing the public peace and tranquility is concerned, by issuing such prior show cause notice the respondent authorities could have permitted the petitioner by putting reasonable restrictions as they feel that such and such restrictions are necessary in the matter.

13. Perusing the order, which is passed in this case, so far as opening of the branch office at Khanapur Taluk and creating the disturbance of public peace and tranquility by Shree Ramsena workers is concerned, it is mentioned that the petitioner has not delivered any such speech on such occasion, but it is the other workers of Shree Ramsena, who have delivered such speech.

Therefore, under such circumstances even though as submitted by the learned HCGP that the respondent-District Executive Magistrate is authorized and is a competent person under the Statute that he can pass such administrative orders, but while passing such orders whether the procedural aspects were taken into consideration or not is subject to judicial scrutiny by way of judicial review.

14. Therefore, considering all these aspects of the matter, the principles enunciated in the decisions, which are referred above and the legal position of the matter, I am of the opinion that the order, which is challenged in this case, is not after following the mandatory requirements of law, hence, it is illegal and not sustainable in law. Accordingly, petition is **allowed** and the impugned order passed by the District Executive Magistrate /D.C.Belagavi District, bearing No.DC.Pee.O.L.CR.1157/2015-16 dated 30.10.2015 as at Annexure-A is hereby quashed."

(Emphasis supplied)

The learned Single Judge in the afore-quoted case quashes the order under Section 144 of the Cr.P.C. on the score that there was no such specific mention throughout the said order, as to why an *ex-parte* order was required to be passed and why the show cause notice could not be issued to the petitioner. The learned Single Judge further holds that when the State had apprehensions that the petitioner was going to give inflammatory speeches, exciting communal feelings, disturbing public peace and tranquillity, the State by issuing a show cause notice in prior, could have permitted the petitioner by putting reasonable restrictions as they feel were necessary in the matter.

18. **If the order impugned is examined on the touchstone of the principles delineated by the Apex Court as well as different High Courts, it becomes evident that the order is wholly indefensible and thus, unsustainable. The order fails to record the existence of any emergent situation that could conceivably justify a restraint enduring for as long as two months. The mere fact that the statute permits a maximum duration of two months, does not bestow upon the Authority a license to exercise such power in a cursory and**

cavalier manner as reflected in the present case. There is an absence of any record for subjective satisfaction on the part of the respondent, that an *ex-parte* order was warranted. Equally absent is any indication of prevailing emergency *vis-à-vis.* the petitioner that could justify a restraint of such disproportionate length. The Apex Court has unambiguously held that an order which has once been the subject matter of interpretation before a coordinate bench cannot by itself serve as an exclusive foundation for initiating a fresh restrictive action. Yet, in the case at hand, the very order has been pressed into service as the sole basis, as it is passed on a representation which said nothing but the order passed by the coordinate bench. This unmistakably suggests that no other material exists against the petitioner.

19. The State has placed heavy reliance upon the judgment in the case of **STATE OF KARNATAKA v. PRAVEEN BHAI THOGADIA (Dr.)**[20]. The said judgment is distinguishable without much ado. In the case before the Apex Court the State had passed an order of prohibition for only 15 days and in most peculiar

---

[20] (2004) 4 SCC 684

circumstance it was upheld. In the case at hand, it is passed for two months while the programme was only for three days between 05.11.2025 and 07.11.2025. However, the prohibitory order spans from 05.11.2025 until 03.01.2026. The order is devoid of reasons, proceeds purely on conjectures for imposition of restraint of manifestly excessive duration. Thus, the impugned order fails the test of constitutionality and legality set forth by the Apex Court, by the division bench of this Court, coordinate benches of this Court and different High Courts. On all the aforesaid grounds, this petition is entitled to succeed. The undertaking furnished by the learned counsel for the petitioner that the petitioner would conduct himself with restraint and shall not transgress the bounds of liberty now accorded, stands duly recorded.

20. For the aforesaid reasons, the following:

O R D E R

(i) Writ petition is allowed.

(ii) The order dated 04.11.2025, bearing No.MAG-1/Sha Su/Va.Hi-257/2025-26, passed by the respondent, stands obliterated.

(iii) All consequential actions taken / to be taken pursuant to the impugned order also shall stand obliterated.

Sd/-
(M.NAGAPRASANNA)
JUDGE

nvj
CT:MJ