

(2014) 10 MAD CK 0047

Madras High Court (Madurai Bench)

Case No: W.P.(MD) No. 16940 of 2014

R. Vaigai Kannan

APPELLANT

Vs

The District Collector
and Others

RESPONDENT

Date of Decision: Oct. 17, 2014

Acts Referred:

- Constitution of India, 1950 - Article 19(1)(a), 19(1)(b), 19(2), 21
- Criminal Procedure Code, 1973 (CrPC) - Section 134, 144, 151

Citation: (2015) 1 LW(Cri) 210

Hon'ble Judges: V.M. Velumani, J; V. Dhanapalan, J

Bench: Division Bench

Advocate: R. Ramasamy for V. Gopalsamy, Advocates for the Appellant; B. Pugalenthir,
Special Govt. Pleader, Advocates for the Respondent

Judgement

V. Dhanapalan, J.

This Public Interest Litigation has been focussed by the petitioner, R.Vaigai Kannan, who is a party member of Pattali Makkal Katchi, a political party, claiming himself as an active social worker, besides doing agriculture and also a resident of 14/15, 1st Street, K.R.R. Nagar, Theni, Theni District. The case of the petitioner is that on 27.09.2014, the then Chief Minister of Tamil Nadu and the party head of the ruling party, Selvi J. Jayalalitha and three others were sentenced to undergo four years imprisonment by the Special Court situated at Prapana Aghraharam in Karnataka State. According to the petitioner, from that day onwards, a lot of unwarranted and unlawful acts were continuing in Tamil Nadu in general and more particularly, in Theni District. On the date of the judgment, i.e. 27.09.2014, around 04.30 p.m., onwards, a mob had gathered and obstructed the traffic in all routes near the old bus stand and Madurai road junction near new bus stand, by carrying the weapons in the name of sympathizers of the ruling party. They forced all the commercial shops including hospitals to close down, due to which, the people who came to the

hospitals, were not in a position to reach their homes and they were put to intolerable difficulties. On 28.09.2014 also, the buses were stopped and the shops were put off, by using force of the said sympathizers. Further, on 29.09.2014, the District Secretary of the ruling party, Sivakumar, along with the party members gathered to conduct a hunger strike, on Madurai Road in front of R.C.C. Church, as the party members claimed that they had their fundamental right in assembling in a democratic manner and the hunger strike was observed in the restricted area declared by this Court.

2. It is further case of the petitioner that a Dharna was arranged on 30.09.2014 in the name of hunger strike at Andipatti, wherein the party members who already participated in the hunger strike held at Theni, also took part and they indulged in the activities, such as, making artificial traffic jam, forcing to stop the buses and threatening the merchants to close down their shops. Again, on 01.10.2014, the party cadres carried out the hunger strike at Bodinayakkanur. Consequent to the said events, the State Leader of Merchants Association, Vellaiyan requested the said members of the ruling party not to harass and not to use force on the merchants to shut down their shops. Even on 02.10.2014 and 03.10.2014, the general public, school students, Government officials, auto related workshops were not allowed to celebrate Gandhi Jayanthi, Saraswathi Pooja and Ayutha Pooja, which were considered as auspicious days relating to their works. On 04.10.2014, the party members had not allowed to run the cinema theaters. Thereafter, a procession was taken place on 05.10.2014 and in that event, the private bus owners and cable T.V., operators were not allowed to operate their vehicles and the cable T.V. Many buses were not allowed to ply on 06.10.2014 and the public were put to lot of miseries. On 07.10.2014, it came to know through media that without giving sufficient time, the associations were demanded not to operate the omnibuses and declare a holiday to the private self-finance schools and colleges.

3. The specific plea of the petitioner is that if the aforesaid events are allowed, it might even be set as a precedent and there is a likelihood of putting the verdicts of the Courts into insult among the public. Then, the third pillar of the democracy would be in danger. In this regard, the banners were also put up by the active members of the ruling party by using certain words. As there are lot of provisions available to fight against the judgment through the appellate Courts, these acts which are trying to get the judgment in their favour, should not be encouraged. In such circumstances, in order to protect the interest of the public at large from the menace that had been caused by the members of the ruling party, the petitioner submitted a representation dated 01.10.2014, seeking to proclaim an order under Section 144 of the Code of Criminal Procedure (hereinafter referred to as "Cr.P.C."), to restrict the gathering and the mob. Since no action has been taken by the respondents, the petitioner has come before this Court with the present writ petition praying for a direction to the first respondent to consider his representation dated 01.10.2014 and pass an order under Section 144 Cr.P.C., so as to maintain

peaceful atmosphere through the second respondent and curtail further sufferings of the public.

4. A status report has been filed on behalf of the second respondent before this Court by the learned Special Government Pleader appearing for the respondents, wherein, it has been inter alia stated that though the present writ petition has been filed for a writ of Mandamus to direct the first respondent to consider the representation of the petitioner dated 01.10.2014 and pass an order under Section 144 Cr.P.C., no such representation was received by the second respondent and therefore, the writ petition is a misconceived one, being filed with an oblique motive. Further, it is stated that the claim of the petitioner is that in view of the verdict of the Special Court, there were incidents of agitations in Theni District and therefore, Section 144 Cr.P.C., has to be invoked based on his representation, dated 01.10.2014, however, the second respondent specifically contended that no such representation was received by the respondents. Neither there is any proof of the receipt of the representation nor there are specific averments in the representation of the petitioner dated Nil, filed in the typed set of papers, but in the affidavit filed in support of this writ petition, the petitioner referred to two incidents of hunger strike on 29.09.2014 and the agitation on 30.09.2014.

5. Further, it is stated by the second respondent that with regard to the hunger strike referred to by the petitioner, it was conducted at Theni on 29.09.2014 under the leadership of the District AIADMK Secretary, Sivakumar, opposite to Canara Bank, Madurai Road, which is 25 meters away from the western side of R.C.C. Church, after obtaining permission from the Deputy Superintendent of Police, Theni Sub Division, by virtue of the representation given by the District Chairman, AIADMK, Murugesan, on 28.09.2014. No other untoward incidents pertaining to law and order problem had taken place in Theni District, on 29.09.2014. Similarly, a hunger strike was also conducted at Andipatti after getting permission from the police and no other untoward incidents took place and all the shops were opened and all the buses were plied regularly.

6. The status report would further reveal that wherever any agitation had been taken place without any permission, necessary action was taken in accordance with law. For the incident that took place on 27.09.2014, a case in Cr. No. 383 of 2014 was registered in Thenkarai Police Station, under Section 151 Cr.P.C., and two persons were arrested on 27.09.2014 in the said crime number. Again, on 01.10.2014, incidents were taken place in various places and necessary action was initiated against those persons. On 01.10.2014, 13 cases were registered and 31 persons were arrested and remanded to the judicial custody, the details of which, are as follows:

7. It is further stated in the report that there were no incidents on 02.10.2014 and 03.10.2014 as alleged by the petitioner and there was no complaint received for the alleged incidents on those days and the petitioner has made vague averments

without referring to the place of occurrence. As to the suspension of the morning shows and matinee shows in the theatres on 04.10.2014, it is stated that it has been done followed by a call made by the Association concerned and it is a State wide one. The private bus owners had not plied their vehicles on 05.10.2014 based on the decision taken by the respective Associations and the second respondent had not received any complaint alleging intimidation either from the theatre owners or from the private bus operators. The averments made in the affidavit as to the functioning of the schools and the plying of the omnibuses, were false and the omnibuses had been plied without any hindrance and the schools had been functioned normally, in Theni District. The respondents had not received any complaint regarding the banners put in Theni District as alleged by the petitioner and the writ petition has not substantiated the same with any proof. According to the second respondent, the situation is under control and therefore, there is no necessity to invoke Section 144 Cr.P.C. Apart from the above, it is seen that they had registered the following cases, on those who attempted to commit suicide:

Ultimately, it is pleaded that the second respondent had not received any representation as claimed by the petitioner and therefore, they prayed for the dismissal of the writ petition.

8. On the above background and pleadings, we have heard the learned Counsel for the parties.

9. Mr. R. Ramasamy, learned Counsel for the petitioner would submit that the incidents as portrayed in the affidavit have to be taken into account for consideration and a direction to the respondents has to be issued to consider the petitioner's representation dated 01.10.2014. He would also submit that the petitioner has come out with the present writ petition only for the public cause and not else.

10. On the other hand, Mr. B. Pugalenth, learned Special Government Pleader appearing for the respondents would submit that the respondents have not received any representation from the petitioner till date and on verification, he had been instructed and also informed in the counter that the representation as claimed by the petitioner, was not received by them.

11. The learned Special Government Pleader would further submit that the law and order situation in the District is normal and it is under control and that there is no necessity for invoking Section 144 Cr.P.C., in Theni District and therefore, prayed for the dismissal of the writ petition.

12. To examine the claim of the petitioner seeking a direction to the respondents to consider his representation, it is relevant and worthwhile to refer and extract hereunder the contents of the representation made by the petitioner as in his representation dated 01.10.2014:

The translated version of the above representation in English, is as follows:

"In a case of unjust enrichment, the Court found the former Chief Minister as accused and imposed four years imprisonment, before a few days. In such circumstances, in our Theni District, her supporters and some anti-social elements, had conducted unnecessary agitations, by committing contempt of the order of the Court and causing disturbance to the general public to create the feeling of fear. Their conduct without realising the dignity of the judiciary would amount to ridicule the judiciary. Therefore, I humbly prayed not to give permission to such agitations having conducted without adhering to law and to pass prohibitory order under Section 144 Cr.P.C., to change the insecure atmosphere of the general public and protect the dignity of the law among the public."

13. Before proceeding to examine the grievance of the petitioner, we would like to refer hereunder Section 144 Cr.P.C., which would amply throw light on the claim of the petitioner:

"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 employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or an affray."

(emphasised by us.)

14. From the reading of the above provision of law, it is crystal clear that in case of a District Magistrate, a Sub-Divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, forms an opinion that 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 orders. Therefore, the act to be prevented by enforcing this provision has to be promulgated in that area on material facts and information of the case concerned and thereafter, all efforts have to be taken 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.

15. No doubt, Section 144 Cr.P.C., deals with immediate prevention and speedy remedy. Hence, it is for the statutory authority to satisfy the existence of the circumstances exhibiting the need for immediate action, before invoking such a provision. It is well settled that the sine quo non for an order under Section 144 Cr.P.C., is urgency requiring an immediate and speedy intervention by passing of an order, which must set out the material facts of the situation. The ultimate object of such a provision is to invoke only in grave circumstances for maintenance of public peace. Further, the efficacy of this provision is to prevent some harmful occurrence immediately and therefore, the emergency must be sudden and the consequences sufficiently grave.

16. In addition, the provisions of Section 144 Cr.P.C., 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 Cr.P.C., has to be used sparingly and very cautiously. It is also not in dispute that the provisions of Section 144 Cr.P.C., would be attracted only in emergent circumstances and the same could be exercised for the purposes of maintaining public order. Prima facie, the material facts should demonstrate that the action is being taken for maintenance of public order, public tranquillity and harmony.

17. Here, it is relevant to place reliance on the decision [Ramlila Maidan Incident Vs. Home Secretary, Union of India \(UOI\) and Others](#), wherein the Honourable Apex Court has elaborately dealt with the scope of Section 144 Cr.P.C., and laid down the law thus:

"79(40). Section 144 Cr.P.C. is intended to serve public purpose and protect public order. This power vested in the executive is to be invoked after the satisfaction of the authority that there is need for immediate prevention or that speedy remedy is desirable and directions as contemplated are necessary to protect the interest of others or to prevent danger to human life, health or safety or disturbance of public tranquility or a riot or an affray. These features must co-exist at a given point of time in order to enable the authority concerned to pass appropriate orders. The expression "law and order" is a comprehensive expression which may include not merely "public order" but also matters such as "public peace", "public tranquility" and "orderliness" in a locality or a local area and perhaps some other matters of public concern too. "Public order" is something distinct from order or orderliness in a local area. Public order, if disturbed, must lead to public disorder whereas every breach of peace may not always lead to public disorder. This concept came to be illustratively explained in the judgment of this Court in the case of [Dr. Ram Manohar Lohia Vs. State of Bihar and Others](#), wherein it was held that 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 Cr.P.C. empowers passing of such order in the interest of public order equitable to public safety and tranquility. The provisions of Section 144 Cr.P.C. empowering the authorities to pass orders to tend to or to prevent the disturbances of public tranquility is not ultra vires the Constitution.

81(42). The scope of Section 144 Cr.P.C. enumerates the principles and declares the situations where exercise of rights recognized by law, by one or few, may conflict with other rights of the public or tend to endanger the public peace, tranquility and/or harmony. The orders passed under Section 144 Cr.P.C. are attempted to serve larger public interest and purpose. As already noticed, under the provisions of the Cr.P.C. complete procedural mechanism is provided for examining the need and merits of an order passed under Section 144 Cr.P.C. If one reads the provisions of Section 144 Cr.P.C. along with other constitutional provisions and the judicial pronouncements of this Court, it can undisputedly be stated that Section 144 Cr.P.C. is a power to be exercised by the specified authority to prevent disturbance of public order, tranquility 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 concerned authority 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 tranquility.

84(45). Moreover, an order under Section 144 Cr.P.C. 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 the Cr.P.C., 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 the case of [State of Karnataka and Another Vs. Dr. Praveen Bhai Thogadia](#), 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 victimization by those in power. Normally, interference should be the exception and not the rule.

85(46). A bare reading of Section 144 Cr.P.C. 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 be served the same upon the concerned person.

86(47). These are the basic requirements for passing an order under Section 144 Cr.P.C. 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 (3) of Section 144 Cr.P.C. Out of the aforesaid 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 tranquility should be real and not quandary, imaginary or a mere likely possibility. This Court in the case of [Babulal Parate Vs. State of Maharashtra and Others](#), had clearly stated the following view:

"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."

87(48). The above-stated 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."

(emphasis added.)

18. On a careful scrutiny of the aforesaid dictum of the Honourable Apex Court, we are of the considered opinion that the provisions of Section 144 Cr.P.C., has to be invoked only in grave circumstances showing the necessity of an immediate action to be taken for maintenance of public peace and also, such provision could not be resorted to merely on imaginary or likely possibility or likelihood or tendency of a threat. However, it should not be a mere tentative perception of threat, but a definite and substantiated one, as it directly affects the right vested in a person under the Constitution of India.

19. Similarly, Articles 19(1)(a) and 19(1)(b) of the Constitution of India, are subject to reasonable restrictions that may be imposed on exercise of such right and that are in the interest of sovereignty and integrity of India. It is settled proposition of law that when some may be exercising their fundamental rights under Articles 19(1)(a) and 19(1)(b) of the Constitution, others may be entitled to the protection of social safety and security in terms of Article 21 of the Constitution and the State may be called upon to perform these functions in the discharge of its duties under the constitutional mandate and the requirements of Directive Principles of State Policy.

20. There can be no quarrel over the legal position that freedom of speech, right to assemble and demonstrate by holding dharnas and peaceful agitations are the basic features of a democratic system, however, these rights are not free from any restrictions and are not absolute in their terms and application. While deciding the questions whether a restriction imposed was reasonable or not, the Honourable Apex Court in Ramlila Maidan Incident case (supra), observed as under:

"65(26). The questions before the Court, thus, are whether the restriction imposed was reasonable and whether the purported purpose of the same squarely fell within the relevant clauses discussed above. The legislative determination of what restriction to impose on a freedom is final and conclusive, as it is not open to judicial review. The judgments of this Court have been consistent in taking the view that it is difficult to define or explain the word "reasonable" with any precision. It will always be dependent on the facts of a given case with reference to the law which has been enacted to create a restriction on the right. It is neither possible nor advisable to state any abstract standard or general pattern of reasonableness as applicable uniformly to all cases. This Court in the case of [State of Madras Vs. V.G. Row](#), held:

"It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard or general pattern of reasonableness, can be laid down as applicable to all cases."

66(27). For adjudging the reasonableness of a restriction, factors such as the duration and extent of the restrictions, the circumstances under which and the manner in which that imposition has been authorized, the nature of the right infringed, the underlining purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, amongst others, enter into the judicial verdict. [See: [Chintaman Rao Vs. The State of Madhya Pradesh](#), .

67(28). The courts must bear a clear distinction in mind with regard to "restriction" and "prohibition". They are expressions which cannot be used inter-changeably as they have different connotations and consequences in law. Wherever a "prohibition" is imposed, besides satisfying all the tests of a reasonable "restriction", it must also satisfy the requirement that any lesser alternative would be inadequate. Furthermore, whether a restriction, in effect, amounts to a total prohibition or not, is a question of fact which has to be determined with regard to facts and circumstances of each case. This Court in the case of [State of Gujarat Vs. Mirzapur Moti Kureshi Kassab Jamat and Others](#), held as under:

"75. Three propositions are well settled: (i) "restriction" includes cases of "prohibition"; (ii) the standard for judging reasonability of restriction or restriction amounting to prohibition remains the same, excepting that a total prohibition must also satisfy the test that a lesser alternative would be inadequate; and (iii) whether a restriction in effect amounts to a total prohibition is a question of fact which shall have to be determined with regard to the facts and circumstances of each case, the ambit of the right and the effect of the restriction upon the exercise of that right....."

68(29). The obvious result of the above discussion is that a restriction imposed in any form has to be reasonable and to that extent, it must stand the scrutiny of judicial review. It cannot be arbitrary or excessive. It must possess a direct and proximate nexus with the object sought to be achieved. Whenever and wherever any restriction is imposed upon the right to freedom of speech and expression, it must be within the framework of the prescribed law, as subscribed by Article 19(2) of the Constitution."

(emphasised by us.)

21. At this juncture, it is also useful to refer to the decision of the First Bench of this Court in [P. Pugalenthiraj Vs. State of Tamil Nadu](#), , wherein the procedures to be adhered to invoke the power under Section 144 Cr.P.C. have been dealt in detail and the relevant paragraphs are reproduced hereunder for ready reference:

"15. In the recent decision of the Supreme Court in the [Ramlila Maidan Incident Vs. Home Secretary, Union of India \(UOI\) and Others](#), referred supra, the scope of an order made under Section 144 Cr.P.C., has been stated. It has been held that an order passed in anticipation by the Magistrate empowered under Section 144, Cr.P.C., is not an encroachment of the freedom granted under Articles 19(1)(a) &

19(1)(b) of the Constitution and it is not regarded as an unreasonable restriction. It is an executive order, open to judicial review. It has been further held that the entire basis of an action under Section 144, is the urgency of the situation and the power therein is intended to be availed for preventing disorder, obstructions and annoyance with a view to secure the public weal by maintaining public peace and tranquillity. The decision of the Supreme Court in case of [Gulam Abbas and Others Vs. State of Uttar Pradesh and Others](#), referred supra, was referred to and stated that preservation of public peace and tranquillity is the primary function of the Government and the aforesaid power is conferred on the executive and in a given situation a private right must give in to public interest. That an order under Section 144, Cr.P.C., though primarily empowers the executive authorities to pass Prohibitory orders vis-a-vis a particular facet, but is intended to serve large public interest. Their Lordship's further held that the legislative intention to preserve public peace and tranquillity without lapse of time, acting urgently, if warranted, giving thereby paramount importance to the social needs by even overriding temporarily, private rights, keeping in view the public interest, a patently inbuilt in the provisions under Section 144 Cr.P.C. After referring to the decision in [State of Karnataka and Another Vs. Dr. Praveen Bhai Thogadia](#), it was observed that Court should not normally interfere with matters relating to law and order which is primarily the domain of the concerned administrative authorities and they are by and large the best to assess and handle the situation depending upon the peculiar needs and necessities within their special knowledge. It has been further held that if the authority anticipates an eminent 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 individual and the provision is attracted only in emergent situation for the purpose of maintaining public order. The order should be in writing referring to the facts and stating the reasons for imposition of such restriction. The Supreme Court in [State of Karnataka and Another Vs. Dr. Praveen Bhai Thogadia](#), held that the Court was not acting as an appellate authority over the decision of the official concerned and unless the order is patently illegal, without jurisdiction or with ulterior motives and on extraneous consideration of political victimization by those in power, normally interference should be the exception and not the Rule. The Court cannot in such matters substitute its view for that of the competent authority. The basic requirements for passing an order under Section 144 were held to be as follows:

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

16. The Constitution Bench held that the gist of the action under Section 144 is the urgency of the situation, its efficacy in the likelihood of being able to prevent some harmful occurrences and it is possible to act absolutely and even ex parte, the emergency must be sudden and consequences sufficiently grave. It was further held that there is no general rule that an order under the Section cannot be passed without taking evidence. Further, it was held that the restraint imposed by the order is temporary and the aggrieved person has an opportunity to have the order rescinded and there are sufficient safeguard available to the person affected by the order and the restrictions are therefore reasonable and the mere fact that the power under the section may be abused is no ground to strike it down.

17. As noticed above, the power under Section 144, is an executive power and for exercise of such powers, there must be sufficient ground for proceeding and the next aspect would be immediate prevention or speedy remedy is desirable and the order is required to be in writing by directing any person to abstain from a certain Act or to take certain order with respect of certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent or tends to prevent obstructions, 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."

(emphasis supplied.)

22. Keeping in mind the above legal principles set out by the Honourable Apex Court as well as by this Court, we proceed to analyse the factual background involved in the case on hand and accordingly, we find that though the second respondent has consistently pleaded that the representation of the petitioner was not received by them, the grievance put forth in the said representation would not reveal any particular incident of riotous situation, 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.

23. The general grievance put forth in the representation would clearly show as to what was the situation prevailed after the verdict of the Special Court and the information furnished by the petitioner in his representation does not disclose any material facts warranting promulgation of the proceedings under Section 144 Cr.P.C., in that area. If that could be the position, it is for the petitioner to make out a case for directing the respondents to consider his representation. In the absence of any material facts, even assuming that the said representation was submitted before the respondents and if the same does not reveal any material facts, the authorities are not bound to consider such a representation. A District Magistrate, a Sub-Divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, on making out a sufficient ground, is having power to proceed under Section 144 Cr.P.C., and take immediate preventive measures to maintain the public tranquillity and the law and order situation so as to

avoid any obstruction or injuries to the public concerned.

24. The pleadings of the petitioner as well as the status report of the second respondent would clearly point out the material information regarding the chaos created by the party members and it is for the law enforcing authority to arrive at a subjective satisfaction and opinion to analyse the situation and take a decision in this regard to invoke the provisions of Section 144 Cr.P.C., in a District in the circumstances as contemplated thereunder.

25. On a bare perusal of the contents of the representation of the petitioner, dated 01.10.2014, we find that there is no material information as to the sufficient ground for directing the Executive Magistrate or the authority concerned to consider such representation. We are not satisfied with the approach of the petitioner to come out with a prayer for a direction to the respondents to consider the representation of the petitioner and to invoke Section 144 Cr.P.C., relating to the maintenance of peaceful atmosphere, through the second respondent, the Superintendent of Police.

26. The power and wisdom have been given to the concerned Executive Magistrate to take note of the situation and it is always open for them to take into account the situation prevailing in the concerned Districts of their control and promulgate the ordinance in a case of situation warranted for that purpose. Hence, we are of the view that the writ petition lacks merit consideration and the same deserves to be dismissed. Accordingly, the writ petition stands dismissed. No costs.

27. It is true, a litigant may approach the Court for a direction to consider his representation by the competent authority in accordance with law. If there is a grievance of that nature which has been explained with material facts and information and such grievances are reflected in his representation, the Court may take note of the said material facts and give a direction to consider the representation.

28. In the instant case, the representation as extracted above, would not give any material facts and information for a redressal of the grievances put forth by the petitioner before this Court. The law is well settled that as far as prohibitory orders are to be enforced in a circumstance where in the opinion of the concerned Magistrate and on satisfaction to impose such a promulgatory order to regulate the law and order situation and to maintain the public order and tranquillity. It is for the State authorities to take stock of the entire situation and see to it that there will be a regulation and in the circumstances where there is a prohibition required, it may do so as per the law and procedures established.

29. Reflecting certain general nature of information would not give a cause of action to the petitioner to make a representation to the respondents to consider his request and impose a promulgatory order under Section 144 Cr.P.C. In the absence of such material information, this Court need not direct the authorities for considering the representation of the petitioner and it is always open to the

respondents/State authorities to analyse the actuality of the situation prevailing in that area and promulgate the ordinance and it is not for the petitioner to demand such a promulgation to be imposed when the learned Special Government Pleader for the respondents made a consistent plea that neither the petitioner has made any representation nor it has been received by any authorities. Prohibition and regulation are in the domain of the State authorities concerned in the control of such an area and the same has to be exercised by such an authority when there is a warranting situation and it is always open to them to do such things, if there is such a situation prevailing upon.