



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF SEPTEMBER, 2022

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 7611 OF 2022

BETWEEN:

SRI. PRAMOD H. MUTALIK

...PETITIONER

(BY SRI. MANJUNATH S. HALAWAR., ADVOCATE)

AND:

1. DISTRICT COMMISSIONER AND DISTRICT
MAGISTRATE
DAKSHINA KANNADA DISTRICT,
CAPITAL AVENUE ROAD,
MANGALURU – 575 001.
2. POLICE COMMISSIONER
MANGALURU CITY,
NEAR A.B. SHETTY CIRCLE,
MANGALURU – 575 001.
3. SUPERINTENDENT OF POLICE
DAKSHINA KANNADA DISTRICT,

Digitally signed
by PADMAVATHI
B K
Location: HIGH
COURT OF
KARNATAKA



NEAR A.B. SHETTY CIRCLE,
PANDESHWAR ROAD,
PANDESHWAR,
MANGALURU - 575 001.

4. DCP LAW AND ORDER
MANGALURU CITY,
MANGALURU-575 001.

(RESPONDENT NOS.1 TO 4 ARE
REPRESENTED BY HCGP,
HIGH COURT OF KARNATAKA.

...RESPONDENTS

(BY SRI KIRAN S.JAVALI, SPP-I A/W
SRI K.S.ABHIJITH, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ORDER NO.MAG(4)/R.330/2022/194129/C9, DATED 27.07.2022 ANNEXURE-A PASSED BY THE RESPONDENT NO.1 AND ORDER DATED 28.07.2022 ANNEXURE-B PASSED BY THE RESPONDENT NO.2 AGAINST THE PETITIONER, BY ALLOWING THIS PETITION.

THIS CRIMINAL PETITION, COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner is before this Court calling in question order dated 27.07.2022 passed in M.A.G.(4)/R.330/2022/194129/C9, by the District Commissioner and District Magistrate, Mangaluru,



exterminating the petitioner from Dakshina Kannada District, Mangaluru, from evening 4.00 p.m. of 28.07.2022, until further orders and the order dated 28.07.2022 passed by the Police Commissioner, Mangaluru, under Section 144(3) of the Cr.P.C., exterminating the petitioner from Mangaluru District, from 28.07.2022 to 03.08.2022.

2. Heard Sri Manjunath S. Haiawar, learned counsel for the petitioner and Sri Kiran S. Javali, learned State Public Prosecutor – 1 along with Sri K.S.Abhijith, learned High Court Government Pleader for the respondent.

3. *Sans* details, facts in brief, are as follows:-

The petitioner claims to be the National President and founder of an organisation by name Srirama Sene. On 29.07.2022, the petitioner came to Mangaluru and is alleged to have been resisted by the Police Officers by



showing the orders of respondent Nos.1 and 2, contending that the entry of the petitioner to Dakshina Kannada and Mangaluru City is prohibited. The petitioner after the said incident claims to have requested with a representation to the Commissioner of Police, Mangaluru City and other cities to permit him to meet the family of Praveen Netturu and would abide by the conditions, if imposed upon him. At that point in time, the Officers appeared to have handed over the copies of the orders issued by respondent Nos.1 and 2 - District Commissioner and District Magistrate and the Police Commissioner. It is then the petitioner comes to know that an order under Section 144(3) of the Cr.P.C. has been passed against the petitioner. It was an *ex parte* order without notice to the petitioner and on coming to know about the said order, the petitioner has knocked the doors of this Court challenging the said orders.



4. Learned counsel for the petitioner appearing for the petitioner would contend that the impugned order is in violation of the guidelines laid down by the Apex Court and further violates the fundamental rights of the petitioner as obtaining under Articles 14, 19 and 21 of the Constitution of India. He would submit that there was no opportunity given to the petitioner to explain whatever the circumstances narrated in the order, while not admitting the narration. In the light of it being violative of the natural principles of justice, the petitioner seeks quashment of both the orders.

5. Learned High Court Government Pleader would seek to defend the action by contending that it is based upon a report that such order is passed under Section 144 of the Cr.P.C. is passed and would seek to justify the action.



6. I have given my anxious consideration to the submissions made by the learned counsel for both the parties and perused the material on record.

7. In the light of the orders being passed under Section 144 of the Cr.P.C., it is germane to notice the provisions of law and the same reads as follows:

"144. Power to issue order in urgent cases of nuisance of 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 tranquility, or a riot, of 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.

(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:

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.

(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)

In the light of the afore-quoted provision of law and facts of the case at hand, what is required to be noticed is the order dated 27.07.2022, by which the petitioner was sought to be made the subject of the said order. The only reference in the order is the communication from Deputy Superintendent of Police, Dakshina Kannada, Mangaluru,



who appears to have sought issuance of an order at the hands of Deputy Commissioner under Section 144 of the Cr.P.C. The contents of the order would be in the realm of seeking to indicate that if the petitioner would visit the family of the deceased Praveen Netturu, it is likely to result in breach of public peace. The reason behind this is, wherever the petitioner has gone and spoken in public, the result is that, there is some breach of public peace. Except saying this, no other apprehension that is brought out to issue an *ex parte* order under Section 144 of the Cr.P.C., as a prohibitory measure banning the entry of the petitioner into the District. The order does not indicate any notice or prior intimation given to the petitioner. Therefore, the order dated 27.07.2022 is thus, without any such substance and also does not indicate that it is for a period of two months. In terms of the statute, orders can be passed *ex parte* only on certain emergent situations. The kind of emergent situation that is narrated to pass an order against the petitioner is that, in the past,



wherever the petitioner has entered there has been breach of public peace. This cannot be in the considered view of this Court an emergent situation to pass an order *ex parte*. No other reason is forthcoming in the order.

8. Sub-section 4 of Section 144 of the Cr.P.C., empowers the competent authority to issue prohibitory order only for a period of two months. The period of two months is also coming to an end. With these facts, I deem it appropriate to set aside the order and remit the matter back to the District Magistrate, to consider any explanation that the petitioner would give and pass appropriate orders in accordance with law.

9. The challenge to the order dated 28.07.2022, issued by the Police Commissioner, which was to be in operation upto 03.08.2022, is rendered infructuous in the light of the order having spent itself.



10. For the aforesaid reasons, I make the following:

ORDER

- i. The Criminal Petition is allowed.
- ii. The order dated 27.07.2022 passed in M.A.G.(4)/R.330/2022/194129/C9, by the District Commissioner and District Magistrate, Mangaluru, is set aside and the matter is remitted back to issue a notice and then pass appropriate orders in accordance with law.
- iii. The order dated 28.07.2022 passed by the Police Commissioner, Mangaluru, stands dismissed as having become infructuous.

I.A.No.1/2022 is disposed, as a consequence.

**Sd/-
JUDGE**

NVJ
List No.: 1 Sl No.: 12