

ANALYSING SECTION 144, Cr.P.C

Author: Ismat Zahra, IV Year of LL.B(Hons.) from Unity P.G. & Law College.

ABSTRACT

In urgent cases of nuisance or apprehended danger, power to issue an order must be directed. In brief, Section 144 of CrPC confers power to issue an order absolutely at once in urgent cases of nuisance or apprehended danger. This writing provides immediate prevention or speedy remedy, the material facts of the case, how to abstain from a certain act. This paper includes that which speeches are likely to create antagonism. The primary function of Section 144 is to maintain public order and tranquility. This paper also models about how to confer power on Additional District Magistrate, *ex parte*, persons to whom order can be directed, period of order, and rescission or alteration. The notification is issued by the District Magistrate; it also empowers the authorities to block internet access. This paper also includes that when there are apprehensions of breach of public peace and order, section 144 is imposed. This paper also mentions that anyone who obstructs the police from breaking the assembly is also punishable under law for 3 years under section 144 of CrPC.

BRILLOPEDIA

INTRODUCTION

The fourth branch of preventive jurisdiction deals with cases, urgent in their character, of either nuisance or apprehended danger. The ‘**nuisance**’ referred to is ‘**public nuisance**’, and the ‘**danger apprehended**’ is ‘**disturbance of the public tranquility, or riot, or affray.**’ Orders under this section can be issued *ex parte*; but they are always temporary in their duration, for they remain in force only for **two months**, and, only in exceptional cases, the State Government can enhance the duration up to a further period of **six months**. An order under this section is an executive order for preserving peace. It was held that reasonable restriction to carry on trade can be imposed for the preservation of peace and such an order could be said to be invalid as infringing *Article 19(1)(g) of the Constitution of India*. It was also held in the same case that the

expression ‘**public tranquility**’ is not used in restricted sense of public order as understood under the preventive detention law¹.

The Executive Magistrate has wide powers under this section. When the Magistrate came to the conclusion that the situation was created which had disturbed public tranquility and danger to human life, an order passed under **Section 144, CrPC** is legal.²

The order must set forth the material facts of the case; and be served as summons. It must either direct any person-

1. to abstain from a certain act, or
2. to take certain order with certain property in his possession or under his management.

OBJECT OF SECTION 144, CrPC

The main object of the provision is prevention of the breach of peace. When the provision is the preventive measure, any authority having jurisdiction can initiate the same. Priority of jurisdiction cannot be considered in such circumstances. Thus, initiation of the proceeding by the Sub – Divisional Magistrate and not the Executive Magistrate, does not call for any interference in revision.³

The extent of the authority possessed by the Magistrate is to suspend the exercise of the right on particular occasions and not to prohibit it absolutely and before the occasion arises which entitles him to act.⁴ These restrictions are within the limits of the saving provision of **Article 19(2) and (3) of the Constitution**.⁵ The exercise of power under **Section 144 of the CrPC** must be in aid of the legal rights and against those who interfere with the lawful exercise thereof. An order under **section 144** prohibiting the petitioners from taking out an immersion procession of *Goddess*

¹ *BBN School v District Mag, Allahabad*, 1990 Cr LJ 422 (All).

² *UmmulKulus v Ex Magistrate, Union Territory*, 1991 Cr LJ 262 (Ker).

³ *M Das v DC Das*, 1989 Cr LJ NOC 163.

⁴ *Sundaram*, (1882) 6 Mad 203, 213 (FB).

⁵ *Ram ManoharLohiya*, AIR 1968 All 160; *MadhuLimaye v Sub – Divisional Magistrate, Monghyr*, AIR 1971 SC 2486 : 1971 Guj LJ 1720 : (1970) 3 SCC 746, 739.

Durga and passing in front of a mosque with music on a particular day was held to be violative of the rights guaranteed by **Article 25 and 26 of the Constitution** of the processionists.⁶ An order under **section 144** can be temporary and valid for **two months** only. An order under **section 144** directing the respondent to remove a bund obstructing the flow of water was quashed as it was unlimited in duration and permanent in effect.⁷ The Magistrate cannot order a party to be dispossessed and order other party to be put in possession in a proceeding under **section 144**.⁸

An order under **section 144** is administrative in nature and not judicial or quasi – judicial. It is amenable to writ jurisdiction if it violates the fundamental rights.⁹

IMMEDIATE PREVENTION OR SPEEDY RECOVERY

The existence of the circumstances, showing the necessity of immediate action, is a condition precedent to the Magistrate having the power to act under this section.¹⁰

THE MATERIAL FACTS OF THE CASE

The Magistrate must state the material facts in the order.¹¹ Detailed substance, grounds or reasons, on which order is based, need not be given.¹² Magistrate must be satisfied about the existence of urgent circumstances and such urgency must be reflected in the order under **section 144** itself which reasons thereof.¹³

⁶ *Prabhas Kumar Roy v The Officer in Charge, Raninagar Police Station*, 1985 Cr LJ 957 (Cal). See also *Gulam Abbas v Sate of UP*, AIR 1981 SC 2198 : 1981 Cr LJ 1835.

⁷ *Parathodu Panchayat v Kanjirappally Panchayat*, 1984 Cr LJ 971 (Ker); *Acharya Jagdishwaran and Avadhuta v Commissioner of Police, Calcutta*, AIR 1983 SC 2238: 1983 Cr LJ 1872.

⁸ *AH Wheeler v State of Bihar*, 1988 Cr LJ NOC 6 (Pat).

⁹ *Gulam Abbas v State of UP*, AIR 1981 SC 2198 : 1981 Cr LJ 1835 : (1982) 1 SCC 71.

¹⁰ *Kamini Mohan Das Gupta v Harendra Kumar Sarkar*, 1907 (ILR) 38 Cal 876; *Jatindranath*, 1967 Cr LJ 1716 (FB).

¹¹ *Karoolal Sajawal v Shyam Lal*, (1905) 32 Cal 935, 940; *Kamini Mohan Das Gupta v Harendra Kumar Sarkar*, (1911) 38 Cal 876. See also *Prodyot Kumar v Bank of India*, 1973 Cr LJ 1361.

¹² *Chander Singh Mandyal v State of HP*, 1993 Cr LJ 3697 (HP).

¹³ *Premoda Medhi v Gauhati Roller Flour Mills Ltd*, 2003 Cr LJ 122 (Gau).

ABSTAIN FROM A CERTAIN ACT

The Magistrate is only entitled to make restrictive order preventing a person from doing an act. He cannot make a mandatory order directing a person to do some act.¹⁴ The words “**abstain from a certain act**” do not empower a Magistrate to make a positive order requiring a person to do particular things;¹⁵ neither can the Magistrate in the garb of a negative order ask the person to do certain thing.¹⁶ The words “**certain act**” mean a definite act.¹⁷ An order to abstain from interference with a temple and its property is an order to abstain from a “**certain act**”.¹⁸

This section is not confined to acts, which, if allowed to be completed, would amount to an offence, but applies also to acts which if completed would furnish grounds for a civil action only. It applies to an infringement of a right of easement, as it causes an injury to the owner thereof.¹⁹

SPEECH LIKELY TO CREATE COMMUNAL ANTAGONISM

A speech in public which is likely to create communal antagonism and hatred and also likely to result in fissiparous activities which may gain foothold and undermine communal harmony. A prohibitory order was passed by the District Administrative Authorities. It was held that interference by the Court in such matters should be an exception and not a rule. Freedom of speech and expression are subject to reasonable restrictions in social interest, preservation of public order and rule of law. Secularism is not to be confused with communal or religious concepts of a person or group of persons.²⁰

PUBLIC ORDER AND TRANQUILLITY

¹⁴ *Kushumkumaree Debee v Hemalinee Debee*, (1933) 63 Cal 11.

¹⁵ *BN Sasmal*, (1930) 58 Cal 1037.

¹⁶ *Ramanlal Bhogilal Patel v NH Sethna*, 1971 Cr LJ 435.

¹⁷ *Abayeswari Debi v Sidheswari Debi*, (1888) 16 Cal 80.

¹⁸ *EV Ramanuja Jeeyarsvami v Ramanuja Jeeyar*, (1881) 3 Mad 354.

¹⁹ *State of Maharashtra v Dr Praveen Bhai Thogadia*, AIR 2004 SC 2081 : (2004) 4 SCC 684 : (2004) Cr LJ 1825.

²⁰ *State of Karnataka v Dr Praveen Bhai Thogadia*, AIR 2004 SC 2081 : (2004) 4 SCC 684 : (2004) Cr LJ 1825.

In urgent cases of nuisance or apprehended danger, prohibitory orders can be imposed by the Executive Magistrate appointed as an Additional District Magistrate (ADM) under jurisdiction conferred by **Notification of 27 March 1974** and **6 July 1974**. The fact that the notification was not placed before the High Court was held to be not a ground to conclude that the ADM who passed the order had no authority. It is the burden of the party challenging jurisdiction of ADM to place materials before the Court to substantiate his claim. The scheme underlying **section 144** and the Code carry sufficient in – built safeguards to control unwarranted exercise or abuse of powers. The orders are also preventive and not punitive.²¹

CONFERMENT OF POWER ON ADDITIONAL DISTRICT MAGISTRATES [Sub – section (1)]

ADMs have to be specially empowered by notification for exercise of powers under this section. The Notification relied on by the State in this case did not show proper conferment of powers. The order of the ADM preventing the petitioner from participation in a public meeting was held to be without jurisdiction.²²

“Ex parte” [Sub – section (2)]

Orders can be passed only under two circumstances:

- in case of emergency;²³
- where the circumstances do not admit of personal service.²⁴

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 because why it should not be passed.²⁵

²¹ *Praveen Bhai Thogadia (Dr) v State of Karnataka*, 2003 Cr LJ 1769 (Kant).

²² *Joyanti Kumar Mookerjee v Middleton*, (1900) ILR 27 Cal 785, 787; *Sundaram*, (1883) 6 Mad 203, 223 (FB).

²³ *Mahamaddi Mollah v Emperor*, (1898) 2 Cal WN 747.

²⁴ *Queen – Empress v Tirunarasimha Chari*, (1896) ILR 19 Mad 18, 20.

²⁵ *Nand Kishore Tiwari v Collector*, 1993 Cr LJ 2883 (MP).

Where the operation of tourist buses from a place near national highway was restrained under *section 144 of CrPC* by the District Magistrate on the ground of traffic hazard, the MP High Court quashed the order as, *firstly*, there was no urgency, *secondly*, no opportunity was given to the person affected to explain his position and *lastly*, the order was based on wrong assumption.²⁶

PERSONS TO WHOM ORDER CAN BE DIRECTED [Sub – section (3)]

This sub-section is an exception to the general rule that the order shall be directed to a particular person. The effect of the order being in the interest of the public order and the interests of the general public, occasions may arise when it is not possible to distinguish between those whose conduct must be controlled and those whose conduct is clear.

In a case relating to imposition of prohibitory orders on a crowd holding protest rally at *Ramlila Maidan* in Delhi, it was held by the Supreme Court that clamping of prohibitory orders on persons attending yoga camp and protesting against black money and corruption when they were asleep and resorting to *lathi charge* and shelling tear gas to disperse sleeping persons without giving notice of such prohibitory order, was arbitrary State action when there was no justification for such immediate action.²⁷ It was further held by the Court that the use of public place for purpose other than for which permission was obtained or apprehended overcrowding of the public place are not relevant grounds for invoking *section 144*. It was held that on facts, the actual occupancy in *Ramlila Maidan* by peacefully agitating members of public was less than its capacity and therefore, there was no justification to issue prohibitory order on this count.²⁸ It was also held that such prohibitory orders under *section 144* being a restriction of freedom of speech and to assemble peacefully, must be in writing and should set out grounds for imposing such order and it should remain in force for a limited period of time.²⁹

²⁶ In *Re Ramlila Maidan Incident v Home Secretary, UOI*, (2012) 5 SCC 1 : 2012 Cr LJ 3516 (SC) : (2012) 2 SCC (cri) 241.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Govinda Chetti v Perumal Chetti*, (1913) 38 Mad 489.

PERIOD OF ORDER [Sub – section (4)]

Every order issued under this section is timed to expire at the end of **two months**. It is not competent to a Magistrate to revive or resuscitate his order from time to time.³⁰ The grant of what in effect is an order for perpetual injunction is entirely beyond the Magistrate's powers.³¹

The State Government may extend the period to **six months** from the date on which the order made by the Magistrate would expire on grounds of prevention of danger to human life, health or safety and prevention of riot or affray. The power conferred on the State Government is an executive power; but the same should not be arbitrary or excessive and the manner of imposition should be fair and just. It is possible for the Sessions Judge or the High Court to interfere in revision even with regard to an order under **section 144 of the CrPC** in exceptional cases when there is glaring defect in the procedure or manifest error on the point of law and consequently flagrant miscarriage of justice. All orders passed under the CrPC are subject to revision under **section 397 of the CrPC** and there is no exception in respect of orders passed under **section 144**. The orders under **section 144 of the CrPC** have greater finality than the order merely summoning the accused. The proceedings, therefore, cannot be considered to be wholly interlocutory.³²

Period of **60 days** has to be counted from the date of the prohibitory order passed at the time of the initiation of the proceedings and not from the date of the final order.³³

RESCISSION OR ALTERATION [Sub – sections (5) and (6)]

³⁰ *GopiMohunMullik v TaramoniChowdhvani*, (1879) 5 Cal 7 (FB); *Bradley v Jameson*, (1882) ILR 8 Cal 580; *Sheodin*, (1887) 10 All 115.

³¹ *ZilaParishad, Etawah v KC Saxsena*, 1977 Cr LJ 1747 (All).

³² *MaulaBux Ansari v Ram Rup Sah*, 1983 Cr LJ 1215 (Pat).

³³ *Purna Chandra v Saoget Ali Mallick*, AIR 1960 Cal 715 : 1960 Cr LJ 1445.

Failure to apply under these sub-sections for rescission or alteration of a positive or negative order under *section 144* is no bar to the filing of revision petition under *section 401* against it.³⁴

CONCLUSION

The very urgency of the case demands the laying aside of the usual formalities and preliminaries to the making of an order. Cases of ordinary public nuisance, shorn of their urgency, have been dealt with earlier. Thus, the gist of the action under this section is the urgency of the situation, its efficacy in the likelihood of being able to prevent some harmful occurrences. As it is possible under the section to act *ex parte*, it is obvious that the emergency must be sudden and the consequences sufficiently grave. But there is no general proposition that an order under this section cannot be passed without taking evidence.³⁵



BRILLOPEDIA

³⁵ *MadhuLimaye v Sub – Divisional Magistrate, Monghyr*, AIR 1971 SC 2486 : 1971 Guj LJ 1720 : (1970) 3 SCC 746, 739.