

THE INDIAN LAW REPORTS

PUNJAB SERIES

CRIMINAL WRIT.

Before Bhandari, C.J. and Khosla, J.

S. AMRAO SINGH,—Petitioner.

versus

THE STATE,—Respondent.

Criminal Writ No. 43 of 1951.

*Criminal Procedure Code (V of 1898), Section 144—
Constitution of India, Articles 19, 25 and 31—Section 144 of
the Criminal Procedure Code, whether ultra vires the
Constitution, Articles 19, 25 and 31—Constitution (First
Amendment) Act, 1951—Subsection (2) of Section 3—Effect
of.*

1951
December, 20th

Interpretation of statutes—Part of the section ultra vires and part intra vires—Rule of construction—Constitution of India, Article 13—Effect of.

Held, that after the Constitution (First Amendment) Act, 1951, all laws relating to maintenance of public order are to be considered intra vires the Constitution. In so far as section 144, Criminal Procedure Code, empowers the District Magistrate to issue orders in the interest of public order the section is good law and intra vires the Constitution.

Held, also that it is not open to law courts to paraphrase an expression used in the statute when invoking the provisions of Article 13 of the Constitution. But if phrases are used in the alternative and these phrases are mutually

exclusive and the omission of one or more of them does not alter the sense of the section, then those expressions which make the section void may be omitted and others allowed to stand.

Petition under Articles 228 and 226 of the Constitution of India praying that the Case "State versus Master Tara Singh, etc.," may be withdrawn from the Court of Additional District Magistrate, Jullundur, and the provisions of Section 144, Cr. P.C., may be declared to be unconstitutional. Consequently the proceedings so far taken by the Court below against the petitioners in the above-noted case may be quashed. Pending the decision of this petition, further proceedings in the Court below may be stayed.

H. S. GUJRAL, for Petitioner.

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

ORDER.

Khosla, J.

KHOSLA, J. These are three petitions under Article 228 and 226 of the Constitution praying that the cases pending against the petitioners in the Court of the Additional District Magistrate, Jullundur, be transferred to this Court. The petitioners are in each instance being prosecuted under Section 188, Indian Penal Code, and the charge against them is that they contravened the terms of an order issued by the District Magistrate under Section 144 of the Criminal Procedure Code. The main ground on which the transfer of these cases to this Court is sought is that section 144, Criminal Procedure Code, is *ultra vires* the Constitution and this constitutional point is to be raised by way of defence by all the petitioners. It is, therefore, prayed that the cases be transferred to this Court and the question of the validity of section 144, Criminal Procedure Code, be decided by this Court.

The facts are that the District Magistrate, Jullundur, on the 10th of March 1951, issued an order under section 144, Criminal Procedure Code,

whereby he prohibited "the holding of any public meeting, procession or demonstration in any public place throughout the Jullundur District for a period of one month only with effect from the 11th March, 1951". According to the order the object of prohibiting these meetings was to "prevent disturbances of public tranquility." The order was extended for a further period of one month, and on the 13th of April 1951, public meetings were held at Village Dhesian, Kartarpur and Rahon in the district of Jullundur. The petitioners attended the meetings held at these places and were subsequently charged with an offence punishable under Section 188, Indian Penal Code.

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The only point requiring our decision at this stage is whether Section 144, Criminal Procedure Code, is or is not *ultra vires* the constitution. The contention of Mr. Harbans Singh Gujral is that this section is couched in such wide terms that it is repugnant to the provisions of Articles 19, 25 and 31 of the Constitution. He also argued that the section contemplated unreasonable restrictions upon the liberty of the subject and was not, therefore, saved by the Exceptions to Article 19 or to Article 25. On the other hand, the learned Advocate-General contended that a part at least of Section 144, Criminal Procedure Code, was good law because it did not in any way infringe any Article of the Constitution. He maintained that in particular orders under Section 144, Criminal Procedure Code, could be passed to prevent a disturbance of the public tranquility, because such orders were saved by subsection (2) of section 3 of the Constitution (First Amendment) Act, 1951, whereby any law imposing reasonable restrictions on the exercise of the right conferred by Article 19 of the Constitution in the interests of public order would be deemed to be good law.

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Mr. Sikri drew our attention to the provisions of Article 13 and maintained that only that part of Section 144, Criminal Procedure Code, which is inconsistent with the provisions of the Constitution can be said to be void and not the whole of the Section.

Subsection (1) of Section 144, Criminal Procedure Code, is in the following terms:—

“144.(1) In cases where, in the opinion of a District Magistrate, a Chief Presidency Magistrate, Sub-Divisional Magistrate, or of any other Magistrate (not being a Magistrate of the third class), specially empowered by the Provincial Government or the Chief Presidency Magistrate or the District Magistrate to act under this section, 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 manner provided by section 134, direct any person to abstain from a certain act or to take certain order with certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, *obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquility, or a riot, or an affray.*”

If in the second paragraph of this subsection the words italicised are omitted this subsection will read as follows:—

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“Such Magistrate may, by a written order stating the material facts of the case and served in manner provided by section 134, direct any person to abstain from a certain act or to take certain order with certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, a disturbance of the public tranquility.”

It is clear that this section is saved by Article 19 of the Constitution as it now reads, for any law in the interests of public order is good law. Mr. Gujral contends that it is not open to us to break up section 144 in this manner as this amounts to redrafting the section and making it totally different to what its framers intended it to be. The omission of certain phrases which stand independently of other phrases does not, however, amount to redrafting. If an entire section in a certain statute is found to be *ultra vires* that section may be omitted and the rest of the statute treated as good law. In the same manner if of several subsections one or two are bad while the others are good, the good ones will stand. Section 144(1) provides that a Magistrate may issue certain orders in certain circumstances. The issuing of such an order in a particular set of circumstances may be *ultra vires* the Constitution, but this does not mean that the entire section must go for the Magistrate may legitimately issue orders in another set of circumstances, namely, when there is danger of public disorder resulting, for the Constitution provides that a law which authorises the issuing of such an or-

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der is good law. Mr. Gujral drew our attention to recent decisions of the Supreme Court in *Romesh Thapar v. The State of Madras* (1) and *Brij Bhushan and another v. The State of Delhi*, (2). In the first mentioned case the Madras Government imposed a ban upon the entry of a certain journal in that State under the provisions of the Madras Maintenance of Public Order Act, 1949. The ban was imposed for the purpose of securing public safety and the maintenance of public order. Their Lordships of the Supreme Court held that the Madras Maintenance of Public Order Act, 1949, was *ultra vires* the Constitution because the ban could not be imposed for securing public safety and the maintenance of public order. This decision was given before the Constitution (First Amendment) Act, 1951, was passed and the Constitution as it then stood did not authorise the imposition of any ban for the purpose of maintaining public order. Now, however, all laws relating to the maintenance of public order are to be considered *intra vires* the Constitution. The wording of the Madras Act was such that the section could not be separated into valid and invalid parts. The only expression used was "public safety and the maintenance of public order" and it was not possible to substitute other words for the words employed. It is not open to law courts to paraphrase an expression used in the statute when invoking the provisions of Article 13 of the Constitution. But if phrases are used in the alternative and these phrases are mutually exclusive and the omission of one or more of them does not alter the sense of the section, then those expressions which make the section void may be omitted and others allowed

(1) A.I.R. 1950 S.C. 124

(2) A.I.R. 1950 S.C. 129

to stand. I am clearly of the view that in so far as Section 144, Criminal Procedure Code, empowers the District Magistrate to issue orders in the interests of public order the section is good law and *intra vires* the Constitution. Therefore it must be held that the section does not contravene the provisions of Article 19.

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With regard to Article 25 of the Constitution the contention of the learned counsel for the petitioners is that the meetings called were religious meetings and that they could not therefore be banned, but the freedom of religion given by Article 25 is subject to public order, and whether the object of these meetings was to propagate religion or not, a ban under Section 144, Criminal Procedure Code, could have been imposed by the District Magistrate in the interests of public order. There is a similar saving to the freedom given under Article 31. In any case, Article 31 would not apply because in the present case we are considering the validity of Section 144, Criminal Procedure Code, by omitting the phrase relating to property.

For the reasons given above, I would hold that Section 144, Criminal Procedure Code, to the extent it deals with issuing orders in order to prevent a disturbance of the public tranquility is good law, and therefore the order issued by the District Magistrate of Jullundur under that section in this case is a valid order. The petitions are accordingly rejected and the records will be sent back to the trial Court for disposal of the cases according to law.

BHANDARI, C.J. I agree.

Bhandari, C.J.