

State vs Deadley Misra on 9 June, 1954

Equivalent citations: AIR1954ALL738

ORDER

Roy, J.

1. This is a reference under Section 432, Criminal P. C., by the learned Judicial Officer of Jaunpur for a decision as to whether or not Section 144, Criminal P. C., is ultra vires as it offends against Article 19(1)(a) of the Constitution of India.

2. On 9-9-1950, an order under Section 144, Criminal P. C., was promulgated by the District Magistrate of Jaunpur with a view to prevent breach of peace and to maintain public tranquillity. One of the clauses contained in that order was that no one shall arrange, organise or take part in any demonstration whatsoever. The order was to remain in force from 15-9-1950 to 31-10-1950, both days inclusive. It was alleged on behalf of the prosecution that on 27-9-1950, Deadley Misra in contravention of that order organised a public meeting at the crossing in Mohalla Tikli Tola and took part in a demonstration and raised slogans like "Inqilab Jindabad, Socialist Party Zindabad", etc. The learned Magistrate held the accused guilty of breach of the order under Section 144, Criminal P. C., punishable under Section 188, I. P. C. The learned Magistrate, however, observed that since Article 19(1)(a) of the Constitution of India gave unfettered right of freedom of speech and expression to every citizen of India except for restrictions imposed under Article 19(2) of the Constitution which did not cover a contingency of the present nature, Section 144, Criminal P. C., must be held to be ultra vires. It appears that the learned Magistrate did not take into consideration the Constitution (First Amendment) Act, 1951, which came into force on 18-6-1951, by which Article 19, as it originally stood, had been amended.

By the amendment the following clause was substituted for Clause (2) of Article 19:

"(2) Nothing in Sub-clause (a) of Clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with foreign States, public order, decency, morality, or in relation to contempt of Court, defamation or incitement to an offence."

3. The amendment further provided that no law in force in the territory of India immediately before the commencement of the Constitution which is consistent with the provisions of Article 19 of the

Constitution as amended by Sub-section (1) of Section 3 of the Amending Act shall be deemed to be void or ever to have become void on the ground only that, being the law which takes away or abridges a right conferred by Sub-clause (a) of Clause (1) of Article 19, its operation was not saved by Clause (2) of that article as originally enacted. Having regard to the Amending Act, there can be no two opinions that Section 144, Criminal P. C., was never in conflict with Article 19(1)(a) of the Constitution of India. The phrase 'reasonable restriction' in Article 19 connotes that the limitation imposed upon a person in enjoyment of a right should not be arbitrary or of an excessive nature beyond what is required in the interest of the public. An order promulgated under Section 144, Criminal P. C., by a District Magistrate for the maintenance of public peace and tranquillity of the nature promulgated in the present case must be taken as a reasonable order and not of an excessive nature beyond what was required in the interest of the public.

My answer to the reference therefore is that Section 144, Criminal P. C., is not in conflict with Article 19(1)(a) of the Constitution of India and that the provisions of that section are valid. A copy of this order shall be sent to the Magistrate by whom the reference was made who shall dispose of the case in terms of this order. In the circumstances of the case I make no order as to the costs of this reference.