

V.G. Deshpandey vs City Magistrate, Lucknow And Ors. on 17 March, 1953

Equivalent citations: AIR1953ALL577

ORDER

1. This is an application under Articles 226 and 228 of the Constitution for an order that the case against the applicant before the Judicial Officer, Lucknow, be withdrawn and disposed of by this Court and that the proceedings in the lower Court be stayed.

2. Learned counsel has urged that in view of the provisions of Article 19(1)(a) of the Constitution the learned Magistrate was not justified in passing an order under Section 144, Criminal P. C. It is further urged that Section 144 itself is ultra vires as it places unreasonable restriction on the right of a citizen conferred by Article 19(1)(a) of the Constitution. The facts, as they appear from the application, are that the applicant came to Lucknow and on 15/3/1953, at about 4-30 P. M. a notice was served on him signed by the City Magistrate, Lucknow, that it had come to his notice that the applicant was going to deliver a speech in support of the Praja Parishad Agitation in Jammu and on the Jammu and Kashmir question generally and that in the prevailing communal excitement in the city such a speech was likely to cause further excitement and breach of public peace and tranquillity. It is said in para 9 of the petition that the situation in Lucknow was normal, there was no communal excitement and the speech that the applicant wanted to deliver was not likely in any way to result or tend to result in any communal disturbance or any breach of the public peace and tranquillity.

3. Article 19(1)(a) guarantees to the citizens of India freedom of speech and expression, but it is subject to "the restriction imposed under Article 19(2) which now provides after the recent amendment that the State has the right to impose reasonable restriction in the interest of public order. In the Criminal Procedure Code there are various sections which are known as preventive sections which gave a Magistrate the power to pass an order in the interest of maintenance of law and order or to prevent the commission of a crime. It is not necessary for us in this case to consider the whole of Section 144, Criminal P. C. or whether or not it is too widely worded. Learned counsel has urged that Section 144 places in the hands of a Magistrate unlimited power and a Magistrate can, at his sweet-will and pleasure, interfere with the fundamental rights given in the constitution. We must confine ourselves to the facts before us which raise only one point, namely, whether a Magistrate has a right, when he apprehends a breach of the peace, to pass an order under Section 144, Criminal P. C. and direct a person not to make a speech which might tend to that result and whether it is open to the court to consider whether there were good grounds for the apprehension. The question whether there was apprehension of the breach of the peace must be left to the Magistrate.

After all he is primarily responsible for maintenance of law and order and it is for him to judge whether there was a reasonable apprehension justifying an order under Section 144, Cr.

P. C. Unless the order passed by a Magistrate is on the face of it absurd or is mala fide there is no reason for the court to interfere. We are not satisfied, therefore, that there is any cause for granting the application.

4. The application is rejected.