Bar and Bench (www.barandbench.com)

IN THE COURT OF SAMAR VISHAL,
Additional Chief Metropolitan Magistrate – II
Patiala House Courts, New Delhi

CC No. 41660/2016
FIR No. 73/2012
State vs Sh Arvind Kejriwal & Others
25.04.2018

ORDER

1. *"We can appreciate that holding peaceful demonstration in order to air their grievances and to see that their voice is heard in the relevant quarters is the right of the people. Such a right can be traced to the fundamental freedom that is guaranteed under Articles 19(1)(a), 19(1)(b) and 19(1)(c) of the Constitution. Article 19(1)(a) confers freedom of speech to the citizens of this country and, thus, this provision ensures that the petitioners could raise slogan, albeit in a peaceful and orderly manner, without using offensive language. Article 19(1)(b) confers the right to assemble and, thus, guarantees that all citizens have the right to assemble peacefully and without arms. Right to move freely given under Article 19(1)(d), again, ensures that the petitioners could take out peaceful march. The 'right to assemble' is beautifully captured in an eloquent statement that "**an unarmed, peaceful protest procession in the land of 'salt satyagraha', fast-unto-death and 'do or die' is no jural anathema**" . It hardly needs elaboration that a distinguishing feature of any democracy is the space offered for legitimate dissent. One cherished and valuable aspect of political life in India is a tradition to express grievances through direct action or peaceful protest. Organised, non-violent protest marches were a key weapon in the struggle for independence, and the right to peaceful protest is now recognised as a*

Bar and Bench (www.barandbench.com)

fundamental right in the Constitution.”.

2. These observations came in a judgment of ***Anita Thakur & Ors vs Government of Jammu & Kashmir & Others (2016) 15 Supreme Court Cases 525*** by Hon'ble Supreme Court of India and shall be the guiding light for future discourse of this order. In this case (*Anita Thakur's, supra*), some migrants of the State of Jammu & Kashmir planned to take out a peaceful protest march from Jammu to Delhi for ventilating their grievances. However, when they reached near Katra in Jammu & Kashmir, the police authorities beaten them and mishandled these migrants. For such atrocities, the Hon'ble Supreme Court of India awarded compensation of Rs.Two Lakhs to one petitioner and Rs.One lakh to other petitioners, holding that -

“*18. When we examine the present matter in the aforesaid conspectus, we find that initially it was the petitioners/ protestors who took the law into their hands by turning their peaceful agitation into a violent one and in the process becoming unruly and pelting stones at the police. On the other hand, even the police personnel continued the use of force beyond limits after they had controlled the mob. In the process, they continued their lathi charge. They continued to beat up all the three petitioners even after overpowering them. They had virtually apprehended these petitioners making them immobile. However, their attack on these petitioners continued even thereafter when it was not at all needed. As far as injuries suffered by these petitioners are concerned, such a situation could clearly be avoided. It is apparent that to that extent, respondents misused their power. To that extent, fundamental right of the petitioners, due to police excess, has been violated. In such circumstances, in exercise of its power under Article 32 of the Constitution, this Court can award compensation to the*

Bar and Bench (www.barandbench.com)

petitioners (See – Saheli, v. Commissioner of Police, Joginder Kaur v. The Punjab State, State of Rajasthan v. Vidhywati, and Nilabati Behera v. State of Orissa). The ratio of these precedents can be explained thus: First, it is clear that a violation of fundamental rights due to police misconduct can give rise to a liability under public law, apart from criminal and tort law. Secondly, that pecuniary compensation can be awarded for such a violation of fundamental rights. Thirdly, it is the State that is held liable and, therefore, the compensation is borne by the State and not the individual police officers found guilty of misconduct. Fourthly, this Court has held that the standard of proof required for proving police misconduct such as brutality, torture and custodial violence and for holding the State accountable for the same, is high. It is only for patent and incontrovertible violation of fundamental rights that such remedy can be made available. Fifthly, the doctrine of sovereign immunity does not apply to cases of fundamental rights violation and hence cannot be used as a defence in public law.

19. Keeping in view the totality of the circumstances of the present case and finding that even the petitioners are to be blamed to some extent, as pointed out above, the only relief we grant is to award compensation of ₹ 2,00,000 (rupees two lakhs only) to petitioner No.1 and ₹ 1,00,000 (rupees one lakh only) each to petitioner Nos. 2 and 3, which shall be paid to these petitioners within a period of two months."

3. The facts of this case are different from the case referred above. In the present case, although the accused citizens are not brutalised by the police but were stopped from taking out an allegedly peaceful procession and thereafter registering an FIR against them and prosecuting them for commission of offence punishable under section 147/148/149/151/152/186/188/353/332/34 IPC and Section 3 of

Bar and Bench (www.barandbench.com)

Prevention of Damage to Public Property Act, 1984.

4. Subsequent to an investigation to this FIR No. 73/2012, a chargesheet was filed by the police for the aforesaid offences against Mr. Arvind Kejriwal, Banwari Lal Sharma, Dalbir Singh, Mukesh Kumar, Mohan Singh, Balbir Singh, Jagmohan Gupta, Azad Kasana, Harish Singh Rawat and Anand Singh Bisht.

5. The prosecution story as is reflected in the chargesheet is that on 26.08.2012, the volunteers of India Against Corruption(herein after referred to as AIC) were to hold a demonstration against coal scam at the House of Prime Minister. Since the police was aware of this programme, it had made its arrangements by deploying barricades and water cannon. At around 2:40 pm, around 300-400 volunteers of India against corruption started assembling at Kothi No. 4, Akbar Road. They were raising slogans and started moving towards Prime Ministers House, where the police warned them from moving further. Mr. Arvind Kejriwal, their leader, started provoking them and without paying heed to the warning, kept moving towards PM House. Thereafter to stop them, force was used through water cannons due to which the volunteers became violent but kept walking. When the volunteers did not stopped, police filed several round of tear gas and thereafter police started using a light force for driving them off. As per the chargesheet certain mischievous elements attacked the police with the flagsticks. It is also stated that one head constable also received injuries in this incident. It is the case of the police that a barricade was damaged along with certain plants. Thereafter, the matter was investigated by Sub-Inspector Babu Ram. According to the chargesheet those persons, who have been made an accused have confessed their involvement in the incident of that day.

Bar and Bench (www.barandbench.com)

The statement of Mr. Arvind Kejriwal was also recorded in police station Parliament Street on 03.09.2012 vide Diary No. 7067, who stated that this letter may be treated as his statement under section 161 Cr.PC. He would also like to make his confessional statement before Magistrate and he takes moral responsibility of what happened on 26th August and what he did was correct and will continue to do so. However, he was not arrested on the apprehension of deterioration of law and order on his arrest.

6. All accused have been summoned in this case for trial and they have moved their application for discharge stating that IAC has been holding a series of peaceful demonstrations and protests across India including Delhi NCR ever since 30.01.2011 and none of the demonstrations they have held in the past two years have ever been violent. This movement, promulgated by Gandhian activist Sh. Anna Hazare, is primarily one of non-violent civil resistance, featuring demonstrations, marches, acts of civil disobedience, hunger strikes, marches and rallies. The movement has gained momentum since 05.04.2011, when Sh. Anna Hazare began his famous hunger strike at Jantar Manger in New Delhi. The chief aim of the movement was to alleviate corruption in the Indian government through the Jan Lokpal Bill. There were many occasions in last two years when people in Delhi and across India participated in the rallies, dharna and demonstrations, which remained peaceful and not a single event of violence was reported ever. It has been further argued that the imposition of the order of Section 144 Cr.PC was itself bad in law because it does not mention any reason that why this provision has been enforced. It is further argued that since the order under section 144 Cr.PC was not a valid order therefore all other offence alleged cannot be invoked as they are all connected with the same.

Bar and Bench (www.barandbench.com)

7. This Court on 30.03.2013 made an order of further investigation observing that it was imperative on the state to explain the circumstances under which ACP Bhoop Singh had passed the order under section 144 Cr.PC on 06.08.2012 and to disclose if the said order was part of a series of repetitive orders. The order of the Court is reproduced here :-

> "4. The foundation/corner-stone of the case presented by the State against the citizens is that on 26.08.2012 the citizens had become an unlawful assembly because they had acted in violation of an Order passed by ACP Bhoop Singh under order 144 of Cr.PC on 06.08.2012. In order to justify the imposition of order under section 144 CrPC on 06.08.2012, the only evidence placed (alongwith the chargesheet) by the State is the order passed by ACP Bhoop Singh on 06.08.2012. The recitals recorded in the said order read as under:
>
> > "1.Whereas the area known as Rastrapati Bhawan, Prime Minister Residence and Central Vista Lawns are located in the area of sub-Division Chanakyapuri.
> >
> > 2. And whereas reports have been received indicating that such conditions now exist that unrestricted holding of public meetings, processions/demonstrations etc. in the area are likely to cause obstruction to traffic danger to human safety and disturbance of public tranquility.
> >
> > 3. And whereas it is necessary to take speedy measures in this behalf to prevent danger to human life or safety and disturbance of public tranquility.
> >
> > 4. Now, therefore, in exercise of the powers conferred upon Commissioner of Police, Delhi by section 144

Bar and Bench (www.barandbench.com)

Criminal Procedure Code, 1973 read with Govt of India, Ministry of Home Affairs, New Delhi's notification No. U-11036/3/1978(I) – UTL, 1.7.1978 and further delegated to the under signed vide Government of India, Ministry of Home Affairs, New Delhi notification No. F No. 11036/1/2010 – UTL dated 09.09.2010 I, Bhoop Singh, Asstt. Commissioner of Police of Sub Division Chanayaka Puri at New Delhi District do hereby make this written order prohibiting :

(i) The holding of any public meeting.

(ii)Assembly of five or more persons.

(iii)Carrying of fire-arms, banners, phaycards, lathi's spears, swords, sticks, brickbats etc.

(iv)Shouting of slogans

(v)Making of speeches etc.

(vi)Processions and demonstrations.

(vi)Picketing or dharnas in any public place within the area specified in the schedule and site plan appended to this order without a written permission....”

5. During arguments under Section 239 of Cr.PC, Sh Rajat Kalra and Sh Arun Kumar, Ld APPs for the State had contended that at the present stage of trial, the presence of the order passed by ACP Bhoop Singh on 06.08.2012 on the judicial file is sufficient for framing of charge against the citizens and during trial, ACP Bhoop Singh should be expected to explain the circumstances under which he had passed the order under section 144 Cr.PC. Per contra, Sh Somnath Bharti, Ld. Advocate for the accused citizens had

Bar and Bench (www.barandbench.com)

contended that is is unfair qua the citizens and this Court that the State is withholding the information on the basis of which, ACP Bhoop Singh had issued the order under section 144 Cr.PC. In support of his submissions the Ld. Advocate for the accused had relied upon the judgment of Hon'ble High Court of Calcutta in Bachuram Kar & Ors. V State,AIR 1956 Cal 102 wherein, the Hon'ble High Court of Calcutta had observed that in a trial qua section 188 of IPC, it is open for the accused to challenge the order issued under section 144 Cr.PC.

6. After considering the submissions made by the Ld APPs and the Ld Advocate for the accused citizens, I find that before passing any order under Section 239 of Cr.PC, it is important for this court to have all the information regarding the passing of order under section 144 Cr.PC by ACP Bhoop Singh on 06.08.2012 because determination of legality/illegality of the said order is material for the just adjudication of the present case and because in the recent past the Hon'ble Supreme Court and Hon'ble High Court of Delhi have been critical about misuse of the power under section 144 Cr.PC by the Delhi Police in the New Delhi District. In this context it is relevant to refer to the judgment of Hon'ble Supreme Court in In re: Ram Lila Maidan Incident dated 4/5.06.2011 vs Home Secretary, Union of India, wherein the Hon'ble Court has observed as under :-

“25. The gist of action under Section 144 is the urgency of the situation, its efficacy in the likelihood of being

Bar and Bench (www.barandbench.com)

able to prevent some harmful occurrences. As it is possible to act absolutely and even ex parte it is obvious that the emergency must be sudden and the consequences sufficiently grave. Without it the exercise of power would have no justification. It is not an ordinary power flowing from administration but a power used in a judicial manner and which can stand further judicial scrutiny in the need for the exercise of the power, in its efficacy and in the extent of its application.....

40. Section 144 Cr.P.C. is intended to serve public purpose and protect public order. This power vested in the executive is to be invoked after the satisfaction of the authority that there is need for immediate prevention or that speedy remedy is desirable and directions as contemplated are necessary to protect the interest of others or to prevent danger to human life, health or safety or disturbance of public tranquility or a riot or an affray. These features must co-exist at a given point of time in order to enable the authority concerned to pass appropriate orders....”

7. Also, it is relevant to refer to the order passed by Hon'ble High Court of Delhi on 31.05.2011in WP(C) 5000/2010, Bano Bee vs Union of India, wherein the Hon'ble Court after referring to the law laid down in Gopi Mohun vs Taramoni Chowhrani, (1880) ILR 5 Cal 7, Bishesur Chuckerbutty vs Emperor AIR 1916 Cal 472 and Acharya Jagdishwaranand Avadhut etc vs Commission of Police, Calutta & Anr. 1983 CRL. L.J.

Bar and Bench (www.barandbench.com)

1872, has criticised the passing of repetitive orders under section 144 Cr.PC by the Delhi Police and ultimately disposed of the writ petition after accepting an affidavit filed by DCP, New Delhi to the effect that repeated use of power under section144 of Cr.PC has been discontinued in the New Delhi District.

8. In my view, the views expressed in the aforesaid Judgment and Order make it imperative for the State to explain the circumstances under which ACP Bhoop Singh had passed the Order under Section 144 of CrPC on 06.08.2012 and to disclose if the said Order was a part of a series of repetitive Orders. Accordingly, in exercise of power under Section 173(8) of CrPC, the SHO, PS Tuglak Road is directed to investigate about the circumstances/reports referred in the recitals of the Order passed by ACP, Bhoop Singh on 06.08.2012. Also, the SHO PS Tuglak Road is directed to investigate if the said Order was a part of a series of repetitive Orders".

9. During arguments under Section 239 of Cr.PC it was revealed/admitted by one of the Investigating Officers that the Delhi Police had done/prepared videography of the impugned incident and that it had not been filed alongwith the charge sheet because it did not pertain to the point at which the offences had been committed. In order to test the veracity of the statement made by the investigating officer and the ocular evidence filed alongwith the charge-sheet, it is directed that as part of further investigation SHO, PS Tuglak Road shall obtain

Bar and Bench (www.barandbench.com)

the videography available with the Delhi Police. Also, it is directed that SHO, PS Tuglak Road shall endeavor to obtain videography recorded by the TV channel reporters who were following the accused citizens on 26.08.2012.

10. The aforesaid investigation shall be completed within eight weeks from today and the report shall be filed as per Section 173(8) of CrPC. After completion of the aforesaid investigation, the case shall be taken up for further arguments under Section 239 of CrPC on 26.06.2013 at 12.30 pm."

8. In pursuance of this order, the investigating agency has filed a supplementary chargesheet informing the reasons for which order under section 144 of Cr.PC was passed from 07.08.2012 to 07.09.2012 that during this period Independence Day, Janamastmi, Ramzan etc were the important occasions on which there is always an apprehension of untoward incident. Apart from this on 01.08.2012, there was a terrorist attack in Pune. Further, between 25.07.2012 to 03.08.2012, the volunteers of India Against Corruption had held demonstration at Jantar Manter. On 28.02.2012, Indian against Corruption activist had demonstration near PM House on 30.07.2012. Indian against Corruption activist held demonstration at the house of Sharad Pawar. On 01.08.2012, India against Corruption activist raised slogans near PM House and on 01.08.2012, they marched from Jantar Manter to India Gate and some activist raised slogans at 14, Akbar Road and at the resident of Salman Khurshid. Regarding repetitive order, it is informed that order under section 144 Cr.PC was imposed on 10.03.2012 to 31.03.2012 for 22 days, then from 23.04.2012 to

Bar and Bench (www.barandbench.com)

25.05.2012 for 31 days.

9. The validity of order under section 144 CrPC is under challenge in this case and it is the submission of the accused that if the order under section 144 CrPC is not found in order, the whole case of prosecution will go.

10. In the year 1931, in the case of ***Emperor vs Motilal Gangadhar Kabre*** (1931) 33 BOMLR 1178 while setting aside the order of conviction under section 188 IPC for violation of order under section 144 Cr.PC , Calcutta High Court observed that :-

"*2. Before a Magistrate can take action under this section he must be of the opinion that immediate prevention or speedy remedy is necessary, and when he has made up his mind that it is so, he must state the material facts in the order. It will be seen that no material facts are set out in the first part of the order. It appears from the judgment of the learned District Magistrate that the order was promulgated to prevent a breach of the peace and rioting, which the authorities apprehended on account of the sentences passed by the High Court in what is now known as the Sholapur case. That, we think, was a material fact which should have been stated in the order; and we think that this part of the order as it stands is vague and does not comply with the requirements of Section 144(1) of the Code.*"

11. In ***Niharendu Dutt Majumdar And Ors. vs Emperor,*** AIR 1939 Cal 703 the order of conviction was set aside under section 188 IPC observing that the communication of the order under section 144 CrPC had not been established. Calcutta High Court has observed that :-

Bar and Bench (www.barandbench.com)

"4. On the second point, the learned Deputy Legal Remembrancer conceded that he had no evidence apart from the evidence relating to what took place at the actual meeting. It is said that the petitioners knew of the order because they were told of it by the Sub-Inspector while the meeting was actually going on. The evidence on the point is extremely scanty and is to be found in the deposition of P.W. 1, P.W. 3 and P.W. 4. P.W. 1, the Sub-Inspector, says that he ordered the crowd to disperse as they had assembled in violation of the order. The order was given in an audible voice and part of the crowd actually dispersed. It is, of course, difficult for him to say whether the order was audible to other persons or not. P.W. 3, the Town Inspector, corroborates this account of the action taken by the officer-in-charge of the thana and adds that petitioner 1 and five other persons were addressing the meeting at the time. P.W. 4 merely says that the police arrived and began to move people telling them that there was a Section 144 Order. It appears therefore that his version is not quite the same. From this evidence it is abundantly clear that no personal communication was made to any of the petitioners. There is no distinct evidence as to the relative positions of the petitioners and the thana officer in the crowd. The learned Judge did not consider whether it necessarily follows that petitioner 1 heard what was said by the Sub-Inspector at a time when he himself was actually delivering a speech. The prosecution really did not take sufficient trouble to see that the evidence on this very essential point was sufficient and clear.

Then in the second place the order itself is not very happily worded. It does not clearly forbid attendance at a meeting or making speeches at a meeting. The use of the words 'no public meeting shall be held' seems to suggest something in connexion with the organization of a

Bar and Bench (www.barandbench.com)

meeting. From the evidence it appears that the petitioner, Majumdar did nothing more than behave like a Hyde Park orator. The actual order is capable of more interpretation than one. Before it can be said that the petitioners had knowledge of the order, it must be shown that its terms were communicated to them. Instead of doing that, the Sub-Inspector merely gave his own interpretation of it, which is quite a different thing. We must accordingly accept the contention raised in the second ground that there is no evidence upon which it can be held that the petitioners had any knowledge of the order. The rule is accordingly made absolute, the convictions and sentences are set aside and the petitioners are discharged from their bail."

12. In ***Himat Lal K. Shah vs Commissioner Of Police***, (1973)1 Supreme Court Cases 227, it was observed by Hon'ble Supreme Court that :-

"33. This is true but nevertheless the State cannot by law abridge or take away the right of assembly by prohibiting assembly on every public street or public place. The State can only make regulations in aid of the right of assembly of each citizen and can only impose reasonable restrictions in the interest of public order.

34. This Court in Babulal Parate v. State of Matharashtra rightly observed :

"The right of citizens to take out processions or to hold public meetings flows from the right in Art. 19(1) (b) to assemble peaceably and without arms and the right to move anywhere in the territory of India."

35. If the right to hold public meetings flows from Art. 19 (1) (b) and Art. 19 (1) (d) it is obvious that the State cannot impose unreasonable restrictions. It must be, kept in mind that Art. 19(1)(b), read with Art. 13, protects citizens against State action. It has nothing to do with the

Bar and Bench (www.barandbench.com)

right to assemble on private streets or property without the consent of the owners or occupiers of the private property.....

69. Freedom of assembly is an essential element of any democratic system. At the root of this concept lies the citizens' right to meet face to face with others for the discussion of their ideas and problems- religious, political,, economic or social. Public debate and discussion take many forms including the spoken and the printed word, the radio and the screen. But assemblies face to face perform a function of vital significance in our system, and are no less important at the present time for the education of the public and the formation of opinion than they have been in our past history. The basic assumption in a democratic polity is that Government shall be based on the consent of the governed. But the consent of the governed implies not only that the consent shall be free but also that it shall be grounded on adequate information and discussion. Public streets are the 'natural' places for expression of opinion and dissemination of ideas. Indeed it may be argued that for some persons these places are the only possible arenas for the effective exercise of their freedom of speech and assembly.

70. Public meeting in open spaces and public streets forms part of the tradition of our national life. In the pre-Independence days such meetings have been held in open spaces and public streets and the people have come to regard it as a part of their privileges and immunities. The State and the local authority have a virtual monopoly of every open space at which an outdoor meeting can be held. If, therefore, the State or Municipality can constitutionally close both its streets and its parks entirely to public meetings, the practical result would be that it would be impossible to hold any open air meetings in any large city. The real problem is that of reconciling the city's

Bar and Bench (www.barandbench.com)

function of providing for the exigencies of traffic in its streets and for the recreation of the public in its parks' with its other obligations, of providing adequate places for public discussion in order to safeguard the guaranteed right of public Assembly. The assumption made by Justice Holmes is that a city owns its parks and highways in the same sense and with the same rights a private owner owns his property with the right to exclude or admit anyone he pleases. That may not accord with the concept of dedication of public streets and parks. The parks are held for public and the public streets are also held for the public. It is doubtless true that the State or local authority can regulate its property in order to serve its public purposes. Streets and public parks exist primarily for other purposes and the social interest promoted by untrammeled exercise of freedom of utterance and assembly in public street must yield to social interest which prohibition and regulation of speech are designed to protect. But there is a constitutional difference between reasonable regulation and arbitrary exclusion.

71. The framers of the Constitution were aware that public meetings were being held in public streets and that the public have come to regard it as part of their rights and privileges as citizens. It is doubtful whether, under the common law of the land, they have any such right or privilege but, nobody can deny the de facto exercise of the right in the belief that such a right existed. Common error facit jus (common error makes the law). This error was grounded on the solid substratum of continued practice,. over the years. The conferment of a fundamental right of public assembly would have been an exercise in utility, if the Government and the local authorities could legally close all the normal places, where alone, the vast majority of the people could exercise the right. Our fundamental

Bar and Bench (www.barandbench.com)

rights of free speech and assembly are modelled on the Bill of Rights of the Constitution of the U.S.A (see Express Newspapers (Private) Ltd. and Another v. The Union of India and others(1)] (1) [1959] S.C.R 12, 121) would be relevant then to look to the ambit and reach of those rights in the United States to determine their content and range in India. On closer analysis, it will be found that the basis of Justice Roberts' Dictum in Hague v. C.I.O.(1) is the continued de facto exercise of the right over a number of years. I think the same reasoning can be applied here."

13. In ***Re-Ramlila Maidan Incident (2012) 5 Supreme Court Cases 1***, it was observed that :-

"24. *The gist of action under Section 144 is the urgency of the situation, its efficacy in the likelihood of being able to prevent some harmful occurrences. As it is possible to act absolutely and even ex parte it is obvious that the emergency must be sudden and the consequences sufficiently grave. Without it the exercise of power would have no justification. It is not an ordinary power flowing from administration but a power used in a judicial manner and which can stand further judicial scrutiny in the need for the exercise of the power, in its efficacy and in the extent of its application. There is no general proposition that an order under Section 144, Criminal Procedure Code cannot be passed without taking evidence : see Jagrupa Kumari v.Chobey Narain Singh (1936) 37 Cri.L.J. 95 (Pat) which in our opinion is correct in laying down this proposition. These fundamental facts emerge from the way the occasions for the exercise of the power are mentioned. Disturbances of public tranquility, riots and affray lead to subversion of public order unless they are prevented in time. Nuisances dangerous to human life, health or*

Bar and Bench (www.barandbench.com)

safety have no doubt to be abated and prevented. We are, however, not concerned with this part of the section and the validity of this part need not be decided here. In so far as the other parts of the section are concerned the key-note of the power is to free society from menace of serious disturbances of a grave character. The section is directed against those who attempt to prevent the exercise of legal rights by others or imperil the public safety and health. If that be so the matter must fall within the restrictions which the Constitution itself visualises as permissible in the interest of public order, or in the interest of the general public. We may say, however, that annoyance must assume sufficiently grave proportions to bring the matter within interests of public order.

49. Section 144 Cr.P.C. is intended to serve public purpose and protect public order. This power vested in the executive is to be invoked after the satisfaction of the authority that there is need for immediate prevention or that speedy remedy is desirable and directions as contemplated are necessary to protect the interest of others or to prevent danger to human life, health or safety or disturbance of public tranquility or a riot or an affray. These features must co-exist at a given point of time in order to enable the authority concerned to pass appropriate orders. The expression `law and order' is a comprehensive expression which may include not merely `public order' but also matters such as `public peace', `public tranquility' and `orderliness' in a locality or a local area and perhaps some other matters of public concern too. `Public order' is something distinct from order or orderliness in a local area. Public order, if disturbed, must lead to public disorder whereas every breach of peace may not always lead to public disorder. This concept came to be illustratively explained in the judgment of this Court in the case of Dr. Ram

Bar and Bench (www.barandbench.com)

Manohar Lohia (supra) wherein it was held that when two drunkards quarrel and fight, there is `disorder' but not `public disorder'. They can be dealt with under the powers to maintain `law and order' but cannot be detained on the ground that they were disturbing `public order'. However, where the two persons fighting were of rival communities and one of them tried to raise communal passions, the problem is still one of `law and order' but it raises the apprehension of public disorder. The main distinction is that where it affects the community or public at large, it will be an issue relatable to `public order'. Section 144 Cr.P.C. empowers passing of such order in the interest of public order equitable to public safety and tranquility. The provisions of Section 144 Cr.P.C. empowering the authorities to pass orders to tend to or to prevent the disturbances of public tranquility is not ultra vires the Constitution.

56. Moreover, an order under Section 144 Cr.P.C. being an order which has a direct consequence of placing a restriction on the right to freedom of speech and expression and right to assemble peaceably, should be an order in writing and based upon material facts of the case. This would be the requirement of law for more than one reason. Firstly, it is an order placing a restriction upon the fundamental rights of a citizen and, thus, may adversely affect the interests of the parties, and secondly, under the provisions of the Cr.P.C., such an order is revisable and is subject to judicial review. Therefore, it will be appropriate that it must be an order in writing, referring to the facts and stating the reasons for imposition of such restriction. In the case of Dr. Praveen Bhai Thogadia (supra), this Court took the view that the Court, while dealing with such orders, does not act like an appellate authority over the decision of the official concerned. It would interfere only where the order is patently illegal and without

Bar and Bench (www.barandbench.com)

jurisdiction or with ulterior motive and on extraneous consideration of political victimization by those in power. Normally, interference should be the exception and not the rule."

14. In the case of ***Bachuram Kar And Ors. vs The State AIR 1956 Cal 102,*** it was held that it is open to a person charged with disobedience to an order promulgated by a public servant lawfully empowered to promulgate such order, to plead in defence that the order though made with jurisdiction was utterly wrong or improper on the merits and mere disobedience of an order promulgated by a public servant is not in itself an offence unless it entails one or other of the consequences which the section itself mentions.

15. In view of the law discussed above, it is not in dispute that the volunteers of an organization, India against Corruption, who have the fundamental right to assemble peacefully and without arms, were holding some kind of demonstration on the date of incident. The demonstration was peaceful as it is evident from the fact that the police men controlling them had not suffered any kind of injury to them nor is there any prominent damage to any public property. The injury seen in the MLC of head constable Subhash was a previous injury to him as per his statement under section 161 Cr.PC. The order of ACP Bhoop Singh which is alleged to have been violated has been reproduced above. It is clear that the order does not record any reason for imposition section 144 Cr.PC. It is only when the Court directed a further investigation to search for the reasons, it is reported that the report on which ACP Bhoop Singh passed order under section 144 Cr.PC had been obtained. But interestingly that report is not made part of the record. The reasons for imposing section 144 Cr.PC order

Bar and Bench (www.barandbench.com)

stated in supplementary chargesheet is that due to festivals and some other demonstrations of India against Corruption members that order was imposed. As far as festival is concerned, it has been one of the argument of the accused that festivals in India are celebrated round the year and if section 144 Cr.PC is to be imposed only because of the festivals then such an order can be kept in force for the whole year and it is also an argument that the place where the incident took place is not a very busy area in fact Delhi has more busy places and markets and if due to festivals the imposition of section 144 CrPC order can be justified then those places are more vulnerable and invites such orders where there is more apprehension of some untoward incident. Further, the fact that the volunteers of India against corruption were holding demonstration during those day does not seems to be a valid ground to impose the provision of section 144 Cr.PC. No violence in their earlier protests have been reported as a reason for imposing prohibitions under section 144 CrPC. As discussed above the validity of the order under section 144 can be challenged by the accused, I am of the view that the order passed by ACP Bhoop Singh was an order without assigning any reason for passing it and the reasons which are disclosed later on does show any situation of emergency which warrants its imposition. As discussed above Section 144 Cr.P.C. is intended to serve public purpose and protect public order. This power vested in the executive is to be invoked after the satisfaction of the authority that there is need for immediate prevention or that speedy remedy is desirable and directions as contemplated are necessary to protect the interest of others or to prevent danger to human life, health or safety or disturbance of public tranquility or a riot or an affray. Even if, it is assumed that there were valid reasons for imposition of order under section 144 Cr.PC, then it was the duty of the issuing

Bar and Bench (www.barandbench.com)

authority to disclose all these reasons in the order itself, which has not been done in the present case. Then the communication of the order is also an important factor. It is the only fact regarding communication in the chargesheet that they were warned by the police not to move further. How this warning was given and to whom. Whether any public address system was used in giving of the warning. The case of the prosecution is that there were around 300/400 persons therefore what method was adopted by the police to warn and inform all of them about the fact of prohibition order. Whether the order of prohibition was read over to them or it was simply told to them that order under section 144 CrPC is in force and then what were its conditions . There is nothing in the chargesheet to this effect except a mere statement that the demonstrators were warned by the police. This itself is not in accordance with the Guidelines framed by the Police for execution of such orders. In Ramlla Maidans case, Hon'ble Supre Court has referred to an order of Delhi Police ie. the Standing Order 309 which contemplates that there should be display of banner indicating promulgation of Section 144 Cr.P.C., repeated use of Public Address system by a responsible officer-appealing/advising the leaders and demonstrators to remain peaceful and come forward for memorandum, their deputation etc. or court arrest peacefully and requires such announcement to be videographed. It further contemplates that if the crowd does not follow the appeal and turns violent, then the assembly should be declared as unlawful on the PA System and the same should be videographed. Warning on PA system prior to use of any kind of force is to be ensured and also videographed. But in the present case there is hardly any compliance to these terms of this Standing Order. The situation in which I find myself pitched in is to balance the fundamental rights of citizens to

Bar and Bench (www.barandbench.com)

assemble peacefully without arms and to exercise their right of speech and expression on one hand and the right of public authorities to maintain law and order. I am conscious of the fact that the right to assemble at a place is subject to reasonable restricts and one such restriction will be the the general order and right of other citizens of parallel movement. It is not the case of the prosecution that the citizens sought to be prosecuted were having arms or that they have any criminal intent in their assembly. Its also not the case of the prosecution that there was any general problem of traffic or that any inconvenience was caused to the other users of the road. Whatever commotion happened there was due to the use of the force by the police and in consequent retaliation by the protesters. Finally cases like this pose a great challenge in deciding because a choice has to be made between upholding the sacred and cherished fundamental rights and the issue of general law and order. But since the assembly in this case was not an unlawful assembly and has not committed any offence, I have no doubt in my mind to opt for upholding the fundamental rights of citizens under Article 19 of the constitution and finding that neither the prohibition of section 144 CrPC was valid nor validly communicated. Since the prohibition of section 144 was not valid therefore the accused of this case cannot be said to commit any offence under section 188 IPC and for that matter cannot be said to commit all other connected offences with which they are charged.

16. As a result I discharge all the accused citizens in this case.

Announced in the open court
this 25th day of April 2018

SAMAR VISHAL
ACMM-II (New Delhi), PHC