
(1965) 11 OHC CK 0005
In the Orissa High Court
Case No : Criminal Revision No. 233 of 1965

Gandharva Jena

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 18-11-1965

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 242, 243
Epidemic Diseases Act, 1897 — Section 2(1)
Penal Code, 1860 (IPC) — Section 188

Citation : (1966) 32 CLT 218

Hon'ble Judges : Das, J

Bench : Single Bench

Advocate : S.N. Misra, for the Appellant; K.C.J. Ray, for the Respondent

Final Decision : Allowed

Judgement

Das, J.—The Petitioner has been convicted u/s 188, Indian Penal Code and sentenced to pay a fine of Rs. 100- in default to undergo S.T. for one month.

2. The Petitioner was prosecuted for having refused to get himself inoculated against small-pox and thus contravening the provisions of Notification No. 10541-H dated 2-7-1960 issued by the Government of Orissa in Health Department, and the Regulations made in exercise of the powers conferred on them by Section 2(1) of the Epidemic Diseases Act, 1897. Clauses 7 and 8 of the said Regulations are relevant for the present application. Clause 7 says that every person, the parent or guardian of every minor child or the husband of a wife, residing within the limits of the areas to which the Regulations apply, shall when directed by the District Health Officer (Municipal Health Officer or any person authorised by him in his behalf, submit himself herself the minor child or the wife as the case may be, for vaccination against small-pox forthwith, unless such person, parent or guardian or husband proves to the satisfaction of the said officer or the person duly authorised by him on his behalf that he or the minor child or minor wife was successfully vaccinated against small-pox within a period of two years from the

date of such direction, or had an attack of small-pox within the said period. Clause (8) says that a person who fails to submit himself herself, the minor child or minor wife as the case may be, for vaccine then demanded or refuses to give his correct address or gives an address which appears to the officer on duty to be incorrect, doubtful or suspicious shall be handed over to Police for producing him or her before a trying Magistrate. Under Clause 12 the disobedience of the above provisions is punishable u/s 188 Indian Penal Code.

3. The prosecution case is that the vaccinator went to the Petitioner's village, called the Petitioner to take vaccination, but the latter refused and he thus contravened the provisions of the aforesaid Regulations and made himself liable u/s 188, Indian Penal Code.

4. The Petitioner was summoned and appeared before a Magistrate, 1st Class on 27-3-1965 when the Magistrate explained to the Petitioner the substance of the accusations made against him and he pleaded guilty. Thereafter the Magistrate convicted him u/s 188, Indian Penal Code and sentenced him as hereinbefore stated.

5. Mr. Misra, learned Counsel for the Petitioner contended that the Magistrate has not complied with the provisions of Sections 242 and 243, Code of Criminal Procedure and the statement of the accused does not amount "to an admission and it has not been taken into consideration in its entirety. From the records, it appears that on 27-3-1965 the Magistrate put the following question to the accused:

Question: Whether you refused to take vaccination on 22-2-1965? Whether you have committed an offence?

The answer given by the accused was as follows:

Answer: Yes, I am ill. I will take vaccination after wards.

The contention of the learned Counsel is that the Magistrate in fact clubbed two questions together which were misleading in form and prejudiced the accused. The learned Magistrate could have split up the questions in order to appreciate the answer of the Petitioner. The answer given by the accused only means that he refuses to take vaccination at that time as he was ill and it is not that, he wilfully refused to take vaccination.

6. It was a summons case and the procedure for trial of such cases has been laid down in Chapter XX of the Criminal Procedure Code. The first thing that a Magistrate has to do on appearance of the accused before him is to explain to the accused the particulars of the offence charged against him and to ask if he has any cause to show why he should not be convicted. Section 242 of the said Chapter is broadly divided into two parts, under the first part, the substance of the accusations has to be explained to the accused and under the second part the accused is to be asked if he pleads guilty to the charge or not. In the present case, all that appears from the order-sheet of the Magistrate is that the

substance of the accusations was explained to the accused. The relevant portion of the order-sheet runs as follows:

Accused is present. Substance of the accusations explained to him. He pleads guilty. His statement is recorded according to law.

The main question for consideration is whether this admission of guilt by the accused is a sufficient foundation for his conviction u/s 188, Indian Penal Code. Section 243 of the Code of Criminal Procedure says that if the accused admits that he has committed the offence of which he is accused, his admission shall be recorded as nearly as possible in the words used by him and if he shows no sufficient cause why he should not be convicted, the Magistrate may convict him accordingly.

7. No doubt in the present case the accused has stated that he is guilty, but at the same time he has given his explanation for not having taken vaccination on the ground of his being ill at the time. It is obvious that when the accused admitted his guilt, he only meant that he refused to take vaccination when he was approached by the officer of the Health Department, but that was not an unqualified refusal. It is well-settled by authorities that the entire admission has to be taken into consideration to find out whether an offence has been committed, notwithstanding the mere fact that the accused admitted his guilt. In a case AIR 1934 65 (Nagpur) , while dealing with a case of this nature, Vivian Bose, A.C.J. held that even if the accused uses the word "guilty" "that is not enough to convict him. The Courts should not be astute to construe technical words inadvertently used by the accused persons, but should look to the statement as a whole and should place fair and liberal construction to it after giving reasonable opportunity to the accused. See also Murarji Raghunath Gujarati Vs. Emperor, and In Re: U.R. Ramaswami, . In a case State v. Kartar Singh and Ors. L.R. 1915 (I) K.B. 512 it was held that the plea of the accused which admits the commission of the offence and further contains an explanation which exonerates the accused, does not amount to an admission of guilt and the order convicting and sentencing the accused on that plea is illegal and without jurisdiction. The same view was also taken in a case State Vs. Kartar Singh and Others, . The plea of guilt as mentioned by the Magistrate in the order-sheet in this case is his own conclusion deduced from the facts stated by the accused. It is likely that the facts adverted to by the accused may not constitute an offence and the appellate court may take a different view. It is for that reason Section 243 provides that the admission of the accused shall be recorded as ready as possible in the words used by the accused himself. He have already seen that the accused has clearly stated in his statement that his failure to take vaccination was due to his illness. This was a statement made in his defence and runs counter to his unqualified admission of guilt. The learned Magistrate obviously has not taken the entire statement of the accused into consideration and has found him guilty on a portion of his answer to the question as to whether he refused to take vaccination the reply to which was in affirmative.

This cannot be" said to be an admission of guilt. Whether the illness was a good defence should have been examined by the Court.

8. There is yet another point to be taken into consideration. Clause 12 of the Regulations says that any person wilfully disobeying any provisions of the Regulations shall be deemed to have committed an offence punishable u/s 188, Indian Penal Code. Thus the Regulation clearly requires that there must be a wilful disobedience so as to make one liable u/s 188. The word "wilful" means something which is done "deliberately" and "intentionally" so that the mind of the person who does the act goes with it. In the present case, there is nothing to show that the Petitioner wilfully disobeyed the direction to get himself vaccinated on the relevant date. Of course, the Regulations do not exempt one from vaccination on the ground of illness. But despite that, we are mainly concerned with the question whether the refusal of the Petitioner can be called a wilful disobedience. There is nothing on record to show that the Petitioner wilfully disobeyed the provision. On the other hand, the disobedience, if any, was occasioned by the illness of the Petitioner and it cannot be said wilful. The order of the learned Magistrate therefore cannot stand and is set aside, and the petition allowed.

Petition allowed.