
(1930) 08 MAD CK 0018

In the Madras High Court

In Re: K.V. Subramania Aiyar

Date of Decision : 20-08-1930

Acts Referred:

Citation : (1931) 33 LW 133 : (1931) 60 MLJ 299

Hon'ble Judges : Krishnan Pandalai, J

Bench : Division Bench

Judgement

Krishnan Pandalai, J.—The petitioner, a resident of Palghat Municipality, was convicted, and fined by the 1st Class Bench of Magistrates in

both the above cases. In Case No. 24 he was convicted for failure to produce his 31-year old child for vaccination as required by a notice served

on him on 23rd September, 1929, an offence falling u/s 300 of the District Municipalities Act read with Rules 2 (1) and 11 (1) (a) of the rules

framed by Government under that section and he was sentenced to pay a fine of Rs. 3 or to suffer 3 days" simple imprisonment in default. In Case

No. 25 he was convicted for failure to comply with another notice served on him on the same day, 23rd September, 1929, calling on him to

discontinue his previous breach of the vaccination rules, viz., failure to get the same child vaccinated in pursuance of a previous notice, an offence

falling u/s 300 of the District Municipalities Act read with Rule 11 (2) of the rules framed by Government under the section and he was sentenced

to pay a fine of Rs. 8 at As. 4 per day for 32 days, or to suffer 3 days" simple imprisonment in default.

2. The petitioner says he has bona fide and conscientious objections to getting his child vaccinated as it will be injurious to its health and that so far

as his conviction in Case No. 24 is concerned, the Magistrates have erred in declining to consider it at all as according to him it is a reasonable

excuse within the meaning of Rule 11 (1) (a) of the rules. This raises an interesting question which is now dealt with by Section 2 of 61 and 62 Vic,

c. 49, exempting conscientious objectors from the operation of compulsory vaccination statutes. But there is no corresponding exemption in the

District Municipalities Act. The decision in *Rutter v. Norton* 57 J.P. 8 shows that even under the previous Act 30 and 31 Vic, c. 84, Section 29,

objection to vaccinating a child on the ground that it was or was bona fide believed to be injurious to its health may be reasonable excuse under

that Act. It is not, however, necessary to decide the point in this case, because the conviction in Criminal Revision Case No. 24 must fail for

another reason. It is now admitted that the petitioner had already in S.C. No. 281 of 1929 before the Magistrate been convicted and sentenced for

disobeying a previous notice to produce the same child for vaccination and that this Court refused to interfere with that conviction (Cr. R.C. No.

836 of 1929). The present notices served on him on 23rd September, 1929, were in fact nothing more than a repetition of the same demand

though served in two forms, one as a notice to produce the child for vaccination, the other as one to discontinue his breach of the previous notice.

It is clear to me that the petitioner cannot be punished, as he has been, for two offences on the same facts (of. Section 26, General Clauses Act).

Apart from that, there is the further objection in respect of the conviction in Case No. 24, that according to the rules, once a person has been

convicted for neglecting to take his child to be vaccinated under Rule 11 (1) (a) his persistence in such neglect is punishable not as "neglect" under

that rule but as "continuing breach" under Rule 11 (2). (*Pilcher v. Stafford* (1864) 122 E.R. 651.) The offence constituted by such persistence is

really not merely neglect as such for which the offender has already suffered punishment but a continuing breach which is separately punishable

under Rule 11 (2) with a penalty calculated according to the period during which the offender persists in his neglect. For both reasons the

conviction in Case No. 24 is unsustainable and is set aside. The fine of Rs. 3, if paid, will be refunded.

3. In Cr.R.C. No. 25, in which the petitioner has been found to have neglected to produce his child for 32 days his advocate's argument, lucid and

to the point, was that continuing to neglect to produce a child for vaccination is no offence at all. For this *Pilcher v. Stafford* (1864) 122 E.R. 651,

a decision passed under 16 and 17 Vic, c. 100 and 24 and 25 Vic, c. 59 was cited. It was there decided that where a parent or a person having the care, nurture, or custody of a child has incurred and paid the penalty for neglecting to have it vaccinated within the time specified by Statutes, a continuous neglect to have it vaccinated is not a further breach of the Statutes. But the judgment of Cockburn, C.J., shows that that was because nothing corresponding to Rule 11 (2) penalising continuous neglect existed in the then Statutes and as he said ""nothing will meet it (the mischief) but fresh legislation"". In view of the clear language of Rule 11 (2) the above decision is not applicable. The petition in Cr. R. C. No. 25 is dismissed.