

(1963) 04 OHC CK 0012
In the Orissa High Court
Case No : Criminal Revision No. 329 of 1962

J. Choudhury

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 11-04-1963

Acts Referred:

Epidemic Diseases Act, 1897 — Section 2(1)
Penal Code, 1860 (IPC) — Section 188

Citation : AIR 1963 Ori 216 : (1963) CriLJ 659

Hon'ble Judges : R.L. Narasimham, C.J

Bench : Single Bench

Advocate : R.N. Misra and R.C. Patnaik, for the Appellant; Standing Counsel, for the Respondent

Judgement

R.L. Narasimham, C.J.—The petitioner is a practicing homoepathic doctor in Puri Town. He was prosecuted for an offence u/s 188 I.P.C. for having refused to get himself inoculated against cholera on 4-7-59(during the Ratha Jatra Festival). The Government of Orissa had made certain Regulations in exercise of the powers conferred on them by Section 2(1) of the Epidemic Diseases Act 1897 for the purpose of preventing the spread of cholera in Puri District. Paragraph 7 of the said Regulations is as follows:--

"7. Every person, the parent or guardian of every minor child above one year or the husband of any minor wife residing within the limits of the areas mentioned above, shall, when directed by the District Health Officer or Municipal Health Officer, or any person authorised by him in this behalf, submit himself, herself, the minor child or the minor wife as the case may be, for inoculation against cholera forthwith, unless such person, parent or guardian or husband proves to the satisfaction of the said officer, or the person duly authorised by him in this behalf, that he or the minor child or the minor wife was inoculated against cholera within a period of six months and produce a certificate from a Medical practitioner or a member of the Health Department to that effect."

Paragraph 8 prohibits a person from entering into the area mentioned in paragraph 7 unless he is inoculated against cholera and carried with him a certificate from a Registered Medical Practitioner to the effect that he has been inoculated against cholera within a period of 6 months. Paragraph 15 of the Regulations makes disobedience of any of the provisions of the Regulations an offence punishable u/s 188 I.P.C.

2. The petitioner refused to get himself inoculated against cholera saying that he had a conscientious objection against inoculation and that he had taken sufficient preventive homoeopathic medicine to protect himself against an attack of cholera. He also stated that he was of the view that inoculation was dangerous to human health and that inoculation would create reactions on the human body which might endanger human life. This plea was not accepted by the Magistrate who convicted him u/s 188 I.P.C. and sentenced him to pay a fine of Rs. 20/- in default, to undergo simple imprisonment for one week.

3. There can be no doubt that the petitioner was guilty of contravening Regulations 7 and 8 mentioned above. Admittedly he did not get himself inoculated, nor did he have in his possession a Certificate from a Medical practitioner showing that he had been inoculated against cholera within a period of 6 months prior to 4-7-1959.

4. The main contention raised on behalf of the petitioner by Mr. Misra was that by the passing of the Orissa Homoeopathic Act, 1958, Homoeopathy has become one of the recognised system of medicine in the State of Orissa and that consequently the taking of medicine taken under the Homeo system, which are held by a competent medical practitioner to be equivalent to inoculation against cholera, must be held to be a sufficient compliance with the provisions of the said Regulations. He has not however been able to show that there is any provision either in the Homoeopathic Act or in the Rules made under that Act, which expressly says that for statutory purposes the taking of homoeopathic medicines, for the purpose of protecting oneself against attacks of cholera, would be treated as equivalent to inoculation against cholera.

5. I am not concerned here with the question as to whether inoculation is injurious to health or not or else whether any other system of medicine provides a better remedy against attacks of cholera. The simple question is whether the petitioner has contravened the provisions of Regulation 7 and 8. On his own admission he has contravened them and his guilt is thus established beyond doubt.

6. If the petitioner feels that the Homoeopathic method of providing immunity against attack of cholera should be put on a par with the allopathic method of inoculation, it is open to him to move the appropriate authorities and get a suitable exemption clause inserted in the Regulations. But in the absence of such an exemption clause he must be held to have contravened the provisions of the said Regulations.

7. But as the offence is of a purely technical nature think a token punishment would suffice. While therefore maintaining the conviction of the petitioner u/s 188 I.P.C. I reduce the fine to Rs. 5/- (Rupees five only in default of payment of the fine he shall undergo simple imprisonment for one week.