
(1953) 10 MP CK 0010
In the Madhya Pradesh High Court
Case No : Criminal Revision No. 60 of 1953

Keshav Rao

APPELLANT

Vs

Madhya Bharat Govt.

RESPONDENT

Date of Decision : 06-10-1953

Acts Referred:

Penal Code, 1860 (IPC) — Section 352, 353
Vaccination Act, 1880 — Section 16, 17, 2(4), 22, 3

Citation : (1953) 10 MP CK 0010

Hon'ble Judges : B.K. Chaturvedi, J

Bench : Single Bench

Advocate : Inamdar, for the Appellant; Mungre, Government Advocate, for the Respondent

Judgement

Chaturvedi, J.—This is a criminal revision filed by Keshav Rao, an employee in the Co-operative (sic) Shivpuri who has been convicted by the Sub-Divisional Magistrate Shivpuri u/s 353, CPC and who has been sentenced to pay a (sic) Of Rs. 50/-. His appeal has been dismissed the Additional District and Sessions Judge, Shivpuri and so he has come in revision to this Court.

2. The prosecution story is that on 29-2-1952 Bhriballabh Vaccinator went to the Girl's high school, Shivpuri and vaccinated the applicant's daughter (sic) four or five years old, who was studying (sic) in the first class. It is conceded that the applicant, (sic) who was the father of the girl, was at (sic) all consulted in the matter. The question whether (sic) the accused under such circumstances (sic) be said to be discharging his duty as a public at? (sic) To sustain a conviction u/s 353, must be shown that the accused assaulted or Criminal force to a person who was a public (sic) and was discharging his duty as a servant. Now it is well settled that there can be no assault to a public servant in the discharge of his public function within the meaning of Section 353 unless it is shown that the public servant was acting in the discharge of his public function in the manner authorised by law. Now there is no law which authorises the Vaccinator to

vaccinate a child without the permission of without the consent of the parent or the guardian of the child.

In a case reported in - "In re Bozagellaya" 11 Cri LJ 200 (Mad) (A), Abdur Rahim J. was of opinion that the Vaccinator who vaccinates the child against the will of its parent in a place where vaccination has not been made compulsory is not discharging any duty under the law when the attempt is made to vaccinate the child; and that therefore a person who prevents him in so doing cannot be said to have committed any offence u/s 353, Penal Code. With very great respect I may amplify this statement of law by observing that even in a place where vaccination has been made compulsory the Vaccinator is not authorised to vaccinate a child without the consent of the parent or the guardian of the child.

In the Vaccination Act 1880 (Act No. 13 of 1880)(sic) the provisions of Sections 16 and 17 have been inserted (sic) to restrict (sic) as far as possible the interference of the Police and it was specifically kept in view that the law should not unduly interfere with the customs and ways of life of the people and so every care has been taken to render operation of this law free from practical difficulties. The Vaccination Act of former Gwalior State (Act No. 3 of Samvat 1999) is based upon the Indian Vaccination Act. In both the Acts it has been laid down if the Superintendent of Vaccination has reason to believe that the parent or guardian of an "Unprotected child" is bound to procure the vaccination of such child and has omitted so to do, he shall personally go to the house of such parent or guardian and there make inquiry and shall, if the fact is proved, forthwith, deliver to such parent or guardian a notice requiring that the child be vaccinated or that be presented for inspection at a time and place to be specified in such notice (Section 17, Indian Vaccination Act and Section 19, Gwalior State Act).

The next section lays down that if such notice is not complied with, the Superintendent of Vaccination will report the matter to a Magistrate and the Magistrate will demand an explanation of the parent or guardian and that if the explanation is not given or if the explanation is found to be unsatisfactory, the Magistrate will make an order in writing directing such parent or guardian to comply with the notice before the date specified in the order. Even after this notice, if the order has not been obeyed the Magistrate is bound to summon the parent or guardian before him, and unless just cause or excuse is shown, he will deal with it as a disobedience i.e., as an offence punishable u/s 22, Indian Vaccination Act (Gwalior State Vaccination Act,- Section 25),

3. Sub-clause 4 of Section 2 defines an "unprotected child" as a child who has not been protected from small-pox by having had that disease either naturally or by inoculation, or by having been successfully vaccinated, and who has not been certified under this Act to be insusceptible to vaccination. So a Vaccinator is first to see whether a child to be vaccinated is or is not an unprotected child" within the meaning of Section 2 (4): and then he has to consult the Superintendent of Vaccination. As seen above if the parent does not want his child to be vaccinated even the Superintendent of Vaccination has no alternative but to report the

matter to the Magistrate empowered in this behalf and the utmost that can be done is that proceedings may be instituted for enforcement of the law against a parent or a guardian who is in default in respect of vaccination of his child. I do not know whether the Vaccination Act was extended to the whole or a part of the area of the Shivpuri Municipal Committee.

Section 3, Vaccination Act requires two notifications to be published in the official Gazette. In the first notification the State Government has to declare its intention to extend this Act to the whole area or to a particular part of the area within the jurisdiction of a Municipal Committee. Any inhabitant of that area can then file objection to the extension of the Act which will be duly considered, and if considered inadequate, the Government should after six weeks from the first notification, issue another notification to effect the proposed extension. No such Notification has been produced in this case and no evidence has been adduced by the prosecution on this point. Assuming that the Act has been extended to the Municipal area of Shivpuri even then the Vaccinator had no authority to vaccinate a child without the consent of the parent or the guardian of the child. Consequently it cannot be held that the Vaccinator was assaulted when he was acting in the discharge of his public function. A Vaccinator thus runs a grave risk in vaccinating a child without the consent of its parent or guardian. Of course, if the Vaccinator was actually assaulted the accused would be guilty of an offence u/s 352, I.P.C.

In my opinion, the only reliable evidence in the case is that of the class teacher Kusum Karkare who deposed that the accused had entered the class room and that she saw that he had put his hand on the shoulder of the Vaccinator Shriballabh and had asked him why he had not consulted him in the matter. In my opinion, putting hand on the shoulder of the Vaccinator and asking him a question that may legitimately be asked, was not such a gesture or preparation¹ to use criminal force which would bring the act of the accused within the meaning of the expression "assaults or uses criminal force" in Section 352.

4. It transpires from the record that the accused had also asked the Vaccinator to write down that he had vaccinated the child without, consulting the parents and the Vaccinator actually wrote that on a paper (Ex.D. 1). In it the Vaccinator did not mention that there was any assault on him by the accused. He" would have done "that if he had actually been assaulted. But sometime after he went to the Police Kotwali and lodged a report (Ex.P. 1) in which he mentioned first that the accused had abused him. These words were then scored off and above them the accused wrote that the accused had throttled him and beat him with fists. ? xnu ejksMk o ?kqls ekjs ? This clearly displays an improvement in the story and cannot be believed to be true especially in the presence of the candid statement of the class teacher. Under these circumstances I come to the conclusion that the story of the assault on the Vaccinator is absolutely unreliable and his conviction cannot be sustained. I accordingly set aside the conviction and direct the fine to be refunded.