
(1964) 11 AHC CK 0042
In the Allahabad High Court
Case No : Criminal Rev. No. 1532 of 1963

Ramesh Chandra Sharma

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 18-11-1964

Acts Referred:

Penal Code, 1860 (IPC) — Section 353

Citation : (1965) 35 AWR 69

Hon'ble Judges : H.C.P. Tripathi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

H.C.P. Tripathi, J.—The applicant is a permanent resident of the town of Vrindaban. He practices as an advocate in the district courts at Mathura.

A Kumbh Mela was to be held at Vrindaban in March, 1962. On February 14, 1962 the Governor of Uttar Pradesh promulgated an order No. 312/XVIII-1997/1961, in exercise of his powers u/s 2 of the Epidemic Diseases Act 1897 for the prevention of outbreak and spread of epidemic diseases at the Mela. Paras 2 and 3 of the aforesaid Order read as follows:

(2) During the period between March 1, and March 20, 1962, both days inclusive, no person other than Military personnel on duty, and children below three years of age shall be carried by any vehicle or boat to Vrindaban and an area within a radius of five miles of it unless he holds a certificate of having been inoculated against cholera on a date not prior to December 15, 1961, signed by a Medical Officer or Medical Officer of Health or Epidemic Assistant or Sanitary Inspector in the service of Government or a local body, or signed by a Registered Medical Practitioner of modern medicine (Allopathy) and countersued by the honorary Secretary or President of the local branch of the Indian Medical Association and bears the seal of his office.

(3) (i) During the period of March 1 and March 20, 1962, both days inclusive, no

person shall enter the mela area defined in regulation (i) below unless he holds a certificate signed by a Medical Officer or Medical Officer of Health or Epidemic Assistant or Sanitary Inspector in the service of Government or a local body or signed by a Registered Medical Practitioner of modern medicine (Allopathy) and countersigned by the Honorary Secretary or President of the local branch of the Indian Medical Association and bears the seal of his office, showing that he has been inoculated against cholera on a date not prior to December 15, 1961.

(ii) Every person shall produce such certificate on demand to any member of the police and health staff on duty in the mela area;

Provided that if the person entering the mela area is a child below 14 years, the parent or guardian or other person in whose charge he is, shall be required to produce such certificate in respect of the child.

(iii) A person who is unable to produce the anticholera inoculation certificate referred to in Clause (i) shall get himself inoculated at the inoculation post at one of the barriers in the mela area before he is allowed to pass within the harrier.

(iv) The District Magistrate, Mathura, or the Officer incharge of the Mela, or any person authorised by any one of them " in this behalf may prohibit from entering into or remaining in Mela area any person who fails to produce a certificate as required by Clause (ii) or refuses to get himself inoculated as required by Clause (iii).

(v) These regulations shall not apply to military personnel on duty or children under three years of age.

(vi) "Mela Area" means the whole of Vrindaban town and an area within a radius of five miles of it.

2. The applicant visits the city of Mathura every day on his professional business as an advocate and returns back in the evening to his house at Vrindaban. According to the prosecution on the 2nd March, 1962 the applicant was on his way from Mathura to Vrindaban and when his car reached a place near Attalia Chauki he found a barrier, which had been raised by Mela Authorities in order to prevent the entry of persons who had not been inoculated for cholera in Vrindaban. As Sri Sharma stopped his car near the barrier and asked Bishambhar Dayal, who was looking after it to lift it to enable his car to pass, he was asked to show inoculation certificate. Sri Sharma retorted, that as he was a permanent resident of Vrindaban he was not required to take inoculation within the meaning of the aforesaid order. This resulted in a discussion between him and Bishambhar Dayal and the matter was ultimately referred to Sri G.C. Datta, Assistant Director Medical and Health Services and Jagdish Chandra, District Medical Officer of Health, both of whom happened to be present there at that time. They informed the applicant that for him it was necessary either to get himself inoculated at the barrier or to produce a certificate of inoculation before he could be allowed to enter the Mela area. It appears that there was some discussion between them

and the applicant is alleged to have caught hold of Bishambhar Dayal by his neck, pushed him aside, lifted the barrier and drove away.

3. On these allegations the applicant was prosecuted for an offence u/s 353 of the Indian Penal Code to which he pleaded not guilty. He admitted that his car had been stopped at the barrier and that there was some heated discussion between him and the Mela Authorities posted at the barrier regarding the applicability of the Regulations preventing the entry of non inoculated persons in the Mela area in his case. He, however, denied to have pushed aside Bishambhar Dayal or to have caught hold of his neck.

4. A number of witnesses were produced before the trial court in support of the prosecution story. The trial magistrate held that since the applicant had not entered the Mela area from outside, he was not required to take any inoculation within the meaning of the Regulations promulgated by the State Government. Even then the learned magistrate was of the view that as Bishambhar Dayal was barring the entrance of the persons in the Mela area with a view to find out whether they had been inoculated or not, he was acting under the colour of his office as a public servant and the applicant had no justification to push him aside and drive away his car by force. He, therefore, convicted the applicant u/s 352 of the Indian Penal Code and sentenced him to pay a fine of Rs. 55/- only.

5. On appeal the learned Sessions Judge was of opinion that "The learned Magistrate committed an error by accepting the contention of the Appellant that as he had not come from any place outside the Mela Area he was not required to take inoculation." In the opinion of the learned Judge paras 2 and 3 of the aforesaid order of the State Government applied in the case of the applicant also even if it was held that he was a permanent resident of Vrindaban and had been coming from some place in the city of Mathura which was not beyond five miles from Vrindaban. He, therefore, affirmed his conviction and sentence as recorded by the Magistrate.

Having heard the learned Counsel for the applicant I am of opinion that the conviction of the applicant is wholly unsustainable in law and this revision must be allowed.

Sub-clause (vi) of paragraph 3 of the Order reads:

"Mela Area" means the whole of Vrindaban town and an area within a radius of five miles of it.

6. Both the lower courts have held that it has been established that the applicant was coming to Vrindaban not from a place outside the radius of five miles of it. On the other hand it appears that as usual he was returning by his car from the premises of district courts at Mathura to his home in the town of Vrindaban. A careful perusal of the regulations issued by the Governor of Uttar Pradesh under Epidemic Diseases Act indicates that the object with which the regulations were promulgated was to prevent the out break and spread of epidemic diseases at

the Kumbh Mela. A careful perusal of the regulations makes it evident that the intention was to prevent the entry of pilgrims from outside who flock on such occasions in the Mela Area, unless they had taken inoculation as a precaution against epidemics. It could not have been the intention of the authorities in promulgating the regulations to make it compulsory for all the inhabitants of the town of Vrindaban to take inoculation during the period and to prevent their movements from one place within the area to the other unless they had been inoculated or were able to produce a certificate within the meaning of paragraph 3 of the order.

7. It is no doubt true that in suitable cases power has been vested u/s (iv) of paragraph 3 of the regulations in the District Magistrate or certain other authorities to prohibit any person from entering into the Mela Area or from remaining there. This power was vested only with a view to enable them to ask even the permanent residents of the town, which fell within the Mela Area, in exceptional cases, either to get themselves inoculated or to leave it during the period. There is no evidence on record that either the District Magistrate, Mathura or the Officer incharge of the Mela or any person authorised by anyone of them had asked the applicant not to remain in the Mela Area without inoculating himself.

8. In this view of the matter I am of opinion that Bishambhar Dayal had no justification to prevent the applicant from going to his home on his car on the date of occurrence and, therefore, if the applicant pushed him aside and went away he committed no offence.

9. There is another aspect of the question. The only complaint against the applicant is that he pushed aside Bishambhar Dayal, lifted the barrier and went away on his car. This was a matter against which a person of ordinary sense and temper would not have lodged a complaint. The action of the applicant, in my opinion, was also protected u/s 95 of the Indian Penal Code.

10. The Revision is allowed, the conviction and sentence of the applicant are set aside. Fine, if paid, shall be refunded to the applicant.