

(1958) 06 AHC CK 0002
In the Allahabad High Court
Case No : Criminal Ref. No. 156 of 1956

Shiv Charan Das

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 16-06-1958

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 195(1)(a)
Epidemic Diseases Act, 1897 — Section 3
Penal Code, 1860 (IPC) — Section 188

Citation : (1958) 28 AWR 710

Hon'ble Judges : A.P. Srivastava, J

Bench : Single Bench

Advocate : Sri S.H. Shaukat Abidi, brief Holder of Sri K.C. Saxena, for the Appellant; Sri J.R. Bhatt, A.G.A, for the Respondent

Judgement

A.P. Srivastava, J.—This is a reference by the Sessions Judge of Meerut recommending that the conviction of the applicant u/s 188, IPC and the consequent sentence of a fine of Rs. 25 imposed upon him be set aside.

2. It appears that u/s 2 of the Epidemic Diseases Act, 1897 the Public Health Department had issued a notification bearing No. 2382/XVI (PH) 85-55, dated 6-4-1955 which, inter alia, provided that no person should sell sweetmeats without proper covering or container to protect them from dust and flies. Shiva Charan was found selling sweetmeats unprotected from dust and flies on 7-7-1955 and a complaint was filed against him at the instance of the Food Inspector of Ghaziabad by the District Medical Officer of Health for Meerut. The Magistrate took cognizance of the case, tried Shiva Charan, found him guilty u/s 188, IPC and sentenced him to pay a fine of Rs. 25 and in default to undergo 15 days simple imprisonment. Shiva Charan went up in revision to the Sessions Judge of Meerut and raised two contentions one of which found favour with the learned Judge. That contention was that the learned Magistrate could not have taken cognizance of the offence against Shiva Charan in view of S. 195 (1) (a), Code of Criminal Procedure because the regulation which Shiva Charan was said

to have broken had been issued by the Secretary to the UP Government in the Public Health Department and the complaint, before cognizance could be taken in respect of it, should have been made either by the Secretary himself being the public Officer concerned or by some officer to whom he was Subordinate. Accepting this contention and being of opinion that the trial of Shiva Charan was without jurisdiction the learned Sessions Judge has recommended that his conviction and sentence be quashed.

3. Sri J.R. Bhatt, Learned Counsel for the State, opposes the reference, and the ground he puts forward is that the regulation which Shiva Charan was said to have broken was not a regulation issued by a public servant at all. It was really a regulation issued by the Government and for the breach of such a regulation it is not necessary that a complaint should be filed by a public servant before cognizance can be taken of the offence by a Magistrate. In support of this contention he relied on a decision of the Madras High Court reported in *Queen Empress v. South* ILR 24 Mad. 70.

4. No doubt the authority relied upon supports the contention of Mr. Bhatt. In that case also two persons had disobeyed an order promulgated by the Government under the Epidemic Diseases Act, and had been prosecuted on a complaint made by the Chairman of the Municipal Board within the limits of which the order had been broken. They had been acquitted by the Magistrate who tried them on the ground that the complaint had not been filed by the proper person, but the acquittal was set aside by the High Court on the ground that the order in question not having been promulgated by a public servant but by the Government it was not necessary that a complaint for their breach should have been filed by a public servant or an officer superior to him. The point which, however, does not appear to have been considered by the learned Judges who decided the Madras case appears to be that if an order is not promulgated by a public servant but is promulgated by the Government, S. 188, IPC will in terms become inapplicable. That section can apply only if an order duly promulgated by a public servant is disobeyed. To meet this difficulty Mr. Bhatt referred to S. 3 of the Epidemic Diseases Act which provides:

Any person disobeying any regulation or order made under this Act shall be deemed to have committed an offence punishable u/s 188 of the IPC." Relying on this section he contended that for the breach of a regulation promulgated by the Government under the Epidemic Diseases Act, S. 188, IPC would apply even though the essential requirements of the section according to the section itself were not present. He relied particularly on the deeming clause in S. 3 of the Epidemic Diseases Act, and urged that on account of that clause the case will fall u/s 188 even though the regulation which has been broken had not been promulgated by a public servant. If this deeming clause in S. 3 of the Epidemic Diseases Act is interpreted in the way in which Mr. Bhatt wants it to be interpreted, there can be no escape from the position that the offence committed by the person who breaks a regulation promulgated not by a public servant but

by the Government will be one punishable u/s 188, IPC. The offence may be made out on account of the deeming clause without proving the essential ingredients of the section, but the offence will still remain an offence punishable u/s 188, IPC. A glance at S. 195 (1) (a), Code of Criminal Procedure will, however, show that it provides an absolute prohibition against the taking cognizance of by any Court of any "offence punishable u/s 188" except on the complaint in writing of the public servant concerned or some other, public servant to whom he is subordinate. The prohibition contained in this clause relates to an offence punishable u/s 188, IPC whether it is punishable on account of a deeming clause or is punishable on account of the existence of all the essential ingredients of the section itself. The section is a procedural section and when it prohibits any Court from taking cognizance of an offence u/s 188, IPC except under certain conditions those conditions must exist before cognizance can be taken by any Magistrate in respect of that offence. The deeming clause relied upon by Mr. Bhatt cannot, therefore, provide, any escape from the prohibition contained in S. 195 (1) (a), CrPC.

5. It may be said that, difficulties may arise in cases like the present because a regulation is promulgated by the Government and issued by its Secretary, and the Secretary cannot always be expected to file a complaint for breach of the regulation. Any difficulties in the application of a law cannot, however be allowed to affect its interpretation. Moreover, the difficulty does not appear to be insurmountable. S. 2 of the Epidemic Diseases Act authorises the Government not only to promulgate a regulation itself but also to require or empower any other person to take such measures as may be necessary. It is, therefore, permissible under that section for the Government to authorise the Medical Officer of Health or the Chairman of a municipal Board to issue the necessary regulation to prevent epidemic diseases, and if that is done no difficulty can arise in the strict compliance with the provisions of S. 195(1)(a) of the Act in case the regulation is broken by any one.

6. I have, therefore, come to the conclusion that the objection which was raised to the conviction of Shiva Charan was well founded and the reference made by the learned Sessions Judge should be accepted. The conviction and sentence of Shiva Charan Das are, therefore, set aside. The fine, if paid by him, shall be refunded.