

Baluni Dei Vs. the State

Baluni Dei Vs. the State

SooperKanoon Citation : sooperkanoon.com/525150

Court : Orissa

Decided On : Nov-23-1956

Reported in : AIR1957Ori69; 23(1957)CLT50; 1957CriLJ468

Judge : Narasimham, C.J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 197

Appeal No. : Criminal Ref. No. 43 of 1955

Appellant : Baluni Dei

Respondent : The State

Advocate for Def. : S.N. Mukherji and ;P.K. Bose, Adv.

Advocate for Pet/Ap. : K.P. Acharya, Adv.

Judgement :

Narasimham, C.J.

1. This is a reference by the Sessions Judge of Cuttack, made under the following circumstances.

2. One Baluni Dei filed a complaint before the Sub-divisional Magistrate, Dhenkanal (Sadr), alleging that Shri Kiren Ghosh, Assistant Surgeon in charge of the Sadr Hospital at Dhenkanal, had assaulted her husband on 17-6-55 while he

was a patient in the hospital, & has also abused him. It appears that her husband was an in-patient in the hospital in connection with some operation to his private parts. She alleged that the Assistant Surgeon slapped her husband, made some taunting remarks, and after taking him to the operation, theatre further assaulted him in consequence of which the patient screamed aloud, but the doctor roughly handled his testicles. The Sub-divisional Magistrate passed the following order on that complaint:

'This is a complaint against a gazetted government servant for something done in the course of his official duty. Let the complainant get the sanction from Government. It is not maintainable now. Return to the party.'

Against this order of the Sub-divisional Magistrate a revision petition was filed before the Sessions Judge. The learned Sessions Judge at first thought that the order of the Sub-divisional Magistrate was tantamount to dismissal of the complaint under Section 203 Cr. P. C. and hence passed an order on 10-10-56 under Section 436 Cr P. C. setting aside the order of dismissal and directing further enquiry. But on application filed by the opposite party he reconsidered the whole matter and by his order dated 18-10-56 held that he could not pass any order under Section 436 Cr. p. C. as there was no 'dismissal' of the complaint under Section 203 Cr. P. C. and the proper procedure was to refer the case to the High Court under Section 437 Cr. P. C.

3. In the order of reference the learned Sessions Judge has relied on a decision of the Patna High Court reported in Behari Rai v. The State AIR 1952 Pat 253 (A) and pointed out that the assault and abuse of a patient by the Medical Officer in charge of the hospital cannot be said to have been committed either in the discharge or purported discharge of his official duty and consequently no sanction of Government would be necessary for his prosecution, as required in Section 197 (a) of the Criminal Procedure Code.

4. The learned Sessions Judge is undoubtedly right in saying that ordinarily if a public servant while discharging his duty abuses a person or causes hurt to him, he may not get the protection of Section 197 Cr. P. C. as pointed out in the aforesaid Patna decision. But there may be special circumstances where the very

acts alleged to have been committed by the public servant may be said to have been done in the purported discharge of his official duty. This remark would apply with special force to a medical officer handling a patient in the hospital. On the complainant's own case some sort of operation to the private parts of her husband was done in the hospital. If therefore in the operation theatre his testicles were roughly handled it will not be proper to hold that the injury caused during the course of such rough handling was not caused in the purported discharge of his official duty, as medical officer in charge of the hospital. The handling of the patient was done by the Assistant Surgeon in the discharge of his duty. Every medical officer has his own way of handling his patient, and if he is unduly rough and rude there may be some justification for reporting his conduct to his superior authorities, but a criminal case is clearly misconceived inasmuch as the act of handling the patient was done during the course of his official duty. It was urged, however, that the slaps given to the patient by the Assistant Surgeon prior to his being taken to the operation theatre were not justified on any account, and no sanction of Government was required for prosecuting him for this offence. But the incidents that were said to have taken place on 17-6-55 cannot be kept separated in such a manner. The patient was under the treatment of the Assistant Surgeon throughout. The slaps given to him prior to his being taken to the operation theatre and the subsequent rough handling inside that theatre all form part of one transaction. Even the use of rough words by a medical officer towards an intractable patient for the purpose of taking him to the operation theatre for performing an operation could be justified as being necessary for the occasion. Hence, on the facts as disclosed by the petitioner in her petition of complaint, I think it reasonable to hold that the Assistant Surgeon was acting, or purporting to act in the discharge of his duty and the sanction of Government would be required for his prosecution. The protection given by Section 197 Cr. P. C. would be available to him.

I would accordingly agree with the Sub-divisional Magistrate and discharge this reference.