

In Re: C.S. Swaminathan

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Court : Chennai

Decided On : Aug-12-1943

Reported in : AIR1944Mad20; (1943)2MLJ380

Appellant : In Re: C.S. Swaminathan

Judgement :

ORDER

Kuppuswami Ayyar, J.

1. The petitioner has been convicted by the Chief Presidency Magistrate, Madras for an offence punishable under Section 5(b) read with Section 7(1) of Ordinance XI of 1941 and sentenced to two months' rigorous imprisonment. He was recruited as a First Aider in the A.R.P., Madras in February, 1943, and after completing his training was posted to the A.R.P. depot situated in the Government School of Indian Medicine on the Poonamallee High Road. He reported himself for duty on the evening of 3rd March. On the same day he had an anti-cholera vaccine injection. Unfortunately as he happened to suffer from varicose veins there was a reaction to the injection and he had high fever. On the 4th he signed the declaration and a certificate of identity. He was late for physical training and was excused. On the 5th morning, he was sent for physical training and after that was over, he complained to P.W. 1, his depot superintendent that he was ill and was suffering from varicose veins. He also seems to have made other complaints to P.W. 1 about his inability to get liquid food and other comforts in his then state of

health. P.W. 1 went out. The accused unable to bear the effect of his illness went away leaving a letter of resignation. This was on the 5th of March. Subsequently he was prosecuted under Section 5(b) of Ordinance XI of 1941.

2. That reaction in some cases follows inoculation against cholera was admitted by Captain Gnanamuthu, D.W. 1, the Casualty Officer of this very depot. D.W. 2, the Corporation doctor who treated the accused on the 5th and 6th of March stated that when he came to him on the evening of the 5th he had swelling of the left arm, heaviness of both limbs, was unable to walk and had high fever of 105 degrees, due to reaction after inoculation and that persons with varicose veins have a strong reaction. He is no doubt a distant relative of the accused and it was but natural in his then state of health that he went to a person known to him. It is significant that this witness was not cross-examined with regard to his statement that there will be strong reaction to inoculation and swelling of legs in the case of persons with varicose veins. That the accused underwent treatment for varicose veins soon after was proved by Exs. IV and V, the records produced by D.W. 3 from the Royapuram Hospital. As a matter of fact P.W. 1 himself admitted that the accused complained to him on the 5th itself that he was suffering from varicose veins and that his left leg was slightly swollen and that there was no provision for liquid diet in the depot. P.W. 2 also says that the accused complained to P.W. 1 about something in his leg and wanted to go to the hospital for it. Thus it is clear that the accused was ill with fever and swollen leg on the morning of the 5th and was not sent to the hospital and that he hence felt that he will have to go and get himself treated elsewhere.

3. The question for consideration is whether he had reasonable cause for abandoning the employment or absenting himself from work. It cannot be said that in his then state of health he had no grounds for absenting himself from duty. But this is not merely a case of the petitioner absenting himself from work but also of having abandoned his employment as he left a letter of resignation. I do not think that fever as a result of an anti-cholera injection followed by swelling in the legs can be said to be a reasonable excuse for abandoning the employment, though it may be a justification for applying for leave or for absenting himself for a few days. The petitioner was therefore guilty of having abandoned his employment without

reasonable excuse when he left the depot leaving the letter of resignation on the 5th March.

4. It is next stated that the proceedings are invalid in view of the fact that the Magistrate had no jurisdiction to take cognizance of any offence punishable under Ordinance XI of 1941 except upon a complaint in writing made by a person authorised in this behalf by the Central or a Provincial Government. The Commissioner of Police, Madras, is the person who has been authorised in this behalf to file such complaints. It is admitted by the Crown Prosecutor that though the Commissioner had signed the complaint in this case on the 25th April, as is seen from Ex. E, that paper did not reach the Magistrate till all the prosecution witnesses were examined and after the Magistrate took cognizance of it on a complaint of the Sub-Inspector. It is stated that this would amount only to an irregularity and cannot affect the validity of the conviction. The section runs thus:

No Court shall take cognizance of any offence under this Ordinance except upon complaint in writing made by a servant of the Crown authorised in this behalf by the Central or Provincial Government.

5. The jurisdiction of the Court to take cognizance of the offence is conferred only by the complaint by the person authorised in this behalf. The Court therefore had no jurisdiction to take cognizance of the offence which was done not on the filing of Ex. E but on a charge-sheet laid by the Sub-Inspector of Police. As this affected the jurisdiction of the Magistrate to take cognizance of the same and as the prosecution itself was practically closed by the time Ex. E reached the Court I have no other course but to set aside the conviction and sentence and it is ordered accordingly.

6. I do not think it necessary to order a re-trial in view of the fact that the petitioner has already undergone a portion of the sentence and as he had some justification for absenting himself from duty on account of high fever and swollen legs and had to undergo treatment for nearly a week thereafter. That he did not really want to abandon the employment but only wanted to be away for treatment is also clear from Ex. I, dated 10th March, 1943, wherein he prayed for being appointed as a First Aider and stated that from 9th March, 1943, he ceased taking medicine.

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