1938

COMMISSIONER OF INCOME-TAX, BOMBAY v. CHUNILAL B. MEHTA

Sir George Rankin

construction which the appellant seeks to put upon the Act has no direct support from them and the main current of authority in India is inconsistent therewith.

No separate consideration of the second of the questions referred to the High Court is required. Their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.

Solicitor for the appellant: *The Solicitor, India Office.*

Solicitor for the respondents: Messrs. *Barrow, Rogers & Nevill.*

C. S. S.

APPELLATE CRIMINAL.

Before Mr. Justice Broomfield and Mr. Justice Norman.

1938
June 24

S. D. MARATHE (ORIGINAL ACCUSED), PETITIONER *v.* PANDURANG NARAYAN JOSHI (ORIGINAL COMPLAINANT), OPPONENT.*

The Government of India Act, 1935 (Geo. V, c. 2), s. 270—"Servant of the Crown", meaning of—Medical Officer in charge of Local Board dispensary—Certificate by Officer—Fabricating false evidence—Prosecution, if competent—Rules—Construction.

Though there is no definition of the expression "servant of the Crown" in the Government of India Act, 1935, the expression as occurring in s. 270 of the Act has, unless there is something in the provisions of the Act which suggests a different meaning, the same meaning which is given in the definition of the expression "servant of the Queen" in ss. 13, 14 and 17 of the Indian Penal Code, 1860, as including all officers or servants continued, appointed or employed in India by or under the authority of the Government of India or any Government.

A civil servant does not cease to be a servant of the Crown although the conditions of his service may be regulated by an Act of the Legislature.

The provisions contained in Part X of the Act show that the expression "Crown services" includes the subordinate as well as the superior civil services.

*Criminal Revisional Application No. 107 of 1938 (with Criminal Revisional Application No. 108 of 1938).

The expression " brought " as occurring in rule 7* of the rules at page 373 of the Civil Medical Code does not really mean anything other than " is admitted ".

The word " duty " in s. 270 is not necessarily confined to a legal duty.

There is no justification for suggesting that the words " affairs of a Province " as used in s. 270 mean only the affairs of the executive Government.

The petitioner, a member of the Bombay Subordinate Medical Service, when asked by the Police, gave a certificate explaining the nature of the injuries, received by the opponent. The certificate stated that the wound was a contused one caused by some hard and blunt substance.

The opponent thereafter filed a complaint, alleging that the wound was an incised one and that in giving the certificate the petitioner had fabricated false evidence :—

Held, that the petitioner was a servant of the Crown within s. 270 of the Government of India Act, 1935 ; and that the proceedings taken against him were barred by the section.

CRIMINAL REVISIONAL APPLICATION from an order passed by S. M. Kaikini, Additional Sessions Judge, Thana, setting aside an order made by V. G. Chakradev, First Class Magistrate, Karjat.

Fabricating false evidence.

In 1929-30 Joshi (opponent) was a school teacher in the Local Board Marathi School, Dahiwali, and S. D. Marathe (petitioner), a member of the Subordinate Medical Service, was a medical officer in charge of the Local Board dispensary at Karjat.

The opponent complained to the Police that a man named Pimputkar had assaulted him and wounded him with an iron bar having a sharp edge. For the injuries received by him the opponent was treated in the Local Board dispensary and the Police Sub-Inspector, who enquired into the complaint, asked the petitioner to state the nature of the injuries received by the opponent.

*Rule 7 of the Civil Medical Code runs as follows :—

" When called upon, Medical Officers will supply the Police as far possible with certificates regarding cases of injury brought to Hospitals and Dispensaries immediately after examination and the following instructions are issued for their guidance."

1938

MARATHE v. PANDURANG

On January 9, 1930, the petitioner gave the Police Officer a certificate, stating that the wound was a contused one caused by some hard and blunt substance.

On May 11, 1936, the opponent lodged a complaint against the petitioner, alleging that by giving the certificate in question the petitioner had fabricated false evidence. The complaint was withdrawn on February 8, 1937, and on May 5, 1937, the opponent filed a fresh complaint repeating the same allegation.

The petitioner objected to the prosecution, contending that he was protected by s. 270 of the Government of India Act, 1935.

The Magistrate accepted the contention and ordered that the proceedings be dropped.

The opponent having filed a revisional application in the Sessions Court, the Additional Sessions Judge held that s. 270 had no application and he ordered a further enquiry into the matter.

The accused and the Government of Bombay separately applied in revision.

Criminal Revisional Application No. 107 of 1938.

W. B. Pradhan and *M. W. Pradhan*, for the accused.

G. M. Joshi, for the opponent.

Criminal Revisional Application No. 108 of 1938.

Dewan Bahadur P. B. Shingne, Government Pleader, for the Government of Bombay.

G. M. Joshi, for the opponent.

BROOMFIELD J. The facts material to these revision applications are these. As long ago as December 23, 1929, one Pandurang Narayan Joshi, who was a school teacher

residing at Dahiwali in the Karjat taluka of the Kolaba district, was treated in the Local Board dispensary at Karjat for certain injuries to his left leg. The officer in charge of the dispensary at that time was Dr. S. D. Marathe, a member of the Bombay Subordinate Medical Service. Joshi complained to the police that a man named Pimputkar had assaulted him and wounded him with an iron bar having a sharp edge. The Police Sub-Inspector who inquired into the complaint asked Dr. Marathe to state the nature of the injuries received by Joshi, and on January 9, 1930, the Doctor gave the police-officer a certificate stating that the wound was a contused one caused, in the Doctor's opinion, by some hard and blunt substance. As that meant that it was not a cognizable case under s. 324 of the Indian Penal Code but a case of ordinary simple hurt, the police took no further action.

On May 11, 1936, Joshi lodged a complaint against Dr. Marathe alleging that by giving the certificate in question he had fabricated false evidence under ss. 193 and 197 of the Indian Penal Code. This complaint was withdrawn on February 8, 1937, but on May 5, 1937, Joshi filed a fresh complaint making the same allegations. In view of the extraordinary delay in complaining of the alleged grievance one would have expected that the Magistrate would have ordered a preliminary inquiry. Apparently this was not done and process was issued. Dr. Marathe objected that he was protected by s. 270 of the Government of India Act, 1935. The Magistrate accepted that plea and ordered that proceedings should be dropped. In revision the Sessions Judge held that s. 270 had no application to the case and he ordered that further inquiry should be made by the Magistrate. Against this order of the Sessions Judge both Dr. Marathe and Government have come in revision.

1938

MARATHE v. PANDURANG

Broomfield J.

The only question before us is whether these proceedings are or are not barred by s. 270 of the Government of India Act. The relevant part of that section is in these terms :—

"No proceedings civil or criminal shall be instituted against any person in respect of any act done or purporting to be done in the execution of his duty as a servant of the Crown in India or Burma before the relevant date (the relevant date for our purposes is the 1st of April, 1937), except with the consent, in the case of a person who was employed in connection with the affairs of the Government of India or the affairs of Burma, of the Governor-General in his discretion, and in the case of a person employed in connection with the affairs of a province, of the Governor of that Province in his discretion."

It is, I think, sufficiently clear that the prosecution of Dr. Marathe is incompetent provided that he was at the material time a servant of the Crown and that the act complained of was done or purported to be done in the execution of his duty as such servant. As I have mentioned Dr. Marathe was and is a member of the Bombay Subordinate Medical Service. It appears from the Civil Medical Code, Bombay, that officers of this Service are selected from the successful candidates at the final L. C. P. S. examination. The actual appointments are apparently made by the Surgeon General but certainly under the authority of Government. In the Government of India Act there is no definition of the expression "servant of the Crown". According to the definition in the Indian Penal Code, ss. 13, 14 and 17, a servant of the Queen, which is the same as a servant of the Crown, includes all officers or servants continued, appointed or employed in India by or under the authority of the Government of India or any Government. That is in accordance with the theory of the constitution and we may fairly assume that the words "servant of the Crown" in s. 270 of the Government of India Act have the same meaning unless there is something in the provisions of that Act which suggest a different meaning.

The section comes in Part X of the Act which deals with the Services of the Crown in India. Chapter I deals with the Defence Services and Chapter II with the Civil Services. Section 240 provides that, except as expressly provided by this Act, every person who is a member of a Civil Service of the Crown in India, or holds any civil post under the Crown in India, holds office during His Majesty's pleasure. It is provided in s. 241 that, except as expressly provided by this Act, appointments to the civil services of, and civil posts under, the Crown in India, shall, after the commencement of Part III of this Act, be made (*b*) in the case of services of a Province, and posts in connection with the affairs of a Province, by the Governor or such person as he may direct. In the second part of the same section it is provided that the conditions of service of persons serving His Majesty in a civil capacity shall be prescribed in the case of persons serving in connection with the affairs of a Province, by rules made by the Governor of the Province or by some person or persons authorised by the Governor to make rules for the purpose. It is likewise provided in s. 241 (*4*) that notwithstanding anything in the section, Acts of the appropriate Legislature in India may regulate the conditions of service of persons serving His Majesty in a civil capacity in India, and any rules made under this section shall have effect subject to the provisions of any such Act. It is clear from that that a civil servant does not cease to be a servant of the Crown although the conditions of his service may be regulated by an Act of the Legislature. Section 243 relates to the conditions of service of the subordinate ranks of the police forces, from which it appears that even police constables are included in the category of civil services of the Crown. Then in s. 244 we have special provisions made for the superior civil services, i.e.,

1938

MARATHE v. PANDURANG

Broomfield J.

the Indian Civil Service, the Indian Medical Service and the Indian Police Service. The members of these services are appointed by the Secretary of State and not by the Governor General or the Governor. It is quite obvious from a perusal of the various sections of this part of the Act that Crown services include the subordinate as well as the superior civil services and there is no warrant whatever for the suggestion made by Mr. Joshi, who argued the case for the complainant in this case, that the chapter in general and s. 270 in particular apply only to the case of the superior civil services.

The dispensary of Karjat is what is called a grant-in-aid dispensary. In the Civil Medical Code at p. 228 a list is given of the various classes of dispensaries including grant-in-aid institutions. The dispensary at Karjat is mentioned at p. 233 and there is a reference to the Government Resolution under which it was established. In Appendix II to the Code we have a list of sanctioned appointments of *Subordinate Medical Service* Officers. The reference to the Karjat dispensary is at p. 574 and it appears from that that the Medical Officer for this institution was appointed by a Resolution of Government in December 1907. At p. 237 of the Code are rules for the regulation of Government aided dispensaries. From these rules it appears that grant-in-aid dispensaries are staffed by officers of the Bombay Medical Service or Subordinate Medical Service and the Officers' salary is paid by Government, although a contribution is recovered from the local body concerned. The rules at p. 242 show that members of the medical services are entirely under the control of their departmental superiors and not under the control of any local body. It is not necessary, I think, to elaborate this point further and it is quite clear from the provisions of the Government of India

Act and from the rules relating to the service to which Dr. Marathe belonged that he was a servant of the Crown and doing duty as such within the meaning of s. 270 when he was acting as Medical Officer in charge of this dispensary. The objection that he was not a servant of the Crown, therefore, fails.

It was not on that ground that the Sessions Judge held s. 270 not to be applicable. His view was that it was not Dr. Marathe's duty to give a certificate to the police. At p. 373 of the Civil Medical Code various rules are given regarding medico-legal examinations by Medical Officers. Rule 7 says :—

> " When called upon, Medical Officers will supply the Police, as far as possible, with certificates regarding cases of injury brought to Hospitals and Dispensaries immediately after examination,"

and the rule goes on to give instructions for the guidance of these officers in giving these certificates. The Sessions Judge referring to this rule says that in the first place it is not a rule having the force of law; it is only a rule of guidance. I do not see what that has to do with it. The word " duty " in s. 270 is not necessarily confined to a legal duty. Civil servants who are Medical Officers are obviously bound to obey the rules made for the guidance of such officers and it is their duty to obey them.

Then the Sessions Judge says that the rule has reference to cases brought to the hospitals by the police themselves. The rule, however, does not say " brought by the Police ". No doubt the word " brought " is used and we are told that in the present case the complainant walked to the dispensary by himself. But it would be unreasonable to suggest that the rule only applies in the case of a man who is not well enough to walk to the dispensary. Having regard to the obvious purpose of the rule we think that the word " brought " should not be unduly stressed and that it does not really mean anything other than " is admitted. "

1938

MARATHE v. PANDURANG

Broomfield J.

In the present case then Dr. Marathe in view of this rule was bound to comply with the Sub-Inspector's request to describe the nature of the injuries and in furnishing the certificate he was quite clearly doing his duty. Even if there were the slightest doubt on that point, which I think there is not, it cannot be disputed that at any rate he purported to do his duty. That is sufficient to bring the case within the language of the section. Furthermore the duty which he was doing was his duty as a servant of the Crown. For the reasons which I have already given he did not cease to be a servant of the Crown by reason of the fact that in accordance with the rules of the Government Department to which he belonged he was in charge of this grant-in-aid dispensary.

Mr. Joshi laid some stress on the words "affairs of a Province" in s. 270 and argued that Dr. Marathe in this case was not engaged in the affairs of a Province but merely in the affairs connected with the Local Self-Government. He suggests that the affairs of a Province in s. 270 mean only the affairs of the executive Government. I can see no justification for this view. Local Self-Government within the provinces is obviously a branch of provincial affairs, and Crown servants whose services are lent to local bodies can quite properly be said to be employed in connection with the affairs of the Province, as opposed to the affairs of the Central Government.

We are of opinion that the Sessions Judge was wrong in holding that s. 270 does not apply here. As it does apply the proceedings which have been taken against Dr. Marathe cannot be allowed to continue. We therefore set aside the Sessions Judge's order directing further inquiry and order that the complaint be dismissed.

Order set aside.

Y. V. D.