

Sunil Scaria Vs. The State of Kerala represented by the Public Prosecutor and Another

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Court : Kerala

Decided On : Nov-24-2015

Judge : K. Ramakrishnan

Appeal No. : Crl. MC. No. 6682 of 2014

Appellant : Sunil Scaria

Respondent : The State of Kerala represented by the Public Prosecutor and Another

Judgement :

1. This is an application filed by the petitioner who is the 2nd accused in ST No.6439/2014 on the file of the Judicial First Class Magistrate's Court-II,(Mobile) Kottayam challenging the legality of portion of direction issued by the Magistrate under Section 482 of the Code of Criminal Procedure (hereinafter referred to as the Code).

2. It is alleged in the petition that the petitioner was arrayed as 2nd accused in ST 6439/2014 on the file of the Judicial First Class Magistrate Court-II (Mobile) Kottayam is the owner of the stage carriage vehicle with registration KL 05 X 8078 having permit to ply on the route Kangazha Hospital-Kottayam. On 13.11.2014, at about 12.50 pm,when the mobile court was conducting sitting at Karukachal, the

vehicle was inspected by the Assistant Motor Vehicle Inspector of Motor Vehicles Department Kottayam and it was found that it was driven by the 1st accused and 3rd accused was working as conductor and first and third accused were not having requisite license as required under the Motor Vehicles Act to act as driver and conductor respectively and no first aid material available in the vehicle and so a petty case was registered against accused Nos. 1 to 3 alleging offence under Sections 3 read with Section 181 and Section 190 (2) of Motor Vehicles Act against the 1st accused and under Section 5 read with Section 180 and Section 29 and read with Section 177 of Motor Vehicles Act against the second accused and against the 3rd accused for the offence under Section 29 read with Section 177 of Motor Vehicles Act and read with 102 of Central Motor Vehicle Rules 1989 and 151 of Kerala Motor Vehicle Rules 1989. On appearance of the accused before the Magistrate, after complying with the formalities, the particulars offences were read over and explained to them and they pleaded guilty. Court below accepted the plea of guilty as voluntary and convicted them for the offence alleged and sentenced the 1st accused to pay a fine of Rs.1,500/- under Section 3 read with Section 181 and 192 of Motor Vehicles Act and sentenced the 2nd accused to pay fine of Rs.1,500/- and 3rd accused to pay a fine of Rs.300/- and in default to undergo simple imprisonment for 5 days each. Further the Magistrate has directed the Regional Transport Authority, Kottayam to initiate action against the owner of the vehicle under Section 86 of the Motor Vehicles Act and to suspend the sentence for one month and report compliance. The parties were directed to appear before the Regional Transport Authority Officer, Kottayam on 14.11.2014 at 3 pm. The above petition is filed to quash the judgment to that extent mentioned last under Section 482 of the Code.

3. Heard the counsel for the petitioner Shri. K.V. Gopinathan Nair and Smt. Seena Ramakrishnan learned Public Prosecutor appearing for the State.

4. The counsel for the petitioner submitted that the court below had exceeded its jurisdiction of directing the Regional Transport Authority to suspend the permit for one month. At the most, if the court felt that any action need be taken, it would give intimation to the authority along with the judgment passed and on the basis of such intimation it is for Transport Authority to initiate the proceedings and

independently pass orders under Section 86 of the Motor Vehicles Act. So the court below had exceeded its jurisdiction and to that extent, the order passed is to be quashed.

5. On the other hand the learned Public Prosecutor submitted that since the vehicle was used in violation of the provisions of the Motor Vehicles Act, court has got power to impose such punishment as well.

6. It is an admitted fact that the petitioner is the owner of the State carriage with No.KL 05 X 8078 and on 13.11.2014, the vehicle was driven by the 1st accused and 3rd accused was the conductor of the bus at the relevant time. It is also an admitted fact that on 13.11.2014, at 12.50 pm, the Mobile court was conducting sitting at Karukachal and the vehicle was stopped by the Assistant Motor Vehicles Inspector, Motor Vehicles Department Kottayam and on inspection it was found that the driver and conductor of the bus were not holding requisite license required under the Motor Vehicles Act and it was not having necessary First Aid in the Vehicle and on that basis he had submitted petty charge alleging offence under Section 3 read with Section 181 and 190(2) of Motor Vehicles Act against the 1st accused the driver of the vehicle and for the offence under Section 5 read with Section 180 and Section 29 read with Section 177 of the Motor Vehicles Act against the 2nd accused the owner of the vehicle and for the offence under Section 29 read with Section 107 of the Motor Vehicles Act 1989 against the 3rd accused the conductor of the bus.

7. It is also an admitted fact that on the basis of the summons issued, all the three accused appeared before the court below and after complying with the formalities under Section 207 of the Code of furnishing the documents, the particulars of offences were read over to the accused persons and they pleaded guilty and Court below accepted the plea of guilty as voluntary and convicted the accused persons for the respective offences alleged and sentenced them directing to pay fine with default sentence under respective provisions for which they have been charge sheeted as per Annexure A1 judgment. Apart from the findings them guilty and sentencing them for the offence alleged, the learned Magistrate had passed the following order also in paragraph 5 of the judgment which reads as follows:-

"Considering the gravity of the offence and the manner in which the vehicle has been recklessly used by all the three accused, the court finds that they have used the vehicle in violation of S.84(d) of the M.V.Act and hence the R.T.O., Kottayam is directed to initiate action u/s 86 of the M.V.Act to suspend the permit for one month and report compliance. The parties are directed to appear before the RTO, Kottayam on 14.11.2014 at 3.00 p.m. The SHO Traffic P.S. shall release the vehicle to A2 on producing a person having valid D/L."

8. It is true that for violation of conditions mentioned under Sections 86 of the Motor Vehicles Act, the Transport authority has power to suspend the permit. But as in the case of Section 20 of the Motor Vehicles Act, the Magistrate has no power to suspend the permit. Power has been given to the Magistrate under Section 20 of the Act on finding guilty of driving the vehicle in violation of the provisions of the Motor Vehicles Act, to suspend the driving license of the driver for a particular period as part of the sentence to be imposed on the driver of the vehicle.

9. Such a power has not been given to the Magistrate either under Section 180 or under Section 177 of the Motor Vehicles Act. Specific punishments have been provided under those sections and apart from that, Magistrate has no power to impose or issue any direction to suspend the permit usurping the power of the Transport authority vested in them under Section 86 of the Motor Vehicles Act. But the Magistrate can send an intimation to the transport authority regarding the commission of the offence and on that basis, it is for the transport authority, after giving an opportunity to the parties, to consider as to whether action under Section 86 of the Motor Vehicles Act has to be taken or not. In this case instead of following that procedure, the Magistrate himself has taken the power under Section 86 of the Motor Vehicles Act and directed the Regional Transport Authority to suspend the permit for a period of one month and directing the Authority to comply with the direction, report compliance which is beyond the jurisdiction of the Magistrate and to that extent the judgment passed by the court below has to be quashed. But at the same time, the Regional Transport Authority is at liberty to initiate proceedings under Section 86 of the Motor Vehicles Act on the basis of the intimation received from the Magistrate and after complying with the procedure

contemplated under law, pass appropriate orders in this regard. Quashing of the proceedings of the Magistrate to the extent mentioned above is not a bar for the Transport Authority to initiate action against the petitioner for committing any violation of the provision under Section 84 of the Motor Vehicles Act. If such an order is passed, the petitioner will be getting the right of appeal under the Act. But by virtue of the order passed by the Magistrate, right of appeal to the petitioner is curtailed and he cannot file an appeal against that order to the authorities as it cannot be deemed to an order passed by the transport authority invoking the power under Section 86 of the Act.

With the above observation and direction the petition is allowed and the direction of the Magistrate in paragraph 5 of the impugned judgment to the extent directing the transport authority to suspend the permit for one month and report compliance is quashed.

Office is directed to communicate this order to the concerned court and also the Regional Transport Authority, Kottayam.

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