

**Emperor Vs. C.S. Modi**

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**SooperKanoon Citation :** [sooperkanoon.com/327148](http://sooperkanoon.com/327148)

**Court :** Mumbai

**Decided On :** Jan-18-1934

**Reported in :** (1934)36BOMLR369

**Judge :** John Beaumont, Kt., C.J. and ;Barlee, J.

**Appeal No. :** Criminal Application for Revision No. 379 of 1933

**Appellant :** Emperor

**Respondent :** C.S. Modi

**Disposition :** Appeal allowed

**Judgement :**

John Beaumont, C.J.

1. This is an application in revision in which the applicant asks us to review his conviction under by-law No. 27 of the bye-laws made under the Bombay Tramways Act (Bom. I of 1874) for breach of the transfer regulation No. 10 made under the Act. The learned officiating Chief Presidency Magistrate convicted the accused and imposed a fine of Rs. 10.

2. The facts are that on the day in question the applicant boarded a tram at Flora Fountain and took a ticket for Bhendi Bazar. The ticket required him to change trams at Bori Bunder, and this he did, but instead of taking a tram proceeding

along the Hornby Road direct to Bhendi Bazar he took a tram proceeding along the Cruikshank Road to Dhobi Talao and then along Kalbadevi Road to Bhendi Bazar, the result being, in effect, that he travelled over two sides of a triangle instead of over one. The conductor of the tram into which the applicant changed at Bori Bunder, on examining his ticket, told him that he was in a wrong tram and must get into a tram proceeding along the Hornby Road. The applicant refused to get out of the tram. Thereupon the traffic regulator was summoned and he directed that the applicant should be issued a fresh ticket for the route along the Kalbadevi Road and should be charged one anna for that ticket. The applicant refused to purchase a fresh ticket. It is suggested on behalf of the applicant that by issuing a fresh ticket the breach (if any) of the transfer regulations was waived. But, in my opinion, inasmuch as the applicant refused to accept a ticket on the terms upon which it was offered, viz., the payment of one anna, there was no waiver of the breach of any regulation, which might have been committed by the applicant.

3. Now, the relevant sections of the Act and bye-laws are these:--Section 24 of the Bombay Tramways Act authorises the grantees to make regulations for regulating the travelling in or upon any carriage belonging to them. Section 25 provides that any person offending against any bye-law made under the provisions of the next preceding section shall forfeit for every offence any sum not exceeding twenty-five rupees, to be imposed in such bye-laws as a penalty for such offence. Then Section 26 provides that all penalties under the Act or under any bye-law made in pursuance of the Act may be recovered and enforced before a Police Magistrate of Bombay by a summary proceeding, and then the section provides for the issue of a warrant by the Magistrate for recovery of the amount.

4. Certain bye-laws were framed under the Act. Bye-law No. 27 provides that any person offending against or committing a breach of any of the bye-laws or regulations of the company shall be liable for every such offence or breach to a penalty not exceeding Rs. 25. Then certain transfer regulations were also framed. Transfer regulation No. 10 is the material one and provides that a passenger when changing cars at a transfer station shall not continue his journey from that station in a car going from such station over the same portion of line as the car from which he has transferred except when such a journey is scheduled in the section tables.

It was argued in the first place on behalf of the applicant that the bye-Laws and the, transfer regulations were ultra vires because they were not covered by the 'words of Section 24 of the Act as being framed 'for regulating the travelling in or upon any carriage belonging to them.' I am unable to appreciate the force of that argument. It seems to me that provisions that a passenger shall change at a particular point, and shall travel, or shall not travel, by a particular car are clearly regulations as to the travelling in or upon any carriage belonging to the company. Therefore, I have no doubt that transfer regulation No. 10 is within the competence of the Tramways Company.

5. Then it is said that in fact the applicant did not commit a breach of the transfer regulation No. 10. Regulation No. 10 is not very clear. Under it when the applicant changed his car at Bori Bunder he was not entitled to continue his journey in a car going over the same portion of the line as the car from which he transferred. Now the car from which he transferred, we are told, though there is no definite evidence on the point, proceeded along the Cruikshank Road to Dhobi Talao and thence along the Girgaum Road; whereas the car into which the applicant transferred proceeded to Dhobi Talao and then branched off down Kalbadevi Road. The result is that the latter car travelled in fact over part of the same route as the former car, that is, from Bori Bunder to Dhobi Talao. I shall assume, without deciding, that the applicant by travelling over a substantial portion of the same route as that traversed by the car from which he had alighted committed a breach of regulation No. 10.

6. Then the next point, and to my mind a serious point, taken by the applicant is that, he was not liable to be prosecuted and fined by the learned Magistrate. Section 25 of the Act provides that any person offending against any bye-law shall forfeit for every offence any sum not exceeding Rs. 25, to be imposed under the bye-laws. Now the bye-laws do not impose a particular penalty for breach of each bye-law or regulation. They provide in bye-law No. 27 generally that any person offending against or committing a breach of any of the bye-laws or regulations shall be liable for every such offence or breach to a penalty not exceeding Rs. 25, that is to say, the bye-law merely follows the wording of the Act, and does not impose a penalty of any fixed amount for the breach of any particular bye-law. If

the bye-law had followed strictly the provisions of Section 15 of the Act and had imposed a penalty of a particular amount for breach of regulation No.10, then it seems to me quite plain that any proceedings under Section 26 before the Magistrate could only be proceedings for the recovery of a penalty of that particular amount. The Magistrate might no doubt in such a case inquire in a summary way whether the regulation had been broken. But it would not be competent for the Magistrate in such a case to say that the penalty imposed by the bye-law was wrong and that some other penalty should be recovered. It may be that the Tramways Company in such a case might seek to recover something less than the whole penalty which they were entitled to recover. But it seems to me that all that the Magistrate could do would be to give directions for the recovery of the penalty imposed by the bye-law or such part thereof as the Tramways Company were seeking to recover. It is, however, argued on behalf of the Tramways Company, and by the Government Pleader, that inasmuch as bye-law No. 27 does not impose a particular penalty for the breach of regulation No. 10, but merely imposes a general penalty not exceeding Rs. 25 for the breach of any bye-law or regulation, the Tramways Company was entitled to prosecute the applicant or to get him convicted and fined in such sum not exceeding Rs. 25 as the Magistrate should determine to be proper. I can find nothing in the words of Section 25 or Section 26 of the Act to justify that procedure. It is for the bye-law, and not for the Magistrate, to impose the fine. Whether under bye-law No.27 as framed it would be open to the Tramways Company to ask the Magistrate to direct recovery of the maximum penalty of Rs. 25, or such part thereof as the company might desire to recover, it is not necessary to determine, because that course was not adopted. The company did not ask the Magistrate to enforce recovery of the penalty which the bye-laws imposed. They asked the Magistrate to try the applicant and sentence him to such fine not exceeding the maximum, as the Magistrate might think proper, and such a course of procedure is not warranted by the words of the Act. We have been referred to various authorities under other Acts, particularly *Municipality of Ahmedabad v. Jumna Punja*, under Section 84 of the old District Municipal Act, and *In re Dinbai Jijibhoy?* under Section 161 of the present Municipal Act. But the wording of both the old and the present Municipal Act is quite different from the wording of the relevant sections of the Bombay Tramways

Act.

7. We allow the application, set aside the conviction and sentence, and direct that the fine, if paid, be refunded.

**Barlee, J.**

8. I agree.

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