Emperor Vs. Khodabux

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Court : Mumbai

Decided On : Jul-21-1926

Reported in : (1926)28BOMLR1066

Judge : Shah and ;Fawcett, JJ.

Appeal No. : Criminal Application for Revision No. 144 of 1926

Appellant : Emperor

Respondent : Khodabux

Judgement :

Shah, J.

1. We have heard the learned Counsel for the applicant in this case, and, after a consideration of the points urged in support of the application, we have come to the conclusion that no case for interference in revision is made out

2. As regards the first point about jurisdiction, it is quite clear that the learned Chief Presidency Magistrate had jurisdiction to try the case. As explained by him in his report, there is the further fact that he had given directions for bringing up such cases to his Court, in view of the congestion in the Maza-gaon and Girgaon Police Courts, under Rule 3 of the Rules made under Section 21, Criminal Procedure Code. Apart from that fact, there can be no doubt that, under Section 20 of the

Code of Criminal Procedure, he had jurisdiction to try the case.

3. As regards the merits, in the absence of any record of the evidence, it is very difficult in revision to determine what the evidence was. Taking the evidence as stated by the learned Magistrate in his judgment, and taking the statement of the accused, it does appear that he drove on the left leaving the line which was formed on that particular day on the Pedder Road. According to his statement he drove on the left ahead of two or three cars which were moving very slowly. The learned Magistrate has stated in his judgment that the traffic was heavy and a line was formed, and the accused drove his oar recklessly in a manner which was not only dangerous to the public but to the occupants of his own car. I am willing to take it, as urged by the learned Counsel for the applicant, that we are not concerned with the consideration whether it was dangerous to the occupants of his own oar, But, under Section 5 of the Indian Motor Vehicles Act (VIII of 1914), the accused was bound not to drive in a manner which would be dangerous to the public. In determining whether the manner of his driving was dangerous to the public or not regard must be had to all the circumstances of the case and the amount of traffic which actually was at the time in the place, This is really a question of fact under the circumstances. We have heard the applicant's counsel on the merits, but we see no reason to think that the finding of the learned Chief Presidency Magistrate is not justified by the evidence in the case.

5. Rule 5 of the rules made under Sub-section (1) of Section 22 of the City of Bombay Police Act, 1902, has been relied upon as justifying the act of the accused. But, we do not think that that rule applies to the facts of this case. It entitles the driver of a vehicle intending to pull up to do so at the extreme side of the street along which he is proceeding. In fact, instead of pulling up, he himself says that he overtook two or three cars because they were going very slowly. Thus, that rule would not apply to the facts of this case. Even, aocording to his present contention, he did not wish to pull up at the point where he deviated from the line, but wanted to go ahead in order to get into his bungalow, which was a little further up on that road on the right side. It is not necessary to refer in this case to Rule 19 of the rules under the Motor Vehicles Act, upon which the learned Government Pleader has relied.

6. The whole question in the case is, whether, is acting in the manner in which the accused acted at the time and under the circumstances under which he acted, he drove his car recklessly in such a manner as would be dangerous to the public, It must be noted that the explanation, which he has put forward in his petition to this Court, does not appear to have been offered in the trial Court. The learned Magistrate, after considering the evidence, has found against the accused, and we see no sufficient reason to disturb that finding. We discharge the rule.

Fawcett, J.

7. I agree. I would only add, as I was a member of the Bench that admitted the application, that we had not then before us the statement of the accused, which certainly supports the prosecution case, and the application was admitted because the mere fact of deviating from a line of traffic does not necessarily amount to negligently, recklessly, or dangerously driving a car. It depends entirely on the circumstances whether the case falls within the provisions of Section 4 of the Indian Motor Vehicles Act (VIII of 1914); and even where there is disobedience to a rule under Section 22 of the City of Bombay Police Act, 1902, or to a lawful direction given by a Police Officer about traffic, that would be a question of an offence under Section 127 of that Act, rather than one of an offence under the Motor Vehicles Act. In the present case, I think, after hearing arguments, that the Chief Presidency Magistrate had good grounds for the finding he has arrived at, and that there are no sufficient reasons to interfere in revision.