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Court : Mumbai

Decided On : Dec-01-1926

Reported in : (1927)29BOMLR191

Judge : Patkar and Baker, JJ.

Appeal No. : Criminal Application for Revision No. 296 of 1926

Appellant : Emperor

Respondent : Aba Appa Dharwade

Disposition : Application dismissed

Judgement :

Patkar, J.

1. In this case the accused Aba Appa Dharwade was convicted under Section 16 of the Bombay Motor Vehicles Act VIII of 1914 for committing a breach of Rule 7 of the Rules applicable to the Ratnagiri District published in Government Resolution No. 6630, dated October 16, 1917, and also under Rule 33 (b) published in Government Notification No. 2592, dated March 16, 1920.

2. The facts found against the accused are, that, on August 30, 1925, the accused drove a motor car belonging to Messrs. Shirgaokar Brothers who had a contract for the transport of the mails between Ratnagiri and Kolhapur, as the regular driver

of Messrs. Shirgaokar Brothers was ill on that day ; that, according to the owner's permit, not more than eight passengers could be carried in the Ratnagiri District, and as a matter of fact the accused carried seventeen passengers including himself and the cleaner. The defence of the accused was that the same car was licensed to carry seventeen persons within Kolhapur limits and carried seventeen persons from Sakharpe to Kolhapur on that day, and that he did not know that in the Ratnagiri District the car was to carry eight persons only. It is argued on behalf of the accused that as this motor carried the mails, it was not plying for hire, and reliance was placed on *Queen-Empress v. Narayan* (1890) Unrep. Cr. C. 521 in which it was held that a tonga, when used for carrying Her Majesty's mails, is not a public conveyance within the definition contained in Section 1 of Bombay Act VI of 1863. It does not appear from the facts of that case whether the tonga was licensed to carry passengers. Besides the definition of 'public conveyance' would not include a motor car, and the present case will have to be decided by the provisions of the Motor Vehicles Act VIII of 1914 and the rules made thereunder.

3. Under Section 6 of the Act no owner or person in charge of a motor vehicle shall allow any person who is not so licensed, to drive it. Under Section 7 the holder of a license shall not allow it to be used by any other person. Section 8 says that the driver of a motor vehicle shall produce his license upon demand by any police-officer.

4. Under the rules framed for the Ratnagiri District and published in the Government Notification No. 6630, dated October 16, 1917, at page 2390 of the Bombay Government Gazette for 1917, the owner is required to take a permit in form A of the schedule under Rule 3, and under Rule 7, Clause (4), the public driver's permit has to be taken in accordance with form B of the Schedule. It is argued on behalf of the Crown that form B shows that the permit is restricted to a particular motor vehicle, as the permit is granted to a particular person to act as a driver of a motor vehicle bearing a certain number to be let or plied for hire and none other.

5. Having regard to the provisions of the Motor Vehicles Act and the rules thereunder, we think that the accused who had not a driver's license as required

by Rule 7 was guilty of a breach of the rule, and, therefore, liable to be punished under Section 16 of the Motor Vehicles Act. Besides the accused's master had taken out an owner's permit for this motor car for carrying eight passengers in the Ratnagiri District from the District Superintendent of Police. He admittedly carried more passengers, and he was, therefore, guilty of a breach of Rule 34, Clause (I) of the Rules published in Government Notification No. 2592, dated March 16, 1920.

6. It is further argued that this motor car was not plying for hire within Rule 1 of the rules framed for the Ratnagiri District and reliance is placed on the case of Emperor v. Nasarvanji Bomanji. (1922) 25 Bom. L.R. 95 The facts of that case were quite different as the accused in that case had three private conveyances which he hired out to such persons as he wished. It was held in that case that the essential idea of a conveyance being used for the purpose of plying for hire is that it should be available at some public place or on some regular route for any one who wishes to hire it or travel by it. The motor car in this case was available on a regular route from Kolhapur to Ratnagiri, and, therefore, was clearly plying for hire. The contractor may use any car he likes for carrying mails, but if he wishes to carry in it at the same time passengers for hire he must have an owner's permit and also a driver holding a public driver's permit.

7. We think, therefore, that the accused was properly convicted and would, therefore, discharge the Rule.

Baker, J.

8. This is an application for revision of an order of the Sessions Judge of Ratnagiri dismissing the petitioner's application for revision of a conviction and sentence of Rs. 10 passed by the First Class Magistrate of Ratnagiri under Section 16 of the Bombay Motor Vehicles Act VIII of 1914.

9. The facts are admitted. The accused was charged with driving a motor for hire without a driver's permit, and carrying passengers in the motor car in excess of the number entered on the owner's permit, under Rule 7 published in Government Resolution No. 6630, dated October 16, 1917, and Rule 34, Clause (I), of the

Motor Rules for the Ratnagiri District, published in Government Notification No. 2592, J.D., dated March 16, 1920. The accused was driving without a driver's permit, and was carrying sixteen persons instead of eight which is the number permitted by the license of that particular car.

10. It is, however, contended that the car in question being used for the conveyance of His Majesty's mails is not subject to the rules in question. The learned pleader for the applicant has been unable to show any authority for the proposition laid down by him that a car which carries mails, and also carries passengers is exempt from the operation of the ordinary rules. The Case he has quoted, viz., Queen-Empress v. Narayan, (1890) Unrep. Cr. C. 521 refers to a mail tonga which was not governed by the rules of the Motor Vehicles Act. The owner of this car has actually taken out a license for it, and must abide by the conditions in the license.

11. There is no authority for holding that a car, because it carries mails, is exempt from the rules regarding the number of passengers in the permit. The regulations being made for the safety of passengers, it cannot be assumed, in the absence of clear evidence to the contrary, that the legislature contemplated that passengers carried in motors carrying mails should be in a position of less safety than those travelling by an ordinary car. There is no law which makes an exception in the case of a car which carries mails as well as passengers, and I agree with the view taken by the learned Sessions Judge that the conviction is correct and there is no ground for interference. We dismiss the application.

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