

**In Re Jehangir D. Davar**

**In Re Jehangir D. Davar**

**SooperKanoon Citation :** [sooperkanoon.com/346145](http://sooperkanoon.com/346145)

**Court :** Mumbai

**Decided On :** Jan-25-1911

**Reported in :** 9Ind.Cas.945

**Judge :** Russell and ;Batchelor, JJ.

**Appellant :** In Re Jehangir D. Davar

**Judgement :**

**Russell, J.**

1. I do not think it desirable to reserve our judgment in this case, In my opinion in dealing with cases of this kind--and this is not likely to be the last of such cases in Bombay--it is extremely desirable to have regard to Section 2 of the Motor Vehicles Act (Bombay Act II of 1904). That section says:

Whoever drives a motor vehicle recklessly or negligently or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road, and to the amount of traffic which actually is at the time, or which might reasonably be expected to be on the road, may on conviction be punished with fine, and so on.

2. Therefore you have to consider at least eight different points in dealing with a case of this nature. Above all, in this particular case you have to pay regard to all the circumstances of the case.

3. It has been truly pointed out by Mr. Desai that we are not sitting in appeal but in revision, and must act in accordance with the sections to which Mr. Lowndes has referred us. We have to decide on the 'legality or propriety' of the decision of the Magistrate.

4. I, therefore, do not propose to deal with this case in any way as if it were an appeal. But it appears to me that the learned Magistrate has erred in law. He has found at the bottom of page 12, 'that it is clear in his opinion from the evidence that at one time the hack victoria was in such a position that the accused thought he could safely pass on the left' and I think this conclusion is correct, i.e., he intends to find that there was at one time ample room for the accused to pass on the left hand side of the victoria, i.e., on the wrong side of it. Then he goes on at the top of page 13: 'at the same time I think it is established beyond reasonable doubt that he decided to pass on the wrong-side and to take the risk of the hack victoria coming more to the left.'

5. On the first reading, that passage, in his judgment misled me, but it is clear from what was said by the learned Counsel and from what my learned brother pointed out that what the Magistrate means is that the accused decided to pass on the wrong side and to risk the danger of the hack victoria coming more to the left. In coming to that conclusion he has not paid sufficient attention to the question, by whom was the danger caused? I think he found that 'the danger' was caused by the victoria coming suddenly over again to the left which was the act of the driver of it and not of the accused.

6. It comes to this then that in consequence of the action of the driver of the victoria the driver of the motor car was put in such a difficult position that he had all of a sudden to decide between which of two courses he would adopt. The Magistrate has failed to hold that the victoria driver having first directed his carriage towards his right was not justified in so suddenly changing his course back to the left as to place the overtaking motor in the position of difficulty which he did. This being so, it cannot be said that the accused was reckless or negligent having regard to all the circumstances of the case within the section of the Act.

7. As far as I understand the Magistrate's judgment, no question arises that the accused was going at a speed dangerous to the public.

8. For these reasons I am of opinion that this conviction, and sentence cannot be sustained and ought to be reversed and the fine, if paid, must be refunded.

**Batchelor, J.**

9. I am of the same opinion. It seems to me, having read the judgment with the best attention that I can give to it, that it can be sustained only on the footing that the passing of another vehicle on the left is, without more, conclusive evidence of recklessness or negligence; and I can only read the judgment as based on the supposition that that is in law a good proposition. I am of opinion that the proposition is not good in law and it appears to me that the words of Section 2 of Bombay Act II of 1904 leave no doubt on the subject inasmuch as they require the Court to have regard, not only to the side on which one vehicle passes another, but to all the circumstances of the case, including the nature, condition and use of the road and to the amount of traffic which actually is or may reasonably be expected at the time on the road.

10. In this view of the case the findings of the learned Magistrate do not, I think, in law suffice to sustain this conviction, for, I am unable to extract from the judgment any further finding against the petitioner than that in fact he passed the victoria on the left side. The mere passing of another vehicle on the left is, no doubt, primarily evidence of negligence, but the inference arising from this solitary circumstance may be rebutted by the other circumstances appearing in the case. As was said in *Wayde v. Lady Carr* (1823) 2 D& R. 255 : 1 L.J. K.B. 63 : 25 R.R. 554 a decision which appears to me consistent with the provision of Section 2 of the Indian Statute, the rule of the road is not an invariable or inflexible rule, and a deviation from it may upon occasion be not only justifiable but actually necessary. The learned Magistrate writes: 'It is clear, in my opinion, that at one time the hack victoria was in such a position that the accused thought he could safely pass on the left,' and the Magistrate does not suggest that the petitioner, who admittedly is a driver of unusual skill and experience, erred in so thinking; nor does the

Magistrate express any inability to accept the evidence given by the petitioner or his witness Mr. Bhabha. But if that evidence be accepted, then the deviation from the ordinary rule of the road did not in this case amount to negligence or recklessness within the meaning of the Act.

11. For these reasons I agree that the conviction and sentence should be set aside.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**