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Court : Karnataka

Decided On : Feb-20-1959

Reported in : AIR1959Kant221; AIR1959Mys221; 1959CriLJ1095

Judge : H. Hombe Gowda, J.

Acts : Motor Vehicles Act, 1939 - Sections 2, 22, 38, 42(1) and 123(1)

Appeal No. : Criminal Revn. Petn. No. 395 of 1958

Appellant : B.S. Usman Saheb

Respondent : The State

Advocate for Def. : B.A. Mahishi, High Court Govt. Pleader

Advocate for Pet/Ap. : M.R. Suvarna, Adv.

Judgement :
ORDER

1. This Revision petition is directed against an order passed by the District Magistrate, South Kanara in Criminal Appeal No. 35 of 1958 confirming the conviction for offences under Section 38 read with Section 22 and Section 123(1) of the Motor Vehicles Act. He has also confirmed the sentence of fine of Rs. 20/- passed by the Judicial Sub-Magistrate, Bantwal in C. C. No. 1394 of 1957.

2. The case for the Prosecution was that the petitioner was driving a motor car bearing No. MYR. 1136 on the public road at B. Section road from Mangalore towards Bantwal side at about 3-35 P. M. on 13-11-1957 and when the same was checked by the Head Constable it was found that there were 30 bags of cement inside the car. Admittedly the vehicle that was driven by the petitioner was a motor car and it had been registered as such and not as a goods vehicle. The petitioner had no permit to carry goods or any fitness certificate to be used as a goods vehicle. A charge-sheet for an offence punishable under Section 42(1) read with Section 123(1) of the Motor Vehicles Act was, therefore, placed against the petitioner on the allegation that he had made use of the vehicle as a 'goods vehicle' -- without obtaining a permit, in the Court of the Sub-Magistrate, Bantwal.

The learned Magistrate was of the opinion that no offence under Section 42(1) read with Section 123(1) of the Motor Vehicles Act was made out against the petitioner and acquitted him but he was of the opinion that the petitioner had by his act committed the offence punishable under Section 38 read with Section 22 and Section 123(1) of the Motor Vehicles Act and therefore convicted him of the said offences and sentenced him to pay a fine of Rs. 20/- and in default to undergo Section I for one week. Being aggrieved by this order the petitioner preferred an appeal to the Court of the District Magistrate, South Kanara in Criminal Appeal No. 35 of 1958.

The learned District Magistrate come to the conclusion that the finding of the learned Magistrate that the petitioner was guilty of an offence punishable under Section 38 read with Section 22 and Section 123(1) of the Motor Vehicles Act was justified in the circumstances of the case and dismissed the appeal. It is the legality of this order that is now challenged before me.

3. Sri Mahishi for the Advocate General fairly conceded that the vehicle that was being driven by the petitioner is not a 'goods vehicle' as defined in Section 2 of the Motor Vehicles Act. A 'goods vehicle' means any motor vehicle constructed or adapted for use for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods solely or in addition to passengers. A 'Motor car' is defined in Sub-section (16) of Section 2 as follows:

' 'Motor Car' means any motor vehicle, other than a transport vehicle (omnibus) road roller, tractor, motor cycle or invalid carriage'. It is admitted that the vehicle in which the cement bags were being removed by the petitioner was a private motor car and not a goods vehicle. The version of the petitioner was that he was carrying the cement bags in his car for his bona fide use to the estate as directed by his muster and that he was not carrying the goods for hire. There is absolutely nothing to indicate that the petitioner was carrying these goods for hire.

There is not a whisper that the goods were being transported for hire. As already stated there is nothing on record to indicate that the explanation offered by the petitioner that he was carrying these cement bags in his car for his bona fide use is not true. An owner of a motor car who carries his luggage or other goods for his use cannot be prosecuted for infringing Section 38 read with Section 22 and Section 123(1) of the Motor Vehicles Act.

The prosecution against the petitioner is not that he infringed any of the conditions of the licence that had been issued to him to use the vehicle as a private motor car. Section 38 of the Motor Vehicles Act, as I understand, makes it obligatory on the part of a person to obtain a certificate of fitness in respect of transport vehicles only. It is not applicable to private cars. The conviction of the petitioner for an offence of infringement of Section 38 of the Motor Vehicles Act is prima facie illegal and cannot be supported.

The learned Magistrate, in the circumstances of the case was not Justified in finding the petitioner guilty of an offence under Section 38 read with Section 123(1) of the Motor Vehicles Act. The conviction is liable to be set aside.

4. In the result, therefore, this revision petition is allowed. The conviction and sentence passed against the petitioner are set aside. The fine amount, if paid, is ordered to be refunded to the petitioner.

5. Revision allowed.

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