

The State of Mysore Vs. Krishnacharya Appacharya Jahagirdar and anr.

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Court : Karnataka

Decided On : Feb-21-1966

Reported in : AIR1967Mys79; 1967CriLJ635; ILR1966KAR961;
(1966)1MysLJ618

Judge : A. Narayana Pai, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 367, 438 and 439;
Mysore Motor Vehicles Rules - Rules 23, 180, 181, 181(1) and 181(4); [Evidence Act, 1872](#) - Sections 106; Motor Vehicles Act - Sections 78 and 121

Appeal No. : Criminal Revn. Case No. 34 of 1965

Appellant : The State of Mysore

Respondent : Krishnacharya Appacharya Jahagirdar and anr.

Advocate for Def. : B.V. Deshpande, Adv.

Advocate for Pet/Ap. : B.K. Ramachandra Rao, High Court Govt. Pleader

Judgement :

ORDER

1. This is a reference made under Section 438 of the Code of Criminal Procedure by the Sessions Judge of Bijapur at the instance of the applicant accused Krishnacharya Appacharya Jahagirdar recommending that the conviction of the

said applicant by the Judicial Magistrate, First Class, Indi-Sindgi, in Criminal Case No. 75 of 1965 be set aside.

2. The original allegation against him was that while he was driving the State Transport bus No. MYF 4039 on 22-1-1965 at about 8-35 P. M., on the Hippargi Talikot Road, the bus did not have either the rear lamp burning or the destination board properly illuminated and that the applicant (driver) did not permit a police jeep No. MYJ 19 to overtake it as he should have. On these allegations, three accusations were made against him viz., contravention of Rule 181(1)(c)(i) and Rule 181(4) of the Mysore Motor Vehicles Rules and Section 78 of the Motor Vehicles Act. The Magistrate acquitted him of the third accusation, viz., failure to permit the jeep to overtake his bus. He convicted him under the first two accusations proceeding on the assumption that he had pleaded guilty.

3. The Sessions Judge in his reference states that the Magistrate's assumption that the accused had pleaded guilty is not correct. He further expresses the view that on merits also the conviction of the accused on the first two counts is unsustainable.

4. In his order the Magistrate clearly states that the accused did plead guilty under the first two counts. He has however initialled the type-note prepared apparently by his clerk in the Roznama against the date 30-1-1965 which records that the accused pleaded not guilty. The plea is found in exhibit I, among the papers before the Magistrate, in which on being questioned on the accusations in Kannada concluding with the sentence 'Ee prakara gunhe madiddu ninage aeke shikshe madabaradu?' He made the following answer:--

'Hindina danagera lightu va mundina root lightu illadae iddaddu kaboot ade. Adare sidu kodalilla annuvadu sullu'

Although it may be that the Magistrate got the impression that this was a plea of guilty, I find it a little difficult to read it that way. The question itself proceeds upon the assumption that he had committed an offence and asks him why he should not be punished. That is not how to call upon an accused to plead guilty or not guilty to an accusation. The answer may be read merely as admitting the fact that the rear

light and the light illuminating the route or destination board were not burning. A bare admission of those facts may not in all circumstances amount to an admission of guilt in the sense that the driver on being apprised of the circumstances in which the facts stated above may amount to an offence committed by him admits the fact of his fault or mistake in regard to them.

5. I agree therefore with the ultimate opinion of the Sessions Judge that this was not a case in which the accused should have been convicted on the footing that he has pleaded guilty.

6. Coming now to the merits of the case, the alleged commission of an offence by the accused consisting in the contravention of Sub-rule (4) of Rule 181 of the Motor Vehicles Rules is clearly unsupportable. That sub-rule reads as follows :--

'(4) No lamp showing a light to the front shall be fixed so that the centre of the lamp is more than five feet from the ground, provided that this provision shall not apply to-

(i) the internal lighting of any motor vehicle; or

(ii) any light necessary to illuminate the route board of public service vehicle; or

(iii) the red light on the vehicle conveying the Governor of Mysore.'

How the facts of this case amount to any contravention of any positive mandate contained in sub-rule is more than I can say. All that appears is that the prosecuting police copied this rule without having read it and without taking the trouble of seeing whether it fits into the facts of the case that they were trying to make out against the accused; and what is more surprising is that the infirmities in the case went unnoticed by the Magistrate as well as by the Sessions Judge.

7. For these reasons therefore, and without having to consider or examine the reasons stated by the Sessions Judge. I think, his recommendation in the reference should be accepted and the accused acquitted of this charge.

8. Coming now to the failure to keep the rear light burning, there is no doubt it is one of the mandatory provisions of Sub-rule (1) of Rule 181 that the vehicle should

be provided with a light of that type. It is also true that according to the evidence on record as well as the admission made by the accused, the rear light was not burning when the vehicle was stopped by the police officer travelling in the jeep at the TIME and date in question.

9. The only question is whether the facts so brought on record are sufficient to support the conviction of the accused, the driver of the vehicle. The learned Sessions Judge in holding that the facts are insufficient to support such a conviction, stated that the driver could, if at all, be said to have contravened only the provisions of Clause (xii) of Rule 23, according to which one of the duties of the driver of a Transport Vehicle is that he should at all times exercise all reasonable care and diligence to maintain his vehicle in a fit and proper condition and shall not knowingly drive the vehicle when it, or any brake, tyre or lamp thereof, is in a defective condition likely to endanger any passenger, etc., He therefore held that it was necessary to prove further that the driver drove this Transport Vehicle with the knowledge that the rear light was defective. That fact having not been proved, the Sessions Judge thought that the driver could not have been convicted.

10. Here again it appears to me that the accusation has not been drafted in the manner the law requires it to be. The Chapter in which Rule 181 occurs is Chapter V of the Rules dealing with the construction, equipment and maintenance of motor vehicles. The first general rule therein is Rule 180, according to which no person shall use and no person shall cause or allow to be used or to be in any public place any motor vehicle which does not comply with the rules contained in this Chapter. The Rule being one in general terms, it does not specifically refer to particular individuals in particular circumstances, except that it indicates some relation between the Transport vehicle and the person concerned.

The expression 'using the vehicle' will take in obviously such persons as the owner, driver, conductor or other persons who have any duty or responsibility to discharge with reference to the use of vehicle as a Transport Vehicle. The question, whether in a given situation any one of such persons has contravened the mandate of the Rules, depends upon the effect of specific Rules, if any,

imposing specified duties on him, and the circumstances of the case which attract the purpose of the duties so imposed upon him. It is apparently this position which took the learned Sessions Judge to Rule 23 enumerating the duties of a driver of the Transport Vehicle. If he had continued his scrutiny of the legal position by a reference to Chapter IX of the Act itself, I feel sure he would have found the most appropriate Section which would have applied to the situation, and that is Section 121 which reads as follows :--

121. 'Any person who drives or causes or allows to be driven in any public place a motor vehicle or trailer while the vehicle or trailer has any defect, which such person knows of or could have discovered by the exercise of ordinary care and which is calculated to render the driving of the vehicle a source of danger to persons and vehicles using such place, shall be punishable with fine which may extend to two hundred and fifty rupees or, if as a result of such defect an accident is caused causing bodily injury or damage to property, with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.'

11. Whether therefore the position is viewed from the point of view of Rule 23 (xii), as the learned Sessions Judge has done, or from the point of view of Section 121, which, in my opinion, is the most appropriate section to be applied, there can be little doubt that the facts brought on record are too meagre to support the conviction. It has no doubt been suggested by the learned Govt. Pleader that knowledge is a matter peculiarly within the possession of the accused. But such knowledge as constituting an ingredient in the offence should have undoubtedly been proved by the prosecution. Although in doing so it may rely upon inferences available from the proved circumstances, the burden is undoubtedly on the prosecution which may in proper cases be mitigated by the provisions of Section 106 of the Evidence Act. That does not in my opinion relieve the prosecution of placing on record facts necessary to draw an inference of the knowledge and avail itself of the benefit of Section 106 of the Evidence Act, No such attempt has been made by the prosecution in this case. As already stated by me, the prosecution has not even taken sufficient trouble to state clearly the correct and relevant provisions of the Act and the Rules before launching a prosecution against a

person in a criminal case.

12. For these reasons I agree with the learned Sessions Judge that the conviction on the second count also is unsustainable.

13. In the result, the reference is accepted and the conviction and sentence of the applicant accused Krishnacharya Appacharya Jahagirdar in C. C. No. 75 of 1965 on the file of the Judicial Magistrate, First Class, Indi-Sindgi, are set aside.

14. It is stated by Mr. Deshpande appearing for the applicant accused in this court that a further order by me that the fine if paid by the accused should be refunded to him may be made. I find it a little difficult to understand the absolute legal necessity of the High Court making such an order. When a sentence of fine is set aside, it means that the fine amount can no longer be retained by the State. Therefore, setting aside a sentence of fine necessarily means that the fine, if collected, should be refunded. If any action necessitated by the Treasury Rules or the Financial Code is required, it is the duty of the original court which imposed the fine to take such steps as may be necessary and to see that the fine already collected gets back into the hands of the person, the sentence upon whom has been so set aside.

15. Order accordingly.

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