

V. Ayodhyaraman Vs. State of Mysore

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Court : Karnataka

Decided On : Apr-14-1959

Reported in : AIR1960Mys212; 1960CriLJ1114

Judge : H. Hombe Gowda, J.

Acts : [Motor Vehicles Act, 1939](#) - Sections 72(3)

Appeal No. : Criminal Revn. Petn. No. 61 of 1959

Appellant : V. Ayodhyaraman

Respondent : State of Mysore

Advocate for Def. : C. Shankara Setty, Additional Assistant Adv. General

Advocate for Pet/Ap. : K. Subbiah Setty, Adv.

Judgement :

ORDER

(1) This revision petition is directed against the judgment dated 17th December, 1958 passed by the City Magistrate, Bangalore, in Criminal Case No. 2240 of 1958 convicting the petitioner for an offence under S. 72(3) read with Section 124 of the Indian Motor Vehicles Act and sentencing him to pay a fine of Rs. 100/- and in default to suffer simple imprisonment for one month. The learned Magistrate has further directed that the fact of the conviction of the petitioner should be endorsed

on the registration certificate.

(2) The facts of the case are not in dispute. The petitioner V. Ayodhyaraman is the owner of the lorry bearing Number MYF 3286. The said lorry was being driven not by the petitioner but by his driver by name Alfred John. On 5-3-1958 at about 7-30 P. M. the lorry referred to above was being driven by Alfred John in Arcot Srinivasachar's street when the same was loaded with some goods and was checked by the Police Officers. It was found that the lorry had been loaded in excess by two tone, two Cwts 1 quarter over the permitted weight.

A charge-sheet was accordingly placed against the driver before the City Magistrate, Bangalore. The driver pleaded guilty and was convicted and sentenced. Subsequently the police placed a charge-sheet against the petitioner who is the owner of the vehicle for an offence punishable under S. 72(3) read with S. 124 of the Indian Motor Vehicles Act on the ground that he had allowed his driver Alfred John to use the vehicle in contravention of the conditions of the permit, namely to overload that same in the Court of the City Magistrate, Bangalore.

The petitioner pleaded not guilty; he contended that he had no idea that his driver had overloaded the vehicle; that the vehicle with the goods in it had come from Salem and that even before it came to his place it had been checked by the Police Officers on its way to his place and the driver had been convicted and in the circumstance he cannot be held liable for an offence under Section 72(3) of the Indian Motor Vehicles Act. His contention in other words was that he had no knowledge that his driver filled the vehicle with goods in excess of the permitted weight and that he had no reasonable opportunity to know it in any manner and cannot, therefore, be convicted for an offence under S. 72(3) of the Indian Motor Vehicles Act.

In support of his contention the petitioner got the booking goods vehicle record marked as an Exhibit in the case to indicate that according to the entry made in Exhibit D1(a) relating to the particulars of the goods conveyed in the vehicle the driver had only mentioned four tons of goods in it and that it was within the permitted limits that the vehicle could be loaded. The learned Magistrate rejected

the contention put forward on behalf of the petitioner. The question as to whether mens rea is a necessary element of an offence under S. 72(3)(b) of the Act and whether it was necessary for the prosecution to prove that the petitioner had knowledge of the fact that the vehicle had been overloaded before he could be convicted under S. 72(3) of the Indian Motor Vehicles Act arises for consideration in this case.

According to the learned Magistrate mens rea is not a necessary element of an offence and all that the prosecution had to establish is that the petitioner was the owner of the vehicle. If that was done the petitioner was vicariously liable for criminal act or acts committed by his driver who was in charge of the vehicle. The learned Magistrate observed in the course of his judgment that the terms 'causes' or 'allows' used in S. 72(3) of the Indian Motor Vehicles Act indicate passive acquiescence and both of them were punishable and, therefore, the petitioner as the owner who had the benefit out of the illegal act of the driver was liable under S. 72(3) of the Indian Motor Vehicles Act. It is the legality of this order that is now challenged by the petitioner in this revision petition.

(3) Section 72 of the Indian Motor Vehicles Act reads as follows :

'Limits of weight and limitations on use--(1) The State Government may prescribe conditions for the issue of permits for heavy motor vehicles by the State or Regional Transport Authority and may prohibit or restrict the use of such vehicles in any area or route within the State.

(2) Except as may be otherwise prescribed, no person shall drive or allow to be driven in any public place any motor vehicle which is not fitted with pneumatic tyres.

(3) No person shall drive or cause or allow to be driven in any public place any motor vehicle or trailer--

(a) the unladen weight of which exceeds the unladen weight specified in the certificate of registration of the vehicle, or

(b) the laden weight of which exceeds the registered laden weight specified in the certificate of registration.

(4) Where the driver or person in charge of a motor vehicle or trailer driven in contravention of sub-section (2) or clause (a) of sub-section (3) is not the owner a Court may presume that the offence was committed with the knowledge of or under the orders of the owner of the motor vehicle or trailer.'

It is clear from the above that when an owner is being prosecuted under clause (B) of sub-s. (3) of Section 72 of the Indian Motor Vehicles Act there can not be any presumption either of knowledge of the owner of the vehicle or that the lorry was being driven with weight in excess of the registered laden weight under his orders. It is the duty of the prosecution to establish by adducing proper evidence that the petitioner who was the owner of the vehicle had knowledge of the fact that the vehicle was loaded in excess of the registered laden weight or that he had issued instructions or permitted his driver who was in charge of the vehicle to load the same in excess of the registered laden weight.

When such proof is not forthcoming the owner of the vehicle cannot be convicted. The question whether mens rea is a necessary element of an offence under S. 72(3) of the Indian Motor Vehicles Act came up for consideration before the Allahabad High Court in *Bucha Lal v. Rex* AIR 1949 All 11. His Lordship Seth J. Who considered the matter observed in the course of his order that mens rea was a necessary element in the case of an offence of contravening the provisions of S. 72(3)(b) of the Motor Vehicles Act.

That was a case wherein as in this case the owner of the vehicle was also prosecuted for an offence under S. 72(3)(b) of the Motor Vehicles Act on the ground that he had allowed his driver to load the vehicle in excess of the registered laden weight though he was not actually present. It was contended before his Lordship that the proof of mens rea was not necessary was erroneous and unless and until there is clear evidence adduced by the prosecution to prove that the owner of the vehicle had knowledge of the fact or that he had actually permitted the person who was in charge of the vehicle to carry weight in excess of the registered laden weight he was not liable to be convicted for any illegal act

committed by his driver.

After examining the relevant sections of the Motor Vehicles Act his Lordship came to the conclusion that the presumption of knowledge of the owner can only arise in case of the contravention of S. 72(2) or S. 72(3)(a) and not in case where there is a contravention of S. 72(3)(b) of the Motor Vehicles Act. His Lordships observed as follows:

'I have examined the relevant section of the Motor Vehicles Act from this point of view. According to S. 72(4)--

'where the driver or person in charge of a motor vehicle or trailer driven in contravention of sub-s. (2) or clause (A) of sub-s. (3) is not the owner, a Court may presume that the offence was committed with the knowledge of or under the orders of the owner of the motor vehicle or trailer.'

It is thus clear that this presumption of knowledge can arise only in cases of the contravention of S. 72(2) or S. 72(3)(a) and inasmuch as the presumption has been definitely applied to those two cases only it is permissible for me to infer that the legislature did not intend to apply this presumption to a case falling under S. 72(3)(b). Instead of there being an indication by implication that mens rea was not a necessary element of this offence there is a clear indication to the contrary.

The sections set out above clearly indicate where mens rea will be presumed to exist and it is not indicated that it shall be presumed to exist in the case of the offence charged. Section 124, Motor Vehicle Act, provides for the punishment for contravening the provisions of S. 72 of the Act as follows :

'Whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of S. 72 of the conditions of any permit issued thereunder..... shall be punishable.'

It is clear in the present case that the applicant did not drive the motor-truck. It is further clear that the applicant did not cause the motor truck to be driven in contravention of the provisions of S. 72. Can it be said that he allowed the motor truck to be driven in contravention of the provisions of S. 72? In my opinion in the

absence of any evidence of knowledge on the part of the applicant, it cannot be said that he did so. The section does not contemplate that a person who does not know that his driver is contravening certain provision of law 'allows a vehicle to be drive in contravention of the provisions of the law. It amounts to no more than 'allowing a vehicle' to be driven! In my opinion therefore the applicant has not been proved to have committed an offence under S. 72 read with S. 124, Motor Vehicle Act, on the evidence on the record of the case.'

In *In re Devaraja Mudaliar* AIR 1938 Mad 998, His Lordships Horwill J. Observed that such knowledge could be proved by adducing evidence that, for example, the lorry had just left the owner's premises or that all the goods on the lorry had come from there. In the absence of any such evidence it is not correct to hold that the owner of the vehicle had permitted his driver to load the vehicle in excess of the permitted weight. The version of the petitioner that the vehicle came all the way from Salem and was caught by the Police Officers even before it came to his place is not proved to be false by the prosecution. Exhibit D-1(a) indicates that the vehicle had come from Salem. As a matter of fact the two Police Officers who have been examined in the case have stated in their evidence that they do not know whether the vehicle had come from Salem or from any other place.

They were also not sure as to whether the vehicle came from the place of the petitioner or whether the petitioner had any knowledge of the fact that the driver had overloaded the vehicle. In these circumstances it is unreasonable to hold that the petitioner was aware of the contravention committed by the driver in regard to the load carried and the petitioner cannot, therefore, be convicted for contravening the provisions of S. 72(3) read with S. 124 of the Indian Motor Vehicles Act.

Sri Shankara Chetty, the learned Additional Assistant Advocate-General, who appeared for the State conceded with all fairness that the conviction of the Petitioner in the circumstances of the case cannot be supported and that the petitioner cannot vicariously be held liable for the act committed in Motor Vehicles, Act particularly in view of sub-section (4) of S. 72 of the Act which enables a Court to raise a presumption only to a case falling under S. 72(2) or clause (a) of sub-section (3) of s. 72 of the Motor Vehicles Act. The conviction of the petitioner

cannot, therefore, be supported and 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 and the petitioner is acquitted. The fine amount, if paid, will be refunded to the petitioner.

(5) Revision allowed.

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