Ratnakumar Vs. the State of Mysore

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Court : Karnataka

Decided On : Mar-18-1965

Reported in : 1965CriLJ829

Judge : M. Santosh, J.

Appellant : Ratnakumar

Respondent : The State of Mysore

Judgement :
ORDER

M. Santosh, J.

1. The petitioner has been convicted by the learned Sub-Divisional Magistrate, Mangalore, of an offence under Section 116 of the Motor Vehicles Act and sentenced to a fine of Rs. 10/- and in default to suffer S. I., for one month.

2. The charge against the petitioner was that he, being a driver of motor cycle bearing No. MYX 2000, on 6-9-1964 at about 5-50 P. M. at Kankanady Bendoor Well Road was found driving the same in the Public Road at a high speed and in a manner dangerous to the public and thereby he committed an offence punishable under Section 116 of the Motor Vehicles Act.

3. The only witness examined in the case is P. W. 1, the Police Officer who was on traffic duty that evening. He has stated that he saw the said motor cycle being driver by the petitioner (accused) from Kankanady side towards Bendoor well in a high speed and in manner dangerous to the public. He also stated that the petitioner tried to over-take a lorry coming in the same direction without giving signal to the driver of the lorry and sounding the horn. He has further stated that there were several persons going in the road at that time.

4. The petitioner has denied the offence. His case was that be had sent a registered notice to the Sub-Inspector Sri Marappa and he has put up this false case through P. W. 1. In support of his contention, the petitioner has examined one defence witness. He spoke to the petitioner and himself going to the lawyer and sending a registered notice to the said Sub-Inspector Marappa. The said notice was marked as Exhibit D.1. The prosecution did not cross-examine the defence witness.

5. Sri Holla, the learned Counsel appearing on behalf of the petitioner has contended that the prosecution has not at all proved the necessary ingredients of the offence under Section 118 of Motor Vehicles Act. He has contended that there is absolutely no evidence before the Court to show the nature, conditions and use of the place where the vehicle was driven and the amount of traffic which actually was or which might reasonably be expected in that place to justify a conviction under Section 116 of the Motor Vehicles Act. He has also contended that the evidence let in on behalf of the prosecution is very scanty and meagre and only that of a Police Officer. Particularly in view of the fact that the prosecution itself did not challenge that a registered notice had been given to the Sub-Inspector Marappa, the learned Magistrate must have satisfied himself about the truth of the prosecution case and not merely convicted the accused because P. W. 1 got into the box and gave some general evidence.

6. Sri Holla has cited before me various decisions to substantiate his contention. He has relied on Arjun Singh v. State , Din Mahomed v. Emperor AIR 1929 Lah 378 and Goyindaswami Fadayachi v. Kaliyaperumal Padayachii (1964) 2 Mad LJ 438. He has also cited before me the observations made by Sarkar in his

Evidence Act (10th Edition) at page 1178 dealing with police witnesses.

7. I think there is considerable force in the contention of Sri Holla. Except the bald statement of P. W. 1 that there were some persons going on the road at that time, there is absolutely no evidence of the nature, the condition and use of the place where the vehicle was driven and the amount of traffic which actually was at that time or which might be reasonably expected to be in the place. Merely a formal statement by the police officer that the vehicle was driven at a high speed in a manner dangerous to the public is not sufficient to prove a charge under Section 116 of the Motor Vehicles Act, In cross-examination, P. W. 1 has stated that the vehicle was going approximately at a speed of 35 miles per hour. This is only an opinion or guess made by the witness. He has also admitted that no Board has been put up imposing any speed limit nor prohibiting overtaking. Therefore, the evidence of P. W. 1 does not prove that the petitioner drove the vehicle at a high speed dangerous to the public. P. W. 1 does not even say that the petitioner overtook the lorry. He only says that the petitioner tried to overtake the lorry. He has not even stated whether any vehicles were coming from the opposite direction and made it dangerous for the petitioner to overtake the lorry. It may be mentioned that no independent witness has been examined to prove that the petitioner drove the motor cycle at a high speed or in a dangerous manner. It was easy for the police officer to have examined either the lorry driver or any other member of the public who happened to be there, to speak to the fact of the petitioner driving the vehicle at a high speed or in a dangerous manner.

8. It is no doubt a fact that the evidence of Police Officer should not be rejected simply because he is a Police Officer. But the evidence of a Police Officer should not be accepted simply because he is a Police Officer. The Court should treat the evidence of a Police Officer as that of any other witness and apply the same standards or tests in judging his evidence. In this case, since the prosecution has not challenged the version of the petitioner that a registered notice had been issued to Sub-Inspector Marappa and because of that he has put up this false case against him, it was necessary for the prosecution to let in some independent evidence and not rest content only with the general evidence of a police witness. There is, therefore, force in Sri Holla's contention that the prosecution has not

proved the necessary ingredients of the offence under Section 116 of the Motor Vehicles Act. In view of this finding, it is unnecessary to consider the various decisions cited by Sri Holla. If the prosecution wants to get conviction under the said section, it must let in better evidence than the one let in in this case.

9. In the result, this petition is allowed and the conviction and sentence passed on the petitioner for the offence under Section 116 of the Motor Vehicles Act is set aside. The fine, if paid, is directed to be refunded to the petitioner.