

In Re: Jayaram Shivaji

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Court : Andhra Pradesh

Decided On : Mar-29-1963

Reported in : AIR1964AP331; 1964CriLJ13

Judge : Sharfuddin Ahmed, J.

Acts : [Motor Vehicles Act, 1939](#) - Sections 123 and 127A; Madras Motor Vehicles Taxation Act, 1931 - Sections 4 and 7

Appeal No. : Criminal Revn. Case Nos. 188 to 195 of 1962 and Cri. Revn. Petn. Nos. 166 to 173 of 1962

Appellant : In Re: Jayaram Shivaji

Advocate for Def. : Innayya Reddy for Public Prosecutor

Advocate for Pet/Ap. : A. Suryarao, Adv.

Disposition : Petitions allowed

Judgement :

ORDER

1. Crl. R. Cs. 188, 191, 193 and 195 are Erected against the conviction of the petitioner under section 123(1) of the Motor Vehicles Act while Crl. R. Cs. 189, 190, 192 and 194 arise out of his conviction under section 7 of the Madras Motor Vehicles Taxation Act.

2. The petitioner in these cases is Jayaram Shivaji. It appears that four lorries belonging to the Firm M/s. Jayaram Shivaji and Sons bearing ORC 123, 59, 40 and 425 were found by the Regional Transport Officer on 21-12-1960 at about 11-20 a. m. at Mile 554/3 on the G. T. Road within the jurisdiction of the said Officer in Srikakulam District. They were found carrying some empty drums and furniture. Whereupon as they had no permit under section 42 or temporary permit under Section 62 of the Motor Vehicles Act, a prosecution was launched against the owner of the vehicles under section 123 of the Motor Vehicles Act. There was also prosecution under section 7 of the Motor Vehicles Taxation Act as the tax contemplated under the said Act had not been paid. The petitioner appeared in the Court in response to the summons issued to the Company and pleaded that he was not aware of the routes taken by the drivers of the lorries; he was in Calcutta at the relevant time and the drivers have not informed him of the route they were taking. He also pleaded that no tax was payable under the Motor Vehicles Taxation Act.

3. The learned J. S. C. M. Srikakulam who tried the cases held the petitioner guilty under Section 123(1) of the Motor Vehicles Act and under Section 7 of the Motor Vehicles Taxation Act and sentenced him to a fine of Rs. 50/- and Rs. 20/- respectively under each head. The same was confirmed in appeal by the Addl. Sessions Judge, Srikakulam. The revisions are directed against this order.

4. The main contention of the learned counsel for the petitioner is that no liability could be imposed on the petitioner in view of the fact that the offence was not committed with his connivance or as a result of negligence on his part. He also pleaded that he was not responsible for the management of the lorries. Under section 127A of the Motor Vehicles Act, a special procedure is prescribed for the launching of the prosecution for contravening any provision of the Act where the offences are by Companies. It lays down that:--

'(1) If the person contravening any provision of this Act is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall

be liable to be proceeded against and punished accordingly:

Provided that nothing in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.'

5. In view of the fact that in response to the summons issued by the Court, the petitioner appeared and pleaded before the Court, it cannot be said that he did not represent the Company. Some of the witnesses produced on behalf of the defence, have spoken that he was the proprietor while others have said that he was a mere partner. Whatever may be the position, from the fact that he took the summons and appeared and pleaded before the Court, it could be safely concluded that he represented the company, but the question before the Court was whether by virtue of this fiction in Section 127(A) of the Motor Vehicles Act, he could be held liable merely because the lorries were found in Srikakulam District without a valid permit or licence. Section 127 (A) (2) of the Motor Vehicles Act lays down that:

'..... where an offence under this Act has been committed by a company, and it is proved that the offence was committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly'.

To hold the petitioner guilty therefore it had to be established that the offence viz., of plying the lorry in the Andhra Pradesh area without a licence or permit was with the consent or connivance or attributable to any negligence on the part of the petitioner whether he be the director, manager, secretary, or any other officer of the company.

Be Regional Transport Officer examined as P. W. 1 in the case has not stated that the provisions of the Act were contravened with the consent or connivance of the petitioner or it was a result of any negligence on his part. There is absolutely no

evidence to that effect. In fact the Regional Transport Officer has not examined the trip sheet or any other, relevant document to ascertain which was the prescribed route for these vehicles and how it came about that these vehicles were found plying in the Andhra Pradesh area. The drivers who should have been normally prosecuted in the case, as the main culprits, have not been so impleaded. On the other hand they have been examined as defence witnesses to show that the petitioner was in Calcutta at the relevant period and the drivers had merely taken the route on the return journey as the road was good and there was some saving of distance, the route taken by them being admittedly shorter. The Regional Transport Officer therefore should have verified whether the plea set up by the drivers that they had gone to obtain a fitness certificate and were returning to their destination by this route merely as the road was good and that the samans carrying were not for hire or for any profit, was correct or not. No attempts seem to have been made in that direction, in the face of the evidence furnished by the drivers, the mere statement of the Regional Transport Officer, does not seem to be sufficient to sustain a conviction of the petitioner under section 123 of the Motor Vehicles Act.

6. The conviction of the petitioner under section 7 of the Motor Vehicles Taxation Act is based on the fact that the vehicles were found plying in the Andhra Pradesh area on that particular date. The explanation offered by the drivers in this connection, as stated above, is that they were proceeding along with this route mainly as the road was good and there was some saving of distance. It does not seem to be the case of the prosecution that the vehicles were being constantly plied in the area lying within the State of Andhra Pradesh. Under Section 4 of the Motor Vehicles Taxation Act, the Government is empowered to direct that the tax should be levied on every motor vehicle using any public road in the State. The question is whether the vehicles were liable to pay the tax even if it was found as a matter of fact that it was for the first time that the vehicles had entered the area lying within the State of Andhra Pradesh. As stated above, it is not the case of prosecution that the vehicles were regularly plied in the area within Srikakulam District or on their route to their destination in Orissa they had to constantly pass through the District of Srikakulam. The Regional Transport Officer has not spoken in this regard. The prosecution seems to be based only on the footing that on the

particular date, the vehicles were found on the road which lies within the district of Srikakulam, I find it difficult to hold that it amounts to using of public road as contemplated under section 4 of the Motor Vehicles (Taxation?) Act.

7. The appellate Court and so also the trial court do not seem to have adverted to this aspect of the case viz., whether the use of road once or twice, amounts to using any public road as provided in Section 4, of the Motor Vehicles Taxation, Act. No authority has been cited to show that even a casual or accidental use of the public road lying in another part of the State would render the owner of the vehicle of a neighbouring State to tax under the Motor Vehicles Taxation Act.

8. Thus on a consideration of the entire facts and circumstances of the case, I am of opinion that the conviction of the petitioner under Section 7 of the Motor Vehicles Taxation Act is also not according to law.

9. In the result the revisions are allowed, setting aside the conviction and sentence passed by the lower court. The fines and taxes, if paid, will be refunded to the Petitioner.

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