

Bansraj Vs. State

Bansraj Vs. State

SooperKanoon Citation : sooperkanoon.com/448861

Court : Allahabad

Decided On : Sep-13-1955

Reported in : AIR1956All27; 1956CriLJ6

Judge : Desai and ;Upadhya, JJ.

Acts : [Motor Vehicles Act, 1939](#) - Sections 42, 42(1), 123, 123(1) and 123(11);
[Code of Civil Procedure \(CPC\) , 1908](#)

Appeal No. : Reference No. 359 of 1952

Appellant : Bansraj

Respondent : State

Advocate for Def. : Jagdish Swarup, Sr. S.C. and ;Sri Ram, Dy. Govt. Adv.

Judgement :

Upadhya, J.

1. This is a reference made by the Sessions Judge, Gorakhpur, recommending that the conviction of the applicant Bansraj under Section 123 read with Section 42 of the Motor Vehicle Act be set aside. The prosecution case is that Bansraj, a driver, was found carrying 23 passengers in a public carrier while the permit allowed him to carry only 6 passengers in that vehicle.

The Magistrate found him guilty and sentenced him to a fine of Rs. 200/-, and in default to undergo rigorous imprisonment for a period of three months under Section 42 read with Section 123 of the Motor Vehicles Act. It was urged before the Sessions Judge that the applicant being a driver could not be convicted under the said provisions. Section 42(1) of the Motor Vehicles Act runs as follows ;

'No owner of a transport vehicle shall use or permit the use of the vehicle in any public place, save in accordance with the conditions of a permit granted or countersigned by a Regional or Provincial Transport Authority authorising the use of the vehicle in that place in the manner in which the vehicle is being used.,....'

Section 123 (1) of the Motor Vehicles Act is as below:

'Whoever drives a motor vehicle or causes or allows a motor vehicle to be used or lets out a motor vehicle for use in contravention of the provisions of Sub-section (1) of Section 42 shall be punishable for a first offence with fine which may extend to five hundred rupees, and for a subsequent offence if committed within three years of the commission of a previous similar offence with a fine which shall not be less than one hundred rupees and may extend to one thousand rupees.'

The learned Sessions Judge took the view that Section 42 was a provision applicable only to the owner of a transport vehicle and it laid down that he shall not use or permit the use of a vehicle, save in accordance with the conditions of a permit, and Section 123 (1) provided for the punishment of the contravention of the provisions of Sub-section (1) of Section 42.

The learned Judge thought that Section 42 (1) being applicable only to the owner of a vehicle the contravention thereof could be possible only when he acted against the provisions of that section, and that a driver could not be held to have acted in contravention of Section 42 (1) which did not concern him at all, and he could not, therefore, be punished under Section 123. The learned Judge relied on a decision of this Court in -- 'Jagroop v. Rex : AIR1952 All276 , and made the recommendation as noted above.

2. In -- 'Jagroop v. Rex', (A), mentioned above my brother Desai J., expressed the opinion that under Section 42 (1) of the Motor Vehicles Act.

'it is the owner and no body else, such as the driver or conductor, who is forbidden to use or permit the use of a vehicle, save in accordance, with the conditions of the permit, and consequently if a transport vehicle is used against the conditions of the permit, only the owner, and no body else can be guilty of contravening this provision.'

He, therefore quashed the conviction of the accused, who was a driver in that case., under Section 123 read with Section 42 of the Motor Vehicles Act. He referred to a decision by Pollock J. in -- 'Emperor v. Amrutlal Chunnilal AIR 1945 Nag. 263 (B), for the view taken by him. In that case the managing partner of a motor service and the driver and the conductor of a bus were prosecuted under the Motor Vehicles Act for not issuing tickets to two of the passengers in the bus, although they had paid their fares. Referring to Section 42 (1) the learned Judge held that the first accused was the owner as well as the manager and fell within the meaning of the word 'owner' in that section and held that he was responsible for seeing that the conditions of the permit requiring the issue of the tickets were carried out.

Referring to Rules 78 and 79 of the rules framed under the Act stating the duties of drivers and conductors, the learned Judge found that the issue of tickets was not one of the duties assigned to them and he held that it would be quite unreasonable to expect the driver to see that all the passengers had tickets and it could not be said, therefore, that the driver had driven the motor vehicle in contravention of the provisions of Section 42 (1) if he failed to see to the issue of tickets.

As to the conductor the learned Judge held that he did not drive the motor vehicle nor did he allow it to be used in contravention of the said provisions.

The learned Judge, therefore, upheld the conviction of the managing partner but set aside the conviction of the driver and the conductor of the bus.

3. As against these two cases there are a series of authorities in which the view taken is that a driver who drives a motor vehicle not in accordance with the permit issued, acts in contravention of the provisions of Section 42 (1), and is liable to be convicted. The first case to which my attention has been invited is a single Judge decision re-reported in -- 'Public Prosecutor v. Jevan AIR 1941 Mad 845 (C). The judgment in that case is rather very short.

The learned Judge held that the driving of a transport vehicle on the public road without a permit would certainly contravene Section 42 (1) of the Act and the fact that the permit is to be obtained by the owner would not make any difference. The learned Judge's attention was not invited to the fact that while Section 42 (1) laid down that the owner shall not use or allow the use of the vehicle save in accordance with a permit it said nothing about persons other than the owner.

He did not therefore consider the question as to whether there could be any violation of Section 42(1) by a person other than an owner. The next case is a Division Bench case of the Nagpur High Court reported in -- 'Provincial Govt. C. P. & Berar v. Mohanlal Keshap Lal AIR 1944 Nag 89 (D).

In that case the learned Judges held that while Section 42 (1) applies only to the owner of transport vehicles Section 123 applies to any one who drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of Section 42 (1), and that Section 123 is much wider than Section 42 (1), and the view taken was that the provisions mentioned in Section 42 (1) are the conditions of the permit granted by the Regional Transport Authority, and if the vehicle is driven by anybody in contravention of the conditions of the permit a liability under Section 123 (1) is incurred.

In this decision also no reason has been given for taking the view that Section 123 is wider in its scope than Section 42 (1). With great respect, I am unable to agree that Section 42 (1) lays down the conditions of the permit granted. Section 42 (1) only makes it necessary for every owner of a vehicle to obtain a permit and not to use it or allow it to be used save in accordance with the permit.

The learned Judges have not discussed as to how the penalty provided by Section 123 could be imposed on a person who is not required to do or abstain from doing anything under Section 42 (1) specially when Section 123 specifically says that the contravention of Section 42 (1) is essential to constitute the offence.

A learned Judge of the Punjab High Court had occasion to consider these provisions in a case reported in -- 'Teja Singh v. State', and observed:

'Prima facie section 42 is designed to punish the owner of a transport vehicle who uses or permits the use of the vehicle in contravention of the conditions of the permit while Section 123 is designed to punish the person who drives or causes or allows a motor vehicle to be used in contravention of the conditions of the permit.'

The case decided by my brother Desai J., was placed before him but he thought that the construction placed in that case was such as to defeat the obvious intention of the Legislature, and he declined to follow it. Referring to Section 123 the learned Judge observed :

'To my mind this section was clearly intended to be a residuary section and was enacted with the object of punishing a person (other than the owner) who uses a vehicle in contravention of the conditions of the permit issued by the appropriate authority. Another construction would lead to absurd results and render the section wholly meaningless.

On a plain reading of Sections 42 and 123 I entertain no doubt whatsoever that whereas the former section is designed to punish the owner of a transport vehicle the latter is designed to punish the driver or any other person.'

4. Following the view taken in AIR 1941 Mad 845 (C), and AIR 1944 Nag 89 (D), the learned Judge held that the driver was rightly convicted. With great respect, it is difficult to appreciate the basis of this decision. Section 42 does not contain any provision for punishment at all, and I am unable to see how Section 42 (1) can be said to be 'designed to punish the owner.' Section 123 similarly cannot be said to exclude the liability of an owner who causes or allows a motor vehicle to be used or lets out a motor vehicle to be used.

The observation, therefore, that Section 42 (1) is designed to punish the owner and Section 123 (1) is designed to punish a driver or any other person is, difficult to appreciate. Courts have to interpret the statutes primarily according to their plain meaning and I am unable to find any authority for the view that the meaning of the words used has to be strained so as to make it conform to some assumed intent of the Legislature.

In the interpretation of a penal provision the well settled rule is that the subject should be held to be free unless he can be found guilty according to the clear and unambiguous language of the statute. In -- 'Kalyan Lal v. The State', Justice Dave has expressed the following opinion :

'It is no doubt true that Section 42 (1) imposes the duty only on the owner of a transport vehicle, but it would appear from the language of Section 123 (1) that it is much wider in its scope than Section 42 (1), as it imposes a penalty not only on the owner but also on a person who drives a motor vehicle or causes or allows a motor vehicle to be used or lets out for use in contravention of the provisions of Sub-section (1) of Section 42.

To my mind-Section 123 (1) makes the contravention of the provisions of Sub-section (1) of Section 42 punishable not only for the owner of a transport vehicle, but also for any other person who drives it.' The learned Judge held that the words 'whoever drives the motor vehicle' are wide enough to cover drivers other than the owners of the vehicle. He followed the rule laid down in the Madras and Nagpur, cases mentioned above and also referred to the decision by my brother Agarwala J., in --'Umashankar v. Rex : AIR1950 All234 .

5. In : AIR1950 All234 , Agarwala J., observed as follows :

'Section 42 prohibits the use of a transport vehicle except in accordance with the conditions of a permit. This means that Section 42 is contravened not only when the vehicle is being used contrary to the conditions of the permit but also when there is no permit whatsoever..... The motor vehicle was, therefore, being used in contravention of the provisions of Section 42 (1), and the persons responsible for that use were, therefore, guilty under the provisions of Section 123 of the Act.'

The conviction of the driver under Section 123 read with Section 42 was maintained. With very great respect, I am unable to agree with the views expressed by Dave J., and Agarwala J. When Section 123 provides for punishment of those who drive or use or cause or allow the use of a vehicle in contravention of the provisions of Section 42 (1) it is necessary to see in each case whether the person sought to be punished has acted in contravention of Section 42 (1).

As Section 42 (1) only forbids an owner to use or allow the use of a vehicle save in accordance with a permit it is difficult to see how any person not an owner can be said to act in contravention of the provisions of Section 42 (1) which does not concern him at all. Section 42 (1) does not lay down any general rule relating to use of vehicles. It lays down what an owner must not do and obviously only an owner can be said to act in conformity with or in contravention of the provisions of that section.

It appears this aspect of the matter escaped attention when Agarwala, J. observed that 'Section 42(1) prohibits the use of the vehicle etc.' The section prohibits the owner from using or allowing to be used a vehicle save in accordance with a permit

6. The present reference came up for hearing before Mukerji J., but in view of the divergence of opinion mentioned above he considered it proper that the case should be decided by a Bench , Accordingly this case has been listed before us. A learned Judge of the Calcutta High Court in a recent case -- 'Chandra Deo Singh v. The State', 59 Cal WN 787 (H), has also taken the view that a driver other than the owner who drives the motor vehicle in contravention of the terms of the permit would be covered by the words of Section 123 (1).

It appears that the two decisions of this Court were not placed before the learned Judge and while he has referred to the case reported in AIR 1941 Mad 845 (C), and two other cases, the learned judge has not given any reasons for the view taken by him.

7. The Motor Vehicles Act is divided into ten chapters. The first chapter is the preliminary one and deals with the definitions of the words used in the Act; the

second chapter runs from Sections 3 to 21 and deals with the licensing of driver and the third chapter runs from Sections 22 to 41 dealing with the registration of the motor vehicles, Chapter IV (Sections 42 to 68) deals with the control of the motor vehicles, and it is this Chapter that contains the provisions requiring the owner to use or allow the use of a motor vehicle only in accordance with the permit to be obtained by him.

Chapter V deals with the construction, equipment and maintenance of motor vehicles and has only two Sections 69 and 70. Chapter VI (Sections 71 to 91) deals with the control of traffic, and chapter VII has only one Section 92, which deals with the motor vehicles temporarily leaving or visiting India. Sections 93 to 111 from Chap. VIII which deals with the insurance of motor vehicles against third party risks.

Chapter IX is the chapter which deals with offences, penalties and procedure and runs from Sections 112 to 132. Nowhere else in the Act is there any provision for a punishment. The other provisions of the Act lay down what the statute requires to be done by drivers, owners and other persons, or in respect of vehicles to be governed by the statute. This chapter alone states what the offences are under the Act and provides the necessary procedure and the penalties in respect thereof.

The very first Section 112 contains a provision which is wide enough to include within its ambit all contraventions of the Act and the rules made there-under, and reads as follows :

'Whoever contravenes any provision of this Act or of any rule made thereunder shall, if no other penalty is provided for the offence, be punishable with fine which may extend to twenty rupees, or, if having been previously convicted of any offence under this Act he is again convicted of an offence under this Act, with fine which may extend to one hundred rupees.'

8. Thereafter the other sections of this Chapter deal with specific types of offences. Section 113 deals with wilful disobedience of directions and obstructions of authority and refusal to supply information when required. Section 114 deals with offences relating to licences; Section 115 deals with offences relating to

excessive speed in driving; Section 116 deals with reckless or dangerous driving; Section 117 deals with driving under the influence of drink or drugs; and Section 118 deals with driving when mentally or physically unfit to drive and the next section punishes abetment of the offences under the three preceding sections.

Section 120 punishes racing without the written consent of the Provincial Government; Section 121 punishes using a vehicle in unsafe condition and Section 122 punishes an importer or dealer if he sells or delivers a motor vehicle in such condition that the use thereof in a public place would be in contravention of Chap. V of the Act and Section 123 punishes the use of a vehicle in contravention of the provisions of Section 42(1).

The other subsequent provisions of this chapter provide for punishments for driving vehicles with weights exceeding permissible limits or uninsured or without authority etc., and contain provisions for the arrest of persons impounding of documents and summary disposal of cases etc.

9. An analysis of Section 123 quoted above would show that (1) whoever drives a motor vehicle in contravention of the provisions of Sub-section (1) of Section 42, shall be punished, (2) whoever causes or allows a motor vehicle to be used or lets out a motor vehicle for use in contravention of the provisions of Sub-section (1) of Section 42, shall also be punished. The second part of this provision clearly makes the owner liable because it is he who may either cause or allow or let the use of the vehicle in that manner.

The first part makes a person driving the motor vehicle liable in the circumstances mentioned. The word 'whoever' in the provision has been construed as widening the scope of the section so as to include persons who are not owners. This I feel would be in conflict with the restrictive import of the phrase 'in contravention of the provisions of Sub-section (1) of Section 42'. The question is whether a non-owner driving a vehicle does so in contravention of Section 42 (1).

The answer to my mind cannot but be in the negative for the simple reason that Section 42 (1) does not require the non-owner to do or to abstain from doing anything. It does not concern him at all. When the owner of a vehicle uses or

permits the use of the vehicle against the provisions of Section 42 (1) he alone contravenes the provisions of that section. If the intention of the Legislature had been to cast a duty on persons other than owners also, the language of Section 42 (1) would have been plain enough to indicate that intention.

Section 123 also makes punishable only those persons who act against the provisions of Section 42 (1). If the intention had been to make punishable those also who are not owners, the language would have been clear enough to show that persons who contravene the provisions of Section 42 (1) and all other persons who drive the vehicle in a manner not in accordance with the permit would be punishable.

10. An argument has been advanced by Mr. Jagdish Swarup that the real offence was the putting on the road a vehicle otherwise than in accordance with a permit and whoever commits that offence is punishable. I regret it is not permissible to place such a construction on Section 42 (1) which embodies a direction to owners only. The owners are forbidden to do certain things and when they violate that direction they alone contravene the law. Section 123 therefore makes only these owners punishable.

11. For the above reasons, I agree with the view taken by Desai J. in AIR 1952 All p. 276 (A), and accept the reference and set aside the conviction of the accused.

Desai, J.

12. I agree with my learned brother that the reference should be accepted. Since the correctness of the view expressed by me in : AIR1952 All276 , has been challenged in several decisions, I feel compelled to add a few words.

13. The provision of Section 42 (1) does not present any problem of interpretation and there is no doubt or dispute about its meaning; it imposes a prohibition only against the owner of a transport vehicle, only he is prohibited from doing certain acts. No prohibition is imposed against any other person such as a driver of the vehicle. The words 'driver' and 'owner' both are defined in the Act and a driver is not an owner within the meaning of the Act (unless of course he owns the vehicle).

Since only an owner is prohibited from doing certain acts, the provision can be contravened only by the owner and cannot be contravened by any other person such as a driver. It is obvious that if a particular person, say A, is prohibited from doing a certain act and B does it, B does not contravene the provisions prohibiting the act; when B is not prohibited from doing it, he cannot be said to have contravened the provision by doing it.

If on the other hand every person is prohibited from doing an act, that is, if what is prohibited is the doing of an act, no matter by whom it is done, every doer of it is punishable. The prohibition contained in Section 42 (1) is of the former type and not the latter. The provision is not that no transport vehicle shall be used or permitted to be used save in accordance with the conditions of a permit; it is that the owner shall not use or permit it to be used save in accordance with the conditions of a permit.

Therefore if somebody, who is not the owner, uses or drives a vehicle without a permit, he does not do an act forbidden to be done and cannot be said to contravene the provision.

14. A contravention of the provision of Section 42(1) is made punishable only by Section 123 and the latter section punishes nothing but such a contravention. It follows that only an owner can be punished under Section 123 for contravening the provision of Section 42 (1); 'since a person, who is not an owner, cannot be laid to act in contravention of the provision he cannot be punished under Section 123. The section requires both the driving and the contravening of the provision of Section 42 (1) to be done by the same person.

'Drives in contravention' means 'drives by or after contravening' and since the two verbs 'drives' and 'contravening' are in active voice, they must have a common subject, i.e., both acts must be done by the same person, who cannot be other than the owner. In some authorities cited by my learned brother it was observed that the words 'whoever drives' in Section 123 are wide enough to include a driver who is not the owner.

Certainly the words are wide enough to cover him, but when I say that the provision does not apply to a driver who is not the owner, it is not because the words 'whoever drives' do not stand in isolation but are qualified by the words 'in contravention of the provisions of Sub-section (1) of Section 42.'

Every person who drives is not made punishable but only that person who drives in contravention of Section 42 (1), and the question essentially is whether a person, who is, not the owner, drives a motor vehicle save in accordance with the conditions of a permit, drives in contravention of i.e., does an act forbidden by, Section 42 (1) and the answer clearly is 'No'.

Had the act of driving save in accordance with the conditions of a permit been prohibited by Section 42 (1), the driver would be doing a prohibited act, but the prohibition in Section 42 (1) is against a certain person's driving save in accordance with the conditions of a permit, and only he can be guilty of doing the prohibited act. In -- 'Fazal Ahmad v. The State', Criminal Ref. No. 115 of 1951, D/- 13-11-1952 (All) (I), F, who was not the owner of a motor vehicle, drove it against the conditions of the permit and was convicted under Section 123.

Our learned brother held that he drove in contravention of the provision of Section 42 (1) but did not explain how he did so. In the judgment there is no discussion of the question who can contravene the provision of Section 42 (1) and the case seems to have been decided as if the provision in S, 123 were 'if the provision of Section 42 (1) is contravened, whoever drives the motor vehicle is guilty'.

It was said in the same case that the provision of Section 123 is wider than that of Section 42 (1). In the case of two enactments differing from each other in degree only it can be said that one is wider than the other but the difference between the provisions of Sections 42 (1) and 123 is not one of a degree only and therefore there can be no comparison between them.

One provision imposes a prohibition and the other punishes its contravention. I may say at the cost of repetition that Section 123 punishes the doing of only that act which is prohibited from being done by Section 42 (1). It does not punish any act prohibited by some other provision. Therefore, it is not correct to say that its

scope is wider than that of Section 42 (1).

The words 'drives' and 'causes or allows..... to be used' are used in Section 123, but it does not follow necessarily that it punishes the owner and the driver for the same act. An owner can also drive and the words 'whoever drives' are meant to apply to an owner who himself drives in contravention of the provision of Section 42 (1). What is meant by Section 123 is that the owner is guilty when he himself drives the motor vehicle or causes or allows it to be driven by a driver.

It is a mistake to think that the section punishes both the owner and the driver of a vehicle; really only one person is to be punished and that is the owner himself. An owner may contravene the provision either by personally driving the motor vehicle or by causing or allowing it to be used by another person save in accordance with the conditions of the permit; Section 123 punishes either of the acts done by him and hence the words 'drives' and 'causes or allows.....to be used'.

15. It was contended by Sri Jagdish Swamp that the act made punishable by Section 123 is of plying a motor vehicle save in accordance with the conditions of the permit and that it is the objectionable act that is sought to be punished. The contention would have been sound if the words in Section 42 (1) were 'no transport vehicle shall be used or permitted to be used in any public place save in accordance with the conditions of the permit', but the actual words used in this section are different.

The contention would not have been sound even if the words in section 123 were 'if a motor vehicle is driven or caused or allowed to be used in contravention of the provision of Section 42 (1), whoever drives it shall be punishable', because every time a driver drives a motor vehicle save in accordance with the conditions of a permit neither does he contravene the provisions of Section 42 (1) nor can, the vehicle be said to have been used not in accordance with the conditions of the permit.

16. The language of Section 42 (1) may be compared with that of Section 22 (1). The latter provision expressly imposes a prohibition on an owner and also on every other person driving a motor vehicle.. There would have been no necessity

of the words 'no person shall drive any motor vehicle' in the provision if without them a mere driver were liable to be punished in contravention of the provision.

17. The Legislature has made an owner of a transport vehicle responsible for seeing that the vehicle is used in accordance with the conditions of a permit. Naturally, since he is the owner, he is the proper person to be made responsible for seeing this. If he permits his transport vehicle to be used by another person in any public place in contravention of the conditions of the permit or without obtaining a permit, he should be punished for the act; the other person who drives it may not be aware of the fact that there is no permit or that its conditions are not being observed.

There is thus good reason for the legislature's punishing only the owner for contravention of the provision of Section 42 (1).

18. No owner can permit the use of a transport vehicle save in accordance with the conditions of a permit. If an owner permits a driver to use the vehicle in a public place without, or against the conditions of, a permit, he contravenes the provision of Section 42 (1), but the driver cannot be said to contravene the provision.

The vehicle can be said to have been used in contravention of the provision of Section 42 (1), but the driver would (not be punishable under Section 123 which requires not only that there is a contravention of Section 42 (1) but also that it is by the owner himself. So long as it cannot be predicated that the owner contravened Section 42 (1), he cannot be punished under Section 123.

19. I do not think any absurdity or anomaly arises out of the interpretation placed by me on the provisions of Sections 42 (1) and 123. Nor do I see how the interpretation is against the legislature's intention. The Legislature's intention is relevant only when the language used by it is ambiguous, capable of two interpretations, and the Court is required to adopt that interpretation which is in accordance with the legislature's intention.

If the language is simple or plain, capable of only one interpretation, the Court's duty is to adopt that interpretation and it would not be justified in embarking upon any inquiry into the Legislature's intention. Moreover even when a court has to ascertain the Legislature's intention, it has to do so from the words used by itself; it cannot speculate about the Legislature's intention or assume it without any data.

There are no words used by the legislature from which it can be inferred that it intended to punish a driver of a motor vehicle that was driven save in accordance with the conditions of a permit. It is not open to a court to assume that the legislature intended to punish such a driver and then to give a forced interpretation upon the words used in Section 123 so as to carry out the supposed intention.

20. If a driver takes out a motor vehicle in a public place without a permit and without the consent of the owner, the owner cannot be said to permit him to use the vehicle and would not be guilty under Section 123. But merely because the owner cannot be punished, the driver cannot be punished. If the legislature wanted someone to be . punished whenever a motor vehicle was taken out without a permit, it should have used appropriate language in Section 123.

There is nothing in Section 123 to suggest that somebody must always be punished whenever a motor vehicle is taken out in a public place without a permit or against its conditions. If a driver persuades the owner to let him use the vehicle save in accordance with the conditions of a permit, he may be guilty of abetment o the offence of Section 123, but not as a principal. The applicant is not sought to be punished as an abetter and there is no evidence also to prove that he is an abetter. He is, therefore, not guilty of any offence and must be acquitted.

21. BY THE COURT: We accept the reference, set aside the applicant's conviction and sentence and acquit him. If the fine has been realised, it shall be refunded to him.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com