

Jagroop and anr. Vs. Rex

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Court : Allahabad

Decided On : Mar-08-1949

Reported in : AIR1952All276

Judge : Desai, J.

Acts : [Motor Vehicles Act, 1939](#)- Sections 112; [Evidence Act, 1872](#) - Sections 42, 42(1), 60, 65 and 123; Motor Vehicles Rules - Rules 79 and 162

Appeal No. : Criminal Revn. Register No. 156 of 1948

Appellant : Jagroop and anr.

Respondent : Rex

Advocate for Def. : Srivastava, Adv. holding brief of Asstt. G.A.

Advocate for Pet/Ap. : S.L. Suri, Adv.

Disposition : Application partly allowed

Judgement :

ORDER

Desai, J.

1. The applicants, who are a driver and a conductor of lorry owned by one Raj Kishore Verma, have been convicted under Section 112, Motor Vehicles Act, read

with Rule 79 (8), Motor Vehicles Rules, for carrying 52 passengers as against the prescribed maximum of 40, under Section 42 read with Section 123 of the Act for not issuing tickets to passengers and under Section 112 read with Rule 162 for not equipping the lorry with a fire extinguisher. On appeal the conviction of the conductor under Section 42 read with Section 123 was quashed; the other convictions and sentences were maintained.

2. The only evidence produced in the case is that of the enforcement squad inspector and the head constable working under him. They deposed that there were 62 passengers in the lorry that there was no fire extinguisher and that the passengers stated that they were not given tickets. Neither the permit nor the registration certificate which must have been in the possession of the applicants had been produced in the Court. The applicants denied all the charges and produced a witness in defence who was disbelieved by the Courts below. They found, as matters of fact, that there were 52 passengers, whereas the lorry was permitted to carry only 40 passengers, that no tickets were issued to the passengers and that there was no fire-extinguisher in the lorry.

3. Under Rule 79 (VIII) it is the duty of the driver and the conductor of a public service vehicle, as the lorry in question was, to see that no person was carried in it in excess of the seating capacity specified in the certificate of registration and of additional number permitted under the terms of the permit to be carried standing in it. Anybody who contravenes a provision of any rule is punishable under Section 112 of the Act. The registration certificate and the permit were in the possession of the applicants; under the rules they were bound to keep them with them in the lorry. When they were prosecuted for committing a breach of the conditions of the certificate and the permit they must have known that they were required to be produced in evidence. They did not care to produce them in Court and the prosecution was entitled to produce secondary evidence. Consequently, the inspector could give secondary evidence to prove that under the conditions of the registration certificate and the permit the lorry could not carry more than 40 passengers. The applicants themselves did not deny, when they were examined by the trial Court, that the maximum number of passengers that they could carry was 40. What they denied was that they exceeded this number. There was thus

legally admissible evidence before the trial Court to enable it to come to the finding that the applicants carried 52 passengers as against the prescribed maximum of 40. On that finding they were bound to be convicted under Section 112.

4. As regards the second charge that no tickets were issued to the passengers, the only evidence is of the inspector and the head constable. None of the passengers was examined to prove that no tickets were issued. What the inspector and the head constable deposed is that when they demanded tickets they were informed by the passengers that none had been issued to them. This evidence is clearly hearsay. The primary evidence could have been given only by the passengers; the fact whether the tickets had been issued or not could be within their personal knowledge and could not be within the personal knowledge of the inspector or the head constable. The prosecution seeks to rely upon the truth of what the passengers are said to have told the inspector and not upon the fact of their telling him. It follows that the evidence given by the inspector on the point is hearsay. The test to distinguish between direct and hearsay evidence is this:

It is direct if the Court to set upon it has to rely upon only the witness whereas it is hearsay if it has to rely upon not only the witness but some other person also.

Here the Court would have to rely upon not only the inspector (and the head constable) but also the passengers, before it could conclude that no tickets were issued. It is not the evidence of the inspector that he had searched the passengers and found no tickets; had he said so, it would have been direct evidence to prove that no tickets were issued. The charge that no tickets were issued was denied by the applicants and when there was no direct evidence to prove it, they could not be convicted.

5. On legal grounds also, the applicants' conviction for the non-issue of tickets was wrong. No provision in the Act or in the Rules was shown which makes it incumbent upon a driver and a conductor to issue tickets to passengers. The duties of drivers and conductors are stated in Rule 77 and 79, but they do not include the duty of issuing tickets to passengers. There is certainly the following provision in Rule 79:

"The driver and the conductor of a public service vehicle.

(1) shall, as far as may be reasonably possible having regard to his duties be responsible for the due observance of the provisions of the Act & of these rules;'

This is a provision which positively fixes responsibility for a certain act on the driver and the conductor; it is not a provision requiring compliance by them & for non-complying which they can be punished. It does not require them to do anything; it simply holds them responsible for something not done. It would be absurd to speak of them being convicted for a contravention of this provision. They cannot, therefore, be convicted under Section 123 read with Rule 79 (I). Moreover the meaning of the words 'as far as may be possible', 'reasonably', "having regard to his duties' & 'due' in the provision go to make it one of the most vague provisions. The applicants cannot be convicted unless the non-issue of tickets by them is specifically covered by this provision.

6. In *L. & N. W. Rly. Co. v. Berriman*, (1946) 1 ALL B. B 255, his Lordship Lord Simonda quoted the following for *Tuck & sons v. Priester*, (1887) 19 Q B D.. 629 at p. 645:

'The well-Settled rule that the Court will not hold that a penalty has been incurred unless the language of the clause which is said to impose it is so clear that the case must necessarily be within it.' (Per Lindley, L. J.).

A penal clause must be construed strictly against the subject, that is he should not be convicted unless: he comes within the four corners of it. It is difficult to say that the applicants come within the four corners of the provision of Rule 79 (1) because no tickets were issued to the passengers. When there is no evidence that it was their duty to issue tickets or to see that tickets were issued to them, they cannot be held responsible for the non-issue of tickets. It is to be noted that Rule 79 makes them responsible for the due observance, and not for seeing to the due observance; had they been made responsible for seeing to the due observance, they could be held guilty even if somebody else failed to observe the provisions of the Act and the Rules. The rules lay down certain duties to be performed by them; see for example, Rules 77 & 34-90. There is no reason to think that the provision

under consideration does not refer to the observance of these rules by the driver and the conductor. It may be said that when there are separate rules enjoining certain duties upon them there was no necessity of this provision but tautology in statutes is not unknown and the provision might have been incorporated in Rule 79 in order to complete the catalogue of duties of drivers & conductors.

7. There is one more provision, namely, Section 42 (I), Motor Vehicles Act, which reads 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."

It is the owner & nobody 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 & nobody else can be guilty of contravening this provision. If A is prohibited from doing an act and the act is done, no matter by whomsoever it is done, A only if at all, can be said to have committed a breach of the prohibition & nobody else, not even the actual doer of the act. I am fully supported in this view by *Emperor v. Amrutlal Ghunnilal A. I. R. (32) 1945 Nag 263*, in which it was held that a driver or a conductor of a motor vehicle is not responsible for the non-issue of tickets. Section 42 (I) & Rules 77 & 79 were considered & it was decided that none of those provisions made a driver or a conductor responsible for the non-issue of tickets.

8. Section 123 of the Act under which the applicants had been convicted for the non-issue of tickets is in these words:

'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.'

The language of this provision is not happy. It punishes contravention of the provision of Section 42 (I). I have already quoted the provision and stated that it

can be contravened only by the owner's using or permitting the use of the vehicle against the conditions of the permit. It is meaningless to speak of somebody driving a vehicle in contravention of the provision that no owner of a transport vehicle shall use or permit the use of the vehicle against the conditions of the permit. When the provision of Section 123 is considered, the entire provision of Section 42 (l) from the words 'No owner' upto the words 'by him' must be considered & not only a part of it. The contravention that it punishes is not of the conditions of the permit granted or countersigned by the regional or Provincial Transport Authority but of the entire provision of Section 42 (l). If this section had simply said 'whoever commits contravention of the provision of Section 42 (l)', it could be understood and the owner could be punished for contravention of it. But, as it stands it seeks to punish whosoever drives a motor vehicle in contravention of a rule which prohibits only the owner from doing a certain act.

9. Therefore for more than one reason the applicants could not be convicted under Section 123 on the ground that no tickets were issued.

10. I come to the third charge, namely that of not equipping the lorry with a fire extinguisher. The relevant Rule is 162 which is in these words;

'Every public service vehicle shall be equipped with a fire extinguisher of a type specified by the Provincial Transport Authority.....'

11. There are two facts to be noticed; (1) that the provision does not state on whom lies the duty of equipping a public service vehicle with a fire extinguisher, and (2) that the duty is to equip (a public service vehicle) with a fire extinguisher of a particular type as is specified by the Provincial Transport Authority. Rules 78 and 79, which deal with duties of drivers and conductors do not lay down that it is their duty either to equip the public service vehicle with a fire extinguisher or even to see that it is equipped with one. Therefore if a public service vehicle is not equipped with a fire extinguisher its driver & conductor cannot be held liable for contravention of Rule 162. For all one knows, the owner may be liable under Section 42 (1) and he may be punished but not the driver & the conductor Section 112 under which the applicants have been convicted on the ground that the lorry was not equipped with a fire extinguisher is to the effect that:

'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...'

12. Nobody can be said to contravene a provision unless there is a duty upon him to comply with it. If the duty to comply with a provision is upon A, B cannot be convicted for its non-compliance. Before the prosecution could hold the applicants guilty of contravening of Rule 162, it had to establish that it was their duty to comply with the rule & it has failed to do so. I have already explained that neither Section 42 (l) nor Rule 79 (l) will help the prosecution to hold the applicants liable.

12a. There is no evidence that the Provincial Transport Authority has specified the type of a fire extinguisher with which the lorry should have been equipped. In the circumstances there was no contravention of the rule at all. The rule requires a particular type of a fire extinguisher to be maintained & not any kind of a fire extinguisher. The rule is contravened only when the particular type of fire extinguisher is not maintained on the lorry. When no type has been specified at all, it is obvious that there can be no contravention of the rule.

13. I partly allow the application, maintain the convictions and sentences of the applicants under Section 112 read with Rule 79 (viii) & quash their convictions & sentences under Section 123 read with Section 42 & under Section 112 read with Rule 162. The balance of fine, if realised, shall be refunded.

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