

Charan Singh Vs. Emperor

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Court : Allahabad

Decided On : Apr-28-1925

Reported in : AIR1925All798

Appellant : Charan Singh

Respondent : Emperor

Judgement :

ORDER

Banerji, J.

1. Charan Singh, applicant, was convicted under Section 5 of the Motor Vehicles Act, fined Rs. 50 or two months' simple imprisonment in default, and had his license cancelled for the remaining portion of the year 1925; that is to say, about nine months from the date of the order. The facts of the case were that the Superintendent of Police personally saw the accused driving in what he regarded as a grossly negligent and dangerous manner. He stopped him and took his address, directing him to appear for examination in driving. The Reserve Inspector reported that applicant was not qualified to hold a license, and the license was therefore, cancelled by the Superintendent of Police.

2. Thereupon Charan Singh put in an application to the District Magistrate stating the facts, and asserting that the cancellation of the license without conviction was illegal. The District Magistrate sent the application to the Superintendent of Police

with the following remark : 'For favour of report. Paragraph 18 appears to be the only section applicable. Do you want to prosecute;' The Superintendent of Police replied that, in the circumstances, the best plan was to let the case go to Court, when he would ask for the cancellation of the license. The papers were then sent to the City Magistrate 'for necessary action.' The City Magistrate tried the case summarily, recording the offence complained of under Section 279, Indian Penal Code, and convicting under Section 5 of the Motor Vehicles Act.

3. It is first urged that, in effect, there being no complaint or police report on the record, the City Magistrate took cognizance on his own initiative under Section 190C. He did not, however, give the accused the opportunity prescribed by Section 191 of trial by another Court, and, therefore, the conviction is bad. In my opinion this is an incorrect view of what took place. Although the proceedings preliminary to prosecution were very informal, I take it that the District Magistrate's order : 'To City Magistrate for necessary action,' was in effect an order taking cognizance of the case, and transferring it for trial to the City Magistrate.

4. The second ground of the application is that when the offence complained of was entered under Section 279 of the Indian Penal Code, a conviction under Section 5 of the Motor Vehicles Act was bad. No very serious attempt has been made to argue this ground, and I cannot see that there is any substance in it. The facts which have to be proved in both cases are substantially the same, and the offence alleged comes equally well under either definition. Whether the conviction is under the one or the other, there is no question of prejudice to the accused.

5. The third ground was on the merits. I am loath to go into questions of fact in a revision application; but as the disputed facts are in the present case mixed up inextricably with the question of whether any or all of those facts constituted the offence, it is desirable that I should do so. The evidence of the Sub-Inspector was that, as he was passing the Imperial Bank, accused was coming in the opposite direction in a Ford car at about 20 miles an hour, and swerving from side to side of the road. A Municipal water-cart was also coming towards the Superintendent of Police, and applicant tried to get between the water-cart and the Superintendent's car, with the result that the latter was forced on to the 'patri' and obliged to stop

dead. There were a large number of foot passengers about.

6. The road is fairly wide at this point, but its surface is indescribable. Only an optimistic municipality would venture to describe it is a pakka road at all. If applicant was really going 20 miles an hour in a Ford, it is inevitable that he must have been swerving about the road a good deal. On the other hand, it is necessary for any form of motor traffic to take a more or less serpentine course on a road of this description, in order to avoid the engulfment of the car in the deeper potholes. I do not necessarily take this swerving as a sign of reckless driving. What is to my mind absolutely clear proof of bad and dangerous driving is the fact that the Superintendent of Police was forced on to the path of a broad road, and compelled to stop in order to avoid an accident. What applicant has been guilty of is the old and dangerous game of 'three abreast' Clearly, when he saw another car approaching him on its proper side of the road, he ought to have drawn in behind the water-cart and not have attempted to force his way past it in front of the on coming-car. I am in entire agreement that such conduct comes within the purview of Section 5 of the Motor Vehicles Act, and that the conviction was a proper one.

7. In my opinion; however, taking every thing into consideration, the sentence is too severe; at any rate as regards cancellation of the license. Applicant has been driving cars regularly since 1912, and has obtained a large number of good certificates from a variety of masters. He has never before had a conviction for bad driving, and I regard the Reserve Inspector's verdict that he is unfit to hold a license because he is not a good driver as ridiculous in view of his record. I have no doubt that in passing his order the learned City Magistrate must, to some extent, have been influenced by this opinion after examination of the Reserve Inspector.

8. I, therefore, order that the record be sent to the Hon'ble High Court, with a recommendation that the order canceling applicant's license be quashed. A fine of Rs. 50 I regard as quite adequate punishment for the offence which has been committed.

Banerji, J.

9. I have read the record and I agree with the views of the learned Sessions Judge. I set aside the order of the Magistrate directing the license of the accused to be cancelled.

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