

Gur Bux Singh and anr. Vs. State

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SooperKanoon Citation : sooperkanoon.com/468622

Court : Allahabad

Decided On : Apr-07-1977

Reported in : 1977CriLJ1226

Judge : K.C. Agrawal, J.

Appellant : Gur Bux Singh and anr.

Respondent : State

Judgement :

ORDER

K.C. Agrawal, J.

1. This revision is directed against the judgment of the learned Sessions Judge, Bareilly dated January 1, 1973 convicting Gur Bux Singh, the owner of vehicle No. UPM 3783 and Namdar Khan, its driver. Vehicle U.P.M. 3783 was a public carrier. The prosecution case was that the aforesaid vehicle was inspected by Dinesh Singh, Assistant Regional Transport Officer (E) Bareilly on September 4, 1964 at about 12.55 p.m. at Bareilly Shahjahanpur road between 1-2 miles from Bareilly. On inspection Namdar Khan, the applicant No. 2 was found illegally driving the aforesaid vehicle without the registration certificate, fitness certificate, permit, insurance certificate, tax token and goods tax payment receipt. The public carrier was thereafter taken to the Thana and a complaint was filed thereafter against Gur Bux Singh, the owner and Namdar Khan, the driver.

2. Both the applicants pleaded not guilty. The defence of Gur Bux Singh, the applicant No. 1 was that he had surrendered the vehicle in September, 1963 and, therefore, none of the documents was with him. It was further asserted by him that the vehicle was parked at Gujral Petrol Pump near Shahjahanpur. that he had absolutely no knowledge of the said public carrier having been taken out by Namdar Khan. Namdar Khan, the applicant No. 2 simply denied the charge and pleaded not guilty.

3. After examination of the evidence the courts below found that the vehicle in question had not been parked at the Gujral Petrol Pump and that the evidence showed that the vehicle was coming from Shahjahanpur side and was stopped and checked by Dinesh Singh, A.R.T.O. resulting in the discovery of illegalities mentioned above. The Magistrate convicted the applicants of the various offences in respect of which the complaint had been filed. In appeal the conviction and sentences awarded to the applicants were substantially maintained but the conviction of Gur Bux Singh Under Section 123. on the count of plying vehicle without permit was set aside. Aggrieved by the aforesaid judgments the present revision has been filed by the applicants in this Court.

4. Sri S. P. Gupta, counsel appearing for the applicants did not challenge the findings recorded against the applicants by the two courts below that the vehicle was found to be without the registration certificate, fitness certificate, permit, insurance certificate, tax token and goods tax payment receipt. He, however, questioned the legality of the conviction of the applicants for not having found in possession of the various things mentioned above. It may be mentioned that the two applicants before me were convicted by the courts below for not having obtained the aforesaid certificates and other documents mentioned above.

5. The first question that was raised by the learned Counsel for the applicants was that Gur Bux Singh, the applicant No. 1 could not be convicted for the various offences for which he was found guilty inasmuch as he was admittedly not present on the spot when the vehicle was checked by the A.R.T.O. This, according to the learned Counsel for the applicants shows that the applicant No. 1 did not have requisite mens rea which was necessary to be established by the prosecution in

the instant case for holding him guilty. Sri V.P. Goel, learned Counsel for the State, however, contended that Section 123 of the Motor Vehicles Act (hereinafter referred to as the Act) casts vicarious liability on the owner if a servant or agent is found using the vehicle contrary to the provisions of the Act and in this case as Namdar Khan was found using the vehicle without the documents mentioned above, the owner was liable for the act of Namdar Khan. According to the submission of Sri Goel, the offences contemplated by the various sections of the Act impose an obligation which is absolute and since the ingredients of the various offences were proved by the State, there was no requirement of proving that the applicant No. 1 had a particular state of mind. In such a case, according to Sri Goel, mens rea was not a necessary element. The question arises in this case whether Section 123 of the Act creates such an obligation. The relevant words of Section 123(1) are these :

(1) Whoever drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of Section 22 or without the permit required by Sub-section (1) of Section 42 or in contravention shall be punishable.

It is to be noted in the provision quoted above that there are no words such as 'knowingly' or 'negligently' which, if they were present, would indicate that there was an ingredient expressed by Parliament in the words of the Statute requiring proof of mens rea. In my opinion, however, the absence of such words is not conclusive. The use of the words 'causes or allows a motor vehicle to be used' make a owner liable for the breach of the provisions of the Act mentioned in Section 123. This obviously means that the owner must not commit an act which may lead one to hold that he allowed that use of the vehicle by the servant or his agent. It is worthy of being noted that the use of the expression mentioned above in Section 123 indicates that the Legislature did not intend the owner of a vehicle to be vicariously liable for the act of his servant or agent and that his liability could arise only if he, by his illegal act or omission permits the driver to contravene the provisions of the Act. It, therefore, appears to me that mens rea is a necessary part of the crime provided by Section 123 of the Act and thus a owner cannot be found guilty of an offence unless he has got a guilty mind.

6. It is now settled position in law that mens rea is an essential ingredient of a statutory offence but this may be rebutted by the express words of a statute creating the offence or by necessary implication. In deciding whether mens rea excluded as a necessary constituent of a crime, it is necessary to find whether the offence consists in doing a prohibited act or in failing to perform a duty which only arises if a particular state of affairs exists. If a statute contains an absolute prohibition against the doing of some act, mens rea not a constituent of the offence but where it only imposes a duty to do something on the happening of a certain event, mens rea would be required to be proved. In the instant case an analyst of the various provisions of the Act, the breach of which has been alleged against the applicants, would show that those provisions only impose a duty and did not contain absolute prohibition against doing some act. Hence it does not appear to me to be correct, as urged by Sri V. P. Goel, that in view of the absolute prohibition imposed by the Act. the owner was liable for the act of his servant irrespective of the guilty mind. Hence on consideration of the language of the various provisions of the Act, in my opinion, mens rea is a necessary element of the offence defined in the Act. The view taken by me is supported by an authority of this Court reported in *Buchcha Lal v. Rex* AIR 1949 All 11 : 50 Cri LJ 20 and *State v. Bhagwan Singh* . In *Hari Prasad Rao v. State* : 1951 CriLJ768 approving the view of the Privy Council in *Shri Niwas Mall v. Emperor* AIR 1947 PC 135, the Supreme Court observed that unless the statute either clearly or by necessary implication, rules out mens rea as a constituent part of a crime, a defendant should not be found guilty of an offence against the criminal law unless he has got a guilty mind.

7. The second question, which now arises, is whether the conviction of the applicants for the breach of the various provisions of the Act can be held to be illegal as was urged by the learned Counsel for the applicants. It may be recalled that the applicants were convicted Under Section 123(1) of the Motor Vehicles Act for breach of Sections 22, 38 and 42 of the Act, i.e. for plying the vehicle without registration and fitness certificate and without permit. Counsel for the applicants urged that Section 22 of the Act could apply to a case where a vehicle is being driven in any public place for the purposes of carrying passengers or goods. He submitted that as in the instant case, the vehicle was found empty. Section 22 did

not apply to them, and, as such, they could not be convicted for the breach of the same. The submission made has no merit. What is required by Section 22 is that no motor vehicle would be driven or caused or permitted to be driven in a public place unless the vehicle is registered. It has been found as a fact that in the instant case the vehicle was checked when it was being driven by Namdar Khan, applicant, No. 2 on the public place without the registration certificate. Therefore, the applicants would be guilty of the breach of the provisions of Section 22. Emphasis was, however laid by the learned Counsel for the applicant on the words 'for the purposes of carrying passengers or goods' and it was urged by him that as there was no evidence that the vehicle was actually laden with goods, the applicants could not be convicted. I am unable to uphold this submission. The expression 'for the purposes of' has a wide meaning. It takes in within its ambit not only the time when the vehicle is actually laden with goods and is going from one place to another for the purposes of loading and unloading but also the time when it is taken out for the purposes of engaging itself in the business. The expression would include the measures taken for procuring business. If I were to accept the submission of the learned Counsel for the applicants, the same would result in overlooking the context of the words occurring in Section 22, which is not possible inasmuch as in construing the words one must look at the subject matter of the Act and see its scope and object as well. The purpose of Section 22 obviously is that no motor vehicle can be driven in any public place without registration certificate. It is, therefore immaterial that the vehicle which was being driven in public place, was not actually engaged in the business for which the registration is required. Accordingly, in my opinion, the first charge against the applicants is fully established.

8. The second submission made by the learned Counsel for the applicants was that the conviction of the applicants for the breach of the provisions of Section 38 was also illegal inasmuch as this section could apply only when the provisions of Section 22 could be made applicable to the facts of the present case. In his submission, as the applicants were not required to obtain the certificate of registration, therefore, the omission to obtain the certificate of fitness was immaterial. Under Sub-section (1) of Section 38 the absence of a certificate of fitness nullifies registration obtained under Sub-section (1) of Section 22. The

effect of Section 22 read with Sections 38 and 41 is that no motor vehicle can be deemed to be duly registered in accordance with Section 22 unless it has a certificate of fitness. Since I have already negated the submission of the learned Counsel for the applicants made in regard to the applicability of Section 22 of the Act to the facts of the present case, therefore, I must find that the second submission of the learned Counsel also cannot be upheld. As stated above, the second submission was, in fact, based on the assumption that Section 22 did not apply. The second argument, therefore, also fails.

9. The third submission was in regard to Section 42 of the Act, Section 42 requires that no owner of a transport vehicle could use or permit the use of the vehicle in any public place except in accordance with the conditions of the permit granted to him. It is, therefore, clear that a permit was necessary to be obtained before plying the vehicle. Admittedly the applicants did not possess such a permit. The trial court had convicted both the applicants for the breach of Section 42 but in appeal the conviction and sentence of Gur Bux Singh, applicant No. 1 on the count of plying the vehicle without permit was set aside. Although, in my opinion, the view of the learned Sessions Judge setting aside the conviction of Gur Bux Singh on this count was illegal, but as no State appeal has been preferred against the said order I would confine myself to the consideration of this question as against Namdar Khan, the applicant No. 2 alone. Challenging the conviction of applicant No. 2 for the offence Under Section 42 of the Act, the learned Counsel urged that in order to attract Section 42 it was necessary to show that the vehicle was being used in any public place for the purposes of the business. According to the learned Counsel as it was found empty and no goods were found kept in the public carrier, the conviction of applicant No. 2 for the breach of Section 42 was illegal. The submission made is untenable. Neither the language employed in this section nor its context warrants the interpretation as placed by the learned Counsel. The expression 'use' does not mean that the vehicle must have been actually found laden with passengers or goods. If a person drives a vehicle in contravention or without permit, even then on a plain reading of Section 123 he is guilty. Hence the applicant No. 2 was rightly held guilty for the breach of Section 42.

10. The conviction of the applicants for the offences of non-possession of insurance certificates Under Section 125 and for the breach of Section 13 of the Motor Vehicle Taxation Act for using the vehicle without payment of the tax was also challenged on the same grounds by the learned Counsel for the applicants on which the conviction for the breach of the provisions of Section 42 of the Act was challenged. As this ground of attack has already been repelled. I am unable to find any substance on which the conviction of the applicants for the offence Under Section 125 of the Motor Vehicles Act and Section 13 of the Motor Vehicle Taxation Act could be held to be illegal.

11. Counsel for the applicants next contended that for establishing an offence Under Section 123, it must be proved that the applicant No. 1 had caused or allowed the vehicle to be used by the applicant No. 2 and he contended that in the absence of such proof, conviction of the applicant No. 1 cannot be sustained. In my opinion, it may not be always possible for the prosecution to bring direct evidence to prove that the owner caused or permitted to be driven a vehicle. Hence in an appropriate case, such an inference may be drawn by virtue of Section 114 of the Evidence Act, inasmuch as the vehicle could not have been brought on the road or driven by the agent or servant except by express or implied consent of the owner. The question of presumption is one of fact. In the instant case such a presumption has been drawn. It is not possible for me to interfere with it. It may be noted in this regard that in ordinary circumstances the vehicle could not be taken out and driven by Namdar Khan, applicant No. 2 unless Gurbux Singh, applicant No. 1 had permitted him to do so, In this respect it may be worthwhile to mention that the case of the applicant No. 1 that he had parked the vehicle at the Gujral Petrol Pump was disbelieved by the two courts below. Under these circumstances, it could safely be presumed that the vehicle was taken out by Namdar Khan with the express or implied permission of applicant No. 1, It was for the applicant No. 1 to show that the vehicle was brought on the road by Namdar Khan without his express or implied permission. No such evidence was given by the applicant No. 1.

12. In the result, the revision fails and is dismissed. The stay order is vacated.

