B. Durga Prasad Vs. Emperor

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Court : Allahabad

Decided On : Dec-19-1935

Reported in : AIR1936All439

Appellant : B. Durga Prasad

Respondent : Emperor

Judgement :
ORDER

1. This is a criminal revision from a conviction under Section 109, Railways Act. The accused, a Sub-Inspector of Police, on 7th July 1934, entered a compartment occupied by the ice-vendor with his ice, aerated waters, &c.; which compartment had been entered in the Guard's Constitution Book as reserved for the ice-vendor and on the outside of which the words 'Ice-Vendor' were stencilled. The guard of the train when informed of it warned the accused that he was occupying the compartment reserved for the ice-vendor and asked him to vacate it. The accused maintained that the compartment was not reserved for the ice-vendor and declined to vacate it. A report was made to the station police but neither they nor the Assistant Station Master succeeded in persuading the accused to leave the compartment though the train had to be detained for some 23 minutes at Rtawah. Again at Cawnpore a similar request was made by the station authorities to the accused to get out of the compartment but he refused to do so. The accused got down at Allahabad where a complaint was lodged against him and he also made a counter-report. On these facts the accused was convicted under the Railways Act.

The learned Sessions Judge agreed that the conviction was right and declined to interfere in revision. It is too late in the day now to contend that the compartment had not in fact been reserved for the ice-vendor. This fact was established by the entry in the Guards Constitution Book and by the words 'ice-vendor' stencilled on the outside. The learned Counsel for the accused has, however, argued that the railway authorities had no power to reserve a whole compartment for an ice-vendor (without charging for the full fare payable by 18 passengers.) It is on account of the importance of this question that the case has been referred to this Bench.

2. The contention that before reservation the fare for the full compartment should have been charged has no force. The railway authorities have now produced before us the original contract signed by the Agent on a printed and approved form under which the company was allowed the use of a reserved compartment for an ice-vendor and his accompaniments in a running train on condition of supplying to the passengers cool drinks. If the fact were now to be disputed, we would be compelled to ask the Court below to take evidence to prove this written agreement; but the genuineness of the contract cannot be seriously disputed. Indeed, it is a well-known fact that on passenger trains, particularly during the hot weather, ice-vendors have compartments reserved for them for the supply of cool drinks just as dining cars run on some trains for supplying meals. In summer months it is absolutely necessary for the convenience of passengers that cool drinks and ice should be available. We think that the railway 'authorities have power to reserve a compartment for an ice-vendor for the comfort and convenience of the travelling public. In Emperor v. Brij Basi Lal 1920 42 All 327, a Bench of this Court went so far as to hold that the Railway Authorities have power to-set apart a compartment for Europeans or Anglo-Indians. It is not necessary to examine the correctness of that ruling and to consider whether such a reservation would not offend against the provisions of Section 42, Railways Act assuming that the section would apply to passenger traffic as well. But there can be no doubt that the railway authorities can set apart carriages or compartments which are not for the use of ordinary passengers, particularly so if such setting apart is for their convenience and com- fort. An ice-vendor's compartment is like a dining car and is meant for supplying cool drinks during the hot season. Such facilities are an

absolute necessity for the travelling public and there would be considerable inconvenience and discomfort if there were no such provisions on running trains. It is equally important from the point of view of health and hygiene that the compartment from where drinks are to be supplied should be free from all contagion and infection.

3. This would not be possible if members of the general public were allowed to occupy it. Again, there would be danger to passengers from the accidental bursting of soda water bottles, if they were to travel in the same compartment. If, therefore, the railway authorities set apart a compartment for the ice-vendor appointed by a company which has entered into a contract with them to provide drinks, such a compartment would no longer be one which is open to the general travelling public. It would be just like a guard's van or the Driver's engine room in which the public cannot claim a right to travel, even though they hold tickets. Even where the train is full, there is no inherent right in a ticket-holder to enter into that part of the train which is not meant for the general public. He must wait for the next train or claim a refund. The mere fact that the ice-vendor's pass did not clearly indicate that he had the whole compartment reserved for him is not material, as there was a writing put on the compartment and the accused was repeatedly warned that it was such a reserved compartment. If the ice-vendor be treated as a passenger for whom a compartment had been validly reserved, then the conviction of the accused under Section 109 would be correct. But it seems more appropriate to regard the ice-vendor's compartment as a part of the train which is not meant for passengers. The offence would therefore most appropriately fall under Section 118, Railways Act. As the facts have been clearly found by the Magistrate, and the accused cannot in any way be prejudiced, we alter the conviction of the accused to one under Section 118 and maintain the sentence. The application is accordingly dismissed.