

Rang Bahadur Vs. State

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Court : Allahabad

Decided On : Aug-09-1979

Reported in : 1980CriLJ246

Judge : S. Malik and ;V.N. Misra, JJ.

Appellant : Rang Bahadur

Respondent : State

Judgement :

S. Malik, J.

1. This is a reference made by a learned single Judge of this Court while hearing Criminal Revision No. 394 of 1979 (Rang Bahadur v. State).

2. The question referred has not been formulated by the learned Judge. On perusing the order of reference and the judgment of the learned Sessions Judge dated 8-12-1978 which gave rise to the revision application before this Court, we find that the question referred to us appears to be:

In a case to which the provisions of Section 130 of the Motor Vehicles Act (hereinafter referred to as the Act) apply, will Section 130 of the Act become inapplicable merely because the accused appeared before the Court without being summoned?

The relevant facts are that Mini Bus bearing registration No. U. T. T, 7181 driven by the applicant was checked at 5.00 p.m. on 21-11-1978 and violation of several provisions of the Act were detected. The applicant appears to have appeared before the Mobile Court which was functioning in the area just after the complaint was filed and pleaded guilty for offences punishable under Sections 123, 112 and 124 of the Act and was fined Rs. 500/-, Rs, 100/- and Rs, 100/- respectively. The applicant went up in appeal before the learned Sessions Judge, Varanasi, who set aside the conviction and the sentence passed under Section 124 of the Act, but maintained the conviction and the sentences under Sections 123 and 112 of the Act.

3. The learned Sessions Judge observed:

As to the non-observance of the provisions of Section 130 of the Act, this is a case in which the driver voluntarily appeared before the Court and as such it will have no application vide : AIR 1968 AP125 , In Re: M. Maruthi, which pronouncement also considered the earlier Calcutta and Supreme Court pronouncements on the subject.

4. It was urged before the learned single Judge in the Criminal Revision that as a first offence under Section 123 of the Act is punishable with fine only and an offence under Section 112 of the Act is also punishable with fine only, after taking cognizance of these offences, the learned Magistrate should have followed the mandatory provisions of Section 130 of the Act.

5. In support of this contention observations made by the Supreme Court in Puran Singh v. State of Madh Pra : [1965]2SCR853 , by the Calcutta High Court in State v. Raghu Ram : AIR1964 Cal445 and by the Tripura High Court in Nilamani Singh Tanu Singh v. State AIR 1970 Tripura 72, were cited as was done in this Court, while on behalf of the State reliance was placed on the observations made by the Andhra Pradesh High Court in Re; Mikkirierni Maruthi AIR 1968 Andh Pra 125.

6. Section 130 of the Act is as follows ;

130. Summary disposal of cases (1) The court taking cognizance of an offence under this Act:

(i) may, if the offence is an offence punishable with imprisonment under this Act, and

(ii) shall, in any other case, state upon the summons to be served on the accused person that he;

(a) may appear by pleader and not in person, or

(b) may, by a specified date prior to the hearing of the charge plead guilty to the charge by registered letter and remit to the Court such sum (not exceeding the maximum fine that may be imposed for the offence) as the Court may specify,

Provided that nothing in this sub-section shall apply to any offence specified in part A of the Fifth Schedule,

(2) Where the offence dealt with in accordance with Sub-section (i) is an offence specified in part B of the Fifth Schedule, the accused person shall, if; he pleads guilty to the charge, forward his licence to the Court with the letter containing his plea in order that the conviction may be endorsed on the licence.

(3) Where an accused person pleads guilty and remits the sum specified and has complied with the provisions of Sub-section (2) no further proceedings in respect of the offence shall be taken against him, nor shall he be liable to be disqualified for holding or obtaining a licence by reason of his having-pleaded guilty.

7. As has been observed by the Supreme Court in; *Puran Singh (Supra)*.

Section 130... was enacted with a view to protect from harassment a person guilty of a minor infraction of the Motor Vehicles Act or the Rules framed thereunder...and in the appropriate cases giving him an option to plead guilty to the charge and to remit the amount which can in no case exceed Rs. 25/-.

8. Similarly, if we may say so with respect, the Calcutta High Court rightly observed in paragraph 5 of its judgment in *Nilamani Singh Tanu Singh (Supra)*

that non-compliance with the provisions of Section 130 of the Act seriously prejudices the accused in more than one way.

9. We need not repeat the benefits that accrue to an accused in a case to which Section 130 of the Act applies, They are apparent from the section itself. It is also apparent from the language of Section 130 of the Act that its provisions are mandatory as has been held not only by the Calcutta High Court but also by the Andhra Pradesh High Court in Re. Mikkineni Maruthi, We carefully perused the observations made by the Andhra Pradesh High Court in Re. Mikkineni Maruthi. It was not held by learned Gopal Rao Ekbote, J. that in case the accused appeared before the Court without being summoned Section 130 of the Act will not apply. It was held therein that omission to serve summons in a case to which the provisions of Section 130 of the Act apply, will not vitiate the proceedings unless it is found that prejudice was caused to the accused due to such omission.

10. We are, therefore, of the view that in a case where the mandatory provisions of Section 130 of the Act apply merely because the accused appeared before the Court without being summoned, it cannot be said that Section 130 of the Act will not apply and the trial can be conducted in accordance with (the provisions of the Code of Criminal Procedure ignoring the provisions of Section 130 of the Act.

11. We, however, are of the opinion [that the Magistrate or the Court concerned need not summon the accused if before the issuance of a summons the accused appears before the Court as in 'this case. As has been observed by the Supreme Court, the provisions regarding serving a summons on the accused appearing in Section 130 of the Act have been enacted in order to confer certain benefits on the accused. So if before the Court could do so, the accused himself appeared before it, the purpose is served and merely because of that it would be wrong (to say that the case would be taken out of the purview of Section 130 of the Act. The other benefits enumerated in Section 130 of the Act, in case the accused pleaded guilty, cannot be denied to the accused and the Court has to act in accordance with Section 130 of the Act as if the accused had appeared before it on being summoned in accordance with Section 130 of the Act.

12. We answer the question accordingly.

13. Let the case be now listed before the learned single Judge for disposal of the Criminal Revision.

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