George Banerji Vs. Emperor

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Court : Allahabad

Decided On : Jun-21-1916

Reported in : 36Ind.Cas.877

Judge : Walsh, J.

Appellant : George Banerji

Respondent : Emperor

Judgement :

Walsh, J.

1. In this case the Sessions Judge of Allahabad has referred to this Court an order of the first class Magistrate which came before him by way of revision. As the first class Magistrate says, this is really a test case to decide how certain vehicles should be taxed. The complaint was made by the Municipal Board against Mr. G. Banerji of Canning Road for using a bicycle with a motor-wheel attachment without a license. The question is one of taxation and, as the Sessions Judge rightly says in his order of reference, enactments which render the public liable to pay taxes or charges of this nature must be construed strictly; or in other words, unless the language under which they are sought to be charged is perfectly clear, the charging authorities are not entitled to assess a charge inasmuch as the public have a right to know what exactly are the charges imposed upon them. Now in this case there are three classes of vehicles which are material

(1) a motor car,

(2) a motor bicycle,

(3) a bicycle. The vehicle in question is of modern invention, that is to say, it is an ordinary bicycle with a motor-wheel which may be affixed to or detached from the bicycle itself as the rider chooses, but which when attached provides a motor power which enables the rider to propel the machine by motor power. Now that is really not a motor car, neither in the ordinary nor in the commercial sense of the word; and there is a definition of motor car in the notification of the Municipality itself which does not include the bicycle in question. Secondly, it is not, in my opinion, a motor bicycle, which in the ordinary commercial use of the term must be understood to mean a bicycle which is propelled entirely by motor. A motor bicycle means a motor. The vehicle in question is a vehicle with two wheels which is propelled sometimes by motor and sometimes without. It is built and constructed and designed for the purpose of being used and propelled both by mechanical power and by human agency. The motor which is only contained in the extra motor-wheel or auto-wheel, as it is called, is a temporary attachment and is no part of the vehicle itself. A bicycle may be propelled presumably in various ways besides that of ordinary propulsion by human agency from the saddle, e.g., it may be propelled before a wind with a sail that is merely a temporary aid or attachment which is independent of the original construction and design of the vehicle. This vehicle was undoubtedly a bicycle, and Mr. Banerji has never disputed his liability to have it treated as such. If the Municipal authorities have the right and desire to impose a further burden upon him, they must obtain a notification which in clear terms will bring it within the definition and impose an additional liability by way of tax. The result is that I accept the recommendation of the Sessions Judge and set aside the conviction and direct that the fine, if paid, be refunded.