

**Mannasingh and anr. Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/500914](http://sooperkanoon.com/500914)

**Court :** Madhya Pradesh

**Decided On :** Nov-20-1959

**Reported in :** AIR1960MP151

**Judge :** A.H. Khan, J.

**Acts :** [Motor Vehicles Act, 1939](#) - Sections 42 and 123

**Appeal No. :** Criminal Revision No. 148 of 1959

**Appellant :** Mannasingh and anr.

**Respondent :** State

**Advocate for Pet/Ap. :** H.G. Mishra, Adv.

**Disposition :** Revision dismissed

**Judgement :**

ORDER

**A.H. Khan, J.**

1. The Additional District Magistrate, Bhind, in case No. 151 of 1957, convicted the two applicants (the Driver and the Conductor of a Bus No. MBA 1032) under Section 42(1) read with Section 123 of the Motor Vehicles Act and sentenced them to a fine of Rs. 20/- each. Against their conviction and sentences they went in

revision before the Sessions Judge who disallowed it. Now they have come up in revision before the High Court.

2. Both the courts below have found that the Bus was overloaded. This is a question of fact and there is nothing on the record to disturb the concurrent finding.

3. The only point of law pressed before me is that under Section 42(1) read with Section 123 of the Motor Vehicles Act, its owner should be fined and not the Conductor or the Driver. On a common sense view of the question, I find that the argument is unacceptable. If the conductor and the Bus Driver conspired together and over-loaded a bus, I can see no reason why the owner should be punished unless, of course, it is proved (which has not been done in this case) that the over-loading was done at the instance or with the approval of the owner. Criminal Jurisprudence does not recognise the principle of vicarious liability; the master cannot be punished for the act of his servant, unless the master abetted it or there is some legislative enactment which provides otherwise. The maxim of *qui facit per alium, facit per se*, which means that he who acts through another is deemed to act in person is a doctrine of Civil, law and does not belong to the domain of Criminal Jurisprudence.

4. I feel further fortified in my opinion by a decision of their Lordships of the Supreme Court reported in AIR 1959 SC 79, *State of Uttar Pradesh v. Bans Raj* in which the conviction of a driver by a Magistrate was upheld. The contention of the petitioners who are the Driver and the Conductor that they are not liable to be convicted has, therefore, no force.

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