

Lunkaran Agarwala Vs. the State

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Court : Orissa

Decided On : Sep-30-1958

Reported in : AIR1959Ori50; 1959CriLJ358

Judge : R.L. Narasimham, C.J.

Acts : [Motor Vehicles Act, 1939](#) - Sections 42, 42(1), 112 and 123

Appeal No. : Criminal Revn. No. 12 of 1958

Appellant : Lunkaran Agarwala

Respondent : The State

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : M.S. Ray and ;B. Misra, Advs.

Disposition : Revision allowed

Judgement :

ORDER

R.L. Narasimham, C.J.

1. This is a petition, in revision, against the appellate judgment of the Sessions Judge of Cuttack Dhenkanal maintaining the conviction of the petitioner under Sections 112 and 123 of the Motor Vehicles Act and the sentence of fine passed

on him, by the Sub-Divisional Magistrate of Athmalik.

2. The petitioner is the owner of public carrier vehicle bearing No. ORD-111. The route permit for the vehicle (Ext. 2) authorised the plying of the vehicle on the following routes, namely, (i) Cuttack-Sambalpur (ii) Angul-Hindol, (iii) Angul-Athmalik and (iv) Angul-Talcher during fair weather.

On 9-3-1956 the said vehicle was found plying on the Bamur-Kishorenagar road, by the A.S.I. (P.W. 1). It was driven by one Alekhmoni Biswal. The Police Officer (P.W. 1) found five Muliahs (servants) in addition to the driver and the cleaner. The route permit (Ex. 2) limits the number of Muliahs in the vehicle to four. Hence the owner and the driver were both sent up for trial for (i) plying the vehicle on an unauthorised route; (ii) contravening the condition of the permit by carrying Muliahs in excess of the number permissible.

3. The driver was tried separately and was convicted and sentenced under Sections 123 and 112 of the Motor Vehicles Act. He did not challenge his conviction and sentence.

4. The owner came up in revision before this Court. It was urged on his behalf that he was not guilty inasmuch as he had neither 'permitted', nor 'allowed' his driver to ply the vehicle on the said route, nor did he authorise him to carry Muliahs in excess of the permissible limit. The main contention raised on his behalf by Mr. Ray is that the owner cannot be held liable under Section 112 or Section 123 of the Motor Vehicles Act unless the prosecution establishes that contravention of those sections by the driver was knowingly permitted by the owner or made with his connivance. According to Mr. Ray the necessary mens rea for the criminal liability of the master for the action of his servant must be affirmatively established by the prosecution.

5. Before taking up this legal question I may briefly dispose of a question of fact which was also pressed by Mr. Ray. It was urged that the route permit authorised the plying of the vehicle on the Angul-Athmalik road and also on the Angul-Sambalpur road. One could reach Athmalik from Angul by following a circuitous route via Bamur and Kishorenagar and hence it was urged that the alternative

route via Bamur-Kishorenagar was not an unauthorised route.

Ordinarily, when a route is fixed in the permit it would necessarily mean the direct route fit for motor vehicular traffic. It was admitted that the shortest route from Angul to Athmallik does not pass through Bamur-Kishorenagar and in the absence of any evidence on record I am not prepared to accept the petitioner's contention that the circuitous route via Bamur-Kishorenagar was included in the permit.

The evidence of the A. S. I. (P.W. 1) would, on the other hand, show that the road from Bamur to Kishorenagar was a revenue road. I would, therefore, hold that the truck in question plied through an unauthorised route when it was detected on 9-3-56.

8. The main question still remains as to whether the owner of the truck (petitioner) is liable for contravention of conditions of the permit. It is admitted that he was not present in the truck, nor is there any evidence to show that he authorised the driver to drive the truck on the said route, or that he connived at such driving of the vehicle.

There is also nothing on record to show that the five Muliahs found travelling on the vehicle were taken when it left the owner's bouse so as to attribute to him the necessary guilty knowledge. Under such circumstances, when there is absolutely no evidence about the requisite mens rea, can it be said that the owner also is guilty, along with the driver, for contravention of Sections 112 and 123 of the Motor Vehicles Act?

7. The language of the two sections does not warrant such a view. Section 112 of the Act punishes only that person who contravenes the provisions of the Act. Section 123 penalises the person who either drives the vehicle or causes or allows the vehicle to be driven in contravention of the conditions of the permit granted under Section 42 of the Act.

The words 'causes or allows' in the aforesaid section convey the idea that the Legislature did not intend that the master should be vicariously liable for the action

of his servant and that his liability would arise only if he, by his act or illegal omission, permits the driver to contravene the section. Whenever the Legislature desires that the owner should be held vicariously responsible for the action of his driver, it has expressly said so. Thus Sub-section (2) of Section 72 prohibits the plying of any motor vehicle which is not fitted with pneumatic tyres and Sub-section (4) of the same section says that if a driver drives the vehicle in contravention of Sub-section (2) the Court may presume that the offence was committed with the knowledge or under the orders of the owner of the vehicle.

Similarly, where the unladen weight of the vehicle exceeds the weight specified in the certificate of registration, the owner's knowledge may be presumed. But in respect of other contraventions, either of Section 72 or of the other provisions of the Act the statute does not expressly say that the Court may presume owner's knowledge.

If the intention of the Legislature was that the owner must be held vicariously liable for contravention of any of the conditions of the route permit by the driver, they would surely have inserted provisions similar to Sub-section (4) of Section 72 in Section 42 of the Act.

The absence of any such provisions leads to a reasonable inference that the Legislature intended that the general rule that the prosecution must prove all the ingredients of the offence beyond reasonable doubt, would apply when an owner is prosecuted for an offence under Section 112 or 123 of the Act.

Hence, in the absence of any evidence to show that the owner knew, or connived at the action of the driver in taking the vehicle through Bamur-Kishorenagar road or in carrying more than four Mulliahs on the vehicle, he cannot be held guilty either under Section 112 or under Section 123 of the Motor Vehicles Act.

8. Judicial authority is overwhelmingly in favour of such a view. As early as 1924, the Calcutta High Court in *Varaj Lall v. Emperor* AIR 1924 Cal. 985 while construing the corresponding provisions of the Motor Vehicles Act 1914 pointed out,

'Where a particular intent or state of mind is not of the essence of the offence, a master can be criminally liable for the servant's acts if the act is expressly prohibited, but not otherwise; and he cannot be so made liable if the act provides for liability for permitting and causing a certain thing unless it can be shown that the act was done with the master's knowledge and assent express or implied'.

This was followed in *Shantaram v. Emperor* AIR 1932 Bom 474 where the expression 'allow' was construed to involve permission either express or implied. In *In re Devaraj'a Mudaliar*, 178 Ind Cas 117: AIR 1938 Mad 998 where the owner was prosecuted for over-loading a lorry the Madras High Court held that unless knowledge of such over-loading can be reasonably imputed to the owner from the circumstances of the case his criminal liability would not arise.

The same learned Judge of the Madras High Court again in *In re: Abdul Salam Rowthor* AIR 1943 Mad 41, while construing the word 'permit' occurring in Section 42 (1) of the Motor Vehicles Act pointed out that the word conveyed the idea that the person actually and knowingly allowed a thing to be done, and that mere negligence on his part would not suffice to show that he permitted the use of the vehicle.

In *Bucha Lal v. Rex*, AIR 1949 All. 11 that High Court refused to draw any presumption against the owner under Sub-section (4) of Section 72 of the Motor Vehicles Act, where the prosecution was in respect of contravention of clause (b) of subsection (3) of that Section.

Again, in *The State v. Moti Lal*, AIR 1957 Raj. 63 while considering the liability of the manager of a vehicle it was pointed out that unless there is evidence to show that he was in charge of the vehicle and that he caused or allowed the driver to be used in contravention of the provisions of Sub-section (1) of Section 42 his criminal liability under Section 123 of the Act would not arise. The position of the manager and owner of a vehicle is very similar.

9. The present case differs from those classes of cases where a motor vehicle is plied without any valid permit at all. In those cases it may be reasonably inferred that the owner impliedly allowed the vehicle to be plied without a permit and

thereby committed an offence under Section 123 of the Motor Vehicles Act.

It was the duty of the owner of the vehicle to apply for and obtain a valid permit from the authority concerned and, in the absence of such a permit it was his duty to take proper precautions to prevent the use of the vehicle either by his driver or by any other person. Hence, if he fails to take proper steps to see that the vehicle does not ply until a valid permit is obtained, it could be justifiably held in the absence of any evidence to the contrary, that the vehicle was plied either with the owner's knowledge or with his connivance.

Hence the cases reported in *Kadir Mohideen v. Emperor*, AIR 1935 Mad 577; *Uma Shanker v. Rex*, AIR 1950 All 234 and *R. B. Lally v. State*, AIR 1955 All 618 are clearly distinguishable. They do not lay down any rule that the necessary mens rea is not required for the prosecution of the owner under section 123 of the Motor Vehicles Act.

Similarly., *Provincial Govt. of C.P. and Beraj v. Mohan Lal*, AIR 1944 Nag 69 is also clearly distinguishable. There a person who was admittedly responsible for charging increased fare in contravention of the conditions of the permit, was held guilty under Section 23 (1) of the Motor Vehicles Act, because the necessary guilty knowledge was practically admitted.

10. The learned Government Advocate then contended that when the vehicle plied on an unauthorised route, it was tantamount to plying the vehicle without a permit inasmuch as the permit was only for plying over the authorised portion. He thus attempted to bring the case within the principle laid down above. Though this argument is ingenious, it does not appeal to me.

There is a distinction between plying a motor vehicle without any permit at all or with a permit which had already expired on the one hand and plying a vehicle in contravention of the conditions laid down in a subsisting permit on the other. In the former case the requisite mens rea on the part of the owner may be inferred without any further evidence, but not in the latter case.

11. The learned Government Advocate further urged, relying on some English decisions, that mens rea was not an essential element of Section 112 or Section 123 of the Motor Vehicles Act and that the owner was vicariously liable for the criminal action of his driver. He relied on *Carpenter v. Cambell*, 1953-1 All ER 280, but that case is clearly distinguishable because there the vehicle was plied without a proper license -- in which case the liability of the owner is apparent as already pointed out.

12. The English decisions are also against the view put forward by the learned Government Advocate. As pointed out by Lord Goddard C. J. in *Harding v. Price*, 1948-1 All ER. 283, following *Brond v. Wood* (1946) 175 L T 306 at p. 307.

'It is of the utmost importance for the protection of the liberty of the subject that a Court should always bear in mind that unless a statute either clearly or by necessary implication rules out mens rea as a constituent part of the crime, the Court should not find a man guilty of an offence, against the criminal law, unless he has a guilty mind.'

It was further observed in that case that if a statute contains an absolute prohibition against the doing of some act, as a general rule mens rea is not a constituent of the offence; though this rule also is subject to some exceptions. In the same decision, Rumphreys J. observed :

'In the absence of any such words as 'permit', 'suffer' or 'knowingly' from the statement of the offence, knowledge is prima facie not a necessary ingredient of the offence and to decide whether the offence created in the particular case allows of the operation of the general rule referred to, it is necessary to consider both the Language and the object of the Act in question'.

The use of the words 'permit', 'allow' and 'cause' in Sections 42 and 123 of the Motor Vehicles Act clearly indicates that mens rea is not ruled out in respect of those offences. There is also no absolute prohibition against the doing of any act,

13. It is unnecessary to refer at length to the various other English decisions, bearing on the subject. I may refer only to *Fergtison v. Weaving*, (1951) 1 All E.R.

412 and Gardner v. Akeroyd, (1932) 2 All E.R. 306.

14. For the aforesaid reasons, I must hold that the petitioner (owner of the vehicle) is not guilty either under Section 123 or under Section 112 of the Motor Vehicles Act. The conviction and sentence are set aside and he is acquitted. The revision petition is allowed.

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