

A. Viswanadham Vs. State

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Court : Orissa

Decided On : Mar-04-1966

Reported in : AIR1968Ori42; 1968CriLJ342

Judge : R.K. Das, J.

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

Appeal No. : Criminal Revn. No. 227 of 1965

Appellant : A. Viswanadham

Respondent : State

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : G.R. Rao and ;G. Narasimham, Advs.

Disposition : Petition dismissed

Judgement :

ORDER

R.K. Das, J.

1. The petitioner is the owner of a motor-truck bearing registration No. M. P. O. 61.

2. P. W. 2 is the traffic inspector in the district of Koraput. On 22-5-62 he found the said truck M.P.O. 61, plying in the district without a valid route permit and also without payment of tax for the relevant period, i.e. for the second quarter ending on 30-6-62. On demand, the driver of the vehicle could not also produce the registration certificate, or the fitness certificate or even his own driving license. Thereafter P.W. 2 submitted a prosecution report against the driver as also the owner of the vehicle for offences under Sections 112, 123 of the Motor Vehicles Act and under Section 7 of the Madras Motor Vehicles Taxation Act.

3. At the trial, the accused persons denied that the vehicle was plied that day and also stated that there was no such check by P. W. 2 as claimed by him. They also filed two documents, Exts. A and B. One is a certified copy of a receipt dated 15-5-63 granted by the Traffic Inspector and the other is a receipt granted by the State Transport Authority. These two documents are of no help to the defence since none of them shows that the accused had either a valid permit to ply the vehicle in the district of Koraput on 25-5-62 or that the tax for the vehicle was paid for the second quarter of 1962.

4. On behalf of the prosecution two witnesses were examined. P. W. 1 is the constable on duty and P. W. 2 is the traffic inspector who checked the vehicle and found that it was without any permit, registration certificate, fitness certificate and that the tax for the vehicle for the quarter had not been paid. In view of this evidence of the prosecution the learned trial court convicted both the driver and the owner and sentenced each of them to pay a fine of Rs. 10 under Section 112, a fine of Rs. 20 under Section 123 of the Motor Vehicles Act (hereinafter referred to as 'the Act'), in default to undergo simple imprisonment for five days and ten days respectively on each count.

He also found the petitioner, the owner of the vehicle guilty under Section 7 of the Madras Motor Vehicles Taxation Act and sentenced him to pay a fine of Rs. 15 in default to undergo S. I. for five days. The sentence being non-appealable, both the accused persons filed a Revision Petition (No. 20/64) before the Sessions Judge, Koraput, for making a reference to the High Court to set aside the aforesaid conviction and sentence. The learned Sessions Judge rejected the prayer of the

petitioners on 2-2-65. The petitioner, the owner of the vehicle, alone has filed this revision challenging the legality of the conviction and sentence passed on him by the Stationary Sub-Magistrate, Jeypore. The driver has not filed any revision.

5. At the time of the admission of this revision, notice for enhancement of the sentence was issued to the petitioner. Thus, at the time of hearing of this petition, counsel for the petitioner had the advantage of placing the entire evidence before the court to show if any case has been made out on evidence against the petitioner to justify the conviction and sentence as aforesaid.

6. The evidence of P. W. 2 is clear that on 20-5-62 he checked the truck No. M.P.O. 61 while proceeding to Hazizamal lane being driven by the accused-driver Suryanarayan Raju loaded with some tamarind and other mercantile goods. On demand, the accused-driver could not produce the driving license or the certificate of registration or the route permit. He found that the tax for the second quarter of 1962 had not been paid or the token obtained. This evidence of P. W. 2 stands practically unchallenged. All that was vaguely suggested to P. W. 2 is that under reciprocal arrangement between the States of Madhya Pradesh and Orissa some vehicles which pay tax at Raipur need not again pay at Koraput. In other words, in respect, of some approved vehicles payment of one tax in one State is a sufficient compliance of the taxation law in the other. The onus is undoubtedly on the accused to prove that his vehicle is covered by any such agreement, but there is nothing to show that his vehicle is one of such vehicles which paid tax in Madhya Pradesh and is one in such approved list. Clearly on the evidence the vehicle was plying in the District of Koraput in Orissa without any permit. For this, the petitioner was convicted under Section 123 of the Act.

7. Section 123(1) provides that whoever drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of Section 22 or without the permit required by Sub-section (1) of Section 42 or in contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, shall be punishable for a first offence with fine which may extend to one thousand rupees and for a subsequent offence if committed within three years of the commission of a previous similar

offence, with imprisonment which may extend to six months or with fine which may extend to two thousand rupees or with both. Section 42(1) says that no owner of a transport vehicle shall use or permit the use of the vehicle in any public place, save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or the Commission authorising the use of the vehicle in that place in the manner in which the vehicle is to be used.

Even after the amending Act (Act 100/ 1956) the text of Section 42(1) substantially remained as before. In a case reported in AIR 1959 SC 79, State of Uttar Pradesh v. Bansaraj, their Lordships held that Section 42 is headed 'Necessity of Permits'. The language of the section employs prohibitive or negative words and therefore its legislative intent is that the statute is mandatory. Section 42(1) contemplates not only prohibition against the user by the owner of the vehicle or his permitting its user in a manner contrary to the conditions of the permit, but it also contemplates that the vehicle itself shall be used in the manner authorised by the permit. Thus, it is clear that the user of a transport vehicle without a permit required by Section 42(1) is punishable under Section 123 of the Act. Under Section 42(1) the owner is prohibited from allowing the user of the vehicle in any public place without a permit and its violation makes him liable under Section 123 of the Act.

On the evidence in this case, it is clearly established that the vehicle in question was allowed to run in Koraput without a permit when it was checked by P. W. 2. Therefore the owner-petitioner has been rightly convicted under Section 123 of the Act. Section 112 of the Act is a residuary penal clause and makes a person liable under that provision if no other penalty is provided for the offence. As we have seen the case clearly comes within the mischief of Section 123. A conviction under Section 112 was not therefore justified. The conviction and sentence of the petitioner under Section 112 must therefore be set aside.

8. Now I come to the conviction under Section 7 of the Madras Motor Vehicles Taxation Act. Section 5(1) (a) of the said Act which is applicable to this case, provides that no motor vehicle shall be used on any public road in any quarter of a year, unless the registered owner or person having possession or control thereof

has obtained a license under Sub-section (3) in respect of the vehicle on payment of the tax, if any, due thereon for such quarter. Under sub-s. (3) (a) of Section 5 when any person pays the amount of tax due in respect of a motor vehicle using any public road or proves to the satisfaction of the licensing officer that no tax is payable in respect of such vehicle the licensing officer shall grant to such person a license in such form as may be notified by the State Government to use the vehicle on the public road for the quarters concerned.

Section 7 of the said Taxation Act is the penal section. It says that if the tax due in respect of any motor vehicle has not been paid, the registered owner or the person having possession or control thereof shall be punishable with fine not exceeding in the case of the first conviction, one and a half times, and in the case of second or any subsequent conviction twice the amount of the annual tax payable for the motor vehicle in respect of which the offence is committed. It appears that the quarterly tax for the vehicle is Rs. 525 and thus the annual tax for the vehicle comes to Rs. 2100. In view of the sentence prescribed under Section 7, the sentence of fine of Rs. 25 imposed on the petitioner appears to be grossly inadequate. I would accordingly while maintaining the conviction of the petitioner under Section 7 of the Madras Motor Vehicles Taxation Act enhance the sentence of fine to a sum of rupees two hundred, in default of payment of the said fine, he has to undergo simple imprisonment for one month.

9. The sentence of fine of Rs. 20 passed on the petitioner under Section 123 of the Act appears also to be wholly inadequate. While, therefore, maintaining the conviction of the petitioner under Section 123 of the Act. I would enhance his sentence to a fine of rupees one hundred and in default of payment he has to undergo simple imprisonment for two weeks.

10. In the result therefore the conviction and sentence of the petitioner under Section 112 are set aside and his conviction under Section 123 of the Motor Vehicles Act and under Section 7 of the Madras Motor Vehicles Taxation Act is maintained and the sentence is enhanced as aforesaid: and the revision dismissed.