

Fakir Mohan Das and anr. Vs. the State

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Court : Orissa

Decided On : Nov-27-1957

Reported in : AIR1958Ori118; 24(1958)CLT78; 1958CriLJ789

Judge : Narasimham, C.J. and ;G.C. Das, J.

Acts : [Motor Vehicles Act, 1939](#) - Sections 42, 42(1), 123 and 123(1); Orissa Motor Vehicles Rules, 1940 - Rule 86(1) and 86(8); [Code of Civil Procedure \(CPC\), 1908](#)

Appeal No. : Criminal Revn. Nos. 264 and 266 of 1956

Appellant : Fakir Mohan Das and anr.

Respondent : The State

Advocate for Def. : Government Adv.

Advocate for Pet/Ap. : S.C. Roy and ;R. Das, Adv.

Disposition : Revision dismissed

Judgement :

G.C. Das, J.

1. These two petitions are directed against two orders of the learned Sessions Judge of Mayurbhanj of even date, i.e., 1-10-1956, convicting the petitioners under

Section 123 of the Indian Motor Vehicles Act (Act No. IV of 1939) (hereinafter referred to as the Act') and sentencing each of them to pay a certain fine.

2. Both the petitions were first heard by two single Judges of this Court and later were referred to a Division Bench and were made analogous. Accordingly, they were heard together, and are governed by this common judgment.

3. Before dealing with the point of law, I would like to state the facts in each case which are rather simple. In Criminal Revision No. 264 of 1956, the petitioners, Fakir Mohan Das and Narendra Mohan Panda were the driver and conductor respectively of a State carriage bearing No. O.R.B. 473. The prosecution case was that they were carrying sixty-one passengers while the seating capacity of the carriage was only twenty-five, according to the permit issued by the appropriate authority. The accused persons pleaded guilty and did not claim to be tried. Accordingly, the learned Magistrate found that the overloading was clearly in contravention of Sub-section (1) of Section 42 of the Act and convicted them under Section 123 and sentenced each to pay a fine of Rs. 300/-, in default to undergo simple imprisonment for two weeks.

The accused persons however carried an appeal to the learned Sessions Judge, Mayurbhanj, who by his order dated 1-10-1956, upheld the conviction and sentence as passed by the learned Sub-Divisional Magistrate, Balasore,. It is against this order of the learned Sessions Judge that the present revision is directed.

4. In Criminal Revision No. 266 of 1956 the petitioners, Laran Singh and Boghdad Khan were similarly the driver and conductor respectively of the State carriage, No. O. R. B. 507. On 27-1-1955, while the aforesaid carriage was halting at a place called Ranitola, about four miles from Bhadrak, the Superintendent of Police, Balasore (P. W. 1) at about 9 a. m. found the bus overloaded and on actual counting by P. W. 2 it came to be 42 passengers, while the seating capacity of the carriage in accordance with the permit issued, was only thirty-seven. Accordingly, the petitioners were charge-sheeted under Sections 112 and 123 of the Act.

In this case, undoubtedly several pleas were taken by the petitioners, but they were ultimately negated by the learned Sessions Judge. The only serious point contended was that the conviction under Section 123 of the Act is contrary to law and ought to be set aside. The learned counsel, while admitting the guilt of the accused however, conceded that they may at least be liable under Section 112 of the Act, but their conviction under Section 123 is wholly illegal.

5. The facts as stated above were not challenged in this Court. The sole question raised, and argued at length was, whether the conviction of the driver and the conductor of a State carriage under Section 123 of the Act is legally maintainable

6. Mr. S. C. Boy, learned counsel for the petitioners in Criminal Revision No. 266 of 1956 contended that the language of Section 123(1) is not wider than that of Section 42(1) of the Act so as to include the driver and the conductor of a motor vehicle and make them punishable for any contravention of the permit under that section.

7. Although the point is a short one, yet there has been some controversy regarding the application of the one section or the other, and different High Courts in India have taken different views. While Madras, Nagpur, Calcutta, Bombay, Punjab and the Rajasthan High Courts have taken the view that the plain reading of Section 123(1) of the Act is clear enough to make the driver and the conductor of a motor vehicle liable for the contravention of the provisions of Sub-section (1) of Section 42, the High Court of Allahabad and some later decisions of Nagpur take the opposite view.

8. Before dealing with the cases decided by the other High Courts, I would first like to refer to an unreported decision of this Court in *State v. Upendra Nath Behera*, Cri. Ref. No. 49 of 1956 (Ori) (A); wherein Narasimhan, C. J. independently held that if a bus is found to contain more passengers than the number permissible under the permit, there would be a clear contravention of the conditions of the permit and such contravention would be punishable under Section 123/42 of the Act.

It appears from that decision that no case was cited at the Bar before my Lord the Chief Justice. There are ten Chapters in the Act each dealing specifically with different items. In the present case we are concerned with Chapter IV and IX of the Act. Chapter IV deals with control of transport vehicles whereas Chapter IX deals with offence, penalties and procedure. The sections relevant for our discussion are Sections 42 and 123 of the Act. Section 42 in Chapter IV as is relevant for the purpose of this case is as under;

'42(1) 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 authorising the use of the vehicle in that place in the manner in which the vehicle is being used.'

The relevant portion of Section 123 appearing in Chapter IX is as follows:

'123(1) Whoever drives a motor vehicle or causes or allows a motor vehicle to be used or lets out a motor vehicle for use in contravention of the provisions of Sub-section (1) of Section 42 shall be punishable for a first offence with fine which may extend to five hundred rupees, and/or a subsequent offence if committed within three years of the commission of a previous similar offence with a fine which shall not be less than one hundred rupees and may extend to one thousand rupees.'

9. From the plain language of the two sections quoted above, it is evident that the language employed in Section 123 is much wider than the language used in Sub-section (1) of Section 42. Sub-section (1) of Section 42 applies only to owners of transport vehicles, whereas Section 123 applies to any one who drives a motor vehicle or causes or allows a motor vehicle to be used or lets out a motor vehicle to be used in contravention of the provision of Sub-section (1) of Section 42.

The driving of a public vehicle on the public road without a license or permit authorising the use of that vehicle in that place contravenes Sub-section (1) of Section 42 and whoever drives such vehicle in a public place without such a permit is naturally punishable under Section 123(1). The mere fact that a permit is to be obtained by the owner makes no difference whatsoever, and a driver or a conductor or both cannot escape liability for using the transport vehicle as

indicated above.

10. As it appears the first case on the point was decided by the Madras High Court as far back as on 29-4-1941 (Vide Public Prosecutor v. Jevan, AIR 1941 Mad 845 (B)). In that case two criminal appeals were preferred by the Government of Madras against the orders of acquittal of the drivers of transport vehicles for contravention of certain provisions of the permit. Lakshman Rao, J. while allowing the appeals directed a conviction of the drivers under Section 123(1) of the Act holding that the permit is to be obtained by the owner cannot make any difference and whoever drives the vehicle in a public place without a permit authorising the use of the vehicle in that place would be punishable under Section 123(1) of the Act.

This Madras decision seems to have been followed by the Punjab, Calcutta and Bombay High Courts. Thereafter, in 1944 the same question cropped up for consideration by a Division Bench of the Nagpur High Court reported in Provincial Government, Central Provinces and Berar v. Mohanlal Keshanolal, AIR 1944 Nag 89 (C). In that case their Lordships, Niyogi and Pollock JJ held that the distinction between Section 42(1) and Section 123 is that while the, former applies only to owners of transport vehicles, the latter applies to anyone who drives a motor vehicle or causes or allows a motor vehicle to be used in Contravention of the provisions of Section 42(1).

The provisions mentioned in Section 42(1) are the conditions of the permit granted by the Regional Transport Authority. Section 123 is clearly much wider than Section 42(1) and the person who is admittedly responsible for charging increased fares, committed an offence under Section 123(1). This decision of the Nagpur High Court has also been followed by the High Courts of Bombay and the Punjab. I will advert to the confusion created in the same High Court in their subsequent decisions.

11. Next in point of time is a decision of the Punjab High Court reported in Teja Singh v. The State, AIR 1952 Punj 45 (D). In that case a single Judge of the Punjab High Court relying on the decision of Nagpur and Madras High Courts referred to above, held that although the language employed by the draftsman in

Section 123 is not clear, as it might have been, it is by no means difficult to ascertain the intention of the Legislature. The section is intended to be a residuary section and is enacted with the object of punishing a person (other than the owner) who used a vehicle in contravention of the conditions of the permit issued by the appropriate authority.

Any other construction would lead to absurd results and render the section wholly meaningless. On a plain reading of Sections 42 and 123 there is no doubt whatever, while the former section is designed to punish the owner of a transport vehicle the latter is designed to punish the driver or any other person. In *Chandra Dev Singh v. State*, 59 Cal WN 787 (E), decided on 25-1-1954, Sen, J held that the driver who took the motor vehicle out of the permanent route for which permission was granted was liable under Section 123 of the Act; but with regard to the conductor, the learned Judge held that the terms of Section 123(1) of the Act were not wide enough to make him liable also when the public vehicle was driven to a place not covered by the route permit.

Accordingly he set aside his conviction. With respect to the learned Judge, I could not persuade myself to agree with him that the language of Section 123 of the Act is not wide enough to include the conductor. The very language employed being: 'whoever drives motor vehicle or causes or allows a motor vehicle to be used' to my mind, clearly makes the conductor equally liable with the driver. The duties of the driver and the conductor of a public service vehicle being co-relative the liability of the one cannot be dissected from the liability of the other. On the other hand their liability is coextensive. Hence, they are equally liable.

One of the main duties of the conductor is not to allow any person to be carried in any public service vehicle in excess of the seating capacity specified in the certificate of registration of the vehicle or any additional number permitted under the terms of the permit to be carried standing in the vehicle.

It is not the driver but the conductor who allows passengers to get into the public vehicle and gives the signal to the driver to stop the vehicle whenever and wherever necessary at the specified stands to enable a passenger to get down and then gives the signal to move the vehicle. Thus, it would be quite illegal to

hold that the conductor would not be liable under Section 123. As far as the impugned conviction is concerned, I may refer to Rule 86 of the Orissa Motor vehicles Rules, 1940, (hereinafter referred to as the 'Local Rules').

It lays down the duties of the driver and the conductor of a public service vehicle. Sub-rule (i) of Rule 86 clearly lays down that they shall, as far as may be reasonably possible, having regard to their duties, be responsible for the due observance of the provisions of the Act and of these rules. Sub-rule (8) prescribes that they shall not allow any person to be carried in any public service vehicle in excess of the seating capacity specified in the certificate of registration of the vehicle and any additional number permitted under the terms of the permit to be carried standing in the vehicle. Thus, the local rules fix a joint responsibility on both the driver and the conductor and accordingly, the word, 'whoever' in Section 123 of the Act would eventually include both the driver and the conductor, since the due observance of the provisions of the Act and the rules is their responsibility.

12. The most recent decision on the point is by a Division Bench of Bombay High Court reported in *State v. Balasaheb Baburao* (S) AIR 1957 Bom 342 (F). The learned Judges in that decision followed the Madras, Nagpur, Calcutta and the Punjab High Courts as discussed above, and expressly did not follow a Division Bench decision of the Allahabad High Court in *Bansraj v. State*, (S) AIR 1956 All 27 (G) to which I will advert later while dealing with the contrary view.

The facts of that case were that the accused who was a driver of a motor vehicle No. BMW 3134 drove the vehicle with six adults and two children from Parali to Satara, a distance of seven miles having agreed to receive from each of the passenger six annas as fare and thereby had contravened the provisions of Section 42(1) read with Section 123 and Sections 22(1) and 38(1) read with Section 112 of the Act. The vehicle in question was a goods vehicle which could not be used as a vehicle transport of passengers.

Accordingly, it was held that it amounted to contravention of the terms of Section 42. Thus their Lordships held that the accused being a driver of a goods truck, doubtless contravened the provisions of law as laid down in Section 42(1), and therefore, he must be regarded as having incurred the penalty provided in Section

123(1) of the Act, and accordingly, they set aside the order of acquittal and convicted the accused of an offence under Section 42(1) read with Section 123 of the Act.

The only other decision that I need discuss in this connection, is a case decided by the Rajasthan High Court reported in *Kalyan Lal v. State* AIR 1954 Raj 250 (H). A single judge of that High Court held that it is no doubt true that Section 42(1) imposes the duty on the owner of a transport vehicle, but Section 123(1) is much wider in its scope than Section 42(1). Section 123(1) makes the contravention of the provisions of Sub-section (1) of Section 42 punishable not only for the owner of a transport vehicle, but also for any other person who drives it.

The words 'whoever drives' a motor Vehicle in Section 123 (1) are wide enough to cover drivers other than owners of the bus, and there is no good reason to restrict the interpretation of Section 123 only to the case of owners of the vehicle. In coming to this conclusion the learned Judge relied on the Madras and the Nagpur rulings referred to above. He also relied upon a single Judge decision of the Allahabad High Court *Uma Shanker Tewary v. Rex*, AIR 1950 All 234 (I); but expressly differed from the subsequent Allahabad decision in *Jagroop v. Rex* AIR 1952 All 276 (J).

13. The opposite view, as indicated above, was taken by the Allahabad High Court in a case reported in (S) AIR 1956 All 27 (G). A Division Bench of that Court following a previous decision of the same Court reported in AIR 1952 All 276 (J) and referred to above, held that the difference between the provisions of Section 42(1) and Section 123 is not one of degree only and therefore there can be no comparison between them. One provision imposes a prohibition and the other punishes its contravention. Section 123 punishes the doing of only that act which is prohibited from being done by Section 42(1). It does not punish any act prohibited by some other provision. Therefore, it is not correct to say that its scope is wider than that of Section 42(1).

The words 'drives' and 'causes or allows to be used' in Section 123, do not follow necessarily that it punishes the owner and the driver for the same act. An owner can also drive and the words 'whoever drives' are meant to apply to an owner who

himself drives in contravention of the provision of Section 42(1). What it meant by Section 123 is that the owner is guilty when he himself drives the motor vehicle or causes or allows it to be driven by a driver. It is a mistake to think, that the section punishes both the owner and the driver of a vehicle, really only one person, to be punished and that is the owner himself. An owner may contravene the provision either by personally driving the motor vehicle or by causing or allowing it to be used by another person save in accordance with the conditions of the permit, Section 123 punishes either of the acts done by him and hence the words 'drives' and 'causes or allows.....to be used.'

If a driver takes out a motor vehicle in a public place without a permit and without the consent of the owner, the owner cannot be said to permit him to use the vehicle and would not be guilty under Section 123. But merely because the owner cannot be punished, the driver cannot also be punished. If a driver persuades the owner to let him use the vehicle save in accordance with the conditions of a permit, he may be guilty of abetment of the offence of Section 123, but not as a principal.

While coming to this conclusion, the learned Judges dissented from the view taken in AIR 1944 Nag 89 (C) AIR 1952 Punj 45 (D), AIR 1950 All 234 (I) and 59 Cal WN 787 (E). If this narrow view is accepted, then the driver or the conductor would escape the liability except probably being punished under the residuary Section 112 of the Act. Section 112 deals with penalty for an offence for which no provision has been made in the Act that is probably the reason why Section 112 contemplates of lesser punishment.

Here, it clearly comes within the provisions of Section 123, and accordingly Section 112 would have no application there being provision for punishment provided for in Section 123. The true view of the matter is that Section 123 is much wider than Section 42 (1) and contravention of the provisions of Section 42(1) by anybody is punishable under Section 123.

14. It was debated at the Bar that even in the decisions of the Nagpur and Allahabad High Courts themselves there is some divergence of opinion. I had referred to AIR 1944 Nag 89 (C). It was urged that this decision has not been

followed in a subsequent decision of the same High Court in *Emperor v. Amrutlal Chunilal*, AIR 1945 Nag 263 (K). Pollock J, who was a party to the Division Bench decision in AIR 1944 Nag 89 (C), held in that case that where the issue of tickets is not one of the duties of drivers or conductors under Rules 78 and 79, nor does the condition in the permit say who shall issue the tickets, the driver and the conductor are not liable under Section 123(1) for omission to issue the tickets.

Accordingly, the learned Judge while acquitting the driver and the conductor, convicted Amrutlal Chunilal Mehta who was one of the owners and manager of the public vehicle. Mr. Hoy then referred to another decision of the same High Court in *State v. Vasant Baburao*, AIR 1957 Nag 94 (L), wherein a single judge of that court held that under Section 42 (1) of the Act it is the owner and nobody else such as the driver or the conductor, who is forbidden to use or permit the use of a vehicle save in accordance with the conditions of the permit and consequently if a transport vehicle is used against the conditions of the permit, only the owner and nobody else can be guilty of contravening this provision. The learned Judge while coming to this conclusion relied upon a previous decision of the Allahabad High Court reported in AIR 1952 All 276 (J). Curiously enough, the Division Bench decision of the same High Court in AIR 1944 Nag 89 (C) was not referred to, by which evidently- the learned Judge is bound.

15. Now coming to the Allahabad High Court, the case reported in (S) AIR 1956 All 27 (G) followed the previous decision of the same Court in 1952 All 276 (J). The judgment in (S) AIR 1956 All 27 (G) was delivered on 13-9-55. But another single Judge of that Court in a judgment dated 4-1-56 held that Section 123 is not restricted in its application only to the owner of the motor vehicle, in contravention of the conditions of the permit. Section 42(1) is no doubt applicable to the owner of the transport vehicle and punishes him for using such vehicle or allowing the use of the vehicle in any public place. Section 123 is wider in its application than Section 42.

Hence where the driver and the conductor are found guilty of the offence under Section 42(1), they can be convicted under Section 123 of the Act. The learned Judge did not follow the previous decision of the Court reported in AIR 1952 All

276 (J). But no reference has been made to the Division Bench case in (S) AIR 1956 All 27 (G), which probably was not cited at the Bar. To me, it appears that the learned Judge has taken the correct view in law.

16. Accordingly, following the Madras, Nagpur, Calcutta, Bombay, Punjab and the Rajasthan decisions I have no doubt in my mind that Section 123 is wider than Section 42(1) of the Act and is designed to punish all persons whoever drive a motor vehicle or cause or allow a motor vehicle to be used or let out a motor vehicle for use in contravention of the provisions of Sub-section (1) of Section 42.

17. The next point urged by Mr. Roy was that if the Statute can be interpreted in favour of the accused, then the most beneficial interpretation should be used in their favour, and at least they should be given the benefit of doubt. In view of the decisions of the several High Courts in India, there is no doubt that the section is capable of only one interpretation and the question of two interpretations, one being in favour of the accused and the other against them, does not arise.

True, penal Statutes should always be very strictly construed. It cannot be enlarged or abridged by intendment. A similar question though in somewhat different form was raised before Mr. justice Bhandari, (AIR 1952 pun 45 (D)) and the learned Judge held that only those persons', offences and penalties which are clearly included will be considered within the operation of the Statute and all questions in doubt will be resolved in favour of the person who has contravened the provisions of law. However, it must be remembered that no rule of construction requires that a penal Statute should be unreasonably construed or construed so as to defeat the obvious intention of the Legislature or construed in a manner as would lead to absurd results; on the other hand it is of the utmost importance that the court should endeavour to ascertain the intention of the Legislature and to give effect thereto. In coming to this conclusion the learned Judge relied upon a decision of Lord Goddard, C.J. in (Mc Quade v. Barnes) 1949-1 All ER 154 (M).

18. Mr. R. Das, counsel for the petitioner in Criminal Revision No. 264 of 1956 while adopt-ing the argument of Mr. Roy, further contended that overloading is not a contravention of the permit and relied upon a decision of the Madras High Court reported in AIR 1953 Mad 53 (sic).

This contention cannot be upheld for a moment, for Clause (viii) of Rule 86 of the Local Rules, clearly provides that the driver and the conductor shall not allow any person to be carried in any public service vehicle in excess of the seating capacity. Thus, the driver and the conductor having allowed to take large number of persons in excess of the seating capacity have clearly contravened the provisions of the rules as also Sub-section (1) of Section 42 and hence are liable.

19. Last of all, Mr. Roy contended that the sentence is rather too severe. From the facts as stated above, in Criminal Revision No. 266 of 1956, the seating capacity of the vehicle was thirty-seven and the actual number of passengers being carried at the relevant time was forty-two. In other words, it was five in excess. In my opinion, a sentence of fine of Rs. 200/- is rather heavy. Accordingly, while maintaining the conviction of the petitioners under Section 123, I would reduce their sentence to a fine of Rs. 100/- each.

20. In Criminal Revision No. 264 of 1956, it appears that while the seating capacity of the vehicle was only twenty-five, the petitioners carried sixty-one passengers. It is evident from the order of the learned Sub-Divisional Magistrate, Bhadrak, that the accused driver and the conductor were on previous occasions severely warned by him for such overloading. But that did not seem to have produced any salutary effect on them. Accordingly, the learned Magistrate inflicted a rather deterrent punishment. Taking sixty-one passengers in a public vehicle having the seating capacity only of twenty-five, the inconvenience caused thereby to the passengers who were already in the bus can well be imagined. It is time now that these antisocial offences are stamped out with some strictness. For the reasons stated above, I do not see any reason why I should interfere with the order of sentence in this case.

21. In the result, I would accordingly confirm the judgments of the Courts below and dismiss these revision petitions except for the modification of sentence of the petitioners in Criminal Revision No. 266 of 1956.

Narasimham, C.J.

22.1 agree.

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