

Balmiki Sahu Vs. the State

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Court : Orissa

Decided On : Apr-12-1966

Reported in : AIR1967Ori66; 1967CriLJ797

Judge : R.K. Das, J.

Acts : [Motor Vehicles Act, 1939](#) - Sections 112, 123 and 130(1); Orissa Motor Vehicles Rules - Rule 86

Appeal No. : Criminal Ref. No. 52 of 1965

Appellant : Balmiki Sahu

Respondent : The State

Advocate for Def. : Standing Counsel

Judgement :

ORDER

R.K. Das, J.

1. This is a Reference made by the Additional District Magistrate (judicial). Ganjam, recommending to quash the proceedings in certain criminal cases (U. C. Cases Nos. 90, 122, 123 and 173 of 1956) pending in the court of the Sub Divisional Magistrate Chatrapur, against the petitioner Balmiki Sahu, owner of a public service Motor Vehicle.

2. The motor taxi O. R. G. 1553 of which the petitioner is the owner, was found carrying on four different dates, passengers in excess of the seating capacity of the vehicle as specified in the permit. The petitioner and the driver of the vehicle were both prosecuted under Sections 112 and 123 of the Motor Vehicles Act (hereinafter referred to as 'the Act') and 4 separate cases were started against them. The Sub Divisional Magistrate, Chatrapur, took cognisance of the offence under Sections 112 and 123 of the Act and summoned both the accused persons. In some of the aforesaid cases, the accused driver appeared and admitted his guilt and was convicted.

But in all the cases the owner Balmiki Sahu (petitioner) did not appear in court in response to the summonses issued against him and took the stand that the Magistrate should have complied with the provisions of Section 130 (1) of the Act by giving an option to the accused to appear by pleader and not in person or to plead guilty to the charge by a registered letter by a specified date and to remit to the Court a sum not exceeding Rs. 25/- as the Court might have specified. The petitioner sent a registered letter to that effect to the Magistrate insisting that he should comply with the provisions of Section 130 (1) of the Act. The Magistrate having failed to do so, the petitioner moved the A. D. M. (Judicial) Ganjam who has made the present reference to this court to quash the proceedings pending against the petitioner.

3. The grounds on which the proceedings before the Magistrate were sought to be quashed are:

(a) The offence being one of overloading, it comes within the mischief of Section 112 and not under Section 123 of the Act though the Magistrate had taken cognizance under both the Sections,

(b) The offences made out against the petitioner being offences not specified in Part A of the Fifth Schedule of the Act, the Magistrate was bound to comply with the provisions of Section 130 of the Act which are mandatory in nature.

The Reference is wholly untenable on both the grounds. The case of the prosecution is that the taxi owned by the petitioner was carrying passengers much

in excess of the seating capacity of the vehicle as specified in its permit. The learned Additional District Magistrate took the view that this being a case of overloading the offence comes under Section 112 and not under Section 123 of the Act.

The number of passengers that a particular Public Service Vehicle is authorised to carry is mentioned in the permit and carrying of passengers in excess of such seating capacity is a violation of the conditions of the permit. It is well settled that such a violation of the conditions of a permit is also punishable under Section 123 of the Act (See AIR 1959 S. C. 79 State of Uttar Pradesh v. Bansaraj; AIR 1958 Orissa, 118 Kakir Mohan v. State) Thus the learned A. I M. was not correct in saying that in cases of overloading Section 123 is wholly inapplicable He has recommended the quashing of the proceeding against the owner obviously or the erroneous impression that in no case the owner is liable for an offence of overloading. No doubt, under Rule 86 of the Orissa Motor Vehicles Rules, the driver has been assigned the duty of not allowing any person to be carried in any Public Service Vehicle in excess of the seating capacity but that does not show that the owner is exempt in law from any such liability.

In a particular case, the owner might be present in the vehicle and might aid or abet such acts of over-loading and the driver has simply to carry out the orders of his master. Whether the owner had the necessary mens rea or not is a question of fact which depends upon the evidence in a particular case. It may be that in the absence of any evidence to show that the owner knew or connived at the action of the driver in carrying more than the permissible number of passengers, he may not be held guilty under Section 112 or under Section 123 (See AIR 1959 Orissa 50, Lunkaran v. State). That afterall is a matter of evidence with which the trial Court alone is concerned at the trial stage.

4. The learned Additional District Magistrate has also misconceived the provision of Section 130 of the Act. That Section runs as follows :

'Section 130. (1) A Court taking cognizance of an offence under this Act (shall) unless the offence is an offence specified in Part A of the 5th Schedule, state upon the summons to be served on the accused person that he-

(a) may appear by pleader and not in person, or

(b) may by a specified date prior to the hearing of the charge plead guilty to the charge by registered letter, and remit to the Court such sum not exceeding twenty-five rupees as the Court may specify.

(2) Where the offence dealt with in accordance with Sub-section (1) is an offence specified in Part B of the fifth schedule, the accused person shall, if he pleads guilty to the charge, forward his licence to the Court with the letter containing his plea in order that the conviction may be endorsed in licence. (3) Where an accused person pleads guilty and remits the sum as specified and has complied with the provisions of Sub-section (2) no further proceedings in respect of the offence shall be taken against him nor shall he be liable to be disqualified for holding or obtaining a licence by reason of his having pleaded guilty.'

5. Offences under Sections 112 and 123 of the Act with which the petitioner is charged are not included in part A of the Fifth Schedule of the Act. On a plain reading of Section 130 (1) the provision appears to be mandatory that the Magistrate at the time of issuing process shall comply with the provisions of (a) and (b) of Section 130 (1). The High Court of Allahabad took the view that the choice of the accused to be represented by a pleader or to plead guilty and remit the fine to the Court must be indicated in the summons itself :(1962) (1) Ori LJ 684 (All) State v. Mangal Singh.

The Assam High Court in a case reported in 1962 (2) Cr. LJ 869 (Assam) State v. Sulaman Khan also took the same view. The Madhya Pradesh High Court took a contrary view that the Magistrate had the option to issue summons with endorsement in terms of Sub-section 1(a) or (b) and if a summons was issued with the endorsement specified by Sub-section (1) (b) then only it was open to the accused to avail himself of the option to plead guilty and to claim the privilege mentioned in Sub-section (3)

6. The Supreme Court in the case reported in AIR 1965 SC 1583, Puran Singh v. State of Madhya Pradesh approved the view taken by the High Court of Madhya Pradesh and held that the decision of the High Courts of Allahabad and Assam do

not represent the correct position of law.

7. In view of the legal position there is no room for any doubt that the Magistrate is not obliged in offences not specified in Part 1 of the Act to give the option to the petitioner to be represented by a pleader or to plead guilty to the charge by a registered letter and remit the sum as fine as provided under Section 130 (1) (a) and (b). Section 130 was enacted with a view to protect persons involved in minor offences, so that they may not be harassed by a long process of trial by appealing in the Court. The option is left with the Magistrate to exercise this power in appropriate cases giving the accused an opportunity to plead guilty to the charge and remit the amount not exceeding rupees twenty-five. The intention of the Legislature could not have been that in cases of serious offences also the accused will have the option to stay away from Court and merely remit a sum of rupees twentyfive only to the Court.

8. Thus none of the grounds stated by the learned Additional District Magistrate has any substance. The trial Court may now proceed with the aforesaid four cases and dispose them of according to law.

9. The Reference is discharged.