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State Vs. Charan Singh and

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Court : Delhi

Decided On : Mar-28-1985

Reported in : 1985RLR519

Judge : J.D. Jain, J.

Acts : Motor Vehicles Act - Sections 86

Appeal No. : Criminal Revision Appeal Nos. 61, 138, 139, 140 of 1982

Appellant : State

Respondent : Charan Singh and ;abdul Rashid

Advocate for Pet/Ap. : P.P. Grover and; S. Teja Singh, Advs

Judgement :

J.D. Jain, J.

(1) [ONE Charan Singh was driving a Bus. Traffic Police asked for his license. On failure he was produced before Spl M.M. who u/s 3/112 fined him Rs. 100.00. He filed revision before Add. S.J. pleading that his license had been taken by Police in an earlier challan and showed its receipt to the Police who ignored it and produced him before Spl. M.M. and that in view of the said receipt he could not be punished. That on another occasion there were 75 passengers in his Bus and he was intercepted and produced before Spl. M.M. who without affording him defen c

opportunity hastily fined him Rs. 150.00 u/s 123 & R. 4. 38, He later learnt that punishment was also for non-possession of Regn. Certificate and that this was wrong in as much as he had Regn. Certificate and showed the same to Police. He filed revision against this also pleading that his Bus was authorised to carry 75 persons. Abdul Rashid was driving Mini Bus with 68 persons against sanctioned capacity of 35. He was produced before Sp. M.M. who fined him Rs. 950.00 and also ordered impounding of Bus. He filed revision before Additional S. J. pleading that he was not given any defense opportunity and also the order impounding his vehicle was illegal. Additional S J. noted that Spl. M.M. had passed order on prepared rubber stamps by simply filling blanks and had not afforded any defense opportunity. He acquitted petitioners instead of sending the case back for retrial. He also expounded certain unwarranted propositions of law. The decision of Charan Singh got reported in newspaper. It came to the notice of Hon'ble Mr. Justice Sachar who suo moto issued notices to the petitioners and the State. State then filed revisions in other cases also. A Police Officer in uniform can demand from a driver to show him his license u/s 86(1). Rega. authority (or an authorised person) can demand showing of regn. Certificate (and in case of transport Vehicle, also fitness certificate) u/s 86(2). If the driver is unable to show these documents, then and there, he is entitled to show these to any Police Station in India within 10 days u/s 86(3) provided that this facility would not be available to driver of a transport vehicle. Charan Singh could not be acquitted under proviso to S. 86(3). But as his license was with the Police and he had a receipt about it, he could not be punished. The whole thing was done in an unholy haste and Charan Singh could not raise proper defense. After detailing above, judgment proceeds].

(2) CR. R. No. 61/82 is based on suo motu notice taken by Rajindar Sachar, J. of the fact that the learned Additional Sessions Judge while setting aside the conviction of the various accused persons on the ground that the trial Court had not afforded an opportunity to the accused to defend themselves properly had quashed the proceedings but had not sent the cases back for re-trial and fresh decision after giving an opportunity to the accused. Subsequently, the Delhi Administration filed separate revision petition in respect of each case. So, this judgment of mine shall be common to all these revision petitions. ...Succinctly the facts leading to these revision petitions are as under : Cr. R. No. 138182

(3) Charan Singh-respondent is a motor-vehicle driver. On 30.9.81 he was intercepted by the traffic police attached to the court of Shri S.C. Gupta, Special M.M.; who was holding a mobile court on the roadside near Model Town at about 4.30 P.M. when he was driving private bus No. Dlp 6582. He was allegedly found to be driving the said bus without a driving license. He was thereupon produced by the traffic police before Shri S.C. Gupta, Special M.M. and on his pleading guilty to substance of accusation, he was convicted without an opportunity to defend himself. The Un hold haste in which he was con- trained to plead guilty was thereforee, responsible for his not raising the proper defense. Anyway, in view of the aforesaid receipt, the conviction of the respondent cannot be sustained.

(4) On a parity of reasoning the respondent-Charan Singh cannot claim benefit of S. 86(3) of the Act, as having regard to the explicit language of the proviso thereto he was bound on demand to produce the certificate of registration forthwith. The word 'demand' connotes something imperative and immediate that brooks no delay. However, his contention is that he had registration certificate with him at the relevant time. He attached a photostat copy of the same (annexure *A') with the grounds of revision in Cr. R. No. 100/81 to countenance his plea. However, this being purely a question of fact it would not be possible to express any opinion, regarding its veracity. All the same, as observed earlier, the entire proceedings before the Special M.M. are vitiated by haste and as shall be presently seen by non-compliance with mandatory provisions of S. 130 of the Act. It is also pertinent to notice here that according to the registration certificate the seating capacity in the bus was 50 and besides that 25 passengers could be accomodated in standing position. Thus the bus could carry a total number of 75 passengers and it was precisely the number which was actually found in the bus on 16.10.81 when he was challaned under rule 4.35 (vii) read with S. 123 of the Act. Thus, this case seemingly affords a glaring instance of miscarriage of justice simply because the learned Special M.M. did not care to follow the prescribed procedure and the respondent was deprived of reasonable opportunity to defend himself;

(5) Abdul Rashid-respondent too has been convicted for infraction of rule 4.38 (vii) read with S. 123 of the Act. His grievance was two fold. Firstly, that he was not afforded an opportunity of being heard and secondly, that the Special M.M.

exceeded his jurisdiction by directing that in default of payment of fine his vehicle be impounded. The learned counsel for the State has again frankly conceded that the Special M.M. has no power to impound vehicle in the event of default to pay the fine imposed on him. Indeed, a glance at the impugned order dated 16.9.81 would itself show that subsequent to the passing of the said order the learned Magistrate or someone attached to him realised this fundamental mistake and deleted the second part of the order by way of rectification. However, the certified copy of the order filed by Abdul Rashid-respondent in Cr. R. No. 65/81 would show that the said order was in-tact and had not been tampered with uptil 22.9'81 when the certified copy was ready. Certainly this kind of malpractice on the part of a judicial officer or his subordinate must be deprecated with a/I the force at one's command. I would have surely ordered for a probe into the matter but having regard to the way in which the last lines of the said order which are nothing but an impression of prepared rubber stamp, have been scored off no useful purpose would be served and the inquiry may simply end in fiasco.

(6) That brings me to the most crucial question which is common to all these cases. It is whether it was incumbent upon the Special M.M. to follow the procedure specifically laid down in S. 130 of the Act and if so, what should be the effect of non-compliance there with. The said sections is: '(I) The Court taking cognizance (i) may, if the offence is an offence punishable with imprisonment under this Act, and (ii) shall, in any other case, 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 the maximum fine that may be imposed for the offence as the Court may specify. Provided that nothing in this sub-section shall, apply to any offence specified in Part A of the Fifth Schedule. (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 the license to the Court with the letter containing his plea in order that the conviction may be endorsed on the license. (3) Where an accused person pleads guilty and remits the sum specified and has complied with the provision 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 license by reason of his having pleaded guilty.'

(7) On a plain reading of this Section it is manifest that clause (ii) of sub-section (1) is mandatory and not merely directory. This is explicit from the Use of the word 'may' in clause (i) in contradistinction to clause (ii) where the word 'shall' has been used. Obviously a discretion has been conferred on the court taking cognizance of the offence under the Act under clause (i) because the offence there under is punishable with imprisonment and must necessarily be graver in nature than the one falling within the ambit of clause (ii). That the comparative gravity of the offence was present to the mind of the legislature for application of the procedure con- contained in S. 130 is further borne out by the proviso to sub-section (1) which excludes offences specified in Part A of the Fifth Schedule from the purview of sub-section (1). As shall be presently seen, the offences alleged to have been committed by the respondent in the instant case fall within the ambit of clause (ii) of sub-section (1) and even sub-section (2) of S. 130,

(8) This Section came up for consideration before the Supreme Court in Puran Singh v. The State of U.P. : [1965]2SCR853 . In that case the Magistrate had issued process against the appellant therein for their appearance in court by pleader, but did not make any endorsement thereon in terms of Section 130(1)(b). It was urged by the appellants that the summons served upon them were not in accordance with law for want of an endorsement as envisaged in S. 130(l)(b) and thus they were deprived of the valuable right conferred by the aforesaid Section. Repelling this contention the Supreme Court held that:

'THE Magistrate taking cognizance of an offence is bound to issue summons of the nature prescribed by S. 130(1). But there is nothing in that sub-section which indicates that he must endorse the summons in terms of both the clauses (a) and (b) : to hold that he is so commanded would be to convert the conjunction 'or' into 'and'. There is nothing in the words used by the Legislature which justifies such a conversion, and there are strong reasons which render such an interpretation wholly inconsistent with the scheme of the Acts. It could not have been the intention of the Legislature that the offender, even if the case was serious enough

to warrant the imposition of the maximum penalty which is permissible under section to which the provision is applicable, to avoid imposition of a higher penalty than Rs. 25 by merely pleading guilty. Section 130, it appears, was enacted with a view to protect from harassment a person guilty of minor infraction of the Motor Vehicles Act or the Rules framed there under by dispensing with his presence before the Magistrate and in appropriate cases giving him an option to plead guilty to the charge and to remit the amount which can in no case exceed Rs. 25.... There are also certain offences which, if repeated but not otherwise, are liable to be punished with imprisonment, e.g., certain offences under Section 118A and under Section 123 of the Act. It would be difficult to hold that the Legislature could have intended that irrespective of the seriousness or gravity of offence committed, the offender would he entitled to compound the offence by paying the amount specified in the summous, which the Magistrate would be bound to accept, if the contention raised by the appellants is correct.'

(9) It may be pertinent to notice here that subsequent to the aforesaid judgment of the Supreme Court, S. 130(1) was amended by Act 56 of 1969 and the erstwhile ceiling on the amount of fine payable under clause (b), viz. Rs. 25.00 was removed and as such it is now open to the court to call upon the accused to remit to the court, in case he pleads guilty to the charge, such amount not exceeding the maximum fine that may be imposed for the offence as the court may specify. It would thus appear that the primary consideration which weighed with the Supreme Court would no longer be available and the court is bound to issue the necessary summons with an endorsement as contemplated in clause (a) or (b) of sub-section (1) and non-compliance with the same will seriously prejudice the accused in more than one way. In Nilamani vs. The State, Air 1870 Tri 72 R.S. Bindra, J.C. enumerated the various benefits that accrue to an accused in a case to which Section 130 of the Act applies. Indeed they are apparent from the Section itself. However, the two main advantages which the procedure prescribed by Section 130 confers on an accused deserve to noticed. In the first instance, if option is given under clause (a) of sub-section (I) the accused can enter appearance through a pleader and thereby avoid personal appearance in the court. Secondly, if the accused pleads guilty to the charge, remits the fine as specified in the summons and forwards the Court with the letter containing his plea as envisaged

in S. 130(3) no further proceedings in respect of the offence can be taken against him and he will not be liable to be disqualified for holding or obtaining a license for reason of his having pleaded guilty. Evidently these concessions are of far reaching consequences to an accused guilty of violation of the provisions of the Act or the Rules made there under Hence, there is no escape from the conclusion that any infraction of provisions of Section 130(1) would invalidate the trial.

(10) The question may, however, arise, as in the instant case, as to whether the Court would be bound to issue a summons even where the accused appears voluntarily or is brought before the court by the police before the stage for issuance of summons comes up. The answer to this question would apparently be in the negative in view of the words 'the summons to be served on the accused' appearing in clause (ii) of sub-section (1). These words clearly contemplate a stage when the attendance of the accused has yet to be procured. In other words, if the accused appears whether voluntarily or involuntarily the necessity of issuing summons may be dispensed with. However, that would not relieve the court of its obligation to give one of the two options to the accused as envisaged in clauses (a) and (b) of sub-section (1). It is for the simple reason that by mere appearing in court the accused cannot be deemed to have waived the valuable right conferred on him by the provisions of Section 130 and he can still insist upon the compliance with the said provisions by the court. Indeed, omission on the part of the court to comply with these salutary provisions may result in serious prejudice or even miscarriage of justice to the accused. So, even though issue of process in the instant case was unnecessary, it cannot be gain-said that he was entitled to the benefit of clause (b). The Magistrate cannot deny that benefit to him merely because the option under clause (a) was no longer available to him. It is not difficult to visualise a case where an accused may not be carrying any money with him. Surely he would be entitled to reasonable time to remit the amount of fine which the court may determine to impose on him in case he chooses to plead guilty. He cannot be straightaway sent to prison on the specious plea that having pleaded guilty he must suffer imprisonment in default of payment of fine. Such a course would be clearly vocative of the letter and spirit of sub-section (1) of Section 130 and this is precisely what has happened in the instant case. The Motor Vehicles Act provides its own procedure for enquiring into or trial of the

offence charged. It is well settled that where a power is given to do certain thing in a certain way, the thing must be done in that way or not at all, and that other methods of performance are necessarily forbidden. The respondents were never afforded any opportunity to think over the matter and remit the fine in case they chose to plead guilty and thus earn the benefit of subsection (3). I am fortified in the view I have taken by a recent Bench decision of Allahabad High Court in Rang Bahadur v. State, 1910 Cri. L.J. 246 Said Their Lordships 'As has been observed by the Supreme Court, the provisions regarding serving a summons on the accused appearing in Section 130 of the Act have been enacted in order to confer certain benefits on the accused. So if before the Court could do so, the accused himself appeared before it, the purpose is served and merely because of that it would be wrong to say that the case would be taken out of the purview of Section 130 of the Act. The other benefits enumerated in S. 130 of the Act, in case the accused pleaded guilty, cannot be denied to the accused and the Court has to act in accordance with S. 130 of the Act as if accused had appeared before it on being summoned in accordance with S. 130 of the Act.'

(11) It has now to be seen whether the cases on hand fall within the purview of S, 130 (1) or not. The offence of driving without a license falls under item No. 1 Part B of the Fifth Schedule. So, it is clearly covered by S. 130(2), Similarly the offence of driving a transport vehicle in contravention of S. 42 of the Act is listed at Seriall No. 14 in Part B of the Fifth Schedule. The said offence is punishable u/s 123 of the Act. No. doubt, u/s 42(1) only the owner and nobody else such as driver or conductor is forbidden to use or permit the use of a vehicle, save and except in accordance with the conditions of the permit but the language of S. 123(1) is much wider than that of S. 42(1) and on a plain reading of these two Sections there can be no shadow of doubt that whereas S. 42 is designed to punish the owner of the transport vehicle, S. 123 is designed to punish the driver or any other person who uses the vehicle in contravention of the conditions of the permit in a public place. As said by Bhandari, J. (as His Lordship then was) in Teja Singh v. The State, , it would be a quibble to say that a motor driver who contravenes the conditions of a permit does not contravene the provisions of S. 42 (1). This legal proposition was put beyond any pale of controversy by the Supreme Court in State of U.P v. Hansraj, : 1959 CriLJ248 . Said the Supreme Court : '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. The prohibition, thereforee, is not merely against the use by the owner but against the use contrary to the conditions of the permit of the vehicle itself. It is for this reason that the legislature used the word 'whoever' and did not limit the punishment set out in S. 123 to the owner himself. What is made punishable is the driving of the motor vehicle by anyone contrary to the provisions of S. 42(1). That is to say, the motor vehicle cannot be driven by anyone contrary to the conditions of the permit relating to that vehicle.'

(12) Thus, the offence of overloading a transport vehicle in violation of the conditions of permit is punishable u/s 123 of the Act and being covered by Part B of Schedule V the accused would be entitled to the benefit of the procedure laid down in Section 130.

(13) As for the offence of not producing the certificate of registration which constitutes infraction of S. 86(3) of the Act, suffice it to say that it does not fall within the mischief of the proviso to S. 130(1) and as such being an offence under the Act it would also fall within the ambit of S. 130(1). Thus, it was obligatory on the court to comply with the procedure prescribed therein in respect of this offence too.

(14) Before concluding I may also refer to the observation of the learned Additional S.J. : 'The imprisonment of three days provided in default of payment of fine does not seem to be permitted by Section 112. The wrongful restraint, arrest and detention till appellant arranged for fine was, thereforee, throughly illegal. 2 . I am constrained to say that the learned Addl S.J. hazarded to make these unwarranted observations without caring to look into the substantive provisions of law on the subject. S. 67 of the Indian Penal Code . specifically deals with the question of imprisonment for non- payment of fine when the offence is punishable with the fine only. It provides that : 'If the offence be punishable with fine only, the imprisonment which the court imposes in default of payment of the fine shall be simple and term for which the court directs the offender to be imprisoned in default of payment of

fine shall not exceed the..' (scale mentioned therein).

(15) Hence, the Magistrate was perfectly within his jurisdiction in imposing the sentence of imprisonment in default of payment of fine, but as observed earlier, the whole trial was vitiated by non-compliance with the mandatory provisions of S. 130 of the Act which manifestly resulted in miscarriage of justice inasmuch as the respondents were not only deprived of the opportunity to think over the matter and then to plead guilty to the charge or not but also to remit the fine later in the event of their pleading guilty to the charge. Moreover, the way the learned Special M.M. rushed through the trial had the effect of depriving the accused of their right to know exactly what the accusation against them was and to consult and be defended by a lawyer of their choice, which is a constitutional right conferred on an accused facing a criminal trial.

(16) To sum up, thereforee the impugned order in all the three cases calls for no interference although for reasons other than those given by the Additional S.J. I must further say that Addl. S J. out-stepped the limits of judicial restraint and propriety in making disparaging remarks against the functioning of the Special M.M. ;'s a whole. The mere fact that the Special M.M. who dealt with instant cases, failed to comply with the relevant provisions of law could not justify an inference that the whole body of Special M.M. who were appointed in accordance with provisions of the Cr Pc would be inept or inefficient. With these observatsans, 1 dismiss all the four revision petitions.

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