

State Vs. R.P. Sharma

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Court : Delhi

Decided On : Dec-10-1996

Reported in : 1997CriLJ1256; 65(1997)DLT64; 1997RLR50

Judge : Arun Kumar and; K.S. Gupta, JJ.

Acts : [Motor Vehicles Act, 1988](#) - Sections 190; Central Motor Vehicles Rules, 1989 - Rule 115

Appeal No. : Criminal Appeal No. 42 of 1996

Appellant : State

Respondent : R.P. Sharma

Advocate for Pet/Ap. : A. Ahlawat and; S.K. Prathi, Advs

Judgement :

Arun Kumar, J.

(1) This appeal is directed against the judgment dated 5/12/1995 passed by the learned Metropolitan Magistrate, Delhi acquitting the respondent for offence under section 190(2) of the [Motor Vehicles Act, 1988](#). Briefly the facts are that the respondent had been summoned under section 2:) Criminal Procedure Code . on me allegation that on 21/07/1995 at about 9.55 A.M. he was folia driving vehicle No. DL-2CD 2892at the Raja Garden Chowk, New Delhi The vehicle driven by

there spondent was found emitting excessive smoke density in violation of Rule 115 of the Central Motor Vehicles Rules, 1989 (hereinafter referred to as the Cmv Rules). The respondent pleaded not guilty and claimed trial. On checking for pollution the vehicle driven by the accused was found to be emitting smoke density of Carbon Monoxide 5.7 per cent which is far in excess to the standard prescribed in sub-rule (2) of Rule 115 according to which it should not exceed 3 per cent by volume.

(2) On facts there is no dispute in this case because in his statement under section 313 Criminal Procedure Code . the accused admitted that he was driving the Maruti Van No. DL-2CD 2892 and population of the same was checked and was found as per the meter to be 5.7 per cent smoke density. The learned Metropolitan Magistrate acquitted the accused purely on the basis of a construction of Rules 115 and 116 of the Cmv Rules. The learned counsel for the appellant has challenged the interpretation placed by the learned Metropolitan Magistrate on the said Rules and the reasoning contained in the impugned judgment. Since a pure question of law regarding interpretation of the said Rules is involved it will be appropriate to reproduce the relevant portions of the Rules:

115. Emission of smoke, vapour, etc. from motor vehicles:-(1) Every motor vehicle other than motor cycles of engine capacity not exceeding 70 cc, manufactured prior to the first day of March 1900, shall be maintained in such condition and shall be so driven so as to comply with the standards prescribed in these rules;(2) On and from the date of commencement this subrule, every motor vehicle shall comply with the Following standards:-(a) Idling, Co (Carbon Monoxide) emission limit for all four-wheeled petrol-driven vehicles shall not exceed 3 per cent by volume;(b) Idling Co emission limit for all two and three-wheeled petrol-driven vehicles shall not exceed 4.5 per cent by volume;(c) Smoke density for all diesel-driven vehicles x x x.(3) x x x(4) x x x(5) x x x(6) x x x(7) After the expiry of a period of one year from the day on which the motor vehicle was first registered, every such vehicle shall carry a valid 'Pollution Under Control' certificate issued by an agency authorised for this purpose by the State Government. The validity of the certificate shall be for six months or any lesser period as may be specified by the State Government from time to time and the certificate shall

always be carried in the vehicle and produced on demand by the officers referred to in sub-rule

(1) of Rule 116.(8) The certificate issued under sub-rule

(7) shall, while it remains effective be valid throughout India. Rule

116. Test of smoke emission level and Carbon Monoxide level for vehicles :- (1) Notwithstanding anything contained in sub-rule (7) of Rule 115 any officer, not below the rank of Sub Inspector of Police or the Inspector of Motor Vehicles who has reason to believe that a motor vehicle is not complying with the provisions of sub-rule

(2) or sub-rule

(7) of Rule 115, may in writing direct the driver or any person in charge of the vehicle to submit the vehicle for conducting the test to measure the standards of emission at any one of the authorised testing stations, and produce the certificate to an authority at the address mentioned in the written direction within seven days from the date of conducting the check. (2) The driver or any person in-charge of the vehicle shall upon such direction by the officer referred to in sub-rule

(1) submit the vehicle for testing for compliance of the provisions of sub-rule

(2) of Rule 115, at any authorised testing stations. (3) The measurement of compliance of the provisions of sub-rule

(2) of Rule 115 shall be done with a meter of the type approved by any agency referred to in Rule 126 of the principal rules or by the National Environmental Engineering Research Institute, Nagpur-440001; Provided that such a testing agency shall follow ISO or ECE standards and procedures for approval of measuring meters. (4) If the result of the tests indicate that the motor vehicle complies with the provisions of sub-rule (2) of Rule 115, the driver or any person in charge of the vehicle shall produce the certificate to the authority specified in sub-rule

(1) within the stipulated time limit.(5) If the test results indicate that the motor vehicle does not comply with the provisions of the sub-rule

(2) of Rule 115, the driver or any person in-charge of the vehicle shall rectify the defects so as to comply with the provisions of the sub-rule (2) of Rule 115 within a period of seven days and submit the vehicle to any authorised testing station for re-check and produce the certificate so obtained from the authorised testing station to the authority referred to in sub-rule (1).(6) If the certificate referred to in sub-rule

(1) is not produced within the, stipulated period of seven days or if the vehicle fails to comply with the provisions of sub-rule

(2) of Rule 115 within a period of seven days, the owner of the vehicle shall be liable for the penalty prescribed under sub-section(2) of section 190 of the Act.(7) If the driver or any person in charge of the vehicle referred to in sub-rule

(1) does not produce the said certificate within the said period of seven days, such vehicle shall be deemed to have contravened the provisions of the sub-rule

(2) of Rule 115 and the checking officer shall report the matter to the registering authority.(8) The registering authority shall on receipt of the report refer to in sub-rule

(7) for reasons to be recorded in writing, suspend the certificate of registration of the vehicle until such time the certificate is produced before the registering authority to the effect that the vehicle complies with the provisions of sub-rule

(2) of Rule 115.(9) On such suspension of the certificate of registration of the vehicle, any permit granted in respect of the vehicle under Chapter V or under Chapter VI of the Motor Vehicles Act, 1988 shall be deemed to have been suspended until a fresh 'Pollution under control' certificate is obtained.

(3) The learned Metropolitan Magistrate posed the following questions for consideration in the case 'the only question which is required to be answered by this Court is whether Inspectors of State Transport Authority are empowered to

challan the driver of the vehicles, which are found emitting smoke density without following the procedure laid down under rule 116 of the CMV Rules. The Question was answered holding that the Inspectors of the State Authority cannot challan the motorists for violation of the provisions of sub-rule (2) of sub-rule (7) of Rule 115 without following the procedure laid down under Rule 116. On the basis of the opening words of Rule 116, i.e., 'Notwithstanding anything contained in sub-rule (7) of Rule 115 any officer. . . .who has reason to believe that a motor vehicle is not complying with the provisions of sub-rule (2) of sub-rule (7) of Rule 115 may in writing direct. . . . it was held that Rule 116 has an overriding effect and in every case where Rule 115 is to be invoked the inspectors must first follow the procedure proscribed under Rule 116. The learned judge further concluded that from a bare reading of Rule 116 it becomes clear that Inspectors of motor vehicles have no power to circumvent the procedure laid down under Rule 116. They cannot challan anybody directly under Rule 115 read with section 190 Motor Vehicles Act without following the procedure laid down in Rule 116. The learned Metropolitan Magistrate was conscious of the consequences of his decision because he observed in the impugned judgment that till Rule 116 is in force, it will not be possible to control pollution effectively and, therefore, he recommended that Rule 116 should be abolished.

(4) We have carefully considered the impugned judgment and the reason contained therein for holding that none can be challenged under Rule 115 without following the procedure prescribed under Rule 116 of the Cmv Rules. We are unable to subscribe to the view taken by the learned Metropolitan Magistrate regarding the said Rules. In our opinion Rules 115 and 116 are independent of each other and for booking somebody under Rule 115 it is not mandatory to follow the procedure prescribed under Rule 116. Sub-rule (2) of Rule 115 prescribes the smoke emission standards for the various types of vehicles which use the roads while sub-rule (7) makes it compulsory for every vehicle to carry a valid 'Pollution under control' certificate issued by an agency authorised for this purpose by the State Government. Thus any vehicle which violates the smoke emission standards prescribed under sub-rule (2) commits an offence and attracts the provisions of section 190(2) of the Motor Vehicles Act. Similarly a vehicle which is required to carry a 'Pollution under control' certificate as per sub-rule (7), must carry such a

certificate at all times and such certificate should be produced on demand by the concerned officer. Not carrying a certificate by itself is an offence for which one can be booked and punished under section 190(2) of the M.V. Act. Nothing else is relevant or required. These are strict liability offences and have to be strictly enforced. Section 190(2) also needs to be reproduced at this stage to have a complete picture.

'190. Using vehicle in unsafe condition: (1) x x x x x x x x (2) Any person who drives or causes or allows to be driven, in any public place a motor vehicle, which violates the standards prescribed in relation to road safety, control of noise and air pollution, shall be punishable for the first offence with a fine of one thousand rupees and for any second or subsequent offence with a fine of two thousand rupees.'

(5) Violation of sub-rule (2) or sub-rule (7) of Rule 115 is covered within the meaning of 'standards prescribed in relation to road safety, control of noise and air pollution', it is for purposes of controlling air pollution that the motorists are required under sub-rule (7) of Rule 115 to carry a certificate regarding 'Pollution under control'. Similarly it is for controlling air pollution that standards have been prescribed in sub-rule: (2) of Rule 115 regarding permissible levels of smoke emission.

(6) The learned Metropolitan Magistrate has misconstrued the words 'Notwithstanding anything contained in sub-rule (7) of Rule 115' occurring in sub-rule (1) of Rule 116. This only means that independently of the provisions of sub-rule (7) of Rule 115, the specified officers of the transport authority may follow the procedure prescribed in Rule 116. This does not mean that following the procedure prescribed in Rule 116 is a must in every case and without following the same, a person cannot be booked under sub-rule (2) or sub-rule (7) of Rule 115. Sub-rule (2) and sub-rule (7) lay down statutory requirements which are independently punishable in the event of violation. They hold the field on their own force. They are not dependent on Rule 116. Rule 116 which was introduced in the year 1993 seeks to create additional safe-guards in the area of air pollution by vehicular traffic and it in no way waters down the vigour of Rule 115. The framers

of Rule 116 must be taken to be fully conscious of the ever-increasing menace of smoke pollution on roads and in order to check the same and in order to provide further safe-guards in this behalf they introduced Rule 116 on the Statute book. The intention could in no way be said to waters down Rule 115. The impugned judgment is thus clearly based on a misreading of Rule 116. To further illustrate this we may note that even if a person has a certificate regarding 'Pollution under control' as per subrule (7) of Rule 115, he may be subjected to the procedure prescribed in Rule 116. Similarly the procedure under Rule 116 can still be followed where a vehicle owner does not possess 'Pollution under control' certificate as required by sub-rule (7) of Rule 115. Thus either way, i.e. whether one complies with sub-rule (7) or one does not comply with sub-rule (7) of Rule 115, the procedure under Rule 116 can still be followed. The two Rules in our view are independent of each other and do not derive their strength from each other. Just as non-possession of 'Pollution under control' certificate may attract penalty under section 190(2) of the MV. Act, non-observation of standard of smoke emission prescribed in sub-rule (2) will attract penalty under section 190(2) of the Act.

(7) Unfortunately the provision of section 213 of the Motor Vehicles Act, 1988 escaped the notice of the trial court while deciding the case. Before us also the said provision was not brought to our notice. We feel that section 213 has an important bearing on the controversy before us. The said section deals with the appointment of Motor Vehicle Officers by the State Government. Under sub-section (3) of section 213, the State Government is authorised to make rules to regulate the discharge by officers of the Motor Vehicles Department of their functions, the duties to be performed by them, the powers (including the powers exercisable by police officers under this Act) to be exercised by them and the conditions governing the exercise of such powers. Sub-section (5) confers certain powers on such officers in addition to the powers, conferred on them by the Motor Vehicles Department under sub-section (3). The relevant among them are :-

(A) make such examination and inquiry as he thinks fit in order to ascertain whether the provisions of this Act and the rules made there under are being observed. (b) with such assistance, if any, as he thinks fit, enter, inspect and search any premises which is in the occupation of a person who, he has reason to

believe, has committed an offence under this Act or in which a motor vehicle in respect of which such offence has been committed is kept.'

(8) Under the proviso to the said section, such officer is authorised to examine any person and require the production of any register or ether document maintained in pursuance of this Act, and take on the spot or otherwise statements of any person which he may consider necessary for carrying out the purpose of this Act. Further, the officers are authorised to launch prosecutions in respect of any offence under the Act and take a bond for ensuring the attendance of the offenders before any court.

(9) The examination and inquiry referred to in clause (a) of subsection (5) will naturally be taken to include examination of the person as well as property vehicle. Thus, the above provision of the Act confers ample powers on the officers of the Motor Vehicles Department to check or examine the vehicles which may be suspected by the officers to be not complying with the provisions of the Act or the Rules. This would mean that de hors Rule 116, the officers of the Motor Vehicles Department are empowered to ensure compliance of Rule 115 particularly sub-rules (2) and (7), which are under consideration in this appeal. Interestingly, as already noted, Rule 116 was brought on the Statute book in March 1993. Prior to this Rule being brought into force, prosecutions under Rule 115 must have been going on on violation of Rule 115, because Rule 115 has been in force since much prior to Rule 116. It cannot be said that by bringing into force Rule 116, the legislature has watered down what was already in existence in the shape of Rule 115. The object in bringing Rule 116 into force was to tackle the problem of air pollution through motor vehicles more vigorously, in our view, section 213 of the Act leaves no scope for the view contained in the impugned judgment of the trial court.

(10) The result is that this appeal is allowed. The impugned judgment dated 5/12/1995 passed by the learned Metropolitan Magistrate, Delhi is set aside. The proceedings in relation to the challan against the respondent will continue before the concerned Metropolitan Magistrate from the stage at which they were before the impugned judgment. Parties to appear before the concerned Metropolitan

Magistrate on 9/01/1997.

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