

State Vs. P.M. Varkey

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Court : Kerala

Decided On : Oct-24-1950

Reported in : 1951CriLJ1075

Judge : Kunhi Raman, C.J. and; Subramania Iyer, J.

Appellant : State

Respondent : P.M. Varkey

Judgement :

1. This appeal is brought on behalf of the State from the order of acquittal made by the Stationary First Class Mag. of Moovattupuzha in C. C. No. 714 of 1124 on the file of his Ct. The complainant was P.C. 355 N. Chellappan Pillai attached to the Moovattupuzha Police Station. The accused P. M. Varkey was driving a Motor lorry loaded with tiles. The charge against him was that he had committed an offence under Section 107 read with Section 83 (1)(a), Travancore Motor Vehicles Act, I (1) of 1117. The trial Ct. acquitted the accused under Section 242 (1), Travancore Cr. P.C. On behalf of the State it is contended by the learned Public Prosecutor that the Ct. below erred in acquitting the accused in view of the provisions of Section 63(1)(a), Travancore Motor Vehicles Act, I [1] of 1117.

2. To appreciate the contentions urged on behalf of the State & of the accused it is necessary to set forth briefly the facts of the case which are as follows : At about 2.20 P. M. on 6-7-1124 the accused was driving a motor lorry bearing index No.

MSTR 6173 through the Main Central Road in Moovattupuzha. P. C 355 attached to the Moovattupuzha Police station was at that time standing before the Motor checking station at Moovattupuzha. His complaint is that he signalled to the accused to stop the vehicle by lifting up his arm & that the latter failed to obey that order.

3. At the trial, the accused pleaded not guilty to the charge. The trial Ct. relied upon the provisions of Rule 283 of the Rules made under the Travancore Motor Vehicles Act, 1117 according to which the driver of a 'goods vehicle cannot be called upon to stop by a police constable. It is only a police officer not below the rank of a Head constable that can stop & inspect the goods in the vehicle. Because the complainant whose signal to stop was not obeyed by the accused was below the rank of a Head constable, the lower Ct. held that no offence was committed by the accused.

4. There is no doubt that this view of the case is not correct, The charge against the accused was not for failing to stop the vehicle to enable the complainant to inspect the goods in the vehicle. As already stated, the charge was under Section 83 (1)(a) of the Travancore Motor Vehicles Act.1/1117. According to that section

The driver of a motor vehicle shall cause the vehicle to stop & remain stationary so long as may reasonably be necessary (a) when required to do so by any police officer in uniform....

According to Section 107 of the same Act-

Whoever contravenes any provision of this Act or of any rule made thereunder shall, if no other penalty is provided for the offence, be punishable with fine which may extend to twenty rupees....

The case put forward by the learned Public Prosecutor is that these were the provisions of law mentioned in the charge & in view of the evidence of the complainant which was to the effect that when he lifted up his hand & signalled to - the accused to stop the vehicle, the latter did not obey that direction, the accused has clearly committed an offence under Section 83 (1)(a), Travancore Motor

Vehicles Act. There was no defence evidence called on behalf of the accused at the trial.

5. Prima facie the contention of the learned Public Prosecutor on the error of law committed by the trial Ct. in relying upon the wrong section for determining whether the accused has committed the offence with which he was charged is entitled to consideration. But the question is whether the accused had committed an offence even under Section 83 (1)(a). The fact that the complainant is a police officer within the meaning of that section is not disputed. But one of the essential conditions prescribed by Clause (a) is that the police officer concerned must be in uniform. The reason for this provision is obvious. It is to enable the drivers of motor vehicles to know that the person signalling is a person who is empowered to stop the vehicle on a public road. We have gone through the complaint filed by P.C. 355 Chellappan Pillai & we have also perused the evidence given by him at the trial. In neither of these documents is there any reference made to the fact that the complainant was in uniform at the time he signalled to the accused to stop the vehicle, The offence consists of disobeying a direction to stop the vehicle given by a police officer in uniform. So to bring the guilt home to the accused, it must be proved that the police officer in question was in uniform. There is no such proof in the present case. Therefore, we consider that the finding of the Mag. that the accused is not guilty is correct though not for the reasons given in the judgment of the Ct. below.

6. In the view that we take of the nature of the case it is not necessary to refer to the interesting arguments addressed on behalf of the accused by his learned Counsel Mr. Paikadai which are based upon a construction of the Motor Vehicles Act & the rules framed thereunder, on the basis of the maximum expressio unius est exclusio alterius (the express mention of one thing implies the exclusion of another) discussed in Broom's Legal Maxima, Edn. 10 p. 443.

7. This appeal is therefore dismissed.