

**State Vs. A. Aboobacker and anr.**

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**SooperKanoon Citation :** [sooperkanoon.com/725198](http://sooperkanoon.com/725198)

**Court :** Kerala

**Decided On :** Jan-12-1973

**Reported in :** 1974CriLJ218

**Judge :** K. Bhaskaran, J.

**Appellant :** State

**Respondent :** A. Aboobacker and anr.

**Judgement :**

ORDER

**K. Bhaskaran, J.**

1. This reference is by the learned Sessions Judge Palghat. In S. T. Case No. 248 of 1971 the 1st accused was acquitted and the 2nd accused convicted and sentenced to a fine of Rs. 50/- in default of which to suffer simple imprisonment for 7 days for an offence under Sections 42 and 129-A read with Section 112 of the Motor Vehicles Act by the First Class Magistrate of Mannarghat. The case against the accused was that the lorry KLR 3944 of which the 1st accused was the owner was driven by the 2nd accused carrying 23 passengers. The offence, according to the prosecution, is that the vehicle was used in violation of the conditions of the permit. The trial Court having found that it was not proved that the 1st accused was the owner of the vehicle, acquitted him but convicted the 2nd accused having been satisfied that he had actually driven the vehicle carrying passengers. In

revision, the correctness of this order was challenged before the learned Sessions Judge who, agreeing with the revision petitioner, found that, the conviction and sentence cannot be sustained.

2. There is no case here that the 2nd accused is the owner of the vehicle. If that be so, I wonder how the 2nd accused could be convicted for an offence under Section 42 of the Motor Vehicles Act. Section 42 reads as follows:

No owner of a transport vehicle shall use or permit the use of the vehicle in any public place, whether or not such vehicle is actually carrying any passenger or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or the Commission authorising the use of the vehicle in that place in the manner in which the vehicle is being used:. ... ..  
...

Section 42 in terms can be applied only to cases where the violation of the condition of the permit, is or could be attributed to the owner of the transport vehicle.

3. I am therefore of the opinion that the learned First Class Magistrate has acted illegally in convicting the 2nd accused for an offence under Section 42 of the Motor Vehicles Act when the admitted fact is that he was not the owner of the vehicle. There is clear distinction between the terms 'owner and 'driver'.

4. I, therefore, accept the reference, set aside the order of conviction and sentence passed by the learned First Class Magistrate and acquit the 2nd accused. The fine, if paid, may be refunded to him.