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Court : Rajasthan

Decided On : Aug-19-1964

Reported in : AIR1965Raj21; 1965CriLJ217

Judge : L.N. Chhangani, J.

Acts : [Motor Vehicles Act, 1939](#) - Sections 42, 53, 94, 112, 123, 125 and 130

Appeal No. : Criminal Revn. No. 260 of 1963

Appellant : Bagh Singh

Respondent : State of Rajasthan

Advocate for Def. : S.R. Singhi, Adv.

Advocate for Pet/Ap. : Umrao Chand, Adv.

Disposition : Petition accepted

Judgement :

ORDER

L.N. Chhangani, J.

1. The petitioner Bagh Singh was convicted by the Sub-Divisional Magistrate, Jalore, for different offences under the Motor Vehicles Act) (which shall ereinafter be referred to as the Act) as detailed below:

1. For an offence under section 123 read with section 42 of the Act for driving Truck No. RJQ 2989 without permit

Fine of Rs. 500/-and in default simple imprisonment for 20 days.

2. For offence under section 125 read with S. 94 of the Act for running truck No. 2989 without getting the truck insured.

Fine of Rs. 500/-and in default simple imprisonment for 20 days.

3. For an offence under S. 53 read with S. 112 of. the Act for driving tha truck without a licence.

Fine of Rs. 50/-and in default simple imprisonment for 10 days.

It appears that the trial Magistrate adopted the summons procedure and on the appearance of the accused stated particulars of the offences of which he was charged, and asked the accused to show cause why he should not be convicted. In his examination in this connection the accused-petitioner gave the following answers in respect of the offences of which he was accused.

2. As regards the offence under Section 123 read with Section 42 of the Act the accused admitted that he had no road permit with him and that he committed a mistake. With regards to the offence under Section 94 read with Section 125 of the Act, he pleaded that the truck was insured and he produced a cover-note which was effective for a period of one month from 23-10-1962 to 22-11-1962. As regards the third offence, the accused admitted that he had no driving licence with him.

3. The Magistrate after recording the answers of the accused apparently treated the answers of the accused as admissions of guilt and did not choose to record the prosecution evidence. He, however, enquired from the accused whether he would like to produce his defence, but the accused declined to lead any defence evidence. Eventually the Magistrate recorded the convictions of the petitioner in respect of all the offences.

4. On an appeal by the petitioner, the Sessions Judge maintained the convictions and sentences under Section 123 read with Section 42 and Section 53 read with Section 112 of the Act. In respect of offence under Section 125 read with Section 94 of the Act while maintaining the conviction, he reduced the sentence to Rs. 100/- and in default, simple imprisonment for 10 days. The petitioner filed the present revision challenging his convictions and sentences.

5. The learned counsel for the petitioner in the first instance contended that the petitioner should have been tried in accordance with the procedure prescribed by Section 130 of the Act. He, however, did not go to the extent of submitting that the convictions of the accused should be vitiated on account of the disregard of the procedure prescribed in Section 130 of the Act. He, only, pleaded that keeping in view the spirit of Section 130 of the Act, he should not have been awarded sentences of fines exceeding Rs. 25/- in respect of each of the offences.

6. After hearing the counsel for the petitioner and Mr. Singhi for the State, I find there is a considerable force in the contention advanced on behalf of the petitioner.

7. At the outset, it will be convenient to reproduce Section 130 of the Act:

'(i) A Court taking cognizance of an offence under this Act shall, unless the offence is an offence , specified in Part A of the Fifth Schedule, state upon the summons to be served on the accused persons 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 (i) 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 on the licence.

(3) Where an accused person pleads guilty and remits the sum 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.'

It may be mentioned here that initially the legislature has used the word 'may' in Section 130, Subsection (i). By section 96 of the Motor Vehicle Amendment Act No. 100 of 1956, the word 'shall' was substituted for the 'word 'may'. It may be pointed out at this stage that prosecutions under the Act may sometimes be technical prosecutions and the legislature thought it proper to provide a summary procedure for such technical prosecutions. Initially the legislature gave discretion, to the Courts to adopt the procedure under Section 130 of the Act or to adopt the regular procedure, but the amendment has taken away the discretion from the Courts and it is necessary for the Courts to adopt the procedure under Section 130 of the Act for all offences under the Motor Vehicles Act except those which have been enumerated in Part A of the Fifth Schedule. It is not disputed that the offences of which the petitioner has been convicted do not fall within Part A of the Fifth Schedule and consequently the accused petitioner was entitled to the procedure adopted under Section 130 of the Act. The benefits made available to the accused in this section are two fold:

1. He need not appear personally and may appear by a counsel.
2. It is open to the accused to plead guilty to the charge by a registered letter, by a date to be specified by a Magistrate and to remit to Court a sum not exceeding Rs. 25/-.

These are certainly important benefits available to the accused and the Courts cannot deprive them of these benefits by disregarding the procedure 'under Section 130 of the Act- A question may arise in this connection whether a trial held in disregard of this procedure should stand vitiated or not but in view of the clear admission by the learned counsel for the petitioner that he does not propose to challenge the validity of the trial and that he pleads guilty to all the charges, I do not propose to go into this question.

8. The controversy which calls for determination at this stage is whether the accused petitioner can claim the privileges in the matter of sentences, made available under Section 130 of the Act. There can be no manner of doubt that had the Magistrate adopted the procedure prescribed by Section 130, the accused could have pleaded guilty to the charges by a registered letter and remitted fines not exceeding Rs. 25/- in respect of each of the offences. It may also be conceded that if an accused person on receiving summons in accordance with Section 130 of the Act does not plead guilty by a prescribed date he cannot claim the benefit in the matter of sentence under Section 130 of the Act. As the Magistrate did not adopt the procedure under Section 130 and did not issue summons in accordance with that section, the accused petitioner could not exercise the option available to him by pleading guilty and remitting the sentences of fines.

It may be significantly pointed out that on the commencement of the trial the accused admitted the allegations in respect of offences Nos. 1 and 3 but denied the allegation with regard to offence No. 2. Even with regard to offence No. 2, he did not join a serious controversy and eventually the learned counsel for the petitioner admitted the guilt on behalf of the accused. This tends to show that had the accused received summons as required by Section 130, he would have very likely availed of the option of pleading guilty and remitting the fines. Simply because the Magistrate did not follow the procedure prescribed by Section 130, it will be hardly fair and reasonable to deprive the petitioner of the benefits which are available to him under Section 130 of the Act. Bearing in mind the principle of Section 130 and the spirit behind it. I am inclined to hold that the accused petitioner cannot be awarded sentence of fine exceeding Rs. 25/- in respect of each of the offences.

9. The revision petition is accepted and the convictions of the petitioner are maintained. The sentences are, however, reduced to Rs. 25/- in respect of each of the offences. The petitioner will be entitled to refund of any excess amount, if paid by him.