

**Ram Singh Vs. State**

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**Court :** Rajasthan

**Decided On :** Nov-01-1968

**Reported in :** AIR1969Raj227; 1969CriLJ1009; 1968()WLN95

**Judge :** L.S. Mehta, J.

**Acts :** [Motor Vehicles Act, 1939](#) - Sections 42, 123, 130 and 130(1)

**Appeal No. :** Criminal Ref. No. 38 of 1968

**Appellant :** Ram Singh

**Respondent :** State

**Judgement :**

ORDER

**L.S. Mehta, J.**

1. Sub-Divisional Magistrate, Merta, by his judgment dated 9-12-1965 convicted the accused Ram Singh for an offence under Section 123 read with Section 42, [Motor Vehicles Act, 1939](#) and sentenced him to pay a fine of Rs. 500, and also ordered issue of process against the accused Ramavtar Gupta.

2. The prosecution story, in brief, is that driver Ram Singh contravened the provisions of Section 42/123. [Motor Vehicles Act, 1939](#) by plying truck No. R. J. A. 1128 of Jaipur region in Jodhpur region, in contravention of the terms of the

permit. Ramavtar Gupta, is the owner of the said truck. On a plea of guilty, Ram Singh was convicted and sentenced, as aforesaid. The owner of the truck, Ramavtar Gupta, was ordered to be summoned by the Sub-Divisional Magistrate, to face trial. Against that order a revision-application was filed in the court of learned Sessions Judge, Merta.

The said Judge, while relying upon an authority of this Court, reported in Bagh Singh v. State of Rajasthan, AIR 1965 Raj 21 has observed that the provisions of Section 130. [Motor Vehicles Act, 1939](#) are mandatory and that a court, taking cognizance of an offence, unless the offence is one specified in Part A of the V Schedule, must and should have stated on the summons to be served upon the accused person that he may appear by pleader and not in person or that he may by a specific date prior to the hearing of the charge plead guilty to the charge by registered letter and remit to the court such amount not exceeding Rs. 25, as the court may specify.

According to learned Sessions Judge that being the settled law, the order issuing process otherwise than in the manner laid down in Section 130 of the Motor Vehicles Act, should be quashed, and that the Sub-Divisional Magistrate, Merta, should be directed to comply with the mandatory provisions of the above law. Learned Sessions Judge has further observed that conviction of Ram Singh should also be held illegal on account of non-compliance with the mandatory provisions of Section 130(1)(b), [Motor Vehicles Act, 1939](#).

3. It is true that my learned brother Chhangani J. has pointed out in AIR 1965 Rai 21 (supra) that if a Magistrate does not adopt the procedure prescribed under Section 130 of the [Motor Vehicles Act, 1939](#), it would not be fair and reasonable to deprive the accused of the benefits available to him. Learned Judge further observed that bearing in mind the provisions of Section 130 and the spirit behind it, the accused could not be awarded sentence of fine exceeding Rs. 25, in respect of each of the offences. Learned Judge also laid down that benefits available to the accused are two-fold: (1) he need not appear personally and (2) it is open to him to plead guilty to the charge through registered letter by specified date and to remit to the court a sum not exceeding Rs. 25. The court cannot deprive the

accused of these benefits by disregarding the procedure under Section 130, [Motor Vehicles Act, 1939](#). But there is also a decision of the Supreme Court on the point in issue.

In *Puran Singh v. State of Madhya Pradesh*, AIR 1965 SC 1583 while over-ruling *State v. Mangal Singh*, 1962 (1) Cri LJ 684 (All), and *State of Assam v. Suleman Khan*, 1961 (2) Cri LJ 869 (Assam), the Supreme Court has held that the Magistrate is not obliged in complaint for offences not specified in Part A of the Fifth Schedule to make an endorsement in process in terms of Section 130(1)(b), [Motor Vehicles Act, 1939](#). He has the option to issue a summons with an endorsement in terms of Sub-section (1) (a) or of Sub-section (1) (b) and only if a summons is issued with the endorsement specified by Sub-section (1)(b), it is open to the accused to avail himself of the option to plead guilty and to claim the privilege mentioned in Sub-section (3).

Their Lordships have further made it clear that where in a complaint for an offence, which is not covered by any offence specified in Part A of the Fifth Schedule, the Magistrate issues process against the person complained of but does not make any endorsement thereon in terms of Section 130(1)(b), the summons cannot be said to be illegal.

4. Section 130 of the Act was enacted with a view to protect from harassment a person guilty of minor infraction of the Motor Vehicles Act or the rules framed thereunder by dispensing with his presence before a Magistrate and in proper cases giving him an option to plead guilty to the charge and to remit the amount which can in no case exceed Rs. 25. But that does not mean that in serious cases also punishment cannot transgress that limit. In that event, non-compliance with Section 130(1)(b) will not be material. There is nothing in Sub-section (1) of Section 130 which may indicate that the Magistrate must endorse the summons in terms of both clauses (a) and (b) of Sub-section (1) of Section 130.

To hold otherwise, would mean conversion of conjunction 'or' into 'and'. That apart, it will be difficult to hold that even in serious cases the Legislature intended that offenders should be absolved from crime irrespective of its gravity by realising a paltry sum not exceeding Rs. 25. Section 130, on the other hand gives wide

discretion to the Magistrate to make or not to make endorsement on the process in terms of Section 130(1)(b), exercisable at the time of its issue having regard to the scheme of the Act and nature of the offence.

5. That being the settled law, this reference has no force. The reference is accordingly rejected.

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