

Rupchand Fomra and ors.

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Court : Chennai

Decided On : Feb-12-1964

Reported in : AIR1964Mad449; 1964CriLJ437

Judge : Kunhamed Kutti, J.

Acts : [Motor Vehicles Act, 1939](#) - Sections 2(1), 2(19), 2(25), 38(1), 42(1) and 112

Appeal No. : Criminal Revn. Cases Nos. 1660 to 1667 of 1963 and Cri. Revn. Petn. Nos. 1610 to 1617 of 1963

Appellant : Rupchand Fomra and ors.

Advocate for Pet/Ap. : P.V. Subramaniam, Adv.;B. Sriramulu, Adv. for ;Public Prosecutor

Judgement :

ORDER

Kunhamed Kutti, J.

1. All these revision cases are by one or the other member of the Fomora family or firm and substantially relate to the same question. These petitions can, therefore, be disposed of by a common order.

2. The several petitioners purchased motor cars in their individual names and hired them to the Burmah Shell Oil Storage and Distributing Co. for stated periods

stipulating a fixed monthly rent. The cars were to be used in public places; but neither . permits nor fitness certificates had been obtained for any of them. Each of the petitioners was, therefore, charged firstly under ejection 38(1) and secondly Under Section 42(1) both read with Section 112 of the [Motor Vehicles Act, 1939](#).

3. Under Section 33(1), no transport vehicle could be deemed to be validly registered unless it carried a certificate of fitness in form (H) as set forth in the first schedule to the effect that the vehicle complies for the time being with all the requirements of Ch. (v) and the rules made thereunder. Section 42(1) prohibits the owner of a transport vehicle using or permitting the use of such vehicle in any public place 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 that vehicle is being used. Section 112 is the penal section, and imposes on the contraveners of any of the provisions of the Act or rules made under the Act a fine of Rs. 100 for the first offence and Rs. 300 if he is again convicted of an offence under the Act

4. The learned Sixth Presidency Magistrate, Saidapet, who tried all these cases, found each of the petitioners guilty as charged and on conviction, fined each of them with a sum of Rs. 15 under each count, and in default to undergo simple imprisonment for one week. The petitioners have filed these revision cases against the aforesaid conviction and sentence; and the question for consideration is whether, in the circumstances in which the several cars were made over to the Burmah Shell Co, on rent for their use, the vehicles could be deemed to be transport vehicles within the meaning of Section 38(1) and Section 42(1) of the Act.

5. A 'Transport vehicle' as defined in Section 2 Cl. 33 means a public service vehicle or a goods vehicle and 'public service vehicle' as defined in Cl. 25 means, any motor vehicle Used or adapted to be used for the carriage of passengers for hire or reward and includes a motor car, contract carriage and stage carriage.

6. The terms and conditions on which the Burmah Shell Co. had taken over the cars appear from a letter addressed by them to the petitioner in Crl. R. C. 1665 of 1963. They are said to be the same in respect of all other cars. The registration

certificate of the cars according to these conditions should contain an endorsement showing that the vehicle is in the temporary possession of the company. Registration fees, taxes, and insurance premium if paid by the petitioners initially, would be refunded by the company, which would also refund the amounts paid for renewal of such taxes and insurance policy but the same has to be attended to by the petitioners. The petitioners have also to accept liability for all damage to the vehicle, however, sustained and have further to comprehensively insure the vehicles to include paid drivers as well. The vehicle, has thus to be in the possession of the company for the duration of the arrangement and after the expiry of the term, the petitioners have to accept it in its then condition; but the company will pay the petitioners for the use of each vehicle, a sum of Rs. 340 per mensem.

7. The argument of the learned counsel for the petitioners is that regard being had to the terms of the aforesaid agreement, the company has to be deemed to be the owner for the time being, as in effect the petitioners make over the respective vehicles as chattel for the use of the company and that even though, the arrangement is for a remuneration, the petitioners can never be considered to have let the vehicle as a transport vehicle.

8. 'Owner' has been, defined in Cl. 19 of Section 2 of the Act, to mean where the person in possession of a motor vehicle is a minor, the guardian of such minor and in relation to a motor vehicle which is the subject of a hire purchase agreement, the person in possession of the vehicle under that agreement. The argument, therefore, is that while the respective vehicles cannot be said to have been rented out to the Burmah Shell Co. to be used for the carriage of passengers for hire or reward, since the company is in possession of the vehicle during the subsistence of the agreement, company has to be deemed to be the owners of the vehicle for the time being. It is also pointed out that the petitioners do not maintain the driver, pay their salary or meet the cost of petrol or oil; and, indeed, they have no control over the cars after they are made over to the company.

9. P. W. 1, the Distribution Manager of the company has, however, stated that the cars are used as passenger cars by the company's staff such as salesman and

engineer to go about their business though Burmah Shell people alone are entitled to use the vehicle. The dictionary meaning of a 'passenger' is 'traveller in public conveyance by land or water' and 'public' implies people as a whole or pertaining to the whole people. P. W. 1 had apparently used the word 'passenger' in a general sense; but to construe the cars in these cases as transport vehicles, they should be used for the carriage of passengers or in other words, travellers in public without any distinction. The question then is whether the staff of the Burma Shell Co. could be construed as travelling public in this sense. I am unable to accept such an interpretation. Nor, having regard to the definition of 'owner', the emphasis wherein is on possession, am I inclined to agree that the Burnah Shell. Co. cannot be deemed to be the owner when, the, company is in the actual possession and control of the cars, and the petitioners have no control over them during the subsistence of the agreement.

Taking all these circumstances into consideration, it appears to me that the view taken by the learned Presidency Magistrate that the cars in those cases are transport vehicles is not justified and that the prosecutions of the several petitioners for offences Under Sections 38 (1) and' 42 (1) are not sustainable. In this view, all the petitioners are entitled to acquittal.

10. Each of the petitioners is accordingly acquitted. The fine, if recovered, will be refunded to each of them.