

**In Re: S. Mohammad Sheriff and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/774687](http://sooperkanoon.com/774687)

**Court :** Chennai

**Decided On :** Sep-23-1948

**Reported in :** 1949CriLJ876

**Judge :** Subba Rao, J.

**Appellant :** In Re: S. Mohammad Sheriff and ors.

**Judgement :**

ORDER

**Suba Rao, J.**

1. The two accused were convicted by the Second Presidency Magistrate, Madras under 8. 42 (1) read with 8. 123, Motor Vehicles Act, for having used the lorry on 12th November 194S on Perambur Barracks Road in contravention of the conditions of the permit. The accused in Cr. B. C. No. 916 of 1947, Mohamed Sheriff, is the- owner of the lorry and Joseph, the accused in Cr. K. C. No, 916 of 1917, is the driver of the said lorry. The owner was sentenced to pay a fine of Bs. 100, in default to simple imprisonment for one month and the driver to pay a fine of Bs. 25, in default to simple imprisonment for one week.

2. Mohamed Sheriff is the owner of the Roxy Taxi Co., and he owns 12 taxis, and four lorries. M. S. P. No S 5 is one of such lorries. Ex. 0 I waa the permit in regard to the said lorry. Under the permit the owner was authorised to convey vegetables and food-grains only on behalf of the military. It is admitted that on 12th November

1946 the lorry was used for carting red sand. Both the owner and the driver would be liable to be convicted and sentenced under Section 42 read with Section 123, Motor Vehicles Act, unless the third proviso to that section applied, section 42 (1) reads as follows:

No owner of a transport vehicle shall allow the use of the vehicle in any public place, save in accordance with the conditions of a permit granted by a Regional or Provincial Transport Authority authorising the use of the vehicle in that place in the manner in which the vehicle is being used:

The third proviso reads as follows:

Provided further that a Public carrier's permit shall, subject to any conditions that may be specified in the permit, authorise the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him.

Under the section the owner of a vehicle cannot use the vehicle in contravention of the conditions of the permit. But an exception was made in the case of use by the permit-holder for or in connection with the permit holder's trade or business. Mr. Raja gopala chari argued that in this case the lorry was used for taking red sand for the purpose of repairing the road in the accused's factory premises. D. W. 1, manager of the Roxy Taxi Company deposed:

Joseph was driving it. On its return journey, it was tied red sand meant for road repairs in our factory premises. We purchased the red sand from Balu Reddiar of Bed Hills. We were unloading the red sand near factory gate. We did not carry red sand for hire.

There is no cross examination and for the purposes of this case I must accept the evidence that the red sand was taken for the purpose of 'repairing the road in the factory premises of the accused. The question is whether such use can be said to be use in connection with a trade or business carried on by the accused. The words are 'for or in connection with a trade or business carried on by him.' The words 'in connection' must necessarily be wider in scope than the word 'for' and I think the use of the lorry for carrying on trade to repair the road in the factory must

necessarily be for more convenient user of the factory for his business and is therefore a user in connection with the business Carried on by him. The learned Public Prosecutor Argued that assuming that the user was for Cr in connection with a trade Cr business carried on by the accused still the proviso itself cannot apply aa such a user is in contravention of the conditions of the permit. This argument was based upon the wording of the proviso itself. Exhibit C. 1 is the permit given to the accused for running the lorry in question. In Cl 8 under the head 'nature of the goods to be carried,' it is stated 'vegetables and food-grains only on behalf of the-military.' The argument was that as the permit confined the user only to carrying vegetables and food grains only on behalf of the military, user for any other purpose even for his own purpose in connection with trade Cr business offends the proviso. The learned Public Prosecutor argues that as the authorisation in that proviso is subject to the conditions of the permit and as the condition confines it only to the military purpose the owner cannot use the lorry for any other purpose, even in connection with , the trade Cr business. If this argument is accepted the proviso would become nugatory. The object of the proviso is that under that proviso every owner is authorised to use the vehicle for the carriage of goods for Cr in connection with a trade Cr business carried on by him. No doubt it is subject to any conditions that may be prescribed in the permit limiting Cr otherwise qualifying such user. The word used in the proviso is 'shall' and such authorisation is absolute. The words 'subject to any conditions,' therefore, in my view, cannot be so construed as to make that proviso itself nugatory.

3. Apart from that, assuming that in a permit a condition may legally be introduced preventing the permit holder from using the Public carrier even for his own purpose I am not satisfied that under Clause 3 such a condition had been imposed in this case. If such a condition was intended I would have expected such a condition to have been expressly stated in the permit I cannot imply from the mere use of the word 'only' in Clause 8 of the permit that the permit holder is precluded from using it for his own purpose for which he would otherwise be en. titled to use. The word 'only' in Clause 8 in my view means that vegetables and food grains only on behalf of the military can be carried. It only prohibits carrying even on behalf of the military any article other than vegetables and fond-, grains. I therefore hold that

both the accused did not commit an offence under Section 42, Motor Vehicles Act. The convictions are set aside and the criminal revision cases are allowed. The fine may be refunded to the estate.

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