

In Re: Govilan

In Re: Govilan

SooperKanoon Citation : sooperkanoon.com/776015

Court : Chennai

Decided On : Jan-06-1958

Reported in : AIR1958Mad286; 1958CriLJ775; (1958)IMLJ243

Judge : Somasundaram, J.

Appellant : In Re: Govilan

Judgement :

ORDER

Somasundaram, J.

1. This is a reference by the District Magistrate of South Arcot under the following circumstances. The police at Chidambaram filed a charge-sheet against the respondent herein, stating that he has committed an offence under 5 279, IPC read with Section 112 of the Motor Vehicles Act. The allegations are that the accused who was the driver of the lorry MSY. 2590 drove the lorry on 16-3-1957 in a rash and negligent manner so as to cause danger to human life at about 053 hours in the Chidambaram Bhengiri Road near 1 mile and 4 furlongs from Chidambaram and thereby dashed against a double-bullock cart and caused damage to the cart driven by one Nathar, P.W. 1.

It is stated that this act fell under Section 279, IPC and Section 112 of the Motor Vehicles Act. There is no doubt that the police were wrong in adding Section 112 of the Motor Vehicles Act to this Section 279, I. P. O. Section 279, I.P.O., is as

follows:

Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

This is a self-contained section like any other section of the Indian Penal Code, prescribing the extent of punishment. This being independent by itself, there is no meaning in connecting it or reading it with Section 112 of the Motor Vehicles Act. Section 112 of the Motor Vehicles Act, as amended now, is as follows:

Whoever contravenes any provision of this Act or of any rule made thereunder shall, if no other penalty is provided for the offence, be punishable with fine which may extend to one hundred rupees, or, if having been previously convicted of any offence under this Act he is again convicted of an offence under this Act, with fine which may extend to three hundred rupees.

This section would therefore apply only to offences not only under the Motor Vehicles Act, but also for breach of provisions, the punishment for which is not provided for under those provisions. A reading, therefore, of Section 112 of the Motor Vehicles Act and Section 279, I. P. C will clearly show that Section 112 of the Motor Vehicles Act cannot be read with Section 279, IPC However, the police committed this mistake in filing the charge-sheet in the manner stated above, quoting the two sections together.

2. After filing the charge-sheet, the lower Court appears to have acted under 8. 130 (1) of the Motor Vehicles Act. under Section 130 (1) of the Motor Vehicles Act, a court taking cognizance of an offence under this Act may, unless the offence is an offence specified in Part A of the Fifth Schedule, Btate upon the summons to t served on the accused person 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 Rs. 25 as the court may specify. Apparently, the summons has

specified a sum of Rs. 25, and in pursuance of the option in the summons, the accused pleaded guilty, and thereupon was convicted and sentenced to a fine of Rs. 25.

3. Neither the Magistrate nor the police appear to have looked into the sections of the Indian Penal Code or the Motor Vehicles Act, the one before filing the charge-sheet and the other before sending out a summons. It is obvious that Section 130 (1) cannot apply to the facts of this case, as it can apply only in two circumstances: (1) it must be an offence committed under the Motor Vehicles Act; and (2) such offence not mentioned in Part A. This offence, being one under Section 279. IPC, cannot be said to be under the Act, and therefore Section 130 (1) will not apply.

The issue of summons itself was therefore contrary to the provisions of the section and must be held as illegal. The plea of guilty, therefore, following such summons is equally vitiated by this illegality. The whole course of trial being illegal, the conviction of the accused has to be set aside, and it is hereby set aside

4. The next question is whether there should be a re-trial. Undoubtedly, there was damage caused to the cart of P.W. 1 on account of the rash and negligent driving of the lorry by the accused. In view of the notorious tendencies on the part of lorry-drivers to drive in a rash and negligent manner, I should think ' the ends of justice require that the accused must be put on trial again.

I therefore set aside the conviction and sentence, and order a re-trial of the accused for an offence under B. 279, IPC A fresh summons will issue for an offence under Section 279. IPC and there should be no reference in the summons to Section 112 of the Motor Vehicles Act.

5. The reference is accepted.