

In Re: Jambulingam Pillai

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Court : Chennai

Decided On : Aug-31-1942

Reported in : AIR1943Mad61; (1942)2MLJ629

Appellant : In Re: Jambulingam Pillai

Judgement :

ORDER

Horwill, J.

1. The petitioner was convicted by the Stationary Sub-Magistrate of Tirupathur of an offence punishable under Section 78 read with Section 112 of the Motor Vehicles Act and sentenced to pay a fine of Rs. 8. The conviction and sentence were upheld in appeal by the Sub-Divisional Magistrate of Devakottai.

2. The gravamen of the offence with which the petitioner was charged was that he exceeded the speed limit laid down under the Motor Vehicles Act. That speed limit is ordinarily 30 miles an hour under the VIII Schedule; but the Provincial Government or some authority specially authorised can prescribe lower limits for certain areas under Section 71 (2) of the Motor Vehicles Act and the lower speeds are fixed by notification in the Gazette. In order to bring home this offence to the accused the prosecution have to prove two things : (1) that a certain speed has been laid down under the Motor Vehicles Act as the maximum speed that a vehicle should attain, and (2) that the driver in question has exceeded that speed

limit.

3. The proving of the first of these points is, of course, just as important as the proving of the second. The only evidence let in by the prosecution on that point is that of a Traffic Sub-Inspector of Police who says that within the Karaikudi Municipality there are two posts in cement on which are painted the numbers '10' to indicate that the speed should not exceed 10 miles an hour. He had however further to prove that that speed had been fixed by some authority empowered to fix a speed under Section 71 (2) of the Motor Vehicles Act. No attempt was made to prove that. The learned Magistrate thought that the fact that the vehicles were warned by these sign posts not to exceed 10 miles an hour proved that the Municipal Commissioner had fixed that speed and that the Commissioner would not have fixed that speed unless he had had proper authority for doing so. These are very big presumptions to make; and I think that the accused is entitled to say that the prosecution did not prove its case. '

4. The petition is allowed and the conviction and sentence set Aside. The fine, if paid, will be refunded.

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