

In Re: R. Krishnaswami Pillai

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Court : Chennai

Decided On : Nov-06-1924

Reported in : (1925)48MLJ132

Appellant : In Re: R. Krishnaswami Pillai

Judgement :

ORDER

Krishnan, J.

1. In this case the accused has been convicted of having contravened Section 166, Clause 1, of the Local Boards Act, 1920, by having plied his motor cars without ' obtaining a license from Sattur to Srivilliputhur. The section says: 'No person shall, on any public road in a district, ply any motor vehicle for hire, or use any such vehicle for carrying passengers or goods at separate fares or rates on such road, except on a license obtained from the President of the District Board.' On the evidence it is quite clear that the accused did ply his motor cars in contravention of that section. Schedule VIII prescribes the penalty for plying motor cars for hire on a public road without license, the maximum fine being Rs. 200.

2. It is argued before me for the accused that, though he had no license given to him, as the President of the District Board refused the license when he applied for one, the action of the President should be treated as a nullity as he did not exercise the power vested in him bona fide but was actuated by personal ill-feeling

and malice against him, and the case should be treated as a case falling under Section 212, Clause 11, which a proper order had not been passed on his application for license within 30 days and communicated to him and the application should therefore be deemed to have been allowed for the year. I am unable to accept this contention. The President has given his reasons for his refusal as required by Section 212, Clause (4). Even assuming for one moment that the reasons stated for refusing the license in this case were not bona fide reasons and that the President was actuated by some ulterior motive in refusing it, I consider that that plea will not suffice to exculpate the accused from the penalty prescribed in the Act for plying his cars without a license. I must not be understood as holding that the President acted with any ulterior motive; but, assuming for argument's sake that he did so, I do not think that his order can be regarded as an absolute nullity as is argued and the case considered as one in which no order has been passed. It may be that the accused can claim damages against the President if he is able to establish that the President exercised his powers under Section 212 not bona fide but with malice on account of personal ill-feeling against him. That question will have to be considered when a proper case is brought, but, in this prosecution, the accused, in order to escape punishment, must show that he had a license given by the President of the District Board or he comes under Clause 11 of Section 212. He clearly does not come under that clause as an order on his application for license was made and communicated to him. We are not concerned at present with the question whether that order was properly passed or not : we have only to see if the provisions of law have been complied with. It is true Clause 4 of Section 212 requires the grounds to be stated on which the order of the President is passed; but the grounds have been stated by the President in his order. As held by the Bombay High Court* in a similar case arising under the City of Bombay Municipal Act the fact that the person authorised to grant or refuse the license did not exercise his discretion reasonably in refusing to grant the license is not one that could afford an answer to a charge that, the accused has done something for which a license was necessary and for which he had no license. No authority has been brought to my notice to the contrary. . I am therefore prepared to follow the view taken by the Bombay High Court, and I hold that the conviction is correct. As the Magistrate remarks, it would have been sufficient to inflict a

nominal punishment for the offence. But, as the accused himself asked for a fine of Rs. 51 to enable him to appeal, and he got the benefit of an appeal, I am not prepared to reduce his fine as Dr. Swaminadhan asks me to do. The conviction and sentence are confirmed and the Criminal Revision Petition is dismissed.

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