

In Re: Nagulathiah

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SooperKanoon Citation : sooperkanoon.com/804222

Court : Chennai

Decided On : Dec-01-1942

Reported in : AIR1943Mad283; (1943)1MLJ130

Appellant : In Re: Nagulathiah

Judgement :

ORDER

Byers, J.

1. The petitioner is the driver of a motor bus who has been convicted under Section 123(1) read with Section 42(1) of the Motor Vehicles Act for driving his bus with nine and a half passengers in excess of the number specified in the permit for the vehicle. He was sentenced to pay a fine of Rs. 75 by the Stationary Sub-Magistrate and in appeal the conviction was confirmed but the fine was reduced to Rs. 25. The only point taken in revision is that the conviction is illegal because Section 123 (1) has no application and because it is no part of the driver's duty to prevent the vehicle being used in excess of its specified seating capacity. This duty, it is contended, has been cast on the conductor under Rule 218 of the Madras Motor Vehicles Rules framed in exercise of the powers conferred by Section 67 of the Motor Vehicles Act. It is admitted that there was a conductor on the vehicle at the time but the learned Public Prosecutor supports the conviction on the ground that Section 123 (1) of the Act is sufficiently wide to cover the case of a driver who drives the vehicle in an overloaded state, this being in

contravention of Sub-section (i) of Section 42 of the Act. The relevant portion of Section 42 (1) is in the following words:

No owner of a transport vehicle shall use or permit the use of the vehicle in any public place, save in accordance with the conditions of a permit granted or counter-signed 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 conditions contemplated by Section 42 and the succeeding sections relate to their use as passenger vehicles, goods vehicles, or as vehicles for the carriage of both passengers and goods, and the areas within which and the periods for which permits are to be valid. In addition to these primary conditions governing the use of a vehicle, there are also the general conditions provided by Section 59 which are common to all permits. Section 68 of the Act provides also for the issue of rules, and it is in these rules that all the detailed regulations regarding the operation of transport vehicles, including the duties of drivers and conductors, are to be found. The duties of drivers and conductors are contained in Rules 216, 217, 218 and 219. Rule 218 (i) is in these words:

The conductor of a public service vehicle shall not allow any person to be carried in any public service vehicle in excess of the seating capacity specified in the permit of the vehicle.

Under Rule 219 this duty devolves on the driver in the absence of a conductor.

2. Section 68 (1), under which these rules are framed, empowers the Provincial Government to make rules ' for the purpose of carrying into effect the provisions of this chapter.' Section 68 (2) refers to the several subjects on which rules may be made without prejudice to the generality of the powers under Section 68 (1) and these include ' the determination of the number of passengers a stage or contract carriage is adapted to carry and the number which may be carried.'

It is clear, therefore, that the sanctioned carrying capacity of a vehicle is determined under the rules and that the responsibility of exceeding it exclusively belongs to the conductor when one is carried.

3. What is prohibited by Section 42 (1) of the Act is the use of a transport vehicle except in accordance with the conditions of its permit and under Section 123 (1) the driver is liable to the penalty therein provided. The petitioner was admittedly driving the vehicle at the time and so the correctness of the conviction depends upon whether or not the number of passengers to be carried was a condition of the permit within the meaning of Section 4a.

4. The permit is in Form P S P under Rule 159 (i) of the Rules. This contains the number of passengers' seats as well as the maximum laden weight but it is nowhere expressed as a condition of the use of the vehicle that its seating capacity shall not be exceeded. Nor is any such condition included in the general rules contained in Section 59, although there are conditions regarding maximum and minimum fares and freights. Therefore, although the permit in Form P S P includes details of the number of passengers' seats in the vehicle, overloading is not a breach of the conditions of the permit punishable under Section 123 (i) read with Section 42 (i) of the Act, but is a breach of Rule 218 punishable under Section 112 of the Act. If an express prohibition on overloading were inserted as a special condition in paragraph 15 of the permit P S P, I consider that Rule 218 would protect the driver from all responsibility in the matter. It is plain that the driver cannot be held liable for the non-observance of a rule or condition in respect of which he has been exempted from all responsibility by a statutory rule. The conviction is therefore set aside and the fine, if paid, ordered to be refunded.