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Court : Kolkata

Decided On : Dec-20-1927

Reported in : AIR1928Cal410,110Ind.Cas.326

Appellant : indra Mohan Roy

Respondent : Emperor

Judgement :

Mukerji, J.

1. The petitioner is the owner of a motor bus which was on a certain day driven by a person who had no license to drive. The petitioner has thereupon been convicted under Section 16. Motor Vehicles Act (8 of 1914) and sentenced to pay a fine of Rs. 15 and an order has been made under Section 18 of the Act canceling his license for a period of six months. This rule is directed against the said conviction, sentence and order.

2. The petitioner's defence was that seven or eight days before the date of the occurrence he had left for home leaving the bus in charge of his licensed driver and that he was not liable if any unlicensed person drove the bus during his absence and without his knowledge. There was a further defence that the licensed driver was on the bus but it has been disbelieved. The licensed driver Krishna was examined as a Court witness. He said' that on the day in question, he went away to take his meals asking one Shyam Lal Das to act as driver but as a matter of fact

one Nalini who had no license has driven it. He said further that the petitioner had gone home some days before the date of the occurrence. He also' said that Nalini was the manager of the bus and used to accompany him on the bus. There is a further statement in the cross-examination of this witness by the defence which runs in these words:

The bus was in charge of Nalini and not o myself.

3. It is not clear whether by this the witness meant to deny the allegation of the petitioner that he had left for home leaving the bus in charge of the witness; but as the Magistrate has not stated anything about this matter in his judgment I think it is fair to proceed on the supposition that this allegation of the petitioner has not been disproved. In that view the question that arises is whether the petitioner is punishable for the fact that he bus was driven, though without his knowledge and without his consent express or implied, by a person who is not a licensed driver.

4. The conviction of the petitioner is founded on the liability of the owner arising under Section 6 of the Act. The relevant portion of the section runs thus:

No owner shall allow any person who is not (so) licensed to drive it.

5. The Magistrate has purported to follow the decisions in the cases of Thornton v. Emperor [1911] 38 Cal. 415 and Baidya Nath Bose v. Emperor [1917] 45 Cal. 430 to which he has referred in his judgment, and on the authority of those decisions has held that the petitioner should have seen that the bus was not driven by any man other than a licensed driver. He has further remarked that even upon the decision in the case of Viraj Lall v. Emperor : AIR1924 Cal985 the petitioner is liable as the driving of the car by any man other than a licensed driver is expressly prohibited by the Act, because on the principle of that decision the petitioner as master of Krishna is liable for the criminal act of Krishna in allowing Nalini to drive the bus,

6. Now the penal clause upon which the conviction in Thornton v. Emperor [1911] 38 Cal. 415 was founded was Rule 4 of the rules framed under the Bengal Motor and Cycle Act 3 of 1903 which was worded thus:

No person shall drive or have charge of or cause or permit to be used any motor-car, motor cycle or trailer which does not in all respects conform to these rules or which is so driven or used as to contravene any of these rules.

7. The rule contravened in that case was Rule 20 which purported to forbid the reckless or negligent driving of a motor car. It was held that once the permission express or implied to use a car was given the owner remains responsible for any misuse of the car while that permission lasts and that a general injunction' to the chauffeur never to drive the car beyond the regulation speed is not sufficient to get rid of the owner's responsibility. These Rules 4 and 20 were for all practical purposes same as Rules 3 and 19 framed under the Act of 1914 under which arose the case of *Baidya Nath Bose v. Emperor* : AIR1924 Cal985 . In that case it was said that the language of Rule 3 could not be said to be very happy and that the construction of the rule was not free from doubt but the decision in *Thornton's case* [1911] 38 Cal. 415 was binding. The view taken in *Thornton's case* [1911] 38 Cal. 415 has been dissented from in the case of *Viraj Lall v. Emperor* A.I.R. 1924 Cal. 385 which was a case under Rule 3 and Rule 16 framed under the Act of 1914. It has been said in that case that, where a particular intent or state of mind is not of the essence of an offence, a master can be made criminally liable for his servant's acts if an act is expressly prohibited but not otherwise; and he cannot be so made liable if the act provides for liability for permitting and causing a certain thing unless it can be shown that the act was done with the master's knowledge and assent, express or implied.

8. These decisions may be helpful in interpreting Rule 4 or Rule 3 referred to above and to which they relate, in which the words are:

No person shall cause or permit to be used any motor vehicle etc.,

words which make it necessary to determine whether the word 'person' is meant to include an absentee owner. The decisions properly viewed merely purport to lay down rules of interpretation to be followed in such and similar cases. In my judgment they are of little assistance in construing the words of Section 6 of the Act to which I have already referred and which define the liability of the owner who is made liable for allowing a person not to drive the vehicle.

9. The real question is whether in the circumstances that have happened in the present case the petitioner can be said to have allowed Nalini to drive the bus. It is a question of fact whether he did so or not, and to answer this question it will have to be considered: firstly whether he did so himself: and secondly whether if Krishna did so, Krishna's act may be imputed to him under any general principle of law relating to master and servant.

10. As regards the first of these two questions: it cannot be said that there is any evidence either direct or circumstantial from which any consent express or implied can be held to have been established or to be capable of being deduced. As far as can be made out it has not been established even that the petitioner had any knowledge that such a contingency was likely to happen.

11. As regards the second question: there is abundant authority for the proposition that a servant has no implied authority to engage a stranger to do work on behalf of his master, so as to render the master liable for the stranger's acts or defaults except perhaps in a case of necessity, which term comprises only some well-known exceptional cases *Gwilliam v. Twist* [1895] 2 Q.B. 84 and *Haris v. Fiat Motors Ltd.* [1907] 23 T.L.R. 504, (both of which were cases in which the driver left the control of the car allowing it to be driven by a stranger). Similarly where a driver contrary to instructions allowed a third person to drive who knocked down a passer by it was held that the owner was not liable as the driver had acted outside the scope of his authority *Coogan v. Dublin Motor Co.* [1914] 49 I.L.T. 24. But the owner's liability may arise if the driver retains control of the car and allows a stranger to drive negligently *Ricketts v. Thos. Tilling Ltd.* [1915] 1 K.B. 644 and *Richard v. Shard* [1914] 31 T.L.R. 24. If these general principles are applied to the present case, the petitioner can hardly be said to be responsible for the act of Krishna for Krishna, even if he had allowed Nalini to drive the bus, had clearly acted outside the scope of his authority in doing so.

12. On no conceivable principle then, in my judgment, can the petitioner be said to have allowed Nalini to drive the bus and consequently his conviction and sentence and the order of cancellation of his license against which the rule is directed must be set aside and the fine if paid should be refunded. The rule is made absolute.

