

Ramprobesh Missir Vs. the State

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Court : Kolkata

Decided On : Jul-05-1955

Reported in : AIR1955Cal567

Judge : Debabrata Mookerjee, J.

Acts : [Motor Vehicles Act, 1939](#) - Sections 17, 17(1) and 112; ;Bengal Motor Vehicles Rules - Rule 90

Appeal No. : Criminal Revn. No. 209 of 1955

Appellant : Ramprobesh Missir

Respondent : The State

Advocate for Def. : Soudhendra Kumar Bose, Adv.

Advocate for Pet/Ap. : Gurudas Bhattacharjee, Adv.

Judgement :

ORDER

Debabrata Mookerjee, J.

1. This revision petition raises an interesting question of law, viz., whether a conviction for infringement of a Rule under the Motor Vehicles Act will entail disqualification for holding a license to drive a motor vehicle in addition to the

punishment to which the person convicted may be liable.

2. The petitioner was convicted under Section 112 of the Motor Vehicles Act for violation of R. 90 (b) of the Bengal Motor Vehicles Rules. He has been sentenced to pay a fine of Rs. 20/- in default to suffer rigorous imprisonment for two weeks and his license has been suspended for a period of one month.

3. The prosecution case briefly stated is that a football player had met with an accident in a village in the district of Hooghly which necessitated his removal to Calcutta. He was brought down to Howrah by train. When the brother of the injured person hired the petitioner's taxi at the Howrah Station stand in order that the injured might be carried in that taxi to a hospital, the petitioner refused to go on the metre rate and demanded a consolidated sum.

When this was brought to the notice of the police sergeant in attendance, the petitioner was asked by the latter the reason for his refusal. The petitioner stated that he suspected that the injured person had been suffering from an infectious disease. Expostulations took place and in spite of assurances not only from the hirer but from the sergeant, the petitioner refused to take the passenger to the Medical College Hospital on hire. :

4. Upon these allegations the petitioner was put on trial before a Magistrate of the 1st Class, Howrah. The petitioner pleaded innocence to the charge and his case was that he refused to take the person in his taxi as he had been vomiting and he was suspected to be suffering from Cholera. A witness was examined in defence of the plea taken by the petitioner. The learned Magistrate however rejected the defence plea, believed the prosecution case and convicted the petitioner under Section 112 of the Motor Vehicles Act for contravention of Rule 90 (b) of the Rules,

5. An appeal was taken against this order of conviction and sentence and the Additional Sessions Judge of Howrah who dealt with it dismissed it by an order dated 27-1-1955. Thereafter the petitioner applied to this Court and obtained the present Rule.

6. The only ground upon which this Rule has been issued is that the petitioner having been convicted of an offence for alleged contravention of a Rule under the Motor Vehicles Act, he cannot in addition to the penalty of fine to which he is liable be further punished by an order suspending his license. The contention therefore is that suspension of license is an additional penalty to which a person convicted of an infringement of any of the Rules is not liable.

7. Section 112 of the Motor Vehicles Act reads thus:

'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 twenty 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 one hundred rupees.'

8. The section thus provides punishment for offences not specifically otherwise provided for. It follows therefore that this section leaves to the Court a residuary power to inflict punishment where no specific provisions have been made in the body of the Act.

9. It is to be observed that the Bengal Motor Vehicles Rules do not contain any provisions by which their infringement is punished. The penalty is in no case indicated in any of the Rules. The result therefore is that recourse must be had to the provisions of Section 112 of the Act for the purpose of imposing a penalty for contravention of the Rules.

10. Sub-section (1) of Section 17 of the Motor Vehicle Act reads thus:

'Where a person is convicted of an offence under this Act, or of an offence in the commission of which a motor vehicle was used, the Court by which such person is convicted may, subject to the provisions of this section, in addition to imposing any other punishment authorised by law, declare the person so convicted to be disqualified for such period as the Court may specify, for holding any cense or for holding a licence to drive a particular class or description of vehicle,'

It is not necessary to set out the other sub-sections of that section as they do not fall to be considered in the present context.

11. Rule 90 (b) of the Bengal Motor Vehicles Rules occurs in Chapter IV of the Rules headed 'Control of Transport Vehicles' and reads thus:

'Rule 90 (b). No driver of a motor cab fitted with a taxi meter shall--

(i) refuse to accept a fare when the indicator flag of the taxi-meter is in a vertical position and the motor cab is on an authorised stand or otherwise stationary in a public place, or

(ii) in the absence of reasonable cause to the contrary, fail or neglect to proceed to the destination named by the hirer by the shortest and quickest route,

(iii) as soon as hired, and not before, fail or neglect to set the taxi-meter in motion, and upon the termination of the hiring shall immediately stop the game. Provided that in the event of a motor cab whilst hired being unable to proceed from any accident, mechanical derangement or tyre failure, either temporarily or otherwise, the driver shall at once stop the mechanism of the taxi-meter as against the hirer. The hirer shall be liable to pay the fare up to the time of the stoppage.'

12. The Rules just set out relate to the conduct and duties of drivers and conductors of public vehicles and make it obligatory on the driver to except a fare when the indicator flag of taxi-meter is in a vertical position and the meter cab is on an authorised stand or otherwise stationary in a public place. It also forbids a driver of motor cab fitted with a taxi meter to refuse or to neglect to carry, in the absence of reasonable cause to the contrary, to proceed to the destination named by the hirer by the shortest and the quickest route.

Certain contingencies are also provided for which are exempted from the purview of the rules as for example, tyre failure, or the engine developing mechanical trouble, making for the driver to comply with the hirer's requisition.

13. Chapter IV of the Motor Vehicles Act is similarly headed 'Control of transport vehicles' and 5. 68 gives power to the State Government to make rules for the

purpose of carrying into effect the provisions of this Chapter. Sub-section (2) of Section 68 provides that without prejudice to the generality of the power to make rules for carrying into effect the provisions of Chapter IV, rules may be made for several matters enumerated in that sub-section.

It is to be observed that the matters enumerated in Sub-section (2) are not intended to be exhaustive and Sub-section (1) gives, as has just been seen, ample power to the State Government to make rules for the purpose of carrying into effect the provisions of Ch. IV.

14. It is therefore clear that by virtue of the powers given under the Act the State Government is empowered to make rules regulating the control of transport vehicles. Rule 90 (b) is one such rule. It must therefore be held that the Rule is a statutory rule and is part of the Act. There can be no question whatever that when these rules do not themselves make any provision for penalty upon proof of their infraction, recourse must have to be had to Section 112 of the Motor Vehicles Act which is sufficiently wide to cover contravention of provisions of the Act as also of the rules made thereunder.

Section 112 provides that penalty may be imposed in accordance with that section if there is no other provision made for the imposition of such penalty. That being the position there can be little doubt that R. 90 (b) being a rule under the Act, contravention of it can be punished under Section 112 of the Act.

15. Mr. Bhattacharjee appearing on behalf of the petitioner has contended that since there is no specific provision for penalty in any of the rules Section 112 has to be called in aid for the purpose of imposing penalty for infraction of the rules. But suspension of licence, it is argued, is a form of penalty which is not provided for in Section 112 of the Act. Emphasis has been laid upon the words in Section 17 of the Act, which provide that a person convicted of an offence under the Act can in addition, to any other punishment authorised by law be disqualified for holding a licence.

The argument is that Section 17 does not contain any reference to conviction for infraction of a rule and therefore the petitioner having been convicted for violation

of R. 90 (b) he cannot possibly be disqualified for holding a licence in addition to the fine of Rs. 20/- imposed upon him.

16. Mr. Bose appearing on behalf of the State has contended that the provisions of the Act are quite clear and it cannot be said that the Motor Vehicles Rules are not a part of the Act, Mr. Bose has argued that the Rules not having provided for punishment for infraction of any of them, Section 112 has to be called in aid but that does not necessarily mean that the punishment to be inflicted for such infraction is to be limited to what is prescribed in Section 112 of the Act only.

Section 17 according to Mr. Bose is sufficiently widely worded to include the case of conviction for infraction of rules under the Act.

17. From the citations of the different provisions of the Act and the Rules the position is reasonably clear that the rules are rules made under the Act. An offence of infraction of a rule is clearly an offence under the Act inasmuch as the rules are creatures of the Act. Section 17(1) to my mind is sufficiently wide to cover cases of infraction or violation of the rules. A conviction for infraction of a rule is in essence a conviction of an offence under the Act.

The rules have been promulgated for regulating the conduct of owners, drivers' and other categories of persons having to do with motor vehicles. The rules thus adopted are apart of the Act, that being so, a conviction for infraction of a rule must be held to be a conviction under the Act.

18. Mr. Bose has drawn my attention to an excerpt from Maxwell's' Interpretation of Statutes, 10th Edition. The passage occurs at page 50 where the learned author observes as follows:

'Instruments made under an Act which prescribes that they shall be laid before Parliament for a prescribed number of days, during which period they may be annulled by a resolution of either House, but that if not so annulled they are to be of the same effect as if contained in the Act, and are to be judicially noticed, must be treated for all purposes of construction or obligation or otherwise, exactly as if they were in the Act.'

Reliance has been placed upon this passage for the purpose of reinforcing the argument on behalf of the State that the rules are an integral part of the statute.

19. Section 133 provides for publication and commencement of rules and Sub-section (3) of that section further provides as follows:

'All rules made under this Act by the Central Government or by any State Government shall be laid for not/less than fourteen days before the Parliament or the State Legislature, as the case may be, as soon as possible after they are made, and shall be subject to such modifications as Parliament or such Legislature, may make during the session in which they are so laid.'

20. I think the observation of the learned author apply with great force to the Rules in view of the provisions of Sub-section (3) of Section 133 of the Act which I have just read.

21. That contravention of a rule is an offence can hardly be doubted. An offence is not defined in the Motor Vehicles Act but the definition of the word as we have it in the General Clauses Act makes it perfectly clear that infraction of a rule is an offence. Clause (38) of Section 3 of the General Clauses Act 1897 defines an offence as meaning 'any act or omission made punishable by any law for the time being in force'. The Motor Vehicles Rules are a part of the Motor Vehicles Act. Consequently, their infraction is an offence under the Act.

22. The words of Section 17, I hold, are sufficiently wide to cover cases of infraction of the statutory Motor Vehicles Rules and the Legislature by having enacted Section 17 included in it cases of infraction of the Rules for which in addition to any other punishment authorised by law, the person convicted of such infraction is liable to be disqualified for holding a licence. I do not think that the absence of express mention of rules from Section 17 (1) of the Motor Vehicles- Act in any way affects the position.

23. The result, therefore, is that this Rule must be discharged. The fine must now be paid. The order directing stay of operation of the order of suspension of licence is vacated.

