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Court : Himachal Pradesh

Decided On : Mar-09-1977

Reported in : 1977CriLJ1674

Judge : T.U. Mehta, J.

Appellant : Parkash Chand

Respondent : The State

Judgement :
ORDER

T.U. Mehta, J.

1. The petitioner herein has been convicted by the Additional Chief Judicial Magistrate, Una Under Section 7 of the Prevention of' Ticketless Travelling Act, 1976 read with Rule 4,43(XXI)/ Section 112 of the Motor Vehicles Act. He has been sentenced by the learned Magistrate to pay a fine of Rs. 100/- and in default of payment of fine he is ordered to undergo simple imprisonment for a period of 15 days. The learned Magistrate has also ordered that the Con- ductor's Licence which is held by the petitioner be cancelled for a period of one month Under Section 21-G of the Motor Vehicles Act.

2. The main point which arises to be determined in this petition is whether the. learned Chief Judicial Magistrate who has tried this case summarily has been

properly authorised to hold the trial in a summary way.

3. On this question the contention which is raised by the learned Advocate of the petitioner is that Under Section 10 of the Himachal Pradesh Prevention of Ticketless Travel in Road Transport Service Act. 1976, the learned Magistrate can hold trial only if he is especially empowered to try offences under this Act. In order to appreciate this contention, it will be necessary to quote Section 10 of this Act on which reliance is placed. This section is in the following terms :--

10, (1) All offences under this Act shall be triable by Magistrates having jurisdiction in the area and especially empowered by the High Court Under Section 260 of the Cr. P. C., 1973 to try such offences in a summary way.

(2) No prosecution under this Act shall be instituted except on the complaint in writing by such officer as may be authorised in this behalf by the State Government.

The contention of the learned Advocate of the petitioner is that though it is true that the learned Magistrate was having jurisdiction in the area concerned and had also jurisdiction to try in a summary way the offences contemplated by Section 260 of the Cr. P. C ;, the above quoted Section 10 of the Act stipulates specifically that he should be empowered to try the offence arising out of the Act in a summary manner and since no such empowerment is found to have been made in favour of the learned Magistrate, the trial in which the petitioner is convicted should be treated as having been without jurisdiction. In support of this contention Shri Ahuja learned Advocate of the petitioner puts emphasis on the word 'such' used before the word 'offences' in the last part of the above quoted Sub-section (1) of Section 10.

4. I find myself unable to accept this contention as correct because in my opinion this construction does not correctly interpret Sub-section (1) of Section 10 which is quoted above. It should be noted that the procedure prescribed by the Code of Criminal Procedure is not confined only to the offences committed under the Penal Code, Schedule II of the Cr. P. C. shows that even the offences against other laws such as the Ticketless Travelling Act, which is under our consideration, should be

conducted under the provisions of the Cr. P. C. Therefore, the provisions of the Cr. P. C. would govern even the trials which are held for an offence contemplated by the Ticketless Travelling Act, 1976. Now if reference is made to the provisions of Section 260 of the Cr. P. C., it will be found that it deals with the power to try summarily. The portion of this section which is relevant for our purpose is as under :--

260. Power to try summarily.-- (1) Notwithstanding anything contained in this Code--

(a) any Chief Judicial Magistrate ;

(b) any Metropolitan Magistrate ;

(c) any Magistrate of the first class specially empowered in this behalf by the High Court,

may, if he thinks fit, try in a summary way all or any of the following offences :

(i) offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years ;

Best of this Section 260 is not relevant for our purpose and hence it is not quoted.

5. A plain reading of Section 260 suggests that if the Magistrate is a Chief Judicial Magistrate, he is enabled by this section to try every offence which is not punishable with death, imprisonment for life or imprisonment for a term exceeding two years in a summary way provided he thinks it fit to do so. Clause (i) of this Section 260 of the Cr. P. C. does not limit its operation only to the offences contemplated by the Penal Code. It refers to all offences irrespective of the fact whether that offence is committed under the Penal Code or any other special enactment. The present offence which is committed by the petitioner is one Under Section 7 of the Ticketless Travelling Act and it is punishable with imprisonment of one month or with fine. It, therefore, follows that this is an offence which could be tried in a summary manner by the Chief Judicial Magistrate Under Section 260(1)(i), which is referred to above.

6. However. Shri Ahuja contends that the use of the word 'such' before the word 'offences' appearing at the end of Sub-section (1) of Section 10 suggests that the offence which can be tried summarily under special empowerment should be the offence committed under the Act and, therefore, in spite of the fact that the Chief Judicial Magistrate has power to try in summary way the offences which are not punishable with death or imprisonment for life or imprisonment for a term which may exceed two years, Section 10 contemplates a. special empowerment of this Magistrate and unless such a special empowerment is found there would be no jurisdiction to try the offences summarily. This contention is not acceptable for the simple reason that the expression 'such offences' found in the last portion of Sub-section (1) of Section 10 refers to the offences which could be tried Under Section 260 of the Cr. P. C. for otherwise there would be no meaning in making reference to Section 260 in Sub-section (1) of Section 10. That being the position I do not find myself agreeable with this part of the contention of Shri Ahuja.

7. I, therefore, conclude on this point that the learned Additional Chief Judicial Magistrate, Una had jurisdiction to try this offence summarily and this jurisdiction was derived by him Under Section 260 of the Cr. P. C.

8. There are several other points raised on behalf of the petitioner by Shri Ahuja. I will shortly deal with all these points.

9. It was contended that the challan which is filed in this case against the accused refers only to an offence under the Motor Vehicles Act and not to any offence under the Ticketless Travelling Act. I have referred to the original challan which shows that facts necessary to constitute offence have been mentioned and on the margin there is mention of Rule 4.43(XXI), It is difficult to understand how this could have prejudiced the petitioner-accused. The fact that the facts which were necessary to be stated have been stated is quite sufficient for holding that there was no prejudice to the accused. At any rate, this point is not raised anywhere in the memo of revision, which is filed by the petitioner.

10. It was contended that the offence under Rule 4.43(XXI) is an offence of lesser degree than of Section 7 of the Ticketless Travelling Act and, therefore, the challan should have made reference under the Ticketless Travelling Act. This

contention is the same as stated above but it is of no avail to the petitioner in view of the fact that all the factual data necessary to show that a particular offence is committed, has been mentioned and, therefore, it is immaterial whether reference to a particular section of a particular Act is made or not.

11. It was contended that Under Section 303 of the Cr. P. C. the petitioner accused was entitled to engage a lawyer but no layer was allowed to be engaged to him in his defence. There is nothing in the record to show that the petitioner wanted to engage any lawyer for his defence. And even this point is not raised in the memo and, therefore, I see no substance in it.

12. It was then stated that the learned Magistrate has not given any opportunity to the petitioner to cross-examine the prosecution witnesses. There is nothing in the record to show that the petitioner wanted to avail of this opportunity and the same was not given to him. On the contrary the statements recorded by the learned Magistrate show that opportunity of cross-examination was given to the petitioner and that he has not availed of the same.

13. It was then contended that the learned Magistrate should not have relied upon the statement of prosecution witness Rakesh to whom the receipt of fare was not given by the accused. The contention was that Rakesh was in the position of a co-accused. This contention is not available to the petitioner in a revision application. It is difficult to conclude how Rakesh who had admittedly paid the fare could be treated as a co-accused.

14. It was then contended that notice about the disqualification contemplated by Section 21-G of the Motor Vehicles Act should have been given by the learned Magistrate to the accused before passing an order under that section. Section 21-G of the Motor Vehicles Act says that when any person holding a Conductor's licence is convicted for an offence under this Act the Court by which such person is convicted may 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 think fit for holding the Conductor's licence.

The section, therefore, clearly shows that the order under it could be made at the time of imposing a punishment at the end of the trial. It does not contemplate any separate notice for the same. The learned Magistrate has observed in his order that the petitioner accused is disqualified from service Under Section 21-G of the Motor Vehicles Act. What he obviously means is that he is disqualified not from any service but from holding a Conductor's licence for a period of one month. In my view, therefore, the order which the learned Magistrate has passed Under Section 21-G is also quite proper.

15. In view of above, this revision application fails and the same is dismissed.

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