

The State of Uttar Pradesh

Vs

Bansraj

Criminal Appeals Nos. 115/56 & 83/57

(Syed Jafar Imam, J. L. Kapur, JJ)

09.10.1958

JUDGMENT

KAPUR, J. -

These two appeals involve a common question of law and may be disposed of by one judgment.

In Criminal Appeal No. 115/56 the respondent Bansraj, driver of a public carrier, of which he was not an owner, was found carrying 23 passengers instead of 6 allowed under the conditions of permit No. 42-926-123 granted to the owner. The vehicle was checked by a Head Constable who on counting the number of passengers found them to be 23. Bansraj respondent was prosecuted under section 42 read with section 123 of the Motor Vehicles Act, (IV of 1939), as it existed at the date of the offence; (to be called the Act in this judgment). Bansraj respondent pleaded not guilty and stated that only six passengers were being carried. He was tried summarily by a First Class Magistrate at Gorakhpur and found guilty under section 123 of the Act and sentenced to pay a fine of Rs. 200 and in default three months' rigorous imprisonment. He went in revision to the Sessions Judge, Gorakhpur, and there it was contended that he was only a driver and therefore could not be convicted under section 123 of the Act. The learned Judge accepted that contention and being of the opinion that a mere driver could not be so convicted, he recommended the case to the High Court under section 438 of the Criminal Procedure Code. The matter came up as Criminal Reference No. 359/52 before Mukherji J., who referred it to a Division Bench and was heard by Desai and Upadhyaya JJ. The interpretation which the High Court put on section 42(1) was that under the section it was the owner alone who was interdicted from using or permitting the use of the vehicle save in accordance with the conditions of a permit and therefore if the vehicle was used against the conditions of the permit, no one else, including the driver, could be guilty under section 123 of contravention of the terms of the permit.

The reference was therefore accepted and the conviction and sentence of the respondent was set aside. The State has come up in appeal pursuant to special leave against the judgment and order of the High Court of Allahabad.

In Criminal Appeal No. 83/57 respondent Vishwanath the driver of a private station wagon W.B.C. 8744 and the owner Sunder Singh were both prosecuted for carrying 13 passengers from Moghulsarai to Banaras in the station wagon which had no permit for carrying passengers on hire. Out of these 8 persons were travelling as passengers who had been charged fares. The Magistrate acquitted Sunder Singh giving him the benefit of doubt and sentenced the driver to a fine of Rs. 500 under section 123 of the Act and in default to simple imprisonment for six months. This enhanced sentence was given because he had four previous convictions under the Act. The respondent

Vishwanath took an appeal to the Session Judge, Banaras, who set aside the conviction holding that the driver of a vehicle could not be convicted under section 123 for contravention of the conditions of the permit. The State took an appeal to the High Court and this appeal also was heard by Desai and Upadhyaya JJ. who dismissed the State's appeal and the State has come to this Court pursuant to special leave.

The question for decision in both these appeals is the same i.e. the liability of the driver of a motor vehicle used in contravention of the terms of the permit under section 42(1) of the Act and this will depend upon the construction to be put on sections 42 and 123 of the Act. At the time when the Respondents in the two appeals are alleged to have committed the offence section 42(1) provided :-

"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 countersigned 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"

And section 123 of the Act provided :-

"Whoever drives a motor vehicle or causes or allows a motor vehicle to be used or lets out a motor vehicle for use in contravention of the provisions of sub-section (1) of section 42 shall be punishable for a first offence with fine which may extend to five hundred rupees and for a subsequent offence if committed within three years of the commission of a previous similar offence with a fine which shall not be less than one hundred rupees and may extend to one thousand rupees".

The Act regulates the use of motor vehicles and for that purpose its various provisions provide for control on motor vehicles and on those who own them and those who drive them. Chapter II provides for licensing of motor vehicles, Chapter II-A for licensing of conductors, Chapter III for registration of motor vehicle and Chapter IV for control of transport vehicles. Chapter IX deals with offences, penalties and procedure. Section 3 in Chapter II is headed necessity for driving licences. Section 22 in Chapter III is headed necessity for registration. The marginal note of section 42 in Chapter IV is necessity for permits. There are several provisions in the Act contained in Chapter VI which provide for control of traffic, requiring the drivers of motor vehicles to observe speed limits, to obey duty signals and there are other provisions for subserving safety in regard to driving of motor vehicles. The provisions of Chapter IX show how particular the legislature is in regard to the road safety. With that object in view the Act makes provision for a complete control over the owners of motor vehicles and over the drivers of such vehicles and makes elaborate provisions in regard to every aspect of motor traffic and penalises every one who contravenes the provisions of the Act including the seller of a defective motor vehicle.

Section 42 is headed "necessity for permits". The language of the section employs prohibitive or negative words and therefore its legislative intent is that the statute is mandatory. The negative words convey a forbidding of the doing of the act prohibited and from the use by the legislature of the words "no owner of a transport vehicle shall use or permit the use....." in section 42(1) a total prohibition against user of the vehicle except in accordance with the conditions of the permit is indicated. Further the words "authorizing the use of the vehicle in that place in the manner in which the vehicle is being used" have reference to the transport vehicle itself and not to the owner that is to say section 42(1) does not only prohibit the owner from using the transport vehicle contrary to the conditions of the permit but there is an express provision in the section that the permit authorises the

use of the vehicle in the place and in the manner it is being used, and that it is to be used in accordance with the conditions of the permit. Thus construed section 42(1) contemplates not only prohibition against the user by the owner of the vehicle or his permitting its use in a manner contrary to the conditions of the permit but it also contemplates that the vehicle itself shall be used in the manner authorised by the permit. The prohibition therefore is not merely against the use by the owner but against the use contrary to the conditions of the permit of the vehicle itself.

Section 123 is in the chapter dealing with offences and penalties. The marginal note shows what the section intends to punish, and that the intention was to provide for punishment of every person who drives a motor vehicle in contravention of the provisions of sub-section (1) of section 42. We have said above that section 42(1) requires the use of a transport vehicle in accordance with the conditions of the permit and that it does not merely prohibit its user by the owner contrary to the conditions of the permit. Therefore when a transport vehicle is driven by any one in contravention of the terms of the permit, it is in contravention of the provisions of section 42(1). Section 42(1) is not a penalising section. For its breach section 123 provides the penalties. The legislature advisedly did not use the word 'owner' in section 123 of the Act. Having by section 42(1) prohibited an owner from using or permitting the use of a transport vehicle contrary to the conditions of the permit and having clearly stated therein that the permit granted by the Regional or the Provincial Transport Authority authorised the use of the vehicle in the manner in which the vehicle was to be used, the legislature provided punishment for anyone who drove a motor vehicle or caused or allowed a motor vehicle to be used or lets out a motor vehicle to be used in contravention of the provisions of sub-section (1) of section 42. It is for this reason that the Legislature used the word 'whoever' and did not limit the punishment set out in section 123 to the owner himself. The Legislature intended that no motor vehicle should be driven by anyone contrary to the provisions of section 42(1) and that if it was driven in contravention of those provisions he was liable to punishment. The two sections read together do not lead to the conclusion that section 123 only makes the owner liable to punishment. The words "or causes or allows a motor vehicle to be used, or lets out a motor vehicle for use in contravention of the provisions of sub-section (1) of section 42" may well refer to the owner. That is to say, this part of section 123 punishes an owner for contravening the provisions of section 42(1). The driving of the motor vehicle, however, is a different matter. It could be driven by the owner himself or by some one other than the owner. Therefore, the words "whoever drives a motor vehicle..... in contravention of the provisions of sub-section (1) of section 42" would cover both the owner and one who is not the owner. What is made punishable is the driving of the motor vehicle by anyone contrary to the provisions of section 42(1). That is to say, the motor vehicle cannot be driven by anyone contrary to the conditions of the permit relating to that vehicle.

It may here be remarked that there is a preponderance of judicial opinion in favour of the view that a driver of a motor vehicle who is not its owner and who drives in contravention of the conditions of a permit under section 42(1), would fall within section 123 of the Act. Except the High Court of Allahabad the other High Courts are in accord in holding that such driver would be guilty under section 123. *Public Prosecutor v. Jevan* (A.I.R. 1941 Mad. 845); *Provincial Government, C.P. & Berar v. Mohan Lal* (A.I.R. 1944 Nag. 89), *Chandra Deo Singh v. The State* ((1954) 59 C.W.N. 787); *Teja Singh v. The State* (A.I.R. 1952 Punj. 45); *Kalyan Lal v. The State* (A.I.R. 1954 Raj. 250); *The State v. Ram Chandra* (A.I.R. 1955 Raj. 183); *The State v. Motilal* (A.I.R. 1957 Raj. 63). All these cases have proceeded on the view that the words 'whoever drives' are wide enough to include the case of a non-owner driver who contravenes the provisions of section 123. Even in the High Court of Allahabad in an earlier decision *Uma Shankar v. Rex* (A.I.R. 1950 All. 234), *Aggarwala J.*, was of the opinion that a driver driving in contravention of the conditions of a permit would fall within section 123 of the Act.

In our opinion, the interpretation put in this case by the Allahabad High Court on sections 42 and 123 is erroneous. We would therefore allow these appeals, set aside the orders of acquittal and restore those of the Magistrates convicting the respondents.

Appeals allowed.

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