

ALLAHABAD HIGH COURT

Uma Shanker Tewary

Vs.

Rex

(Agarwala, J.)

Criminal Ref. No. 212 of 1948

05.02.1948. 06.10.1949

JUDGMENT

Agarwala, J.

1. This is a reference made by the Additional Sessions Judge of Gorakhpur recommending that the conviction of Uma Shanker Tewary, driver of a motor vehicle, and R.K. Bajpai, the Manager of the Shankar Sugar Mills Ltd., Captainganj, Deoria, be altered from one under Section 123, Motor Vehicles Act, Act IV [4] of 1939, to one under Section 112 of the said Act, and the fines imposed upon the applicants by a first class Magistrate of Gorakhpur be reduced.

2. The facts which have given rise to this reference may shortly be stated as follows : A motor truck used for carrying goods belonging to the Shankar Sugar Mills Ltd., was being driven by Uma Shanker Tewary, the driver. On 18th August 1946, an Enforcement Squad Inspector checked the truck in question and found that (1) its fitness certificate had expired on 3rd April 1946, and there was no such certificate in existence on 18th August 1946 when it was being plied; (2) that the currency of the driver's license had expired on 5th May 1946, and the driver Uma Shanker Tewary was driving it without the license having been renewed; and (3) that it was loaded with steel pipes which projected at the back of the truck beyond its body to the extent of 9 ft. while the permissible projection was only 4 ft. and in this way Rule 191 (h) (iii), Motor Vehicles Rules had been contravened. Uma Shanker Tewary, the driver, and R.K. Bajpai, the Manager of the Shankar Sugar Mills, Ltd., were, therefore, prosecuted, R.K. Bajpai being obviously prosecuted as the owner of the vehicle, under Sections 112 and 123 of the said Act. Uma Shanker Tewary pleaded that he was not the driver, but that one Ram Kishen was driving the truck. R.K. Bajpai admitted that he was the Manager of the Shankar Sugar Mills Ltd., but pleaded that he was not liable.

3. The Magistrate held that Uma Shanker Tewary was in fact driving the truck. He further held

that R.K. Bajpai was liable as an owner of the vehicle. He, therefore, convicted both the accused under Sections 112 and 123, Motor Vehicles Act, on the ground that they had contravened the provisions of Section 42 of the Act. He sentenced Uma Shanker Tewary to a fine of Rs. 75 and "owner" R.K. Baipai to a fine of Rs. 190. In default of payment of fines, Uma Shanker Tewary was to undergo simple imprisonment for 15 days and R.K. Bajpai for one week. He further convicted Uma Shanker Tewary under Section 112 of the Act and sentenced him to pay a fine of Rs. 5 or in default of payment of fine to undergo simple imprisonment for 5 days. This was on account of his driving the truck with a expired license. He further convicted Uma Shanker Tewari under Section 112 of the Act read with Rule 191, U.P. Motor Vehicles Rules for placing pipes in such a way that they were projecting 9 ft. beyond the body of the truck. He imposed a sentence of fine of Rs. 5 on this count and ordered that in default of payment of fine Uma Shanker Tewary was to undergo simple imprisonment for 5 days. Uma Shanker Tewary was also declared disqualified for 4 months for holding any license for driving any car under Section 17 (1) of the Act. Against this order the accused filed an application in revision to the Sessions Judge of Gorakhpur.

4. The learned Sessions Judge came to the conclusion that upon the finding that the car was being driven without a license of fitness, the offence made out was under Section 112 and not under Section 123 of the Act, because there was no contravention of Section 42 of the Act. He, therefore, recommended that the conviction under Section 123 be altered to that under Section 112 of the Act and the fines of Rs. 75 and Rs. 190 be reduced respectively to the sums of Rs. 10 and Rs. 20.

5. In this Court Mr. C.S. Saran who has appeared on behalf of the accused has contended that so far as the driver Uma Shanker Tewary was concerned, the reference made by the learned Sessions Judge should be accepted, but that since R.K. Bajpai was merely a Manager of the Shankar Sugar Mills, Ltd., he could not be convicted as the "owner" of the vehicle, and that, therefore, R.K. Bajpai was entitled to be acquitted of the charge under Section 123 or under Section 112 of the Act.

6. Section 23, Motor Vehicles Act, provides : "No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place for the purpose of carrying passengers or goods unless the vehicle is registered in accordance with this chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner."

Section 38 provides,

"Subject to the provisions of Section 39 a transport vehicle shall not be deemed to be validly registered for the purposes of Section 22 unless it carries a certificate of fitness in

form H as set forth in the Schedule 1 issued by the prescribed authority..."

A transport vehicle under Section 2 (23) of the Act includes a "goods vehicle," such as the truck in question undoubtedly was. Upon the finding of the Magistrate that the motor vehicle in question did not possess a fitness certificate on the date on which it was being plied, it could not be considered to be a duly registered vehicle within the meaning of Section 22 of the Act.

7. Section 42 provides :

"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 authorizing the use of the vehicle in that place in the manner in which the vehicle is being used....."

8. Section 123 (1) lays down :

"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-sections (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."

9. In the present case since the certificate of fitness had already expired, and the vehicle was to be considered as unregistered, there could obviously be no valid permit in existence as contemplated by Section 42 of the Act. It is conceded before me that the vehicle was being plied without any permit. Section 42 prohibits the use of a transport vehicle except in accordance with the conditions of a permit. This means that Section 42 is contravened not only when the vehicle is being used contrary to the condition of a permit, but also when there is no permit whatsoever. In the present case, as already stated, there was no permit. The motor vehicle was therefore, being used in contravention of the provisions of Section 42(1) and the persons responsible for that use were therefore, guilty under the provisions of Section 123 of the Act.

10. The recommendation of the learned Additional Sessions Judge, therefore, to the effect that Uma Shankar Tewary, the driver, had not committed an offence under Section 123 cannot be accepted. Uma Shankar Tewary was rightly convicted by the Magistrate under Section 123, Motor Vehicles Act.

11. The conviction of R.K. Bajpai under Section 123 can only be sustained if he could be described as an "owner". An "owner" as defined in Section 2(19)

"means where the person in possession of a motor vehicle is a minor, the guardian of such minor and in relation to a motor vehicle which is the subject of a hire-purchase agreement the person in possession of the vehicle under that agreement."

This definition is really not a definition at all and the use to the word 'means' is inappropriate. It merely indicates what persons are included within the meaning of the expression "owner." Two persons who could not be otherwise in the ordinary use of the word, "owners" are paid to be included within the meaning of that expression. These two persons are : (1) in the case of vehicle being owned by a minor, the guardian of such minor ; and (2) in the case of the vehicle being the subject of a hire purchase agreement, the person in possession of the vehicle under that agreement. The definition, therefore, does not exhaustively define the word, "owner". The word 'owner', must therefore, be taken to mean, what it ordinarily means, namely, a person in whom the proprietary title vests.

12. The subject has a little history behind it. In the Motor Vehicles Act of 1914, Act No. VIII [8] of 1914, the word "owner," was not at all defined, although owners were made liable in certain cases under that Act.

13. In the case of *Goolbai Motabhai v. Pestonji Cowasji*¹, a person who had obtained a motor vehicle under a hire purchase agreement and who was plying the car at the time of the accident, was held to be the owner of the car, although the car was registered in the name of another person.

14. In the case of the *King v. Ba Ba Sein*², a minor aged 4 or 5 years was the owner of a motor bus and was prosecuted under Rule 7, Burma Hired Motor Vehicles Rules in his capacity as owner of the bus, as the bus was being plied for hire without being registered. It was held that though the minor was the owner of the bus yet, as he was less than 7 years of age, he was not liable under the provisions of Section 82, Penal Code.

15. When the Motor Vehicles Act was re-drafted in 1939 and passed as Motor Vehicles Act, IV [4] of 1939, the law laid down in the above two cases seems to have been incorporated in the definition of owner. It would have been better if this occasion had been utilized for providing an exhaustive definition of the word "owner", a definition which could have solved the difficulty which has arisen in the present case, namely, "who is to be considered as the owner of the motor vehicle in a case in which a limited concern owns it"?

16. In the case of *In re Bhagwant Gopal*³, the manager of a partnership firm was charged as owner of a motor vehicle under the Motor Vehicles Act. It was held by Niyogi, J. :

"It does not, however, appear that the Legislature by inserting the definition of 'owner' in the Act of 1939 intended to use the word 'owner' occurring in the various sections of the Act in any sense other than the sense in which it is ordinarily understood. Ownership as opposed to possession implies title with the incidental right of transfer. A person may be

in possession and control of a vehicle nevertheless he might not have any title or right to transfer it."

I respectfully agree with these observations. A manager of a limited company is merely an agent of the company acting under the control and directions of the Directors of the company, vide Section 2(9), Companies Act. By no stretch of reasoning can he be described to be an owner of things vesting in the company.

17. In my opinion, therefore, as the law stands at present, a manager of a limited company cannot be held liable under the provisions of the Motor Vehicles Act as the "owner" of a motor vehicle belonging to the company. The conviction of R.K. Bajpai, therefore, was not justified.

18. The result, therefore, is that I set aside the order of conviction of R.K. Bajpai and acquit him of all charges. The fine, if paid, shall be refunded to him.

¹ AIR 1935 Bom 333: (159 IC 363) ³ AIR 1943 Nag 22: (43 Cr LJ 917)

² AIR 1938 Ran 400: (40 Cr LJ 80)

19. The reference so far as it concerns Uma Shankar Tewary is rejected.
Order accordingly.