

RAJASTHAN HIGH COURT

Kalyan Lal

Vs.

State (Rajasthan)

Criminal Ref. No. 16 of 1953. made by S.J., Kotah,
(Dave, J.)

04.12.1952 22.06.1953

JUDGMENT

Dave, J.

1. This reference comes on the report of the Sessions Judge, Kotah, dated 4.12.1952.
2. The facts leading to the reference are that on 20.6.1952, Kalyan Lal accused was plying a motor bus No. R. J. G. 74 from Bundi to Kotah. He was checked by a traffic constable, Tika Ram. On investigation it was found that he was making a second trip in contravention of the conditions of the permit, whereby only one transport motor bus could make one trip from Bundi to Kotah and vice versa during the course of one day. The accused was challenged in the Court of the City Magistrate, who transferred the case to the Additional City Magistrate. The accused admitted all the facts alleged by the prosecution, and the trial Court thereupon convicted him under Section 123, Motor Vehicles Act, and sentenced him to pay a fine of Rs. 50/-.
3. The applicant filed a revision application before the Sessions Judge, Kotah. There it was urged by his advocate that the trial Court was not justified in convicting the applicant under Section 123, Motor Vehicles Act, because that section was meant for punishing the contravention of the provisions of Section 42 (1) of that Act, and Section 42 (1) of that Act imposed the duty only on the owner of a transport vehicle. It was argued that the owner of the vehicle alone could be punished under Section 123 for the contravention of the provisions of Section 42 (1), and, therefore, the applicant's conviction was illegal. This argument has found favour with the learned Sessions Judge, because it was supported by a ruling of the Allahabad High Court in the case of '*Jagroop v. Rex*',¹

4. The applicant has not put in his appearance in this Court in spite of notice.

5. I have carefully gone into the case of ' AIR 1952 Allahabad 276 ', relied upon by the learned Sessions Judge. It was a case of non-issue of tickets, and the driver and conductor were convicted by the trial Court under Section 123. The matter was taken to the High Court in revision. It was observed by the learned Judge that:

"It is the owner and nobody else, such as the driver or conductor, who is forbidden to use or permit the use of a vehicle, save in accordance with the conditions of the permit and consequently if a transport vehicle is used against the conditions of the permit, only the owner and nobody else can be guilty of contravening this provision. If A is prohibited from doing an act and the act is done, no matter by whomsoever it is done, A only, if at all, can be said to have committed a breach of the prohibition and no body else, not even the actual doer of the Act."

6. It would be proper to reproduce the language of Sections 42 (1) and 123 (1), Motor Vehicles Act, before entering into the argument:

"42 (1) 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 authorizing the use of the vehicle in that place in the manner in which the vehicle is being used :

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123 (1) Who ever 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."

7. It is no doubt true that Section 42 (1) imposes the duty only on the owner of a transport vehicle, but it would appear from the language of Section 123 (1) that it is

much wider in its scope than Section 42 (1), as it imposes a penalty not only on the owner but also on a person who drives a motor vehicle or causes or allows a motor vehicle to be used or lets out for use in contravention of the provisions of sub-sections (1) of Section 42. To my mind, Section 123 (1) makes the contravention of the provisions of sub-sections (1) of Section 42 punishable not only for the owner of a transport vehicle, but also for any other person who drives it. If the owner himself drives the motor vehicle or causes or allows it to be used or lets it out, he would certainly be punishable under this section. This would not, however, mean that if there is somebody else who drives the motor vehicle in contravention of the provisions of sub-sections (1) of Section 42, he can do so with impunity. Such an interpretation is likely to make Section 123 in fructuous, because the owner as well can take a plea that the vehicle was taken away by the driver without his knowledge, and he never caused or allowed it to be used or let it out for use in contravention of the provisions of Section 42.

In the case cited above, it was remarked by the learned Judge that :

"It is meaningless to speak of somebody driving a vehicle in contravention of the provision that no owner of a transport vehicle shall use or permit the use of the vehicle against the conditions of the permit."

The argument proceeds on the basis that because the duty under Section 42 (1) is imposed only on the owner, its contravention could not be made punishable for any person other than the person mentioned therein. With great respect I differ on this point. Section 42 (1), as mentioned above, certainly imposes a duty on the owner alone, but there was nothing to prevent framers of the Act to make the contravention of that provision punishable not only for the owners but also for those who actually drove the motor vehicle. The words "whoever drives a motor vehicle" are wide enough to cover drivers other than owners of the bus, and I see no good reason to restrict the interpretation of Section 123 only to the case of owners of the vehicle.

In the case of '*Public Prosecutor v. Jevan*',² it was held that:

"Whoever drives a vehicle in a public place with out a permit under Section 42 (1) authorizing the use of the vehicle in that place is punishable under Section 123 (1). That the permit is to be obtained by the owner cannot make any difference."

To my mind, this decision, if I may say so with respect, is much sounder, and I agree with it. Again, in the case of '*Provincial Government, C. P. and Berar v. Mohanlal Keshalal*',³ it was held by a Division Bench of the Nagpur High Court that:

"Section 42 (1) applies only to the owners of transport vehicles, but Section 123 applies to anyone who drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of Section 42 (1). The provisions mentioned in Section 42 (1) are the conditions of the permit granted by the Regional Transport Authority. Section 123 is clearly much wider than Section 42 (1), and a person, who is admittedly responsible for charging increased fares in contravention of the condition in the permit, commits an offence under Section 123 (1)."

In the case of '*Uma Shankar v. Rex*',⁴ it was observed by Agarwala, J., that :

"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 conditions of a permit, but also when there is no permit whatsoever. Where there is no permit, the motor vehicle is being used in contravention of the provisions of Section 42 (1) and the persons responsible for that use are, therefore, guilty under the provisions of Section 123."

In the above case, Uma Shanker, who was only a driver of the motor vehicle and not its owner, was held to have been rightly convicted under Section 123. This case was not noticed in that of 'AIR 1952 Allahabad 276', cited above.

8. The reference is, therefore, rejected.

Reference rejected.

Cases Referred.

1. AIR 1952 All 276
2. AIR 1941 Mad 845
3. AIR 1944 Nag 89

4. AIR 1950 All 234