

RAJASTHAN HIGH COURT

State

Vs.

Ramchandra

Criminal Appeal No. 63 of 1953

(Bapna and Sharma, JJ.)

04.03.1955

JUDGMENT

Bapna ,J.

1. This is an appeal by the Government against the acquittal of the accused Ramchandra on a charge under Section 123 of the Motor Vehicles Act.

2. The case for the prosecution is that Ram Chandra accused was driving a motor truck No.RJR 489 near cinema at Kotah on 31-5-1952. Tika Ram Traffic Constable No. 713, stopped the truck and asked Ramchandra to produce the token of payment of tax as also the permit for the transport vehicle. Ramchandra failed to produce the two, and a challan was presented against him for an offence under Section 123 of the Motor Vehicles Act. At the trial Ramchandra admitted that he had not with him at the time when checked by Tikaram either the token of the payment of tax or the permit. He, however, produced the two in Court as Exs.D.1 and D.2. The learned Magistrate found that the token Ex.D. 2 did not relate to truck No.RJR 489 in dispute, but to No.203 RJR. As regards the permit Ex.D.1, he was of opinion that it had expired on 30-5-1952, and it was not clear whether it related to RJR 489 or to RJR 203. He accordingly convicted Ramchandra under Section 123 of the the Motor Vehicles Act on a charge of driving truck No.489 RJR without having a valid permit for the same. An appeal was filed before the learned Sessions Judge, and he was of opinion that Section 123 of the Motor Vehicles Act only made a Contravention of Section 42 of the Act punishable, and Section 42 only applied to the owner of a transport vehicle, and, therefore, Ramchandra, who was not an owner of the transport vehicle, but was driving the same, could not be punished under Section 123 of the Act.

3. The view taken by the learned Sessions Judge is no doubt erroneous. Section 42 prohibits only an owner from using a transport vehicle or permitting the use of the vehicle in any public place without a permit. But Section 123 applies not only to the owner, but also to a driver of a motor vehicle for contravening the provisions of Section 42. If the contravention of Section 42 be only referred to as applicable to the owner, the opening words of Section 123 become meaningless. The proper interpretation of Section 123 would be that it makes punishable the driver of a motor vehicle or any person who causes or allows a motor vehicle to be used or lets out a motor vehicle for use without permit or contrary to the conditions of the permit. A driver of a transport vehicle thus commits an offence if he drives the transport vehicle without permit or contrary to the conditions of the permit. The same view has been taken by a Single Bench of this Court in *Kalyanlal v. The State*,¹ and we agree with the view taken in that case. The learned Magistrate has, however, committed an error in finding that there was no valid permit for the vehicle. The copy issued by the District Magistrate, which is on the record shows that the permit was a temporary one, and was in respect of R J R 489, and the date of expiry was 30-6-1952. There is mention in column 4 as to the type of vehicle that it related to R J R 489, with the addition of the figures and word "203 (New)," which meant that the new number of the vehicle was 203 RJR. The document produced by the accused, therefore, shows that there was a valid permit for the vehicle when the accused was accosted.

4. It was next contended that the permit should have been produced when asked for by the Traffic Superintendent on duty. The only provisions of law referred to in support of the contention are Rules 84, 106 and 140 (c) of the Motor Vehicles Rules 1951. Rule 84(c) only casts a duty on the holder of a temporary permit to carry the same in a glazed frame or other suitable container carried in or affixed to the interior of the vehicle in such a way as to maintain it in a clean and legible condition readily available for inspection at any time 'by any authorized person. Rule 106 authorizes any police officer in uniform to mount any transport vehicle for the purpose of inspecting Part B of the permit. The authority to inspect a temporary permit is not found in Rule 106. But even if it be assumed that any police officer in uniform can mount any transport vehicle, it is not the case for the prosecution that the police officer was prevented from mounting. Similarly Rule 140(c) authorizes any police officer in uniform to call upon the driver of a public service vehicle to stop the vehicle and to keep it at rest for such time as may be necessary to enable such officer to make

reasonable examination of the number of passengers and other contents of the vehicle so as to satisfy himself that the provisions of the Act and the rules and the provisions and conditions of the permit in respect of the vehicle are being complied with. No contravention of this rule has been alleged, nor that any police officer was prevented from stopping the vehicle, although it may be mentioned that it refers to a public service vehicle, while RJR 489 was for carrying private goods of Bhagwan Oil Mills, in whose name the permit was applied for. Rule 84(c), which has no doubt been not complied with, only enjoins on the holder of the permit to cause the permit to be exhibited in the particular manner. No duty is cast on the driver in that respect, and, therefore, even if the contravention of Rule 84 has been made in this case, Ramchandra driver cannot be punished for that contravention.

5. The non-production of the token of payment of tax has not been taken into account in convicting the accused. There is some misunderstanding in the mind of the learned Magistrate when he says that the token produced did not refer to the vehicle, for the copy on the record clearly mentioned it as referring to vehicle No.RJR 203. The description in the permit makes it clear that RJR 203 is the new number awarded to RJR 489. That token was also valid upto 30-6-1952, and, therefore, it could not be said that the tax had not been paid for the vehicle.

6. The learned Deputy Government Advocate drew our attention to Section 10(2) of the Motor Vehicles Taxation Act, 1951, which requires a person to whom a token is delivered to cause it to be exhibited in a particular manner, and the manner prescribed by Rule 17 of the Rajasthan Motor Vehicles Taxation Rules, 1951, is that the token issued in respect of every motor vehicle shall be enclosed in a circular holder of weather proof constructed and shall be affixed on the windscreen or other conspicuous position and on a side of the vehicle which is to the left-hand of the driver when driving, in such a way as to be clearly readable from the front of the vehicle. This provision of the rule has no doubt been not complied with, but again the duty of complying with this provision is laid by the law on the person to whom the token is delivered, and the person to whom the token is delivered is to be the person who pays the tax. That person is the owner of the truck. The irregularity in compliance with the provisions of the Motor Vehicle Taxation Rules was thus committed by the owner, and it does not make the driver of such a vehicle punishable under any section of the law. While, therefore, not agreeing with the learned Sessions Judge on the grounds on which he has directed acquittal of the accused, we hold that no offence has been

committed by Ramchandra, and the order of acquittal is maintained.

7. The appeal is dismissed.

Appeal dismissed.

Cases Referred.

1. AIR 1954 Raj 250