

RAJASTHAN HIGH COURT

State

Vs.

Motilal

Criminal Appeal No. 85 of 1954
(Ranawat and Sharma, JJ.)

15.03.1956

JUDGMENT

Ranawat, J.

1. This is an appeal by the State under Section 417 of the Criminal Procedure Code against an order of acquittal passed by the City Magistrate of Bundi on 21-11-1953.

2. The police challaned Motilal, Manager of the Mitra Bahudhandi Sahkari Samiti Ltd., Bundi, and Ramchander, driver of the Bus No. RJG 134 to the Court of the City Magistrate, Bundi, on the allegation that when the said bus was checked on 11-7-1953, on Bundi-Nainwa Road, it was found that the driver had no permit for plying the vehicle on that road. The bus, it is said, belongs to the aforesaid Samiti of which Motilal is the manager. A case under Section 42 read with Section 123 of the Motor Vehicles Act of 1939 was challaned against both the accused persons. The learned City Magistrate held that Motilal being the Manager of the Samiti could not be held liable under Section 42 read with Section 123 of the Motor Vehicles Act as Section 42 covered the case of an owner of a motor vehicle only and section 123 was not wide enough to cover the case of a manager of a company. As regards Ramchander driver, the learned Magistrate held that as the scope of Section 42 of the Motor Vehicles Act was limited to the case of an owner only, a driver could not be punished under Section 123 for the contravention of Section 42. The learned Magistrate followed the decisions of the Allahabad High Court in *Uma Shanker v. Rex*¹ and *Jagroop v. Rex*,²

3. It is urged by Mr. R. A. Gupta on behalf of the State that the view taken by the learned Magistrate is erroneous. He has referred to a Single Bench decision of this Court in *Kalyanlal v. The State*,³ in which it has been held as follows :

"It is no doubt true that Section 42(1) imposes the duty 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-section (1) of Section 42. To my mind, Section 123(1) makes the contravention of the provisions of sub-section (1) of section 42 punishable not only for the owner of a transport vehicle, but also for any other person who drives it".

4. We are in agreement with the decision of this Court in Kalyanlal's case in which the decisions in AIR 1950 Allahabad 234 and *Public Prosecutor v. Jevan*,⁴ were followed. The decision in Jagroop's case which has been relied upon by the learned Magistrate does not appear to lay down the correct law. The learned Judge in that case did not notice the decision of that very Court in AIR 1950 Allahabad 284. The reasoning given by Desai, J., in that judgment is that no duty is cast on the driver of a motor vehicle to equip such vehicle with fire extinguisher and the driver, therefore, cannot be held liable for contravention of Section 42 in case he drives the vehicle which is not fitted with such a fire extinguisher. With due respect to the learned Judge who decided the case it may be noted that the scope of Section 123 includes the case of a driver in express terms and if its meaning be taken in a limited sense as has been done by Desai, J., it would go against the express language used by the Legislature in that section. A driver of a motor vehicle before he undertakes driving must satisfy himself that a permit for the use of that vehicle has been obtained and that the vehicle is in other respects fit to be used. In our opinion the logic of the decision in the aforesaid decision of Desai, J., is not very sound.

5. As regards the case of the manager it may be noted that though simply on account of being the Manager no liability can be imposed on Motilal, yet if he was the person who was in charge of the vehicle and if he is proved to have caused or allowed the vehicle to be used in contravention of the provisions of sub-section (1) of Section 42, he would be held liable under Section 123. No evidence was led by the prosecution and the case was dismissed before the trial commenced on preliminary legal points. The City Magistrate, therefore, should be directed to record the evidence and then to decide the case according to law.

6. We allow this appeal and set aside the order of acquittal passed by the City Magistrate of Bundi and direct him to hold a trial of both the accused, Motilal and Ramchander, according to law and then to decide the case.

Appeal allowed.

Cases Referred.

1. AIR 1950 All 234
2. AIR 1952 All 276
3. AIR 1954 Raj 250
4. AIR 1941 Mad 845