REVISIONAL CRIMINAL

Before Bhandari, J.

TEJA SINGH,—*Convict-Petitioner.*

1951

Aug 20

versus

THE STATE,—*Respondent.*

Criminal Revision No. 1181 of 1950

Motor Vehicles Act (IV of 1939), sections 42 and 123 Section 42 whether applies to a driver of a motor vehicle as distinct from its owner, when he contravenes the conditions of the permit—Penal Statutes—Construction of—Rule stated.

Held, that on a plain reading of sections 42 and 123 of the Motor Vehicles Act, there can be no doubt whatever

that whereas the former section is designed to punish the owner of a transport vehicle, the latter is designed to punish the driver or any other person. It would be a quibble to say that a driver of a motor vehicle who contravens the conditions of a permit does not contravene the provisions of subsection (1) of section 42. Teja Singh v. The State

Held also, that penal statutes should be strictly construed, that is, they should not be enlarged or extended by intendment, implication or by any equitable consideration beyond the fair meaning of the language used. In other words, only those persons, offences and penalties which are clearly included should be considered within the operation of the statute and all questions in doubt should be resolved in favour of the person who has contravened the provisions of law. But no rule of construction requires that a penal statute should be unreasonably construed or so construed as to defeat the obvious intention of the Legislature or construed in a manner as would lead to absurd results. The court should endeavour to ascertain the intention of the Legislature and to give effect thereto.

Case reported by S. Gurdial Singh, Additional Sessions Judge, Rohtak, with his No. 49 of 1950 (under section 438 of the Criminal Procedure Code).

R. P. KHOSLA, for Petitioner.

DALJIT SINGH, for Advocate-General, for Respondent.

JUDGMENT

BHANDARI, J. The facts of this case are as follows :— Bhandari J.

Teja Singh, driver of Krishna Bus Service Ltd., Delhi, was detected by the Secretary, Regional Transport Authority, Ambala, on 25th January 1949, carrying about 11 maunds of vegetables on his stage carriage lorry D.L.H. 4501, against freight charge of Rs. 13-10-0 in contravention of rule 4.17 of the Motor Vehicles Act. He was summarily tried by the Additional District Magistrate, Rohtak and sentenced to a fine of Rs 100. He has brought this petition for revision of his conviction and sentence on a number of grounds. One is that, it is not the duty of the driver to see that the vehicle is loaded with goods in accordance with the conditions of the permit.

The accused, on conviction by D. D. Sharma (A.D.M.) exercising the powers of a Magistrate of

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the 1st Class in the Rohtak District, was sentenced, by order, dated the 20th December 1949, under section 42,123 read with rule 4.17 (sub-rule iv) of the Vehicles Act, to a fine of Rs 100 (One hundred).

The proceedings are forwarded for revision on the following grounds :—

It has recently been held by Allahabad High Court in *Jagrup* and another applicant v. *Rex*, complainant-respondent, reported as 4 D.L.R, 241, 'A penal clause must be construed strictly against the subject, and he should not be convicted unless he comes within the four corners of it : When there is no evidence that it is the duty of a driver and conductor of a public service vehicle to issue tickets or to see that the tickets are issued to the passengers, they cannot be held responsible for the non-issue of tickets. It is the owner and nobody else, 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 the provisions. It follows that the driver and the conductor cannot be, convicted on the ground that no tickets were issued.

Rules 4.42 and 4.43, which deal with the duties of drivers in this Province, do not lay down that it is their duty to see that the vehicle is loaded with goods in accordance with the conditions of the permit. In the circumstances, I am of opinion that the conviction of the accused in this particular case, cannot be maintained. It is, therefore, recommended that his conviction be set aside.

ORDER OF THE HIGH COURT

The short point for decision in the present case is whether a person who drives a motor vehicle in contravention of the conditions of a permit issued by the appropriate authority contravenes the provisions of section 42 of the Indian Motor Vehicles Act, 1939.

Teja Singh, a driver of the Krishna Bus Service Ltd, Delhi, who was carrying eleven maunds of vegetables in a transport vehicle in contravention of the

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provisions of rule 4.17 of the Motor Vehicles Act was convicted under sections 42|123 of the said Act and was sentenced to pay a fine of Rs 100. He filed a revision petition in the Sessions Court at Rohtak and the learned Additional Sessions Judge has recommended that the conviction of the petitioner should be set aside on the ground that he did not drive his motor vehicle in contravention of the provisions of section 42 of the Motor Vehicles Act. The question is whether the Court below has come to a correct determination in point of law.

Section 42 of the Motor Vehicles Act provides that 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. Then follow three provisos which are not relevant to the decision of this case. Section 123 enacts that 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 provision of subsection (1) of section 42 shall be liable to such punishment as is mentioned in the section.

Prima facie section 42 is designed to punish the owner of a transport vehicle who uses or permits the use of the vehicle in contravention of the conditions of the permit while section 123 is designed to punish the person who drives or causes or allows a motor vehicle to be used in contravention of the conditions of the permit. The learned Single Judge who recorded the judgment in the case of *Jagrup* v. *Rex* (1), appears to have taken a contrary view. He observes that section 42 prohibits the owner alone and nobody else such as the driver or conductor from using or permitting 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

(1) 4 D. L. R. 241.

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be guilty of contravening this provision. This being so, the learned judge observes, 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.

I must confess, with great respect, that I am unable to concur in the view expressed by the learned Judge. It is true that penal statutes must be strictly construed, that is, they cannot be enlarged or extended by intendment, implication or by any equitable considerations beyond the fair meaning of the language used. In other words, only those persons, offences and penalties which are clearly included will be considered within operation of the statute and all questions in doubt will be resolved in favour of the person who has contravened the provisions of law. At the same time it must be remembered that no rule of construction requires that a penal statute should be unreasonably construed or construed so as to defeat the obvious intention of the Legislature or construed in a manner as would lead to absurd results. On the other hand it is of the utmost importance that the Court should endeavour to ascertain the intention of the Legislature and to give effect thereto. In Maxwell's Interpretation of Statutes (ninth edition, 1946, page 267) the learned author observes as follows :—

> "The rule which requires that penal and some other statutes shall be construed strictly was more rigorously applied in former times when the number of capital offences was very large, when it was still punishable with death to cut down a cherry-tree in an orchard, or to be seen for a month in the company of gipsies, or for a soldier or sailor to beg and wander without a pass. Invoked in the majority of cases in *favorem vitae*, it has lost much of its force and importance in recent times, and it is now recognised that the paramount duty of the judicial interpreter is to put upon the

language of the Legislature, honestly and faithfully, its plain and rational meaning and to promote its object."

In a recent English case *McQuade* v. *Barnes* (1), the point for decision was whether a by-law which provided that no person should " in any street within the borough * * * * * * * * tout, or importune any person for the purpose of selling any article " covered the case of a shopkeeper who, while standing in the private forecourt of his shop, loudly importuned passers-by in the street to patronise his shop. The Justice convicted the appellant and the Divisional Court dismissed the appeal. In discussing the effect of the bye-law, Lord Goddard, C.J., said :—

" It is possible to read it in one of two ways either, that the tout must be standing in the street or that he must be touting people in the street. We must so construe a bye-law as to give effect to the intention of the authority which made it just as we must construe statute so as to give effect to the wishes of Parliament, and if we gave to this bye-law the meaning for which the appellant contended it would mean that to a great extent the bye-law would be waste paper."

In Re Bide (deceased) (1948) 2 All. E. R. 995, 998 the Master of the Rolls laid down the following principles of construction :—

" The first thing one has to do, I venture to think, in construing words in a section of an Act of Parliament is not to take those words *in vacuo*, so to speak, and attribute to them what is sometimes called their natural or ordinary meaning in the sense that they must be so read that their meaning is entirely independent of their context. The method of construing statutes that I prefer is not to take particular words and attribute to them a sort of *prima facie*

(1) (1949) 65 T. L. R. 65.

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meaning which you may have to displace or modify. It is to read the statute as a whole and ask myself the question : 'In this statute, in this context, relating to this subject matter, what is the true meaning of that word'?"

In the present case, it seems to me that although the language employed by the draftsman in section 123 is not as clear as it might have been it is by no means difficult to ascertain the intention of the Legislature. To my mind this section was clearly intended to be a residuary section and was enacted with the object of punishing a person (other than the owner) who uses a vehicle in contravention of the conditions of the permit issued by the appropriate authority. Any other construction would lead to absurd results and render the section wholly meaningless. On a plain reading of sections 42 and 123 I entertain no doubt whatever that whereas the former section is designed to punish the owner of a transport vehicle the latter is designed to punish the driver or any other person. It would, in my opinion, be a quibble to say that a motor driver who contravenes the conditions of a permit does not contravene the provisions of subsection (1) of section 42. In coming to this conclusion I am supported by at least two authorities of two different High Courts. In *Public Prosecutor* v. *Jevan and others*, (1), it was held that a person who drives a motor vehicle in a public place without a permit contravenes the provisions of section 42 (1) and is punishable under the provisions of section 123 (1). In *Provincial Government, Central Provinces and Berar* v. *Mohanlal Keshaolal Vyas*, (2), it was held that while section 42 (1) applies only to the owners of transport vehicles, section 123 applies to any one who drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of subsection (1) of section 42.

For these reasons I am of the opinion that the recommendation of the learned Sessions Judge cannot be accepted and that the petition must be dismissed. I would order accordingly.

(1) A.I.R. 1941 Mad. 845.
(2) A.I.R. 1944 Nag. 84