

(1987) 10 KAR CK 0010
In the Karnataka High Court
Case No : W.P. No. 15496/1987

Chandramohan

APPELLANT

Vs

Regional Transport Officer, Dharwar

RESPONDENT

Date of Decision : 26-10-1987

Acts Referred:

Motor Vehicles Act, 1939 — Section 122b, 33(1)(B)

Citation : (1987) 3 KarLJ 206

Hon'ble Judges : K. A. Swami, J

Judgement

Swami, J.-In this petition under Articles 226 & 227 of the Constitution, the petitioner has sought for quashing the endorsement bearing No. DSA.II.ZRM 2955/87-88, issued by the respondent informing the petitioner that "there is no provision to compound the offence under Section 33(1)(b) of the Motor Vehicles Act, 1939" (hereinafter referred to as the "Act") and further directing the petitioner to surrender the valid documents of the vehicle No. ZRM 2955 (Re-assigned as CAK 2122) immediately.

2. The registration certificate of the vehicle in question was suspended by the respondent on 19-6-1986, for a period of 4 months and again on 18-11-1986, for a period of 60 days under Section 33(1)(b) of the Act, for using the vehicle without permit. The petitioner preferred writ Petition Nos. 14800 & 14801 of 1987, before this Court, challenging the validity of those orders, but ultimately, withdrew the Writ Petitions on 7th October, 1987, with liberty to seek compounding of the violations in question if permissible in law. The order passed in W.P.Nos. 14800 & 14801 of 1987, on 7th October, 1987, reads thus:

Sri. C. Narasimhachar, learned Counsel for the petitioners submits that the petitioner may be permitted to withdraw the petitions reserving liberty to him to seek compounding of the violations considered in Annexures "C and "D" dated 19-6-1986 and 18-11-1986 respectively. The submission is placed on record.

2. Accordingly, these petitions are dismissed as withdrawn reserving liberty to the petitioner to seek compounding of the violations in question, if permissible in

law.

3. Sri. P.R. Ramesh, learned High Court Government Pleader, is permitted to file his memo of appearance on behalf of respondent in six weeks.

3. After withdrawing the aforesaid Writ Petitions, the petitioner sought for compounding of the same. It is this request of the petitioner that has been rejected by the respondent on the ground that there is no provision in the Act to permit the petitioner to compound the same.

4. It is contended on behalf of the petitioner that Section 127-B of the Act, inserted by Central Act 47 of 1982, enables the respondent to compound the offence committed by the petitioner in using the vehicle without permit. On the contrary, learned Government Pleader submits that Section 127-B deals with the prosecutions and not with the proceeding under Section 33(1)(b) of the Act; that there is no provision in the Act to enable the respondent to permit the petitioner to compound the contravention committed by using the vehicle contrary to Section 42 of the Act.

5. Hence, the question for consideration is, whether the proceeding initiated under Section 33(1)(b) of the Act can be compounded.

6. The proceeding under Section 33(1)(b) of the Act is initiated against the owner of a registered motor vehicle on the ground that it has been, or is being, used for hire or reward without a valid permit for being used as such. After giving the owner an opportunity of making any representation he may wish to make, and on proof of the fact that the vehicle was or was being used for hire or reward without a valid permit for being used as such, the registering authority or other prescribed authority is empowered to suspend the registration certificate of the vehicle for a period not exceeding four months. There is no provision in the Act enabling the Registering or other prescribed authority to compound such a proceeding, whereas, in a proceeding initiated for any of the acts falling under Section 60 of the Act, there is a specific provision made empowering the Transport Authority instead of cancelling or suspending the permit, as the case may be, to recover from the holder of the permit the sum of money agreed upon. However, this power is again subject to the provisions contained in Sub-Section (3) of Section 60 of the Act as inserted by the Motor Vehicles (Karnataka Amendment) Act, 1973. Chapter-IX of the Act deals with Offences, Penalties and Procedure. Section 112 of the Act the first section in Chapter-IX, provides that whoever contravenes any provision of the Act or of any rule made thereunder shall, if no other penalty is provided for the offence, be punishable with fine which may extend to one hundred rupees, or, if having been previously convicted of any offence under the Act he is again convicted of any offence under the Act, with fine which may extend to three hundred rupees. Section 123 of the Act which also falls under Chapter-IX makes using of vehicle without registration or permit, penal. It provides that whoever drives a motor vehicle or causes or provides that whoever drives a motor vehicle or causes or allows a motor vehicle

to be used in contravention of the provisions of Section 22 or without the permit required by Sub-Section (1) of Section 42 or in contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used or to the maximum number of passengers and maximum weight of luggage that may be carried on the vehicle, shall be punishable for a first offence with fine which may extend to two thousand rupees and for any second or subsequent offence with imprisonment which may extend to six months or with fine which may extend to three thousand rupees, or with both.

7. In addition to this, Chapter-IX of the Act creates several other offences and provides for punishment of the same. Section 127-B of the Act, which is inserted by Act No. 47 of 82, provides for compounding of certain offences punishable under the Act. The offences punishable under Sections 112 and 123 of the Act and certain other offences are made compoundable. When the Act provides for compounding of contravention of certain provisions of the Act and certain offences punishable under the Act, it follows that there is implied denial of power to compound in respect of other contraventions and offences by the Act. That being so, when there is no provision made in Section 33 of the Act, enabling the registering authority or other prescribed authority to compound the use of a registered vehicle for hire or reward without a valid permit for being used as such, it is not permissible for the registering authority or other prescribed authority to compound the proceeding under Section 33(1)(b) of the Act. Consequently, it follows that the respondent is right in informing the petitioner that there is no provision for compounding the proceedings in question and further directing the petitioner to surrender the valid documents of the vehicle in question immediately.

8. For the reasons stated above, the petition fails and the same is dismissed.

Sri. P.R. Ramesh, learned High Court Government Pleader is permitted to file memo of appearance in 6 weeks.

Writ Petitions dismissed.