

(1985) 03 DEL CK 0002

In the Delhi High Court

Case No : Criminal Revn. No's. 61, 138, 139 and 140 of 1982

Court on its own Motion

APPELLANT

Vs

State (Delhi Admn.) and Others

RESPONDENT

Date of Decision : 28-03-1985

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 4.38

Motor Vehicles Act, 1939 — Section 112, 118A, 123, 123(1), 130

Penal Code, 1860 (IPC) — Section 229, 337, 67

Citation : AIR 1985 Delhi 483 : (1986) 1 RCR(Criminal) 130

Hon'ble Judges : J.D. Jain, J

Bench : Single Bench

Advocate : P.P. Grover, for the Appellant; Sodhi Teja Singh and B.T. Singh, for the Respondent

Judgement

J.D. Jain, J.—All the above-mentioned revision petitions arise out of judgment dated 19th January, 1982 of an Additional Sessions Judge, Delhi, vide which he accepted three criminal revision petitions 99/81 & 100/81 Charan Singh v. State (Delhi Admn.) and 65/81 Abdul Rashid v. State (Delhi Administration), (wrongly described as criminal appeals in the impugned judgment) and set aside the conviction and sentence awarded to the petitioners therein by the Special Metropolitan Magistrate under the various provisions of the Motor Vehicles Act, 1939 for short "the Act" and the Rules made thereunder.

2. Cr.R. No. 61/82 is based on suo motu notice taken by Rajindar Sachar, J. of the fact that the learned Additional Sessions Judge while setting aside the conviction of the various accused persons on the ground that the trial Court had not afforded an opportunity to the accused to defend themselves properly had quashed the proceedings but had not sent the cases back for re-trial and fresh decision after giving an opportunity to the accused. Subsequently, the Delhi Administration filed separate revision petitions in respect of each case. So, this judgment of mine shall be common to all these revision petitions.

3. Succinctly the facts leading to these revision petitions are as under:

Cr.R. No. 138/82.

Charan Singh-respondent is a motor-vehicle driver. On 30th Sept. 1981 he was intercepted by the traffic police attached to the court of Shri S.C. Gupta, Special Metropolis Magistrate, who was holding a mobile court on the roadside near Model Town at about 4.30 P.M. when he was driving private bus No. DLP 6582. He was allegedly found to be driving the said bus without a driving licence. He was thereupon produced by the traffic police before Shri S.C. Gupta, Special Metropolitan Magistrate and on his pleading guilty to the substance of accusation, he was convicted of an offence u/s 3/112 of the Act and sentenced to a fine of Rs. 100/- which is the maximum prescribed u/s 112 of the Act. In default of payment of fine he was awarded imprisonment for three days. Feeling aggrieved he filed Cr.R. 99/81, inter alia, contending that he was not afforded any opportunity to defend himself and in fact he had with him a receipt to show that his driving licence had been taken into possession by the police earlier in case FIR No. 855 dated 28th Dec. 1980 and he had shown the same to the police but the police officials did not bring the same to the notice of the Special Metropolitan Magistrate.

Cr.R. 139/82

4. In this case the same respondent, viz., driver Charan Singh was again intercepted while driving his aforesaid bus DLP 6582 on 16th Oct. 1981. He was passing through Chowk Sabzi Mandi. He was allegedly plying the aforesaid vehicle without a registration certificate and he was carrying 75 passengers in the bus. He was produced before the same Metropolitan Magistrate, namely, Shri S.C. Gupta for allegedly committing violation of Section 22 read with Rule 4.38(vii) punishable u/s 123 of the Act and on his pleading guilty to the substance of accusation, he was convicted of the aforesaid offences and sentenced to a fine of Rs. 150/-; in default of payment of fine he was awarded imprisonment for 15 days. Feeling aggrieved he filed Cr.R. 100/81, inter alia, contending that the substance of accusation was neither explained to him nor read out to him and he was simply made to sign some papers written in English which he did not understand and it was only subsequently that he learnt that he had been convicted for not possessing the registration certificate and for overloading the bus with 75 passengers. He contended that he had the registration certificate at the relevant time and he had shown the same to the police officials but the latter declined to inform the court about the same. As for overloading, he contended that the way bills of the bus showed that the number of passengers occupying the bus was fifty, Even otherwise the capacity of the bus was to carry 75 passengers and as such there was no overloading.

Cr.R. 140/82

5. In this case too the respondent-Abdul Rashid was convicted by the Special Metropolitan Magistrate (Shri Hanuman Prasad) for violation of Rule 4.38(vii) of

the Motor Vehicles Rules read with Section 123 of the Act. The allegation against him was that on 16th Sept. 1981 at about 9.20 A.M. he was plying mini bus No. DHP 125 on New Rohtak Road, Karol Bagh. Since 68 passengers were found in the bus as against the sanctioned capacity of 35, he was produced before the Special Metropolitan Magistrate, who was holding a mobile court on the same day and on his pleading guilty he was sentenced to a fine of Rs. 950/-. Further, according to the respondent, the Special Metropolitan Magistrate ordered impounding of his vehicle No. DHP 125. He also filed a revision petition contending that the substance of accusation was never explained to him and he was not afforded any opportunity to defend himself. It was also his contention that the order to impound the vehicle in default of payment of fine was illegal and invalid.

6. The learned Additional Sessions Judge has in the impugned order observed that the orders of conviction and sentence in all the three cases were passed by the Special Metropolitan Magistrate by affixing a prepared rubber stamp and just filling in the blanks without affording any opportunity to the accused therein to be heard and to engage a lawyer of their choice which was their legal right. Thus, they were compelled to suffer the conviction and the sentence of heavy fines imposed on them. As shall be presently seen, no exception can be taken to this observation of the learned Additional Sessions Judge. Unfortunately, however, he has also acquitted the petitioners on merits and in the process he has expounded certain propositions of law which do not bear scrutiny.

7. As regards duty of a driver to produce driving licence and certificate of registration, Section 86 of the Act provides that:

(1) The driver "and the conductor, if any" of a motor vehicle in any public place shall, on demand by any police officer in uniform, produce his licence for examination.

(2) The owner of a motor vehicle "other than a vehicle registered u/s 39" or in his absence the driver or other person in charge of the vehicle, shall, on demand by a registering authority or any person authorised in this behalf by the State Government produce the certificate of registration of the vehicle and, where the vehicle is a transport vehicle, the certificate of fitness referred to in Section 38.

(3) If the licence or certificates, as the case may be, are not at the time in the possession of the person to whom demand is made, it shall be a sufficient compliance with this section if such person produces the licence or certificates within ten days at any police station in India which he specifies to the police officer or authority making the demand;

Provided that, except to such extent and with such modifications as may be prescribed, the provisions of this sub-section shall not apply to driver driving as a paid employee, or to the driver of a transport vehicle or to any person required to produce the certificate of registration or the certificate of fitness of a transport vehicle.

8. Sub-section (1) of this section undoubtedly imposes an obligation on the driver and the conductor, if any, of a motor vehicle to produce his licence when demanded by a police officer in uniform. However, this sub-section has to be read in conjunction with -Sub-section (3) which obviously dilutes the rigour of Sub-section (1) inasmuch as it allows a time of ten days to the delinquent driver/conductor to produce the licence or the registration certificate, as the case may be, at any police station in India and that would constitute sufficient compliance with the provisions of Sub-section (1). In other words, it is the non-production of licence on demand and failure to produce it subsequently at the police station within the time allowed by Sub-section (3) that is made an offence u/s 86 read with Section 112 and mere non-possession of the licence while driving is not an offence. So far the learned Additional Sessions Judge is absolutely right. However, he seems to have completely overlooked the proviso to Sub-section (3) which makes it abundantly clear that the provisions of Sub-section (3) shall not apply to a driver driving as a paid employee or to the driver of a transport vehicle or to any person required to produce the certificate of! registration or the certificate of fitness of a transport vehicle. On its plain language, therefore, the proviso carves out an exception against a driver who is a paid employee or driver of a transport vehicle etc. In the instant case the respondent-Charan Singh was admittedly driving a passenger bus. It is not his case that he was not a paid employee although an assertion was made by the learned Counsel for Charan Singh at the bar that he was not a paid employee but he could not substantiate this allegation when taken through the grounds of revision in criminal revision petition No. 99/81 filed in the court below and, therefore, he frankly conceded that this plea was just a figment of imagination of the learned Additional Sessions Judge himself. The learned Additional Sessions Judge has observed in the impugned order that "the challan had mentioned that the accused was driving his vehicle thereby implying that he was not the paid driver". The words "his vehicle" are susceptible of this interpretation and, therefore, it may not be possible to take exception thereto. However, it is not comprehensible how the respondent was taken out of the category of the "driver of a transport vehicle". There can be no two opinions that a bus is a transport vehicle and as such the respondent was under legal obligation to produce his driving licence on demand and he cannot claim the benefit of Sub-section (3). Reference in this context may be made with advantage to *Daulat Mal Singhvi v. The State* 1963 Cri LJ 111, in which it was held by a learned single Judge of Rajasthan High Court that:

Sub-section (3) clearly lays down that if the driving licence or registration certificates are not at the time in possession of the person to whom demand is made, it shall be a sufficient compliance with this section if such person produces the licence or certificates within ten days at any police station in India which he specifies to the police officer or authority making the demand. This sub-section does not apply to a driver driving as a paid employee or to the driver of a transport vehicle as laid down in the proviso thereto.

9. Notwithstanding, however, that Charan Singh-respondent has been acquitted

by the learned Additional Sessions Judge on a wrong exposition of Section 86(3), there still appears to be a silver lining in the dark clouds which threaten the respondent. It is, that in his revision petition he specifically averred that his driving licence had been earlier seized by the police in case FIR No. 855 dated 28th Dec. 1980 and that he was in possession of the receipt issued to him on that account. He produced the said receipt before the traffic police but instead of the same being shown to the court he was forced to sign on dotted lines and was asked to pay a fine of Rs. 100/-. He attached a photostat copy of the said receipt along with his grounds of revision as annexure "A". Its perusal would show that his driving licence No. C-9629 had been seized by Adarsh Nagar police in case FIR No. A55 dated 28th Dec. 1980 u/s 229/337, IPC. Thus, there can be no two opinions that if the licence was already in possession of the police of a different Police Station it would be sufficient compliance with Sub-section (3) if the police officer making the demand is so intimated. However, failure to so intimate that fact would not warrant conviction u/s 86. The learned Counsel for the State has fairly and candidly conceded this proposition of law. There is certainly considerable force in the submission of the learned Counsel for Charan Singh-respondent that he would in all probability have shown the aforesaid receipt to the traffic police and at any rate he would have done so had he been given proper opportunity to defend himself. The unholy haste in which he was constrained to plead guilty was, therefore, responsible for his not raising the proper defence. Anyway, in view of the aforesaid receipt, the conviction of the respondent cannot be sustained.

10. On a parity of reasoning the respondent-Charan Singh cannot claim benefit of Sub-section (3) of Section 86 of the Act, as having regard to the explicit language of the proviso thereto he was bound on demand to produce the certificate of registration forthwith. The word "demand" connotes something imperative and immediate that brooks no delay. However, his contention is that he had the registration certificate with him at the relevant time. He attached a photostat copy of the same (annexure "A") with the grounds of revision in Cr.R. No. 100/81 to countenance his plea. However, this being purely a question of fact it would not be possible to express any opinion regarding its veracity. All the same, as observed earlier, the entire proceedings before the Special Metropolitan Magistrate are vitiated by haste and as shall be presently seen non-compliance with mandatory provisions of Section 130 of the Act. It is also pertinent to notice here that according to the registration certificate the seating capacity in the bus was 50 and besides that 25 passengers could be accommodated in standing position. Thus the bus could carry a total number of 75 passengers and it was precisely the number which was actually found in the bus on 16th Oct. 1981 when he was challenged under Rule 4.38(vii) read with Section 123 of the Act. Thus, this case seemingly affords a glaring instance of miscarriage of justice simply because the learned Special Metropolitan Magistrate did not care to follow the prescribed procedure and the respondent was deprived of reasonable opportunity to defend himself.

11. Abdul Rashid-respondent too has been convicted for infraction of Rule 4.38(vii) read with Section 123 of the Act. His grievance was twofold. Firstly, that he was not afforded an opportunity of being heard and secondly, that the Special Metropolitan Magistrate exceeded his jurisdiction by directing that in default of payment of fine his vehicle be impounded. The learned Counsel for the State has again frankly conceded that the Special Metropolitan Magistrate has no power to impound the vehicle in the event of default on the part of Abdul Rashid-respondent to pay the fine Imposed on him. Indeed, a glance at the impugned order dated 16th Sep. 1981 would itself show that subsequent to the passing of the said order the learned Magistrate or someone attached to him realised this fundamental mistake and deleted the second part of the order by way of rectification. However, the certified copy of the order filed by Abdul Rashid-respondent in Cr.R. No. 65/81 would show that the said order was in-tact and had not been tampered with up till 25th Sept. 1981 when the certified copy was ready. Certainly this kind of malpractice on the part of a judicial officer or his subordinate must be deprecated with all the force at one's command. I would have surely ordered for a probe into the matter but having regard to the way in which the last lines of the said order which are nothing but an impression of prepared rubber stamp, have been scored off, no useful purpose would be served and the inquiry may simply end in fiasco.

12. That brings me to the most crucial question which is common to all these cases. It is whether it was incumbent upon the Special Metropolitan Magistrate to follow the procedure specifically laid down in Section 130 of the Act and if so, what would be the effect of non-compliance therewith. The said section is reproduced below for ready reference.

(1) The Court taking cognizance of an offence under this Act--

(i) may, if the offence is an offence punishable with imprisonment under this Act, and

(ii) shall, in any other case, state upon the summons to be served on the accused person that he--

(a) may appear by pleader and not in person, or

(b) may, by a specified date prior to the hearing of the charge plead guilty to the charge by registered letter and remit to the Court such sum not exceeding the maximum fine that may be imposed for the offence as the Court may specify.

Provided that nothing in this sub-section shall, apply to any offence specified in Part A of the Fifth Schedule.

(2) Where the offence dealt with in accordance with Sub-section (1) is an offence specified in Part B of the Fifth Schedule, the accused person shall if he pleads guilty to the charge, forward the licence to the Court with the letter containing his plea in order that the conviction may be endorsed on the licence.

(3) Where an accused person pleads guilty and remits the sum specified and has complied with the provisions of Sub-section (2), no further proceedings in respect of the offence shall be taken against him, nor shall he be liable to be disqualified for holding or obtaining a licence by reason of his having pleaded guilty.

13. On a plain reading of this section it is manifest that Clause (ii) of Sub-section (1) is mandatory and not merely directory. This is explicit from, the use of the word "may" in Clause (i) in" contradistinction to Clause (ii) where the word "shall" has been used. Obviously a discretion has been conferred on the court taking cognizance of the offence under the Act under Clause (i) because the offence thereunder is punishable with imprisonment and must necessarily be graver in nature than the one falling within the ambit of Clause (ii). That the comparative gravity of the offence was present to the mind of the legislature for application of the procedure contained in Section 130 is further borne out by the proviso to Sub-section (i) which excludes offences specified in Part A of the Fifth Schedule from the purview of Sub-section (1). As shall be presently seen, the offences alleged to have been committed by the respondent in the instant case fall within the ambit of Clause (ii) of Sub-section (1) and even Sub-section (2) of Section 130.

14. This section came up for consideration before the Supreme Court in *Pooran Singh and Another Vs. State of Madhya Pradesh*, . In that case the Magistrate had issued process against the appellants therein for their appearance in court by pleader, but did not make any endorsement thereon in terms of Section 130(1) (b). It was urged by the appellants that the summons served upon them was not in accordance with law for want of an endorsement as envisaged in Clause (b) of Sub-section (1) of Section 130 and thus they were deprived of the valuable right conferred by the aforesaid section. Repelling this contention the Supreme Court held that (at p. 1584):

The Magistrate taking cognizance of an offence is bound to issue summons of the nature prescribed by Sub-section (1) of Section 130. But there is nothing in. that sub-section which indicates that he must endorse the summons in terms of both the Clauses (a) and (b): to hold that he is so commanded would be to convert the conjunction "or" into "and". There is nothing in the words used by the Legislature which justifies such a conversion, and there are strong reasons which render such an interpretation wholly inconsistent with the scheme of the Act.

The Supreme Court enunciated the position further:

It could not have been the intention of the Legislature that the offender, even if the case was serious enough to warrant the imposition of the maximum penalty which is permissible under the section to which the provision is applicable, to avoid imposition of a higher penalty than Rs. 25 by merely pleading guilty. Section 130, it appears, was enacted with a view to protect from harassment a person guilty of a minor infraction of the Motor Vehicles Act or the Rules framed

thereunder by dispensing with his presence before the Magistrate and in appropriate cases giving him an option to plead guilty to the charge and to remit the amount which can in no case exceed Rs. 25.

The Supreme Court then pointed out that:

There are also certain offences which, if-repeated but not otherwise, are liable to be punished with imprisonment, e.g., certain offences u/s 118A and u/s 123 of the Act. It would be difficult to hold that the Legislature could have intended that irrespective of the seriousness or gravity of the offence committed, the offender would be entitled to compound the offence by paying the amount specified in the summons, which the Magistrate would be bound to accept, if the contention raised by the appellants is correct.

15. It may be pertinent to notice here that subsequent to the aforesaid judgment of the Supreme Court, Sub-section (1) of Section 130 was amended by Act 56 of 1969 and the erstwhile ceiling on the amount of fine payable under Clause (b), viz. Rs. 25/- was removed and as such it is now open to the court to call upon the accused to remit to the court, in case he pleads guilty to the charge, such amount not exceeding the maximum fine that may be imposed for the offence as the court may specify. It would thus appear that the primary consideration which weighed with the Supreme Court would no longer be available and the court is bound to issue the necessary summons with an endorsement as contemplated in Clause (a) or (b) of Sub-section (1) and non-compliance with the same will seriously prejudice the accused in more than one way. In *Nilamani Singh Tanu Singh v. The State* AIR 1970 Tripura 72, R.S. Bindra, J.C. enumerated the various benefits that accrue to an accused in a case to which Section 130 of the Act applies. Indeed they are apparent from the section itself. However, the two main advantages which the procedure prescribed by Section 130 confers on an accused deserve to be noticed. In the first instance, as option is given under Clause (a) of Sub-section (1) the accused can enter appearance through a pleader and thereby avoid personal appearance in the court. Secondly, if the accused pleads guilty to the charge, remits the fine as specified in the summons and forwards the licence to the court with the letter containing his plea as envisaged in Sub-section (3) of Section 130, no further proceedings in respect of the offence can be taken against him and he will not be liable to be disqualified for holding or obtaining a licence for reason of his having pleaded guilty. Evidently these concessions are of far-reaching consequences to an accused guilty of violation of the provisions of the Act or the Rules made thereunder. Hence, there is no escape from the conclusion that any infraction of the provisions of Sub-section (1) of Section 130 would invalidate the trial.

16. The question may, however, arise, as in the instant case, as to whether the Court would be bound to issue a summons even where the accused appears voluntarily or is brought before the court by the police before the stage for issuance of summons comes up. The answer to this question would apparently be in the negative in view of the words "the summons to be served on the

accused" appearing in Clause (ii) of Sub-section (1). These words clearly contemplate a stage when the attendance of the accused has yet to be procured. In other words, if the accused appears whether voluntarily or involuntarily the necessity of issuing summons may be dispensed with. However, that would not relieve the court of its obligation to give one of the two options to the accused as envisaged in Clauses (a) and (b) of Sub-section (1). It is for the simple reason that by mere appearing in court the accused cannot be deemed to have waived the valuable right conferred on him by the provisions of Section 130 and he can still insist upon due compliance with the said provisions by the court. Indeed, omission on the part of the court to comply with these salutary provisions may result in serious prejudice or even miscarriage of justice to the accused. So, even though issue of process in the instant case was unnecessary, it cannot be gainsaid that he was entitled to the benefit of Clause (b). The Magistrate cannot deny that benefit to him merely because the option under Clause (a) was no longer available to him. It is not difficult to visualise a case where an accused may not be carrying any money with him. Surely he would be entitled to reasonable time to remit the amount of fine which the court may determine to impose on him in case he chooses to plead guilty. He cannot be straightway sent to prison on the specious plea that having pleaded guilty he must suffer imprisonment in default of payment of fine. Such a course would be clearly violative of the letter and spirit of Sub-section (1) of Section 130 and this is precisely what has happened in the instant case. The Motor Vehicles Act provides its own procedure for enquiring into or trial of the offence charged. It is well settled that where a power is given to do certain thing in a certain way, the thing must be done in that way or not at all, and that other methods of performance are necessarily forbidden. The respondents were never afforded any opportunity to think over the matter and remit the fine in case they chose to plead guilty and thus earn the benefit of Sub-section (3). I am fortified in the view I have taken by a recent Bench decision of Allahabad High Court in Rang Bahadur Vs. State, . Said their Lordships (at P. 248):

As has been observed by the Supreme Court, the provisions regarding serving a summons on the accused appearing in Section 130 of the Act have been enacted in order to confer certain benefits on the accused. So if before the Court could do so, the accused himself appeared before it, the purpose is served and merely because of that it would be wrong to say that the case would be taken out of the purview of Section 130 of the Act. The other benefits enumerated in Section 130 of the Act, in case the accused pleaded guilty, cannot be denied to the accused and the Court has to act in accordance with Section 130 of the Act as if the accused had appeared before it on being summoned in accordance with Section 130 of the Act.

17. It has now to be seen whether the cases on hand fall within the purview of Sub-section (1) of Section 130 or not. The offence of driving without a licence falls under item No. 1. Part B of the Fifth Schedule. So, it is clearly covered by Sub-section (2) of Section 130. Similarly the offence of driving a transport

vehicle in contravention of Section 42 of the Act is listed at serial No. 14 in Part B of the Fifth Schedule. The said offence is punishable u/s 123 of the Act. No doubt, u/s 42(1) only the owner and nobody else such as driver or conductor is forbidden to use or permit the use of a vehicle, save and except in accordance with the conditions of the permit but the language of Section 123(1) is much wider than that of Section 42(1) and on a plain reading of these two sections there can be no shadow of doubt that whereas Section 42 is designed to punish the owner of the transport vehicle, Section 123 is designed to punish the driver or any other person who uses the vehicle in contravention of the conditions of the permit in a public place. As said by Bhandari, J. (as His Lordship then was) in *Teja Singh Vs. The State*, , it would be a quibble to say that a motor driver who contravenes the conditions of a permit does not contravene the provisions of Section 42(1). This legal proposition was put beyond any pale of controversy by the Supreme Court in *The State of Uttar Pradesh Vs. Bansraj*, . Said the Supreme Court (at P. 81-82):

Section 42(1) contemplates not only prohibition against the user by the owner of the vehicle or his permitting its user in a manner contrary to the conditions of the permit but it also contemplates that the vehicle itself shall be used in the manner authorised by the permit. The prohibition, therefore, is not merely against the use by the owner but against the use contrary to the conditions of the permit of the vehicle itself.... It is for this reason that the Legislature used the word "whoever" and did not limit the punishment set out in Section 123 to the owner himself.... What is made punishable is the driving of the motor vehicle by anyone contrary to the provisions of Section 42(1). That is to say, the motor vehicle cannot be driven by anyone contrary to the conditions of the permit relating to that vehicle.

18. Thus, the offence of overloading a transport vehicle in violation of the conditions of permit is punishable u/s 123 of the Act and being covered by Part B of Schedule V the accused would be entitled to the benefit of the procedure laid down in Section 130.

19. As for the offence of not producing the certificate of registration which constitutes infraction of Section 86(3) of the Act, suffice it to say that it does not fall within the mischief of the proviso to Sub-section (1) of Section 130 and as such being an offence under the Act it would also fall within the ambit of Sub-section (1) of Section 130. Thus, it was obligatory on the court to comply with the procedure prescribed therein in respect of this offence too.

20. Before concluding I may also refer to the observation of the learned Additional Sessions Judge:

The imprisonment of three days provided in default of payment of fine does not seem to be permitted by Section 112. The wrongful restraint, arrest and detention till the appellant arranged for the fine was, therefore, thoroughly illegal.

21. I am constrained to say that the learned Additional Sessions Judge hazarded

to make these unwarranted observations without caring to look into the substantive provisions of law on the subject. Section 67 of the Indian Penal Code specifically deals with the question of imprisonment for non-payment of fine when, the offence is punishable with the fine only. It provides that:

If the offence be punishable with fine only, the imprisonment which the court imposes in default of payment of the fine shall be simple and the term for which the court directs the offender to be imprisoned in default of payment of fine shall not exceed the (scale mentioned therein).

22. Hence, the Magistrate was perfectly within his jurisdiction in imposing the sentence of imprisonment in default of payment of fine, but as observed earlier, the whole trial was vitiated by non-compliance with the mandatory provisions of Section 130 of the Act which manifestly resulted in miscarriage of justice inasmuch as the respondents were not only deprived of the opportunity to think over the matter and then to plead guilty to the charge or not but also to remit the fine in the event of their pleading guilty to the charge. Moreover, the way the learned Special Metropolitan Magistrate rushed through the trial had the effect of depriving the accused of their right to know exactly what the accusation against them was and to consult and be defended by a lawyer of their choice, which is a constitutional right conferred on an accused facing a criminal trial.

23. To sum up, therefore, the impugned order in all the three cases calls for no interference although for reasons other than those given by the learned Additional Sessions Judge. I must further say that the learned Additional Sessions Judge out-stepped the limits of judicial restraint and propriety in making disparaging remarks against the functioning of the Special Metropolitan Magistrates as a whole. The mere fact that the Special Metropolitan Magistrates, who dealt with the instant cases, failed to comply with the relevant provisions of law would not justify an inference that the whole body of Special Metropolitan Magistrates who were appointed in accordance with the provisions of the Code of Criminal Procedure would be inept or inefficient. With these observations, I dismiss all the four revision petitions.