

(1985) 10 BOM CK 0046

In the Bombay High Court

Case No : Criminal Writ Petition No. 745 of 1982

Ishardas and Co. and Others

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 30-10-1985

Acts Referred:

Motor Vehicles Act, 1939 — Section 2(18)

Citation : AIR 1986 Bom 348 : (1986) MhLj 30

Hon'ble Judges : V.V. Vaze, J;C.S. Dharmadhikari, J

Bench : Division Bench

Advocate : N.H. Gurusahani and A.A. Irani, for the Appellant; R.S. More and J.A. Barday, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Vaze, J.—The Motor Vehicles Act, 1939 ("the Act") is a consolidating and amending Act relating to motor vehicles. Under Clause 18 of Section 2 of the Act, "motor vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises. Clause (33) of Section 2 defines "transport vehicle" to mean a public service vehicle or a goods vehicle, and Section 22 makes it obligatory upon the owner to obtain a certificate of registration before causing or permitting the vehicle to be driven in any public place. In addition to the requirement of a certificate of registration, Section 38 further prescribes that a transport vehicle should, in addition, carry a certificate of fitness in Form "H" as set forth in the First Schedule.

2. Even though a vehicle which is not a transport vehicle does not ordinarily require a certificate of fitness as prescribed by Section 38, Rule 202A of the Bombay Motor Vehicles Rules, 1959, ("Rules") enjoins upon the owner of the

motor vehicle which is older than 20 years from the date of its first registration to apply to the registering authority every year for periodical testing and inspection of the vehicles. A breach of Rule 202A constitutes an offence punishable u/s 112 of the Act.

3. Messrs. Ishardas & Sons, a partnership firm, owned a mobile crane No. 3039 which has been registered with the Regional Transport Authorities, as a non-transport vehicle. The Inspector of Motor Vehicles, Regional Transport Office, Bombay, filed a complaint in the Court of the Metropolitan Magistrate, 17th Court, Mazgaon, Bombay, alleging that the owner of the crane has contravened the provisions of Rule 202A which is punishable u/s 112 of the Act upon which the learned Magistrate ordered issue of process. Though a perusal of the complaint does not contain enough narration of facts, but only a recital of various sections of the Act, it is common ground that the owner did not possess the requisite certificate of fitness which he should have obtained after producing the vehicle for inspection and testing as required under Rule 202A.

4. Upon receipt of the process issued by the learned Magistrate, Messrs. Ishardas & Sons filed a criminal application u/s 482 of the Criminal Procedure Code for quashing the process. Sharad Manohar, J. before whom the matter came up for hearing on 29th June 1983 was of the opinion that this was a fit case where the same should be decided by a larger Bench, upon which the matter was put before a Division Bench of Kurdukar and Tated JJ. The learned Judges directed that the Transport Commissioner, Maharashtra State, Bombay, should, after giving hearing to the parties, decide the question whether a "Mobile Crane" is not a "motor vehicle" within the meaning of Section 2(18) of the Act, and the same is not required to be registered u/s 22 nor is liable for inspection under Rule 202A of the Rules.

5. The Transport Commissioner, Maharashtra State, before whom the matter (contd. on col 2)

Section 2(18) before

amendment :

"motor vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer, but does not include a vehicle running upon fixed rails or used solely upon the premises of the owner.

was thus remitted, by his order dt. 29-7-1985, held that a mobile crane is a motor vehicle under the definition of motor, vehicle given in Section 2(18) of the Act and proceeded to give consequential findings on other issues. That is how the matter has come up before this Bench for disposal of the original Criminal Writ Petition No. 745 of 1982.

6. At the outset, it will have to be stated that the definition of the words "motor

vehicle" under the various English Statutes will be of no avail for our present purposes, for the simple reason that the English Statutes (like Road Traffic Regulation Act, 1967, and Road Traffic Act, 1972) define "Motor Vehicle" to mean "a mechanically propelled vehicle intended or adapted for use on roads, although certain mechanically propelled vehicles controlled by pedestrians are treated as not being motor vehicles. Similarly, tramcars and trolley vehicles, the use of which is authorised or regulated by special Acts are expressly excluded and so are other vehicles like invalid carriages and hovercraft.

7. Ordinarily, the incorporation of the expression "intended for use on roads" would open up vast vistas for enquiry on facts as to whether the intention is to use a vehicle on roads, but a simple test has also been proposed that, if, a reasonable man looking at the vehicle would say that one of its uses would be a road use, one could say that the vehicle is "intended" for use on roads. *Burns v. Currell*, (1963) 2 QB 433 : (1963) 2 All ER 297. (See Halsbury's Laws of England, Fourth Edition, Volume 40, Paragraph 76).

8. It will be useful to read the definition of "Motor Vehicle" in Section 2(18) of the Act before and after the same was amended by Act 100 of 1956 :

Section 2(18) after amendment by Act

100 of 1956 :

"motor vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises.

After comparing, the two definitions the Supreme Court, in *Bolani Ores Ltd.*, observed that the vehicles which have been taken out of the category of a "motor vehicle" are different in these two definitions. Before the amendment a motor vehicle though a motor vehicle within the meaning of the first part of the definition is nonetheless not so, because of its specified user, i.e. if it is used solely upon the premises of the owner. But, after the amendment though a motor vehicle may be adopted for use upon roads, nonetheless in order to be taken out of the category of the definition it had to be further adapted, namely, it should be a vehicle of a special type adapted for use only in a factory or any other enclosed premises. In other words, a motor vehicle of a special type adapted as stated in the post amendment definition would be such as would not be considered to be adapted for use upon roads.

9. *Bolani Ores* case was reaffirmed in *Travancore Tea Estates Co. Ltd. and Others Vs. State of Kerala and Others*, which concerned itself with the exigibility of tax on motor vehicles under entry 57 of the State List A Division Bench of this Court of which one of us (Dharmadhikari, J.) was a Member in Writ Petn. No. 1213 of 1979, decided on 14th September 1983 (reported in ILR (1985) Bom 1286), also

considered Tranvancore Tea Company's case as regards the levy of tax on the trailers which are not self-propelling but are to be attached to a vehicle which is self-propelling.

10. Thus, the determinant upon which a motor crane would get out of the amended definition of the motor vehicles is : "Is the motor crane a vehicle of special type adapted for use only in a factory or in any other enclosed premises?" Motor cranes are of various types having varying and different capacities of hooks, heights, chassis travel speeds and hoist speeds. The crane in question has mobility and is also suitable for use on a public road so far as the movement is concerned. It has a pendant wire of 1" long, boom wire of 3" in length, with working load of 16 tonnes and 3.5 tonnes respectively. The crane has a driver's cab with two seats one to drive the motor vehicle itself and another for operating the crane, the derrick unit and the hoist unit. The key-word in the amended definition is "only", and the question to ask is : Is the mobile crane meant only for use in an enclosed place? To draw an analogy from the test of Burn's case 1963 (2) QB 433, will not a reasonable man looking at the mobile crane say that though this crane can surely be used in the enclosed premises of a factory in the like manner of an ordinary motor-car being used on the levelled grounds of the piazza in front of a colonial manor-house, it cannot be said that the crane is adapted only for use in an enclosed place. As the mobile crane can be used at any place accessible by road, it cannot be said that it is a vehicle of a special type adapted for use only in a factory or in any other enclosed premises within the meaning of Section 2(18) of the Act as amended in 1956.

11. Though various issues were raised and decided by the Transport Commissioner which bring within its compass questions of taxability etc. we do not think it necessary to consider and deal with the same in the present criminal application which is directed against the order of issuance of process by the learned Magistrate. As we find that a mobile crane is a motor vehicle within the meaning of Section 2(18) of the Act, the petition fails and the same is dismissed. Rule discharged.