

(1988) 06 KAR CK 0032
In the Karnataka High Court
Case No : Writ Petition No. 8767 of 1988

K. Laxmi

APPELLANT

Vs

Sub-Inspector of Police (Traffic-West) and Another

RESPONDENT

Date of Decision : 13-06-1988

Acts Referred:

Motor Vehicles Act, 1939 — Section 129 A, 22, 22 (1), 42 (1)

Citation : AIR 1989 Kar 311 : (1988) 2 KarLJ 292

Hon'ble Judges : H.G. Balakrishna, J

Bench : Single Bench

Advocate : A.S. Vishwanath, for the Appellant; P.R. Ramesh, for the Respondent

Judgement

1. The facts of the case in brief are as follows The petitioner is a stage carriage operator plying several stage carriages in the city of Mangalore and also in the District of Dakshina Kannada and beyond. The grievance of the petitioner is against the attitude of the police officers of Dakshina Kannada and especially the S.I. of Police, Traffic (West) Mangalore who is respondent t in this petition. According to the petitioner, the. respondent 1 is in the habit of seizing stage carriage vehicles of the petitioner even though there is no violation of the provisions of S. 129-A of the Motor Vehicles Act. The grievance appears to be more in the nature of a complaint against harassment and abuse of power than in the nature of ordinary grievance of irregularity in the exercise of power by public officials.

2. The petitioner has produced two police notices which disclose the nature of offences alleged to have been committed by the petitioner's driver and also showing that the vehicle was seized and the petitioner was directed to appear before the concerned jurisdictional Magistrate as denoted in the said notices - vide Annexures A and B besides Annexures C, D and E.

3. In the above circumstances, the petitioner is seeking a writ of mandamus or prohibition as considered appropriate in the circumstances of the case against

both respondents 1 and 2 interdicting seizure of the stage carriages belonging to the petitioner as detailed under Annexure C unless the offences imputed fall within the ambit of S. 129-A of the Motor Vehicles Act, 1939.

4. I directed the learned Government Pleader Sri Ramesh to take notice for respondents I and 2 and a copy of the writ petition was also served upon him.

5. Though the case came up for preliminary hearing today, by consent of the learned counsel for both the parties, after hearing their arguments, this writ petition is disposed of by this order.

6. The learned Government Pleader brought to my notice an unreported judgment of this Court passed in W.P. 12418/1987 dated 26-8-1987 : (reported in (1987) 11 Reports 325). The only difference between the case aforesaid and the instant case is that in the case referred to, the motor vehicle in question had not been released and a case was pending disposal before the jurisdictional Magistrate whereas in the instant case after seizure the vehicle was released by the Authorities. In the said decision the question of law that arose for consideration in relation to facts which are more or less similar to the facts of this case, was - whether the Authority was justified in seizing the vehicle on failure to produce documents such as the permit, registration certificate, tax certificate etc. It is only in Annexure A which is the notice served on the petitioner by the Authority that it is alleged against the petitioner that there was non-production of the permit when it was demanded during the operation of vehicle. The other annexures produced in the writ petition do not disclose the imputation of non-production of the permit. Para 9 of the order of this Court in W.P. 12418/1987 which is the relevant portion is reproduced below for the sake of convenience :-

"Hence it is, not possible to hold that the respondent exceeded his authority in effecting the seizure of the vehicle. However, it is brought to the notice of the Court that all those documents were produced. But it is not the case of the petitioner that at the time of seizure of the vehicle, all the aforesaid documents were produced. Production of necessary documents subsequent to the seizure will not invalidate the seizure. In addition to this, the respondent in his affidavit has stated that the aforesaid documents were not produced before the case was filed. However, for future guidance it is necessary to indicate that a police officer or any other officer authorised in this behalf, before taking any future step after seizing the vehicle will do well and in doing so he will be acting well within his power, if he gives an opportunity to the owner of the vehicle or the person in charge of the vehicle to produce the certificates of registration and fitness and other documents. If those documents are produced and" the police officer or the authorised officer, as the case may be. is satisfied, he need not proceed further in the matter and can release the vehicle on the offence, if any, committed" being compounded." (underlining is mine).

7. In the instant case, vide - Annexure A dated 13-1-1988 there is an allegation

that the petitioner did not produce the permit when it was demanded at about 6-55 p.m. on 13-1-88 when the vehicle was intercepted by the police Sub-Inspector. However, in Annexure B dated 11-2-1988, Annexure C dated 6-3-1988, Annexure D dated 11-2-1987, Annexure E dated" 17-10-1987 there is no mention of non-production of the permit.

8. The provision which relates to the power of the competent authority to carry out seizure of a motor vehicle (stage carriage) is to be found in S. 129-A of the Motor Vehicles Act. The said provision provides as follows : -

"Any police officer authorised in this behalf or other person authorised in this behalf by the State Government may, if he has the reason to believe that a motor vehicle has been or is being used in contravention of the provision of S. 22 or without the permit required by sub-sec. (1) of S. 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, seize and detain the vehicle, and for this purpose take or cause to be taken any steps he may consider proper for the temporary safe custody of the vehicle."

Section 22(I) of the Act reads as follows

"No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place for the purpose of carrying passengers or goods unless the vehicle is registered in accordance with this chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner."

Section 42(I) of the Act provides as follows : -

"No owner of a transport vehicle shall use or permit the use of the vehicle in any public place (whether or not such vehicle is actually carrying any passenger or goods) save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority (or the Commission) authorising the use of the vehicle in that place, in the manner in which the vehicle is being used :

Provided that a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a contract carriage :

Provided further that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorise the use of the vehicle, as a goods vehicle either when carrying passengers or not :

Provided further that a public carrier's permit shall, subject to any conditions that may be specified in the permit, authorise the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him."

9. Applying the ingredients set out in S. 129-A which constitute the statutory

basis for exercising the extraordinary power of seizure of a vehicle, it is no doubt true that the requirements would be satisfied in so far as Annexure A is concerned, provided non-production is undisputed. However, the same cannot be said in respect of Annexures B to E wherein there is no imputation in regard to the non-production of the permit. Even other grounds such as the motor vehicle being used in contravention of the provisions of S. 22 or in contravention of any condition of such permit relating to the rule of which or the area in which or the purpose for which the vehicle may be used or the contravention of the provisions of S. 42(I) of the Act, are conspicuous by their absence.

10. These references had to be made to the annexures only for the reason that the police officer concerned in the case does not appear to have displayed the necessary diligence and caution in determining whether any statutory basis exists for him to carry out seizure of a stage carriage vehicle. I would not make, the same observation in regard to Annexure A because in Annexure A the element that is required for the purpose of effecting a seizure of the vehicle has been made out in the non-production of the permit by the petitioner when it was demanded at the time of interception of the vehicle. It is obvious that the police officer concerned has displayed a tendency to base his action on offences which do not warrant seizure of the vehicle for the purpose of carrying out seizure. It should be understood that the power of seizure is nothing else than a sovereign power

which is delegated to the police in the discharge of their duties of law enforcement and in the preservation of an orderly society. The power of seizure, the power of arrest, are sovereign powers which have to be exercised with extraordinary care and caution. That a stage carriage is a property cannot be disputed. What is disputed is the power to seize the property without due process of law. Even when there is no allegation of an offence which would clothe the police with the Authority to seize the vehicle, it would not take much of thinking to arrive at conclusion. that the officer has clearly exceeded his powers, though it may be a little difficult to distinguish with exactitude whether it is a case of misuse of power or abuse of power.

11. While being in respectful agreement with the view expressed by this Court in W. P. No. 12418/1987 dated 26th August, 1987 (Reported in (1987) 11 Reports 32S), it is my opinion that any police officer who proposes to exercise the extraordinary power under S. 129-A of the Act should at least ascertain before taking action whether the necessary ingredients for exercising such a power have been made out in a given case and then only proceed to take necessary action in accordance with law. The amount of caution and prudence that is expected in a situation like this ought to be that of a reasonable and a prudent person who is discharging his duties under a statute with regulated or limited powers. He should also be aware of the ordinary, natural and probable consequences of his conduct.

12. As observed in W. P. No. 12418/1987 dated 26-8-1987 it would be very fair

and reasonable for a police officer or any officer authorised in this behalf before proceeding to carry out seizure of a vehicle to afford a reasonable opportunity to the owner of the vehicle or to the person in charge of the vehicle so as to enable him to produce certificate of registration, permit, fitness certificate or any other relevant document which may not be immediately or readily available, and it is only upon failure to do so despite the reasonable opportunity that the police officer or the authorised officer as the case may be, if he is satisfied "that there is a violation of law under S. 129-A of the Act he should not only seize the vehicle but also take such action which is appropriate in the circumstances of the case, in accordance with law.

13. In the instant case, since the vehicle has already been released and the petitioner is not deprived of his property and its use, it is not necessary for me to make any further observation. This writ petition is disposed of with the above observations.

14. Sri P. R. Ramesh, learned Government Pleader is directed to take notice for the respondents and permitted to file his memo of appearance within two weeks from today.

15. Order accordingly.