
(1987) 10 DEL CK 0035
In the Delhi High Court

Om Parkash

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-10-1987

Acts Referred:

Citation : (1987) 2 ACC 527

Hon'ble Judges : M.K. Chawla, J;Charanjit Talwar, J

Bench : Division Bench

Judgement

Charanjit Talwar, J.—The petitioner Shri Om Parkash has challenged the validity of Section 127-B of the Motor Vehicles Act (for short "the Act"), which empowers specified officers to compound certain offences under the Act. The legality of Notification No. SECE-3 (42)/82/TPT/13197, dated the 1st October, 1982 issued by the Administrator of the Union Territory of Delhi under Sub-section (1) of Section 127-B of the Act authorising Police officers not below the rank of Sub Inspector in the Delhi Traffic Police to compound the said traffic offences, has also been challenged.

2. According to the petitioner he is a driver employed by M/s Nand Lai Ramesh Kumar, Transporters of Delhi. On 16th November, 1983 while driving a truck of his employers, he was apprehended by the Police Officer; he was falsely challenged u/s 81 of the Act and a fine of Rs. 100/- was imposed on him by that officer. It is his case that he had protested and had sought that he be tried in accordance with law but his request was not acceded to. The factual averments are contained in paragraph 2 of the petition which reads as follows:

2. That on 16-11-83 he was carrying goods in truck No. USE 8255 near D.B. Gupta Road, New Delhi. He was apprehended by police officer and falselyZ:\ \ProdData\0344-2012\2012\July\20.7.2012\D870635.htm and fine was imposed of Rs. 100/- on the spot for the alleged offence u/s 81 of the Motor Vehicles Act. A photo copy of the challan & the receipt are marked unduly & illegally, (copy marked Annexure "E"). He was fined, though he had not committed the alleged offence. The petitioner protested and requested that he

may be tried according to law in the court, but his request was not accepted, but his request was not acceded to and he was illegally fined of Rs. 100/. by the Traffic Police Officer without request of the petitioner for compounding the offence. No notice was given to him in writing about the alleged offence. The witness is also police official who is not an independent witness. The signature of the petitioner were obtained under coercion on threat of impounding/seizing the vehicle.

3. The respondents have controverted the petitioner's allegations. According to them the facts are:

4. "On 16-11-83 at 9.45 A.M. a truck bearing No. USE-8255 which was being driven by Om Parkash, the petitioner, found improperly parked and un-attended during the restriction hours causing obstruction and danger to other users on Desh Bandhu Gupta Road. It was also causing traffic hazard in the smooth flow of traffic. There is restriction on plying/parking of HTV/MMVa from 8 AM to 11 A.M. on Desh Bandhu Gupta Road. The said truck was towed away with the help of crane No. DEL-8282 to P.S. Pahar Ganj as the driver of the truck was not present, as per order No. 60-100/T. Genl dated 3-1-1984 which was issued by the Deputy Commissioner of Police (Traffic), New Delhi which was duly authorised u/s 13(1) of the Delhi Control of Vehicular & other Traffic on Roads and Streets Regulations, 1980, a copy of the said order is enclosed herewith as annexure "R-1".

5. The petitioner Om Parkash who presented himself at police station Pahar Ganj and stated to be driver/in charge of the said truck and thereupon he was prosecuted u/s 74/124 and 81/112 of the Motor Vehicles Act, 1939. The license of the petitioner was impounded u/s 128 of the Motor Vehicles Act and the petitioner was directed to appear before the Court of Sh. G.D. Gupta, Metropolitan Magistrate, Delhi on 16-12-83. The petitioner thereupon requested Shri R.K. Singh, Traffic Inspector of Delhi Police to finalise his case and he expressed his willingness to compound the same. As a result of which a sum of Rs. 100/- as composition fee and other sum of Rs. 100/- were charged as crane charges in accordance with the order No. 481-510/DCP (T) dated 3rd February, 1982, a copy of the said order is also enclosed herewith as Annexure "R-2". On compounding the offences, the license was returned to the petitioner which he acknowledged on the challan itself."

6. According to the petitioner's own showing, the receipt which was issued to him shows that the amount paid by him was by way of "compounding amount". (A photo-copy of receipt No. 198348 dated the 16th November, 1983 has been annexed as annexure "E" to the petition).

7. After carefully considering the material on record, we are of the view that the allegation of the petitioner that he was imposed a fine of Rs. 100/- for offence said to have been committed by him, is not borne out. It appears that on his request the Traffic Inspector concerned compounded the offence and thereupon

the composition fee or compounding amount of Rs. 100/- was paid by the petitioner. The petitioner's further plea on facts that under the garb of compounding the traffic offences, the traffic staff is harassing the public and forcing them to pay fine, is also not made out. We are satisfied that on 16th November, 1983, the petitioner presented himself at the Police Station Pahar Ganj after his vehicle had been towed away by the traffic staff. He was challaned under Sections 74/124 and 81/112 of the Motor Vehicles Act (a photo-copy of the challan has been annexed by the petitioner with the petition and is at page 30 of the record). The averment of the respondent (quoted above) to the effect that he was asked to appear before the Court of Shri G.D. Gupta, Metropolitan Magistrate, Delhi on 16th December, 1983 in pursuance of the challan, is not even replied to by the petitioner in his rejoinder affidavit. The further averment of the respondent that he (the petitioner) requested Shri R.K. Singh, Traffic Inspector of the Delhi Police to finalise his case and expressed his willingness to compound the same, is also to be accepted as it has not been replied to by him. In this view of the pleadings, it cannot be held that the petitioner was fined, as alleged, or was forced to pay the "compounding amount". There was no compulsion. The petitioner wanted to avoid prosecution and, Therefore, he got the matter settled out of Court.

8. Mr. Behl, learned Counsel for the petitioner contended that infact the Traffic Inspector tried the petitioner and sentenced him after finding him guilty by imposing a fine of Rs. 100/-. The submission proceeds on a misconception of Section 127-B and the Notification issued there under. The said Section 127B reads as follows:

127B. Composition of certain offences--(1) Any offence (whether committed before or after the commencement of Section 26 of the Motor Vehicles (Amendment) Act, 1982) punishable u/s 113A Section 113B, Section 114, Sub-Sections (1) and (2) of Section 115, Section 116, Section 118, Section 120, Section 122, Section 123, Section 124, Section 125 or Section 127 may, either before or after the institution of the prosecution, be compounded by such officers or authorities and for such amount as the State Government may, by notification in the Official Gazette, specify in this behalf.

(2) Where an offence has been compounded under Sub-section (1), the offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of such offence.

The impugned notification dated the 1st October, 1982 may also be noticed. It reads:

No. SECE-3 (42)/82/TPT/13197 DATED Delhi 1st Oct. 1982. NOTIFICATION.

In exercise of the powers conferred by Sub-section (1) of Section 127B of the Motor Vehicles Act, 1939 (IV of 1939) read with the notification of the Government of India, Ministry of Transport (Transport Wing No. 26-T (1)/57 (S.R.C. 1394), dated 26th April, 1957, the Administrator of the Union Territory of

Delhi is pleased to authorise (1) any police officer not below the rank of Sub Inspector in the Delhi Traffic Police, and (2) any Enforcement Officer of the Director of Transport, Delhi Administration, Delhi having rank equivalent to a Sub Inspector in the Traffic Police, to compound traffic offences committed under the said Act and punishable under sections mentioned in column 2 of the schedule below for amounts not less than the ones specified in corresponding column 3 and not more than the ones specified in corresponding column 4 of the said schedule.

THE SCHEDULE

S. No.

a. Section under which offence punishable

Minimum AMT for composition specified

Maximum Amount for composition specified

1

2

3

4

1.

112 (first offence)

Rs. 50/-

Rs. 100/-

2.

112 (second offence)

Rs. 150/-

Rs. 300/-

3.

113

Rs. 250/-

Rs. 500/-

4.

113A

Rs. 500/-

Rs. 1000/-

5.

113B

Rs. 250/-

Rs. 500/-

6.

114(1)

Rs. 250/-

Rs. 500/-

7.

115(1)

Rs. 200/-

Rs. 400/-

8.

114(2)

Rs. 50/-

Rs. 100/-

9.

115 (2)

Rs. 500/-

Rs. 1000/-

10.

116 (first offence)

Rs. 500/-

Rs. 1000/-

11.

116 (second offence)

Rs. 1000/-

Rs. 2000/-

12.

118 (first offence)

Rs. 100/-

Rs. 200/-

13.

118 (second offence)

Rs. 250/-

Rs. 500/-

14.

120

Rs. 250/-

Rs. 500/-

15.

122

Rs. 250/-

Rs. 500/-

16.

123 (first offence)

Rs. 1000/-

Rs. 2000/-

17.

123 (second offence)

Rs. 1500/-

Rs. 3000/-

18.

124 (first offence)

Rs. 100/-

Rs. 200/-

19.

124 (second offence)

Rs. 500/-

Rs. 1000/-

20.

125

Rs. 500/-

Rs. 1000/-

21.

127

Rs. 50/-

Rs. 100/-

By order and in the

name of the Administrator of the Union

Territory of Delhi.

Narendra Prasad

Special Secretary (Transport)

9. The plea of the petitioner that the said Section confers legislative powers on the Executive which is not permissible in law is also misconceived. This provision merely enables specified officers or authorities to compound certain offences under the Act either before or after the institution of the prosecution. The policy of the legislature that in cases of minor traffic offences, the offence be permitted to be compounded on payment by the offender of specified amount, cannot be said to be opposed to public policy. A number of offences under the Indian Penal Code are compoundable u/s 320 of the Criminal Procedure Code even without the permission of the Court. The policy seems to be that "where the interests of the public are not vitally affected, the complainant should be permitted to come to terms with the party against whom he complains." "The principle being that wrongs of certain classes which affect mainly a person in his individual capacity or character may be sufficiently redressed by composition." It is well settled that permitting agreement between the complainant and the offender for offences given in Table-I of Section 320 of the Code of Criminal Procedure, is not opposed to public policy. However, there are certain offences which can be compounded by the complainant with the offender only after obtaining permission of the Magistrate Those are given in the second table of the said Section of the Code. Thus compounding of a minor offence is an arrangement between the parties settling their differences.

10. The petitioner when he was told to appear before the Magistrate on 16th December, 1983, requested the Traffic Inspector to compound the offence. The record shows that this request was on his own volition to avoid prosecution The

said Inspector admittedly was authorised under the notification dated the 1st October, 1982 to compound the offence. There was no compulsion whatsoever. The petitioner was free to appear in Court and defend himself if he wanted to. We are not persuaded to hold that the Traffic Inspector Shri R.K. Singh either convicted the petitioner or imposed any sentence of fine, as alleged.

11. The petitioner's further contention that empowering Police Officers not below the rank of Sub-Inspector in the Delhi Traffic Police and any Enforcement Officer of the Directorate of Transport, Delhi Administration, Delhi having the rank equivalent to a Sub-Inspector of the Traffic Police to compound the said minor offence is unconstitutional as the Enforcement Officers who are concerned officers, have been made judges in their own cause, has no force. Mr. Behl's reliance on *Krishna Bus Service Pvt. Ltd. Vs. State of Haryana and Others*, is also misplaced. In the said case appointment of the General Manager of Haryana Roadways who was directly responsible for running its motor vehicles, as one of the officers who was entrusted the powers of a Deputy Superintendent of Police of inspection, search, seizure and detention of the vehicles under the Act was held to be invalid. That officer who was obviously in the rival business to the private operators of the motor vehicles in the State was not expected to discharge the duties of inspection, search seizure etc. fairly and in a reasonable manner. It was found that a large number of motor vehicles owned by the Haryana Roadways would not be subject to inspection and checking by an independent agency. It was held that "Such powers should, Therefore, be entrusted to a person who is expected to exercise them fairly and without bias. The General Manager of Haryana Roadways who is a rival in business to the private operators of motor vehicles in the State and is intimately connected with the running of motor vehicles, cannot be expected to discharge his duties in a fair and reasonable manner. An unobstructed operation of the motor vehicles by private owners operating along the same route or routes would naturally affect the earnings of Haryana Roadways. There is, Therefore, every likelihood of his being over jealous in discharging his duties of stopping a vehicle and in searching, seizing and detaining motor vehicles belonging to others and at the same time excessively lenient to the vehicles belonging to his department."

12. The contention raised in the said case does not arise in the present case. The Police Inspectors and Officers of the Directorate of Transport, Delhi Administration cannot be said to be in any rival business. They are otherwise authorised under the Act to challan the traffic offenders. By entrusting them the powers to compound the offences, they cannot be said to be judges in their own cause. Similarly the plea that the power to impose minimum and maximum fine by the said officers is arbitrary and illegal, is untenable. As we have noticed, the officers are not empowered to try the offences or impose any fine.

13. The submission that the authorised officers are harassing the drivers of the vehicles and force them to agree to compound the offences and Therefore, the notification enabling them to compound is bad, is also liable to be rejected. We

cannot assume that the authorised officers are doing so. At any rate, abuse of power, if at all, cannot be made a ground of challenge to the said Section 127B or the Notification. It was submitted that the authorised officers force the drivers to compound the offence on the threat of seizure of their vehicles. The averment to that effect in the present case is vague. However, Section 129A has given powers to authorised officers to detain vehicles which are being used without certificate of registration or permit. In the counter affidavit, the respondents categorically submit that there was no threat of seizure of the vehicle but the petitioner was asked to deposit his driving license. That was permissible.

14. We have not been able to appreciate the further plea of the petitioner that composition of offence is a judicial function. For minor traffic offences u/s 127B, the authorised officer is permitted to compound the offence at the spot. In our view this is a beneficial provision. The traffic offenders, if they so want, instead of appearing in Court before a Magistrate, can now settle the matter and pay the composition fee. The amounts have also been prescribed. Those are in accordance with the other provisions of the Act. On being found guilty the Court could have imposed that much amount as fine. It is to save harassment to an offender that the provision under challenge has been enacted. By the impugned notification it cannot be said that the powers had been conferred arbitrarily on the Executive. The plea that the officers so empowered are acting as prosecutors and judges is wholly misconceived.

15. A number of other pleas were raised. All those contentions assumed that the authorised officers while compounding the offences are discharging judicial functions. As we have noticed earlier, the assumption is untenable.

16. The petition has no merits. We accordingly dismiss the same.