
(2014) 06 KL CK 0229

In the High Court Of Kerala

Case No : WA. No. 816 of 2014 In WP(C). 12926/2014

S.K. Premraj Menon

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 26-06-2014

Acts Referred:

Evidence Act, 1872 — Section 57

Motor Vehicles Act, 1988 — Section 112, 116, 183, 183(1), 2

Citation : (2014) 06 KL CK 0229

Hon'ble Judges : P.R. Ramachandra Menon, J;Manjula Chellur, J

Bench : Division Bench

Advocate : C.S. Manu, Advocate for the Appellant; P.I. Davis, Sr. Government Pleader, Advocate for the Respondent

Final Decision : Dismissed

Judgement

P.R. Ramachandra Menon, J.—Interference declined by the learned Single Judge with regard to the challenge raised by the appellant/writ petitioner against Ext. P1 "show-cause memo" is the subject matter of challenge in the writ petition.

2. Admittedly, appellant is the owner of the vehicle bearing No. KL-07/BW 7495, which was being driven on an excessive speed of 96 km/h on 31.03.2014, as captured by the camera installed by concerned Department on the route. The appellant was served with Ext. P1 memo asking him to show cause, if any explanation was there with regard to the offence committed u/s 183(1) of the Motor Vehicles Act, 1988. Appellant was also let known as per Ext. P1, that he would be at liberty to have the offence compounded in terms of Section 200 of the Motor Vehicles Act by paying a sum of Rs. 400/- to any of the Regional Transport Officer/Sub Regional Transport Office in the State of Kerala. Being aggrieved by the said notice, the appellant/petitioner approached this Court by filing the writ petition, challenging the course and events pursued by the concerned respondents. After hearing the petitioner, the learned Single Judge observed that the act pursued by the concerned authorities was perfectly within

the four wall of law. Accordingly, interference was declined and the writ petition was dismissed, which led to the appeal.

3. Heard the learned counsel for the appellant and the learned Government Pleader appearing for the respondents.

4. To have proper analysis and appreciation of the issue projected herein, it is necessary to have a look at Section 112 and Section 183 of the Motor Vehicles Act, which are extracted below:

112. Limits of speed. (1) No person shall drive a motor vehicle or cause or allow a motor vehicle to be driven in any public place at a speed exceeding the maximum speed fixed for below the minimum speed fixed for the vehicle under this Act or by or under any other Law for the time being in force:

Provided that such maximum speed shall in no case exceed the maximum fixed for any motor vehicle or class or description of motor vehicles by the Central Government by notification in the Official Gazette.

(2) The State Government or any authority authorized in this behalf by the State Government may, if satisfied that it is necessary to restrict the speed of motor vehicles in the interest of public safety or convenience or because of the nature of any road or bridge, by notification in the Official Gazette, and by causing appropriate traffic signs to be placed or erected u/s 116 at suitable places, fix such maximum speed limits or minimum speed limits as it thinks fit for motor vehicles or any specified class or description of motor vehicles or for motor vehicles to which a trailer is attached, either generally or in a particular area or on a particular road or roads.

Provided that no such notification is necessary if any restriction under this section is to remain in force for not more than one month.

(3) Nothing in this section shall apply to any vehicle registered u/s 60 while it is being used in the execution of military maneuvers within the area and during the period specified in the notification under sub-section(1) of section 2 of the maneuvers, Field Firing and Artillery Practice Act, 1938,(5 of 1938).

183. Driving at excessive speed, etc. (1) Whoever drives a motor vehicle in contravention of the speed limits referred to in section 112 shall be punishable with fine which may extend to four hundred rupees, or, if having been previously convicted of an offence under this sub-section is again convicted of an offence under this sub-section, with fine which extend to one thousand rupees.

(2) Whoever causes any person who is employed by him or is subject to his control in driving to drive a motor vehicle in contravention of the speed limits referred to in section 112 shall be punishable with fine which may extend to three hundred rupees, or, if having been previously convicted of an offence under this sub-section, is again convicted of an offence under this sub-section, with fine which may extend five hundred rupees.

(3) No person shall be convicted of an offence punishable under sub-section(1) solely on the evidence of one witness to the effect that in the opinion of the witness such person was driving at a speed which was unlawful, unless that opinion is shown to be based on an estimate obtained by the use of some mechanical device.

(4) The publication of a time table under which, or the giving of any direction that, any journey or part of a journey is to be completed within a specified time shall, if in the opinion of the Court it is not practicable in the circumstances of the case for that journey or part of a journey to be completed in the specified time without contravening the speed limits referred to in section 112 be prima facie evidence that the person who published the time table or gave the direction has committed an offence punishable under sub-section(2).

5. On going through the contents of Section 112, the provision clearly imposes a ban in driving a motor vehicle at public place in excessive speed or causing to be driven or in allowing anybody to drive vehicle in such manner. Any of these three instances will constitute offence and penalty is provided as given u/s 183 of the Act. In other words, it is not necessary that the offence will be made out only when the vehicle is driven by party concerned/owner. A person who is actually driving the vehicle as well as who causes or allows a motor vehicle to be driven at any public place, exceeding the specified maximum speed could be held liable. The above two circumstances are separately dealt with under sub sections(1) and (2) of Section 183 of the Motor Vehicles Act.

6. The case of the appellant is that, before proceeding against him, the owner of vehicle, it ought to be established that he had consciously permitted or allowed the driver to drive the vehicle in an excessive speed. So far as the appellant does not dispute the ownership of the vehicle and also driving of the vehicle on the relevant date at an excessive speed as disclosed from the factual data with photograph furnished along with Ext. P1 (procured through a mechanical device), it can be taken judicial notice u/s 57 of the Evidence Act that the vehicle could not have been driven without the permission of the owner. This is more so, since the petitioner/owner does not have a case that the vehicle was stolen or that it was taken from his custody without his consent or knowledge. Naturally, it has to be presumed that the vehicle was being driven by the owner himself or he had engaged a driver to drive the same. What is the actual position, is a matter which is to be adjudicated on the basis of the evidence to be let in. The appellant has been given an opportunity to explain the position, by issuance of Ext. P1, making it clear that reply had to be submitted within 15 days. Admittedly, the petitioner did not make use of the said opportunity by submitting any reply. By virtue of the enabling provision, the appellant was also let known that he could compound the offence u/s 200 of the Motor Vehicles Act, but the petitioner has not opted to have such a course.

7. In the above facts and circumstances, the course open to the appellant is either to avail the benefit of compounding the offence or to contest the matter

facing the prosecution. We find that the appeal is devoid of any merit and none of the grounds raised in support of the same could be held as tenable. Accordingly, interference is declined and the appeal is dismissed.