
(1999) 12 BOM CK 0052

In the Bombay High Court

Case No : Criminal Appeal No's. 255 and 259 of 1992

State of Maharashtra

APPELLANT

Vs

Kaluram Tuknrani Shinde

RESPONDENT

Date of Decision : 06-12-1999

Acts Referred:

Motor Vehicles Act, 1988 — Section 190(2)

Citation : (2000) 3 CivCC 438

Hon'ble Judges : A.B. Palkar, J

Bench : Single Bench

Advocate : D.P. Adsule, app, for the Appellant;

Judgement

A.B. Palkar, J.—In these two appeals, the accused are different, however, a common Judgment was passed since the case against the Respondents/accused is common.

2. The appeals are filed by the State of Maharashtra for enhancement of sentence.

3. Complaint was filed and criminal Case No. 302/92 was registered against respondent-B.G. Kale, and Criminal Case No. 303/92 was registered against respondent-Kaluram Tukaram Shinde. Both cases were for offence punishable u/s 190(2) of the Motor Vehicles Act, 1988. for excessive emission of smoke from the motor vehicle by the concerned accused.

4. Admittedly, both these accused/respondents pleaded guilty to the charge and prayed for leniency. The learned Magistrate sentenced them to pay fine of Rs. 100/-, in default to suffer imprisonment for two days.

5. The argument of the learned A.P.P. (Written argument filed) before the Magistrate was that the goods truck which was a diesel vehicle was emitting excess of smoke which resulted in pollution and the offence committed thereby is punishable u/s 190(2) of the Motor Vehicles Act, 1988. which imposes fine of Rs.

1,000/- and there is no discretion to the Magistrate to reduce the said fine and as such the fine as indicated in section has to be imposed and there is no scope for reducing the same. The learned Magistrate however, considered provisions of sections 66 of 85 of Bombay Prohibition Act, where in the words used are "fine of not less than Rs. 1,000/- unless special reasons are recorded in writing by the Magistrate". Such words are not found in the present section 190(2) of the Motor Vehicles Act. 1988. The learned Magistrate also considered that if the offence is committed by vehicle costing Rs. 2-3 lakhs, the fine to be imposed is Rs. 1,000/- and if it is moped or Luna then also fine should be Rs. 1,000/-, which according to him is improper and therefore, rejecting the arguments of the learned A.P.P. he imposed fine of Rs. 100/- as indicated earlier.

Sub-section (2) of section 190 of the Motor Vehicles Act is as under:-

Any person who drives or causes or allows to be driven, in any public place a motor vehicle, which violates the standards prescribed in relation to road safety, control of noise and air-pollution, shall be punishable for the first offence with a fine one thousand rupees.

A perusal of the section shows that any person guilty of the offence resulting in air pollution, road safety and control of noise shall be punishable for the first offence with a fine of one thousand rupees or for any second or subsequent offence with a fine of two thousand rupees. This is a mandate of the legislature that he shall be punishable with a fine of Rs. 1,000/- leaving absolutely no discretion to the Magistrate to reduce the fine to a sum lesser than Rs. 1,000/-. Reference to sub-section (1) and sub-section (3) of section 190 indicates that fine to be imposed may extend to Rs. 2,000/- (Two thousand). Fine may extend to Rs. 1,000/- in case of sub-section (3). The difference in the language used is a clear indication of the fact that so far as section 190(2) is concerned, the Magistrate has no discretion to reduce the fine. It is a mandate of the legislature that the fine imposed shall be Rs. 1,000/-. In the absence of any scope for interpretation of the section the magistrate has no discretion to reduce the fine to a sum less than Rs. 1,000/-. Learned Magistrate was not justified in reducing the fine amount by referring to some other provision, which in my view is irrelevant. Legislature having not given any discretion to the court, the court must implement the law as it stands. The comparison as regards the type of vehicle" was also uncalled for, because the pollution by emission from any vehicle is likely to cause the same effect on the health of the passer-by and the residents in the nearby locality. Price of the vehicle is totally an irrelevant factor and when legislature has not left any scope for discretion to reduce the amount of fine, the question of exercising such discretion by such comparison does not arise.

6. In this view of the matter, learned Magistrate was totally wrong in passing sentence in less than Rs. 1,000/- fine and therefore, orders impugned in these two appeals are hereby set aside. Each of the respondent/accused is sentenced to pay fine of Rs. 1,000/- u/s 190(2) of the Motor Vehicles Act, 1988. and in

default to suffer S.1 for one month. Respondents to surrender to bail if fine is not paid within a period of 8 weeks from the date of the receipt of writ of this Court by the concerned Magistrate.