
(1962) 08 MP CK 0031

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 373 of 1962

State of M.P.

APPELLANT

Vs

Tuljaram, Managing Director M.P. Transport Co. Ltd. and
Another

RESPONDENT

Date of Decision : 18-08-1962

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 190(1)
Motor Vehicles Act, 1939 — Section 112, 86(1), 86(3)

Citation : AIR 1963 MP 101 : (1963) CriLJ 295 : (1962) J LJ 863 : (1962) 7 MPLJ 1136 : (1962) MPLJ 1126

Hon'ble Judges : Shiv Dayal Shrivastava, J

Bench : Single Bench

Advocate : K.K. Dubey, for the Appellant; Y.S. Dharmadhikari, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Dayal, J.

This revision arises out of the order passed by the Magistrate First Class, Raipur, refusing to proceed further with the trial on the ground that the complaint had not been filed by a competent person,

A complaint was filed by P. K. Dave, whose designation is said to be Regional Transport Inspector (Enforcement), on the allegation that when he checked Bus MPR 799 there was no driving license with the driver so that offence u/s 86 (3), read with Section 112 of the Motor Vehicles Act was committed. A preliminary objection was raised by the, accused that the complaint was not competent inasmuch as P. K. Dave had no authority to file the complaint. This objection found favour with the trial Magistrate and he held that -

"When the R.T.I. (Enforcement) had no authority to file a complaint or challan, what he did would be illegal and deserves no further notice. Thus, this Court is

unable to take any further action on the challan under reference. It is without authority and, therefore, cannot be proceeded with further. It will be filed accordingly."

This order of the Magistrate is manifestly erroneous. It is provided in Section 190 (1) of the Code of Criminal Procedure that a Magistrate may take cognizance of an offence (a) upon receiving a complaint of facts which constitute such offence, (b) upon a report in writing of such facts made by any Police Officer Thus, it is transparent that a complaint can be filed by any person regarding any offence, unless there is a bar which requires that a complaint of a certain offence can be filed only by a certain specified person or authority. No provision has been pointed out to me in the Motor Vehicles Act or in any other law, which requires that a complaint for an offence u/s 112 of the Motor Vehicles Act can be filed by a specified person or authority. That being so, the order of the Magistrate that he could not proceed with the trial because the Regional Transport Inspector was not specially authorised to make that complaint, is in utter disregard of the provisions of the Code of Criminal Procedure mentioned above. It is immaterial whether the complainant was or was not a Police Officer. If he was, his complaint would be called a report within the meaning of Clause (b) of Section 190 (1) otherwise, it will be a complaint under Clause (a).

Having reached that conclusion the order of the learned Magistrate must be set aside. Ordinarily therefore, I would have sent back this case to the learned Magistrate for further trial. But, since, both sides have argued before me the question whether the complaint has any substance or not, I would decide this point right now.

In order to constitute an offence u/s 86 (3) it will have first of all to be seen whether there was contravention of Sub-section (1). That sub-section requires that the demand to produce driving licence must be made by "any Police Officer in uniform". That is the sine qua non. To put it differently, it is no contravention of Sub-section (3) read with Sub-section (1) if a driver does not produce his driving license when it is demanded by any person other than a police officer. There is no material to show that the complainant was "a Police Officer". No notification u/s 133 (a) is on record, nor is there anything else to show that the complainant is a Police Officer. The only notifications which are relied on on behalf of the State are those published in the M. P. Gazette of August 26, 1930 at page 1378. Not one of those notifications applies to Sub-section (1) or (3) of Section 83; nor does it notify generally that the Regional Transport Inspector will be a Police Officer. Shri Dube appearing for the State concedes that there is no other notification.

For these reasons the complaint is incompetent because the complainant is not shown to be a Police Officer, and consequently there could not be any contravention of Sub-section (1) or Sub-section (3) of Section 86.

In the result the revision is dismissed.