

(1967) 03 MP CK 0002

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 671 of 1966

The State of Madhya Pradesh

APPELLANT

Vs

Pannalal Chunnilal

RESPONDENT

Date of Decision : 02-03-1967

Acts Referred:

Motor Vehicles Act, 1939 — Section 112

Citation : (1969) JLJ 716 : (1969) MPLJ 634

Hon'ble Judges : P. K. Tare, J

Bench : Single Bench

Advocate : M. V. Tamaskar, for the Appellant; R. K. Tankha and P. C. Pathak, for the Respondent

Final Decision : Allowed

Judgement

P. K. Tare, J.

This order shall also govern the disposal of Cri. Rev. No. 672 of 1966 (The State of M. P. v. Pukhraj and Indarchand.)

These are two references made by the Sessions Judge, Seoni, for quashing the conviction of the respective respondents u/s 112 of the Motor Vehicles Act, 1939 and the penalty of a fine of Rs. 60 or in default simple imprisonment for two days and four days respectively, passed by the Magistrate 1st Class, Seoni, in a summary trial on the admission of the respective respondents.

The only question involved in the present case is whether the action of the respective respondents in carrying gold and silver ornaments for sale in their respective oars, registered as motor cure u/s 2, sub-section (16) of the Motor Vehicles Act, 1939, amounts to an offence u/s 38 of the Act. The learned Sessions Judge did not consider the question whether it would amount to an offence under any other section of the Act. However, the learned Magistrate thought that the offence committed was u/s 112 of the Act for contravention of section 33 of the Act.

It may be relevant to refer to the admission made by the respective respondents. Pannalal in his examination stated that he often carries gold and silver ornaments and utensils for sale in his oar to Barghat Bazar and other bazars. He also admitted that he had no separate registration for the carriage of these articles. Similar was the admission of the other two respondents in the connected case. Can the said admissions be said to constitute an offence u/s 112 of the Motor Vehicles Act, 1939 for an alleged contravention of section 38 of the Act ? The learned Sessions Judge opined that no offence at all is made out as the oar in question could not be said to have become a transport vehicle merely because the respective respondents were carrying their own goods, which were meant for sale.

Before referring to the decided cases it may be pertinent to advert to the relevant provisions in the Motor Vehicles Act, 1939. Section 2, sub-section (7) defines "goods" as follows:-

"goods" includes live-stock, and anything (other than equipment ordinarily used with the vehicle) carried by a vehicle except living persona, but does not include luggage or personal effects carried in a motor car or in a trailer attached to a motor oar or the personal luggage of passengers travelling in the vehicle.

Sub-section (8) of the said section defines "goods vehicle" to mean "any motor vehicle constructed or adopted for use for the carriage of goods, or any motor vehicle not so constructed or adopted when used for the carriage of goods solely or in addition to passengers.

Thus, any motor vehicle if constructed or adopted for use for the carriage of goods can in the first instance be called a goods vehicle. In the second instance if it is not so constructed or adopted then it must be used for the carriage of goods solely or for the carriage of goods of passengers together. Can it be said that if a person carries his commercial goods in a oar on some solitary occasions he has contravened any of the provisions of the Motor Vehicles Act, 1939 ?

Sub-section (16) of the said section defines a "motor car" to mean "any motor vehicle other than a transport vehicle, omnibus, road-roller, tractor, motor-cycle or invalid carriage".

The vehicles in question were registered as motor ears, which are ordinarily meant for carriage of passengers or their goods,

A "private carrier" by virtue of sub-section (22) of the said section has been defined to mean "an owner of a transport vehicle other than a public carrier who uses that vehicle solely for the carriage of goods which are his property or the carriage of which is necessary for the purposes of his business not being a business of providing transport, or who uses the vehicle for any of the purposes specified in sub-section (2) of section 42".

These respective respondents cannot in any sense be said to be private carriers as they are not owners of transport vehicles. Further on, sub-section (33) of the

said section defines "transport vehicle" to mean "a public service vehicle or a goods vehicle".

Therefore, according to the said definition, a transport vehicle can as well be a transport vehicle, but used as goods vehicle which would be governed by the definition provided in sub-section (8).

It would next be relevant to see whether the action of the respective respondents would amount to an offence under any section of the Motor Vehicles Act, 1939. Section 38 of the Act prohibits an owner of a motor vehicle from so altering the vehicle that the particulars contained in the certificate of registration are no longer accurate, unless Therefore, the prohibition is against alteration of a motor vehicle so that it will not be in consonance with the particulars contained in the registration certificate. The respective respondents cannot be said to have contravened section 32 of the Act. Further on, section 38 of the Act prescribes the obtaining of a certificate of fitness in respect of transport vehicles. As the oars used by the respective respondents do not fall within the definition of a transport vehicle as per section 2, sub-section (33) of the Act, section 38 in terms would not be attracted.

Next, we come to section 42 of the Act. The wording of that section also indicates that it applies to an owner of a transport vehicle. It lays down the necessity of obtaining a permit in which conditions may be imposed by the Regional or the State Transport authority. Consequently, as the vehicle used by the respective respondents cannot be said to be a transport vehicle, they cannot be said to have contravened section 42 of the Act.

Next, we come to section 112 of the Act, which is a general section providing for a penalty where specific sections have not made provision for such penalty in the Act. But, for that it must be shown that the person concerned has contravened any provision of the Act or any Rule made there under. If that fact is not established, there can be no penalty imposed u/s 112 of the Act.

Lastly, we may refer to section 123 of the Act. It provides that whoever drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of section 22 or without the permit required by sub-section (1) of section 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, shall be punishable for a first offence with fine which may extend to one thousand rupees and for a subsequent offence if committed within three years of the commission of a previous similar offence, with imprisonment which may extend to six months or with fine which may extend to two thousand rupees, or with both. We are not concerned with the subsequent phrase, but only with the earlier phrase, namely "whoever allows a motor vehicle to be used in contravention of the provisions of section 22". Section 22 of the Act provides that "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". Undoubtedly, the vehicles belonging to the respective respondents were registered as private vehicles for carriage of passengers which would fall within the scope of section 2, sub-section (16) of the Motor Vehicles Act, 1939. Therefore, if a person uses his private car for carrying his goods such as gold and silver ornaments and utensils, can he be said to be a private carrier. The definition of a public carrier has already been reproduced above. It necessarily implies that the person concerned should be the owner of a transport vehicle and he should use that vehicle solely for the carriage of goods which are his property or the carriage of which is necessary for the purposes of his business, not being a business of a private transport or who uses the vehicle for any of the purposes specified in sub-section (2) of section 42 of the Act. As the vehicle concerned is not a transport vehicle at all, the respective respondents cannot be said to be private carriers. On the basis of the said definitions provided by section 2 as also the provisions of the other sections mentioned above, it cannot be said that the respective respondents have committed any offence under any provision of the Motor Vehicles Act, 1939. Of course, if they altered their vehicles so as to make them suitable for carriage of goods, then only they might be said to be contravening section 32 of the Act. But merely carrying of gold and silver articles for commercial purposes in a private car is by no means any offence, whatsoever, under the Act.

In this connection, I might refer to the view expressed by Happell J. in *In Re: Manager, Indian Express*, wherein the petitioner, who was an owner of a motor car and who was also in charge of a daily newspaper, Indian Express, on two occasions carried the bundles of the newspaper from the office of the paper to the railway station, Happell J. opined that he would be using the motor car as a goods vehicle as defined in section 2, sub-section (8) of the Act, by reason of the fact that it was used twice to carry the newspapers to the railway station. Therefore, in the opinion of the learned Judge the offence made out would be u/s 42 (1) of the Act punishable u/s 123 of the Act. With due respect I am unable to agree with that view. The definition of the word "transport vehicle" was altogether lost sight of. Of course, if a person uses a private car regularly as a vehicle for carrying of goods, may be even his own, in that case he may be said to have contravened section 32 of the Act. But it cannot be asserted that the vehicle as such needs a permit u/s 42 (1) of the Act. For that it must be a transport vehicle as defined by section 2, sub-section (33) of the Act. It also cannot be said to be a goods vehicle falling within the scope of section 2, sub-section (8) of the Act. Therefore, if a person uses his private car for carrying his own goods....even though for sale, he cannot be said to have contravened the provisions of the Motor Vehicles Act, 1939.

Further, I may refer to another case decided by Somnath Iyer J., namely, *Jayaram v. State of Mysore* (1962) 2 Cri. L J 707, wherein the learned Judge

expressed the opinion that the owner of a motor vehicle registered as a motor oar would commit no offence u/s 42 (1) of the Act, by carrying passengers for hire. In that view, the learned Judge held that the driver of the car also who was responsible for carrying passengers for hire committed no offence punishable u/s 123 of the Act. In this connection, I may only observe that a slightly extreme view was taken by Happell J. in the case mentioned above, while in Jayaram v. State of Mysore (1962) 2 Cri. L J 707 Somnath Iyer J. took the other view which might border towards the other extreme. I am certainly in agreement with the view of Somnath Iyer J., that using of a motor vehicle in this manner on solitary occasions, may be even one or two, will not itself amount to an offence u/s 43 (1) of the Act, punishable u/s 123 of the Act. But I might further observe that if a person actually converts the use of his vehicle to one of regularly carrying passengers for hire, in that case he can be said to be contravening section 32 of the Act. In that event, it would be necessary for him to have the registration changed. He may also be said to have contravened section 32 of the Act inasmuch as he alters the purpose of the registration, namely, instead of carrying of passengers of the owner or his friends, he carries passengers on hire. There fore, in my opinion, the view to be taken would be this, that using a vehicle on isolated occasions for a purpose not in consonance with the purpose of the registration of the vehicle or the purpose of the use of the vehicle, would by itself not amount to an offence under any provision of the Motor Vehicles Act, 1939. But if a person alters the construction of the vehicle, then he will be guilty of contravention of section 38 of the Act. On the other hand if he alters the nature of the use habitually, then also he might be guilty of contravening sections 22 and 32 of the Act. But in the present case nothing of the kind was done; and, therefore, I am of opinion that the reference made by the learned Sessions Judge was justifiably made as the respective respondents cannot be said to have committed any offence, whatsoever.

As a result of the discussion aforesaid, the reference made by the learned Sessions Judge is accepted. These revisions succeed and are accordingly allowed and the respondents' conviction is set aside The respective sentence passed on the respective respondents is also quashed. The fine, if recovered, be refunded.