STATE OF MYSORE

v.

SYED IBRAHIM

February 21, 1967

[J. M. SHELAT AND G. K. MITTER, JJ.]

Motor Vehicles Act (4 *of* 1939), *ss.* 42(1) *and* 123—*"Owner of a transport Vehicle", meaning of.*

Under s. 42(1) of the Motor Vehicles Act, 1939, no owner of a transport vehicle shall use it or permit it to be used in any public place save in accordance with the conditions of a permit issued by the appropriate authority. A "transport vehicle" means, under s. 2(33) a "public service vehicle" and a "public service vehicle" means, under s. 2(25), a motor vehicle either used or adapted to be used for the carriage of passengers for hire or reward. The respondent was the owner of a motor vehicle registered as a "motor car" as defined in s. 2(16) of the Act and not, as a "transport vehicle". He was charged with an offence under s. 42(1) read with s. 123 of the Act, as the car was used on one occasion for carrying passengers on payment of hire, that is, for having used the car as a "transport vehicle" without the requisite permit. The trial court, and the High Court on appeal, acquitted him on the ground that as s. 42(1) uses the words "owner of a transport vehicle" the sub-section applies only to cases where the motor vehicle was registered as a transport vehicle.

In appeal to this Court,

HELD : It is the *use* of the motor vehicle for carrying passengers for hire or reward which determines the category of the vehicle and the application of s. 42(1). Therefore, even if the motor vehicle was occasionally used for carrying passengers for hire or reward, it must be regarded when so used, as a "public service vehicle" and therefore a "transport vehicle" and, if it was so used without the necessary permit the owner who uses it or permits it to be so used would be liable under s. 42(1) read with s. 123. The interpretation of the High Court would lead to the anomalous result, namely : that whereas the owner of a transport vehicle is required to have the permit, the owner of a motor vehicle not constructed or adapted as a transport vehicle could carry with impunity passengers without any permit, and such an interpretation would defeat the object of the legislature in making the provision in the interest of the safety of passengers. [675 F; 676 A-B; 677 H; 678 A-B]

B. S. Usman Saheb v. *State of Mysore*, (1959) Mys., L.J. 388 and *Jayaram* v. *State of Mysore*, [1962] Mys. L.J. 382, overruled.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 10 of 1965.

Appeal by special leave from the judgment and order dated July 10, 1964 of the Mysore High Court in Criminal Appeal No. 223 of 1963.

R. H. Dhebar and *S. P. Nayyar*, for the appellant.

The respondent did not appear.

The Judgment of the Court was delivered by

Shelat, J, This appeal, by special leave, raises the question as to the true meaning of section 42(1) of the Motor Vehicles Act (4 of 1939).

The respondent, the owner of a motor car bearing No. MYU-1089, carried 8 passengers in his said car on Nanjangud-Mysore Road on April 5, 1963 and collected Rs. 5 from each of them. He was charge-sheeted under section 42(1) read with section 123 of the Act for having used the said car as "a transport vehicle" without the permit required under section 42(1). The trial Magistrate did not go into the merits though the prosecution led evidence and acquitted him relying on the decision of the High Court of Mysore in *Jayaram* v. *The State of Mysore*(1). The State took the matter in appeal to the High Court urging that the said decision required reconsideration. On the view that it did not, the High Court dismissed the appeal. Hence this appeal.

In *B.S. Usman Saheb* v. *The State of Mysore*(2) the question arose whether an owner of a motor car who had carried cement bags and other goods from one place to another without a permit under section 42(1) could be said to have used a "goods vehicle", and, therefore, could be said to have contravened section 42(1). The trial Magistrate convicted the accused on the ground that once the car was used to transport goods, the vehicle was converted into "a goods vehicle" and required permit. The High Court set aside the conviction holding that the mere fact that the owner of such a motor vehicle used it for transporting goods did not mean that the vehicle was converted into a "goods vehicle" so as to attract section 42(1). Likewise in *Jayaram* v. *The State of Mysore*(1) the accused who had his motor vehicle registered as a motor car used it for carrying passengers for reward. The High Court held that the said vehicle having been registered as a motor car as defined by section 2(16) was not "a transport vehicle" and no prosecution could lie under section 42(1). The State of Mysore challenges the correctness of these decisions contending that though a motor vehicle is registered as a motor car, if it is used for a purpose set out in section 42(1) *viz.*, carrying passengers for hire or reward, the motor vehicle on that occasion must be said to have been used as a "transport vehicle", and if so used without a permit, there would be a breach of that provision and the owner so using it or permitting it to be so used would be liable to be convicted.

To test the correctness of this contention, some of the relevant provisions of the Act may first be considered. Section 2(18) defines a "motor vehicle" as meaning any mechanically-propelled vehicle adapted for use upon roads whether the power of propulsion

(1) [1962] Mys. L.J. 382. (2) [1959] Mys. L.J. 388.

A is transmitted thereto from an external or internal source. Section 2(16) defines a "motor car" as meaning any motor vehicle other than a transport vehicle, omnibus, road-roller, motor cycle or invalid carriage. Clause 25 of s. 2 defines "public service vehicle" as any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a motor cab, contract B carriage and stage carriage. Section 2(33) defines an "transport vehicle" as meaning a public service vehicle or a goods vehicle. Section 3 requires a person driving a motor vehicle in any public place to have an effective driving licence issued to himself authorising him to drive the vehicle and provides that no person shall drive a motor vehicle as a paid employee or shall so drive a transport C vehicle unless his driving licence specifically entitles him so to do. Section 42 in Chapter IV deals with control of transport vehicles. Sub-section (1) provides: "No owner of a transport vehicle shall use or permit the use of the vehicle in any public place save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or the Commission authorising the use of the vehicle in that place in a manner D in which the vehicle is being used."

Section 42(1) no doubt uses the words "owner of a transport vehicle" and provides that he shall not use or permit its use in any public place save in accordance with the conditions of a permit granted or countersigned by the prescribed authority. These words, E however, cannot mean that the sub-section applies only to cases where the motor vehicle in question is registered as a transport vehicle. If that were so, a person can use his motor vehicle, provided it is not "a transport vehicle", for carrying passengers for hire or reward without having to take out a permit for its use as "a transport vehicle". Since the section is enacted for control of transport vehicles, it could never be the intention of the Legislature to allow F such an anomalous result. The sub-section, therefore, must be construed in such a manner as to effectuate the object for which it was enacted. So construed, it must mean that if a person owns a motor vehicle and uses it or permits its use as a transport vehicle, he can do so provided he takes out the requisite permit therefor. If he does not take out the permit and uses it or permits its use as G "a transport vehicle" he commits an infringement of the sub-section. What the sub-section emphasises is the use of a motor vehicle as a transport vehicle and the necessity of a permit which is required for purposes of exercising control over vehicles used as transport vehicles. This is clear from the definitions of "transport vehicle" and a "public service vehicle". A "transport vehicle" means a H "public service vehicle" and "a public service vehicle" means any motor vehicle either used or adapted to be used for carriage of passengers for hire or reward. Therefore, any motor vehicle used for carriage of passengers for hire or reward is regarded when so

used as a public service vehicle and therefore a transport vehicle. It is the use of the motor vehicle for carrying passengers for hire or reward which determines the category of the motor vehicle whether it is adapted for that purpose or not. It must follow that even if a motor vehicle is occasionally used for carrying passengers for hire or reward it must be regarded when so used as a public service vehicle and therefore a transport vehicle and if it is so used without the necessary permit such use would be in breach of s. 42(1) and the owner who uses it or permits it to be so used would be liable to be punished under s. 42(1) read with s. 123.

A similar construction was given to para 5(d) of Sch. II of the Finance Act, 1920 and section 14 of the Finance Act, 1922 in *Payne* v. *Allcock*.(1) Section 14 of the Finance Act, 1922 provided that where a licence was taken out for a mechanically-propelled vehicle at any rate under the Second Schedule of the Finance Act, 1920 and the vehicle was at any time, while such a licence was in force, used in an altered condition or in a manner or for a purpose which brings it within, or which if it was used solely in that condition or in that manner or for that purpose would bring it within a class or description of vehicle to which a higher rate of duty was applicable under the said Schedule, duty at such higher rate would be chargeable in respect of the licence for the vehicle. The appellant in that case, who carried on business as a green grocer held a licence for a private motor car, duty having been paid thereon at the horse-power rate under para 6, Sch. II of the Finance Act, 1920.....The car was neither "constructed" nor "adapted" for use for conveyance of goods, but the appellant, while the licence was in force, used the said car occasionally for conveyance of goods in the course of his trade. It was contended that this user was "for a purpose" which brought the car within a class to which higher rate of duty under para 5 of Sch. II of Finance Act, 1920 became chargeable. The court accepted the contention and held that the user was for a purpose which brought the car within para 5 Sch. II of the said Act and the appellant was rightly convicted. It was not in dispute that the car was used by the appellant only occasionally for conveyance of goods in connection with his trade. Negativing the contention that the car was not chargeable to higher duty as it was not adapted for carriage of goods, Avory, J., observed that "the section referred to cases where the vehicle, while the licence is in force, had been used in an altered condition or in a manner or for a purpose which brings it within, or which if it was used solely in that condition or in that manner or for that purpose would bring it within, a class or description of vehicle to which a higher rate of duty is applicable." He added that to construe that section, one has only to see what was the purpose for which the car was being used which would bring it within the class to which a higher rate of

(1) [1932] 2 K.B. 413.

A duty was applicable. The purpose which brought it within para 5, as distinguished from para 6 of Sch. II, was the purpose of conveyance of goods. At page 421 of the Report it was further observed, "where a licence had been taken out and the vehicle was at any time, while that licence was in force, used, (a) in an altered condition, (b) in a manner, or (c) for a purpose, B which brings it within or which if it was used solely in that condition or in that manner or for that purpose could bring it within a class or description of vehicle to which a higher rate of duty is applicable, then duty at the higher rate becomes chargeable." It is thus clear that what brought the motor vehicle under para 5, Sch. II was the purpose for which it was used.

C Similarly in *Public Prosecutor* v. *Captain R. Rajagopalan*(1) the High Court of Madras held that though rule 30(a) of the Madras Motor Vehicles Rules was intended to apply to motor vehicles used for the express purpose of letting for hire, if a motor vehicle was used even once for such a purpose, then, on that one occasion it was nonetheless let for hire. Hence if a person undertakes to convey D goods for reward in his private vehicle on one occasion without the necessary licence he would be regarded as having let his vehicle for hire and would commit an offence under that rule. It was contended in that case that the Legislature did not intend to compel an owner of a private vehicle, who ordinarily uses his vehicle for his own purposes, to take out a licence merely because on one occasion he conveyed goods for hire in his private lorry. That E contention was negatived on the ground that a motor vehicle even if used once for conveying goods for reward would nonetheless be regarded on that occasion as one let out for hire. In *Re. Manager, Indian Express*(2) a motor car owned by the petitioner was twice used for taking bundles of newspapers from the office of the Indian Express to the Railway Station. It was held that when the car was F used for taking the said bundles, it came within the definition of a "goods vehicle" as defined by s. 2 (8) and, therefore, permit under s. 42 (1) was necessary and as the owner had no permit thereunder, he was guilty of an offence punishable under s. 123.

The combined effect of s. 42(1) and the definitions of a "motor vehicle", a "public service vehicle" and a 'transport vehicle" is that G if a motor vehicle is used as a transport vehicle, the owner who so uses it or permits it to be so used is required to obtain the necessary permit. It is the use of the motor vehicle for carrying passengers for hire or reward which determines the application of s. 42(1). Therefore, whenever it is so used without the permit, there is an infringement of the sub-section. If the construction of that sub-H section adapted by the High Court of Mysore were correct, it would mean that whereas an owner of a transport vehicle is required to have the permit, the owner of a motor vehicle not constructed or

(1) A.I.R. 1938 Mad. 233. (2) A.I.R. 1945 Mad. 440.

adapted as a transport vehicle can carry with impunity passengers for hire or reward without any permit therefor. Section 42(1) has been enacted for the purpose of controlling vehicles carrying passengers, the object of such control being obviously to ensure safety of passengers. The construction accepted by the Mysore High Court would defeat the object for which the Legislature provided such control in the interest of and for the safety of passengers. The view taken by the Mysore High Court with respect is not correct and the view taken by the High Court of Madras is not only correct but is in consonance with the purpose and object of s. 42(1). A B

The appeal is, therefore, allowed. The order of acquittal passed by the trial Magistrate and confirmed by the High Court is set aside and the Magistrate is directed to proceed with the case on merits in accordance with law and in the light of the observations made in this judgment. C

V.P.S. *Appeal allowed.*