

APPELLATE CRIMINAL.

Before Mr. Justice Wallace.

SIVARAMA MUDALIAR (COMPLAINANT), PETITIONER,

v.

MUTHANNANAIENGAR (ACCUSED), RESPONDENT.*

1927,
February 4.

Madras Local Boards Act (XIV of 1920), ss. 166 (1) and 207—Liability of licence-holder for act of his servant—Person licensed to ply car for hire on specified roads—Conductor employed by him plies for hire on road not covered by licence—Employer charged under ss. 166 (1) and 207 of the Madras Local Boards Act—Plea, act was done through conductor's ignorance and employer was unaware of act—Principle applicable—Act of servant is act of master.

Where a person was licensed under the Madras Local Boards Act to ply his motor car for hire on certain specified roads, and a conductor employed by him plied the car for hire on a road not covered by the licence and the employer was charged with an offence under section 166 (1) of the Madras Local Boards Act, punishable under section 207 of the same Act, and he pleaded that the conductor plied the car on that road through ignorance and that he himself was not aware of the servant's act,

Held, that the principle to be applied in the case was that which applied in the case of other licence-holders, such as holders of abkari licences and licences under the City Police Act; that the licence-holder having undertaken to conform to the terms of the licence and to be responsible that no breach of it took place, it was the licence-holder who did everything that was done under cover of the licence, that the act of the servant of a licence-holder was the act of his master, and that the licence-holder was in law responsible for all that his servant did. 1 Weir, 647, *Velayuda Mudali v. King-Emperor*, (1920) I.L.R., 43 Mad., 438, *Queen-Empress v. Tyab Ali*, (1900) I.L.R., 24 B., 423, *Emperor v. Babu Lal*, (1912) I.L.R., 34 All., 319, *Emperor v. Jwala Prasad*, (1923) I.L.R. 45 All., 642, referred to

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to

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revise the judgment of the Court of the Taluk Magistrate of Tiruppattur, dated 5th August 1926, in Calendar Case No. 197 of 1926.

V. L. Ethiraj and *E. Antony Lobo* for petitioner.

R. N. Aingar for *Public Prosecutor* for the Crown.

JUDGMENT.

This petition is against the acquittal of the counter-petitioner by the Taluk Magistrate of Tiruppattur. The petition is presented on behalf of the President, District Board, Ramnad. The counter-petitioner holds from the District Board a licence, Exhibit I, dated 15th April 1926, for plying motor vehicles for hire. The licence limits the plying to certain roads and explicitly prohibits the plying of vehicles for hire on roads Nos. 17 and 18. It was admitted by the counter-petitioner before the lower Court that a conductor employed by him plied his car for hire on road No. 17. Obviously then there was a breach of the licence. The defence of the counter-petitioner in the lower Court was that the conductor plied the car on that road through ignorance and that he himself was not aware of the act. No evidence was taken and, on this plea alone, without any evidence as to whether it was true or not, the lower Court accepted the defence and, holding that the licensee is not responsible for the acts of his conductor, has acquitted him. The District Board contends that the lower Court's view of the law is fundamentally wrong and I must agree.

The licence does not cover plying on road No. 17. Therefore the plying on that road was without a licence. This was an offence under section 166 (1) of the Local Boards Act, punishable under section 207. The plying was under cover of a licence given to the counter-petitioner and was by his employee. Without that licence the counter-petitioner would not be plying his car at all.

Prima facie he is responsible in law for whatever plying his car does under cover of his licence. It is the counter-petitioner who has the licence to ply and it is therefore he who plies. It is not open to him to interpose as many persons as he likes between himself and the person who takes the fares or drives the bus and then argue that it is they and not he who plied the car. It is to my mind *prima facie* obvious that it was the counter-petitioner who plied the car without a licence on the road.

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The *ratio decidendi* in the case *In re Krishnaswami Iyer*(1), relied on by counter-petitioner does not apply here. The question here is not whether counter-petitioner caused or permitted his car to ply without a licence because it is really he himself who plied it. The principle to be applied is that which is applied in the case of other licence-holders, for example, holders of Abkari licences (see 1 Weir, 647), holders of licence under the City Police Act. See *Velayuda Mudaly v. King Emperor*(2). See also *Queen Empress v. Tyab Alli*(3), *Emperor v. Babu Lal*(4), and *Emperor v. Juola Prasad*(5). The licensees are in law responsible for all that their servants do. The principle is that the act of the servant of a licensee is the act of his master, and that it is the licensee who does everything that is done under cover of the licence. It is he who undertakes to conform to the terms of it and to be responsible that no breach of it takes place. I therefore set aside the acquittal order of the lower Court and direct that the counter-petitioner be re-tried in the light of the above remarks.

B.C.S.

(1) (1919) 10 L.W., 399.

(2) (1920) I.L.R., 43 Mad., 438.

(3) (1900) I.L.R., 24 Bom., 423.

(4) (1912) I.L.R., 34 All., 319.

(5) (1923) I.L.R., 45 All., 642.