

NAGARAJA
MOOPANAR,
In re.
REILLY, J.

appear to me improbable that, if complete evidence had been given as to exactly what happened and the extent of the damage done to the car, it might have been shown that an accident occurred which the petitioner was bound to report within the valid scope of the rule. I agree that the petitioner's conviction must be set aside and he must be acquitted and the fine, if paid, be refunded to him. But I may perhaps be allowed to express a hope that the rule will be amended so as to make it clear in expression and clearly within the rule-making powers given by the Act.

B.C.S.

APPELLATE CRIMINAL.

Before Mr. Justice Deradoss.

1927,
October 10.

THE PRESIDENT, DISTRICT BOARD, ANANTAPUR

(PETITIONER IN BOTH), PETITIONER,

v.

ISMAIL SAHIB (CRIMINAL R.C. No. 202 OF 1927)
(1ST ACCUSED), RESPONDENT.

HANUMANTA REDDI (CRIMINAL R.C. No. 203
OF 1927) (2ND ACCUSED), RESPONDENT.*

Madras Local Boards Act, sec. 166 (1)—Driver of a bus—Plying for hire along prohibited roads without a licence—If liable—Obeying owner's order—If a valid defence.

Section 166 (1) of the Madras Local Boards Act applies to the case of a driver of a bus—whether he is a owner or not—

* Criminal Revision Cases Nos. 202 and 203 of 1927.

who plies the vehicle for hire along prohibited roads without a licence and the circumstance that the driver was only a servant obeying the orders of the owner is no ground for relieving him from his liability under the Act.

Sivarama Mudaliar v. Muthannamaienyar, (1927) I.L.R., 50 Mad., 913, followed.

PETITIONS under sections 435 and 439 of the Code of Criminal Procedure, 1898, and section 107 of the Government of India Act, praying the High Court to revise the judgment of the Court of the Subdivisional Magistrate of Gooty in C.A. No. 49 of 1926 preferred against the judgment of the Stationary Sub-Magistrate of Gooty in C.C. No. 142 of 1926.

K. P. Ramakrishna Ayyar and *C. R. Lakshmikantha Mudaliyar* for petitioner in both.

V. Balarama Ayyar for respondent in Criminal R.C. No. 202 of 1927.

Respondent in Criminal R.C. No. 203 of 1927 did not appear in person or by pleader.

JUDGMENT.

In these petitions the District Board of Anantapur is the petitioner. These arise out of a prosecution instituted by the District Board against the driver and the owner of a bus for infringing the notification issued by the President, District Board, on 11th June 1926. The second-class magistrate who tried the case acquitted the owner of the bus and convicted the driver under sections 166 and 207 of the Local Boards Act.

The Appellate Court set aside the conviction of the driver. The District Board has preferred these revision petitions against the order of the Appellate Magistrate and also against the order of the second-class magistrate. The contention for the driver is that it is the owner of the bus that is liable if at all under sections 166 and 207 and not the driver who is only a servant. Reliance

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is placed on *Velayuda Mudali v. King-Emperor*(1). That case has no application to the present. In order to see whether the driver of a vehicle comes within the provisions of the section we have to look at the section itself. The first portion of section 166 is in these terms:—"No person shall, on any public road in a district, ply any motor vehicle for hire or use any such vehicle for carrying passengers or goods at separate fares or rates on such road, except on a licence obtained from the President of the District Board". This covers the case of a person who plies any motor vehicle for hire or uses any vehicle for conveying passengers. It cannot be said that the driver of a car does not ply the car for hire when as a matter of fact he collects the fares from passengers. Though the owner may be liable for allowing the car to be taken along the road prohibited by the District Board, yet the responsibility of the driver who takes a car knowing that there is such a prohibition is not taken away by the mere fact that the master also is liable. The contention that the servant is merely obeying the orders of his master is no ground for relieving him of his liability when the section clearly covers the case of a person plying for hire, whether it is his own car or not. There is no warrant for saying that the driver who drives a vehicle knowing perfectly well that he should not go along a particular road does not contravene the provisions of section 166. I am clearly of opinion that the case of the driver is covered by section 166. I therefore set aside the Appellate Magistrate's order and direct him to restore the case to file and dispose of it according to law. In considering the sentence to be awarded to the driver he may of course take into consideration the fact that the master also is liable. But this is a matter entirely within the

(1) (1920) I.L.R., 43 Mad., 438.

discretion of the magistrate and it is unnecessary for me to say anything more about it,

As regards the owner of the vehicle he is clearly guilty under section 166. This point is covered by a distinct ruling of my brother WALLACE reported in *Sivarama Mudaliar v. Muthannanaiengar*(1) and it is unnecessary for me to repeat the observations of the learned Judge. I set aside the acquittal order of the owner of the vehicle and direct the second-class magistrate to take the case on his file and dispose of it according to law.

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B.C.S.

APPELLATE CRIMINAL.

Before Mr. Justice Wallace.

In re TARANAGOWD AND SIX OTHERS
(ACCUSED), PETITIONERS.*

1927,
February 16.

Code of Criminal Procedure, sec. 107—Security—For a certain period—When commences.

Where a magistrate taking action under section 107 of the Criminal Procedure Code passes an order directing a person to furnish security for keeping the peace for a certain period, the said period begins to run from the date on which the final order under section 118 is made and not from the date on which the preliminary order under section 112 is made.

The joinder of several accused in one trial under that section is not illegal, where there is a common purpose animating all the accused, and the evidence of witnesses who speak to acts by some only of the accused is relevant to prove the common purpose animating all.

(1) (1927) I.L.R., 50 Mad., 913.

* Criminal Revision Case No. 912 of 1926.