RAMATHAL ANNI v. KANNIAPPA MUDALIAR.

DEVADOSS, J.

Receiver, Tinnevelly(1). The learned Judges held that "There is no reason why we should assume that the law according to the Provincial Insolvency Act should be understood in a different way from the law according to the Presidency Towns Insolvency Act". We have no hesitation in holding that section 17 of the Provincial Insolvency Act applies to a case of a debtor dying before the order of adjudication whether the petition for adjudication was presented by a creditor or by the debtor.

[His Lordship then dealt with the other points raised, which were questions of facts, and continued :—]

In the result the appeal fails and is dismissed with costs. Two sets to be paid out of the estate.

The Civil Revision Petition is dismissed.

RAMESAM, J.

RAMESAM, J.—I agree.

K. R.

APPELLATE CRIMINAL.

Before Mr. Justice Madhavan Nair and Mr. Justice Reilly.

1927, October 18.

In re R. C. NAGARAJA MOOPANAR (ACCUSED), PETITIONER.*

Motor Vehicles Act (VIII of 1904) sec. 11 cl. (2) (i)—Motor Vehicles Rules (Madras) r. 27 (c)—Accident, interpretation of—Rule if ultra vires—Car falling into a channel—No injury, annoyance or obstruction—Liability of driver to report.

Rule 27 (*c*) of the Motor Vehicles Rules (Madras) applies only to accidents happening to the car which one is driving and which results in some injury, annoyance or danger to the public or of danger or injury to public property or obstruction to

(1) (1928) I.L.R., 51 Mad., 344.

* Criminal Revision Case No. 335 of 1927.

traffic. Thus interpreted the rule is not *ultra vires* of the power conferred on a local government under section 11 cl. (2) (*i*) of the Motor Vehicles Act. NAGARAJA MOOPANAR, *In re.*

Where a person was driving a car, and the car went out of control and jumped over a culvert, the parapet of which was only nine inches high and fell into a channel, and there was no evidence, that as the result of the accident any one was really injured, or annoyed or that traffic was obstructed, or property destroyed, and the person driving was convicted under section 16 of the Motor Vehicles Act for contravention of rule 27 (*c*) of the Motor Vehicles Rules (Madras), *held*, that it was not an accident within the meaning of rule 27 (*c*) and that the conviction should be set aside.

PETITION under sections 435 and 439 of the Code of Criminal Procedure praying the High Court to revise the judgment of the Court of the Joint Magistrate, Kumbakonam in Criminal Appeal No. 49 of 1926 preferred against the judgment of the Court of the Stationary Second Class Magistrate of Papanasam in C.C. No. 240 of 1926.

Rule 27 (*c*) of the Motor Vehicles Rules (Madras) runs thus :

"The driver of a motor vehicle shall promptly report all occurrences of accidents to the nearest police station."

B. C. Sankara Narayana for petitioner.

K. N. Ganpati for *Public Prosecutor* for the Crown.

JUDGMENT.

MADHAVAN NAIR, J.—This criminal revision petition is to revise the judgment of the Joint Magistrate of Kumbakonam, in Criminal Appeal No. 49 of 1926 by which he confirmed the conviction of the petitioner, the owner and driver of a motor car, under section 16 of the Motor vehicles Act, 1914, for failing to comply with Rule 27-C of the Motor Vehicles Rules framed under the Act. MADHAVAN NAIR, J.

The facts are briefly these. On the evening of the 3rd of June 1926 the petitioner was returning from

NAGARAJA MOOPANAR *In re.* MADHAVAN NAIR, J.

Kumbakonam in his own car with some friends to his home at Kapisthalam. When he reached Ramanujapuram bathing ghat on his way, the car went out of control and jumped over a culvert, the parapet of which was only 9 inches high, and fell into a channel. As a result of the accident, the front axle of the car was bent and some chunam was knocked off on the eastern side of the culvert. Those who were in the car received slight injuries; but they were able to return to their homes in the same car. For the next two days the petitioner stayed at home, presumably to get over the shock of the accident. On the morning of the 6th of June, the Sub-Inspector of Police hearing of the accident called at the petitioner's house and recorded a statement from him.

In support of the revision petition three arguments have been advanced before us: (1) that the rule in question is *ultra vires* and that the Local Government has no power under the Act to frame such a rule; (2) that the lower Court erred in holding that there was an accident within the meaning of the rule in this case; and (3) that if there was an accident within the meaning of the rule, the facts show that the petitioner sufficiently complied with the requirement of the rule. I will deal with these arguments in order.

Points 1 *and* 2.—As the question whether the rule is *ultra vires* or not depends on the decision whether the rule having regard to its true scope and meaning falls strictly within the provision authorizing the Government to make the rule, the two points may be considered together. Under section 11, clause (1) of the Act, the Local Government has power to make rules for the purpose of carrying into effect the provisions of the Motor Vehicles Act and of regulating the use of motor vehicles in public places. Under clause (2),

sub-clause (1) the Local Government may make rules providing generally for the prevention of danger, injury or annoyance to the public or any person, or of danger or injury to property, or of obstruction to traffic. Rule 27-C appears to have been made under this provision. The wording of the rule is vague and its scope is uncertain. The word 'accident' is not defined in the Motor Vehicles Act or in any of the rules framed thereunder. Ordinarily it means an event which takes place without one's foresight or expectation. The falling of the motor car into the channel is certainly an event which comes within the meaning of the term 'accident' as understood in its ordinary sense. The bursting of a tube or the puncture of a tyre of a motor car while being driven on the road is as much an 'accident' as its falling into a channel. Are these accidents to be promptly reported to the nearest police station and if so, for what purpose? Again, the rule as it stands makes it obligatory on any one driving a motor car to report to the nearest police station all kinds of accidents that he may see happening on the road such as, accidents to other cars, accidents to pedestrians walking on the road and other accidents of similar description, in which one's own car is not in any way involved. But was this ever the intention of the Government when it passed the rule? I think not. If the rule included within its scope all the accidents above referred to, it would certainly be *ultra vires* under the Act. But obviously the rule is intended to apply only to accidents happening to the car which one is driving and which results in some injury, annoyance or danger to the public or of danger or injury to public property or obstruction to traffic as may be gathered from the object of the rules as specified under sub-clause (i) of clause (2) of section 11. If the rule is so understood, then it is clear that the

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Government have power to frame it under section 11, clause (2), sub-clause (i) and that the 'accident' in the present case does not come within its scope. It may here be mentioned that there is no evidence that by this accident anyone was really injured or annoyed or that it obstructed traffic or destroyed property. I have no doubt that it is the unsatisfactory wording of the rule and its vagueness that has been the cause of this prosecution which is clearly a frivolous one. If the rule is not made more precise it is bound to give trouble to the authorities who have to administer it.

As I have held that the incident we are dealing with in this case is not an accident within the meaning of the rule, it is not necessary to consider the third point raised, namely, that "if there was an accident within the meaning of the rule, the facts show that the petitioner sufficiently complied with the requirement of the rule".

I would therefore set aside the conviction. The fine, if paid, will be refunded.

REILLY, J.

REILLY, J.—The rule in question, rule 27 (*c*) of the Madras Motor Vehicles Rules, is extraordinarily vague. We are informed that this rule among others has been made by the Local Government under the Indian Motor Vehicles Act, 1914, though oddly enough there is no mention of that in the Madras Motor Vehicles Rules as officially published. We may presume, though that is not stated, that it is not intended by this rule to lay a duty on the driver of a motor vehicle to report any accidents but those which he himself observes in the happening or as having happened. But is he to report any accident which comes to his notice, the fall of a tree by the roadside or a rider being thrown from his horse? It is probable that those who made this rule, though they used such wide language, intended it to

apply only to accidents in some way connected with motor vehicles. But, even if we narrow the meaning of the language so far, is the driver of a motor vehicle bound to report every accident connected with any other motor vehicle which comes to his notice? The rule, even when read solely with reference to the subject of the Act, covers in its plain meaning all such accidents. But an accident to a motor vehicle might well come to the notice of the drivers of a hundred other motor vehicles in succession. Is each of them bound to report the accident to the nearest police station? The rule appears to say so; but that can hardly be its intention. Then must we confine the rule to accidents to the vehicle which the driver is himself driving or in which his vehicle is in some way concerned? That appears to be a reasonable restriction of the rule, though not to be found in the rule itself. But even then, does the rule apply to any accident to the vehicle which the driver is driving, even though no other vehicle or person or thing outside the vehicle which he is driving is affected on the road or a speck of paint is scraped off a mudguard in coming out of a garage, is that accident to be reported? That can hardly be intended. If this rule has been made under the Indian Motor Vehicles Act, it must have been made under section 11 of the Act. Under sub-section (2) (1) of that section rules can be made "providing generally for the prevention of danger, injury or annoyance to the public or any person or of danger or injury to property or of obstruction to traffic". It has been contended by Mr. Ganpati for the Public Prosecutor that the rule in question has been made under sub-section (2) (i). If so, we may properly give this rule a meaning which falls within that clause, so far as that is possible, and reject as ineffective, any meaning, however verbally legitimate,

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which goes beyond that clause. No reporting by the driver of a puncture or of an injury to the paint of his car can prevent danger, injury or annoyance to anyone or injury to property or obstruction to traffic. We can exclude therefore such happenings from "accidents" within the proper meaning of the rule. But I am not satisfied that, as contended for the petitioner, we can exclude from its proper purview all accidents which do not affect immediately some vehicle, person or thing outside the vehicle which the driver is driving. An accident which makes the control of that vehicle impossible in the usual way or more difficult than usual may be a source of danger to other users of the road, and a rule requiring the driver to report such an accident would be within the rule-making power under the Act.

It appears to me very unfortunate and unfair both to the public and to those who have to administer the law that this rule should have been so vaguely worded. But let us see whether the evidence shows that anything happened in this case which the petitioner was bound to report under the rule interpreted in the restricted sense in which alone the Act gives power to make it. According to the evidence, while the petitioner was driving his car one evening along a road, it went over the parapet, which was only 9-inch high, of a culvert and fell into a channel ; the front axle of the car was bent, and the petitioner and other persons in the car were slightly hurt. How much the axle was bent is not disclosed, and there is nothing to show that the car was rendered unserviceable or that the petitioner did not drive it home without difficulty the same evening. Nor is there any evidence to show what injuries were received by the petitioner or the other persons in the car. Exhibit I, the petitioner's statement to the police

during their investigation, is inadmissible, and without it there is no evidence of the circumstances in which the car left the road. The Sub-Magistrate states in his judgment that the car dropped 6 feet into the channel; but there appears to be no evidence of that. Of damage to anything outside the car there is evidence only that a little chunam was knocked off the parapet wall. Now would the reporting of such an occurrence tend to prevent danger, injury or obstruction to any person or thing? Conceivably it might do so if there was any evidence to show that the accident was due to any rash or incompetent driving or to any defect in the car, which might lead to the cancellation or suspension of the driver's licence or the cancelling of the registration of the car. But, though the Police have investigated this case, there is no suggestion that they found anything which would justify any such step. In this case therefore it does not appear that the reporting of the accident would have served any of the purposes mentioned in section 11 (2) (i) of the Act. As I understand this case, an accident did happen to the petitioner's car, and, if rule 27 (*c*) could properly be interpreted to the full extent of its literal meaning, the petitioner contravened it by failing to report the accident. But, as I have shown, to interpret the rule according to its literal meaning takes us far beyond the rule-making power given by the Act and indeed leads to absurdities. We must therefore give an artificially restricted meaning to the words used in the rule and be sure that the facts of the case fall within the rule so far as it does not exceed the rule-making powers given by the Act. In my opinion it has not been proved that what happened was an accident which a driver can be required to report by a rule made within the powers given by the Act, though it does not

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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 Devadoss.

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.