

APPELLATE CRIMINAL.

1929,
October 17.

*Before Mr. Horace Owen Compton Beasley, Chief Justice,
and Mr. Justice Pandalai.*

SHROFF VEERAPPA AND ANOTHER
(ACCUSED IN CRIMINAL REVISION CASE NO. 336
OF 1929), PETITIONERS

and

NAWAB SHIYA-UL-MULK AND ANOTHER
(ACCUSED IN CRIMINAL REVISION CASE NO. 337
OF 1929), PETITIONERS.*

Madras Local Boards Act (XIV of 1920), sec. 166—Bus picks up passengers within one Municipality—Carries them at separate fares to another Municipality—In course of journey travels over District Board road—Liability to take out licence under second part of sec. 166 (1).

Where a bus picked up passengers within the limits of a Municipality, and carried them at "separate fares" to another place in another Municipality, but travelled in the course of the journey over a road belonging to a District Board, *held*, that a licence from the President of the District Board, under the second part of section 166 (1) of the Madras Local Boards Act (XIV of 1920), was necessary for the bus being so run, although a licence may not be necessary under the first part of the section. *Local Fund Overseer, Mayavaram v. Pakkriswami Thevan*, (1927) I.L.R., 51 Mad., 527, distinguished.

PETITIONS under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the orders of the Court of Session of the Kurnool Division in Criminal Revision Petition Nos. 1 and 2, dated 25th March 1929, preferred against the orders of the Stationary Sub-Magistrate of Kurnool in Calendar Cases Nos. 440 and 441 of 1928.

* Criminal Revision Case Nos. 336 and 337 of 1929.

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In re.

L. S. Veeraraghava Ayyar for petitioners in both cases.

Public Prosecutor (L. H. Bewes) for the Crown in both cases.

JUDGMENT.

The Assistant Engineer, Kurnool, under the authority of the President, District Board, Kurnool, filed a complaint against the owner and driver, respectively, of bus No. K.U. 62, alleging that they had committed an offence by using that bus on the 15th October 1928 for carrying passengers at separate fares on the Chittoor-Kurnool road without the District Board's licence, an offence coming within the purview of section 166 (1) of the Madras Local Boards Act of 1920 and punishable under section 207 of that Act. The complaint was presented to the Stationary Sub-Magistrate, Kurnool. He recorded the complainant's sworn statement, and holding that the act complained of was not "plying a bus for hire" and that the contracts with the passengers had been entered into within the limits of the Kurnool Municipality and not within the limits of the jurisdiction of the District Board, decided that, upon the allegations made, there had been no contravention of section 166 (1) of the Local Boards Act. He therefore dismissed the complaint. A petition for revision was presented to the Sessions Court, Kurnool Division, by the complainant against that order, and the Sessions Judge set aside the order of the Sub-Magistrate and directed the District Magistrate to take the complaint on the file and make such further enquiry into it as was necessary under the law. Against that order the petitioners have presented this Criminal Revision Petition.

According to the sworn statement of the Local Fund Assistant Engineer, on the date in question, the bus

was carrying passengers at "separate fares" from Kurnool to Nandyal, and the owner of the bus had not obtained the licence from the District Board required by section 166 (1) of the Madras Local Boards Act. The facts seem to be that the passengers were picked up within the municipal limits of Kurnool and carried in the bus to Nandyal, going over, in the course of the journey, one of the roads belonging to the District Board of Kurnool. For the purposes of the argument before us and in the Court below, it was not suggested that any passengers were picked up by the petitioners at any place within the limits of the District Board.

The short point for consideration by us is whether this motor bus under the circumstances must obtain a licence from the District Board of Kurnool. Section 166 (1) of the Madras Local Boards Act is as follows: "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." The Stationary Sub-Magistrate held that the second part of clause (1) of section 166, namely, "use any such vehicle for carrying passengers or goods" must have the same interpretation placed upon it as that applicable to the first part, namely, "plying for hire" and that, as there had been no plying for hire within the limits of the District Board's area, no licence was necessary and no offence had been committed. Before the learned Sessions Judge, the petitioners relied on a decision reported in *Local Fund Overseer, Mayavaram v. Pakkriswami Thevan*(1). In that case MADHAVAN NAIR and CURGENVEN, JJ., held that a person, who lets out his car for hire within a

(1) (1927) I.L.R., 51 Mad., 527.

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Municipality, need not obtain a licence from a District Board, if the car travels beyond the municipal limits and traverses any of the District Board roads, and that the "plying of a motor vehicle for hire" means the act of waiting for or soliciting custom, and, therefore, so soon as any person has hired it, the act of plying for hire is complete, and that it cannot be said that a vehicle plies for hire on a public road merely because it is made use of as a hired vehicle on that road, and that a vehicle cannot be said to ply for hire on a road unless the actual hiring takes place on that road. The facts are set out on page 529 as follows:—"The case was tried as a summons case and he was asked to show cause, why he should not be convicted upon a complaint that he had plied his motor car for hire from Mayavaram to Tranquebar on the 27th, 28th and 29th March 1925 without obtaining a licence. Although, however, the terms of the complaint were not supported by the prosecution evidence, a defence witness was examined who deposed that the accused was in the habit of letting out his car for hire to vakils, mirasidars and others wishing to engage a car for a trip from Mayavaram. It may be taken, therefore, that the accused in this case admitted hiring out his car for journeys from Mayavaram. In the other case (Calendar Case No. 200) the question put to the accused was in similar terms and the evidence was in consonance with it. In both the cases, only the first portion of section 166 (1) would apply, because, admittedly, there is no proof that the vehicles were used for carrying passengers or goods at separate fares or rates." The statement of the facts, in our view, makes this case clearly distinguishable from that, because, according to the sworn statement of the Local Fund Assistant Engineer, the passengers in this case were carried at separate fares, whereas in *Local Fund Overseer*,

Mayavaram v. Pakkriswami Thevan(1) the whole bus had been engaged for the trip from Mayavaram. Therefore, the only thing that that Bench had to consider was the first part of section 166 (1) and not the latter part of it; and the argument on behalf of the Board in that case was that a vehicle plies for hire on a public road if it is made use of as a hired vehicle on that road, so that it is not a necessary condition that the actual hiring should take place upon that road. That argument, however, did not find favour with that Bench, and we think quite rightly. We are in entire agreement with the decision in that case. But here the facts are different. Before us on behalf of the petitioners, it is argued that the latter words of clause (1) of the section, namely, "use any such vehicle for carrying passengers at separate fares" on a District Board road mean plying for hire on a District Board road. If this is so, then the latter part of the clause is redundant. We cannot accept that argument. We think that that section is intended to make persons, who use the road of a District Board for making money by using motor vehicles upon it pay for that privilege. The first part is intended to make persons who ply a motor vehicle for hire within the limits of the District Board pay for it by taking out a licence, and the latter part of it is, in our view, intended to make persons who pick up passengers at separate fares outside the area of the District Board, and who carry those passengers over a road of the District Board also take out a licence. What is meant by "separate fares" is individual fares as distinguished from a fixed amount for the whole vehicle, and it was, as we read the facts in the 51 Mad. case, the latter case that was there being considered.

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(1) (1927) I.L.R., 51 Mad., 527.

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We were referred to several English cases, but except where the definitions are given of what is "plying for hire" they do not assist us, because we are here dealing with the words of a section, which, in our view, clearly express the intention of the Legislature.

Under these circumstances, we are satisfied that the order of the learned Sessions Judge was quite proper and we agree with the reasons he has given for that order. This Criminal Revision Case is, therefore, dismissed. For the reasons given above, Criminal Revision Case No. 337 of 1929 is also dismissed.

B.C.S.

APPELLATE CRIMINAL.

*Before Mr. Horace Owen Compton Beasley, Chief Justice,
and Mr. Justice Pandalai.*

PANTAM VENKAYYA (ACCUSED), PETITIONER.*

*Indian Penal Code, sec. 171-D—Personation—Ingredients—
Proof of corrupt motive.*

To constitute the offence of personation under section 171-D of the Indian Penal Code it is necessary to prove that the accused in doing the act with which he is charged was actuated by a corrupt motive.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the Judgment, dated 14th March 1929, of the Court of the Subdivisional Magistrate of Rajahmundry in Calendar Case No. 181 of 1923.

* Criminal Revision Case No. 375 of 1929.