

APPELLATE CRIMINAL.

Before Mr. Justice Curgenvven.

1931,
November 12.

THE PRESIDENT, DISTRICT BOARD, TANJORE
(COMPLAINANT), PETITIONER,

v.

ADAM GHANNI ROWTHER (ACCUSED), RESPONDENT.*

Madras Local Boards Act (XIV of 1920 as amended by Act XI of 1930), sec. 223, proviso—Using a motor vehicle for hire without licence—Prosecution by District Board—Three months period—Starting point.

Under the proviso to section 223 of the Madras Local Boards Act, read with that section, a person, who does an act for which a licence is required, and fails to obtain a licence, may be prosecuted within three months of the expiry of the period for which the licence, if granted, would have been current.

Arthur v. Appavu Velan, (1927) 108 I.C. 411, followed.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgment of the Court of the Second-class Magistrate of Nidamangalam in Calendar Case No. 38 of 1931.

P. Venkataramana Rao for petitioner.

K. Swaminathan for respondent.

Public Prosecutor (L. H. Bewes) for the Crown.

Our. adv. vult.

JUDGMENT.

This petition has been filed by the President of the District Board, Tanjore, against a judgment acquitting the respondent of the offence of using a motor vehicle for hire without a licence. Such an act is prohibited by section 166 (1) of the Madras Local Boards Act

* Criminal Revision Case No. 599 of 1931.

(XIV of 1920 as amended by Act XI of 1930), and is rendered punishable by section 207 read with Schedule VIII. The lower Court has found indeed that the respondent used his motor bus for hire without taking out a licence, but it considers that complaint was not made within the time prescribed by section 223.

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The question turns upon the construction of that section. It provides that no person shall be tried for an offence under the Act,

“ unless complaint is made by the police, or the president of a local board, or by a person expressly authorized in this behalf by the local board or its president within three months of the commission of the offence.”

To the section is added this proviso :

“ Provided that failure to take out a licence or obtain permission under this Act shall for the purposes of this section be deemed a continuing offence until the expiration of the period, if any, for which the licence or permission is required, and if no period is specified, complaint may be made at any time within twelve months from the commencement of the offence.”

It is urged for the petitioner that, the offence being a continuing one until the 31st December 1930, when the period expired for which the licence was required, a complaint made within three months of that date, as was the case here, would be in time. For the respondent I am asked to hold with the lower Court that time must be reckoned from the commencement of the continuing offence, i.e., from the date, 1st October, from which the licence, which was issued quarterly, should have been taken out.

In *King Emperor v. U Thin Ohn and others* (1) a question of this kind arose under the City of Rangoon Municipal Act in connexion with a case of keeping a private market without a licence : but I have been unable to apply the reasoning there employed, because

(1) (1928) I.L.R. 7 Rang. 23.

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the learned Judge who decided the case based his decision upon the date when the Commissioner of the Corporation came to know that the offence was being committed. I have not seen the Rangoon Act; but such a test will not, I think, accord with the terms of the Madras Act. There is however this principle recognized in the decision, that time has not to be counted from the point when commission of the offence began. That was the view taken in *Emperor v. Becharadas*(1). The prosecution there was for allowing to remain undemolished a house constructed in contravention of municipal regulations, and the learned Judges point out that any other construction placed upon provisions of this character would in such circumstances enable the municipality to prosecute the owner of a completed building after any period whatever. The same considerations certainly do not arise here, where the owner of the motor bus breaks the law every time he uses it without a licence. On the other hand, I have been referred to a case of this Court, *Arthur v. Appavu Velan*(2), where DEVADOSS J. held that a person who kept an unlicensed potter's kiln was liable to prosecution at any time within three months of the expiry of the period during which the licence, if it had been granted, would have been current.

This last case is, I think, clear authority for the view put forward for the petitioner. It is objected that, on the wording of the proviso, it is not possible to apply it to the circumstances of such a case as the present; that the offence does not really consist, as the proviso would require, in a failure to take out a licence, but in an act, or a series of acts, of using a motor vehicle without licence; and that the section, without the proviso,

(1) (1930) 32 Bom. L.R. 768.

(2) (1927) 108 I.C. 411.

requires that the period of three months should embrace that act or series of acts. Verbally, no doubt, there is some ground for a criticism of this kind. But I think that the intention of the section, read with its proviso, is clear. The essential part of the offence, from the point of view of the District Board, is a failure to take out a licence, on the part of a person who has by his conduct obliged himself to do so, for the period under reference—here the last quarter of 1930. It is not very material when and on how many occasions he used his bus during that quarter. Even if he used it only once he was no less bound to obtain a licence for the whole quarter. The terms of the proviso support this view by allowing in such cases a period of three months from the date when the licence would have expired for complaint to be made. The rule accordingly is simply this : If a person does an act for which a licence is required, and fails to obtain a licence, he may be prosecuted within three months of the expiry of the period for which the licence, if granted, would have been current. That, I think, is what the proviso, read with the section, means, and so construed it does not seem to afford undue opportunity for delay in taking action.

I conclude therefore that the complaint in the present case was within time. Since the learned Second-class Magistrate has not recorded any finding upon the facts I allow the petition, set aside his order of acquittal and direct him to dispose of the case in the light of the foregoing observations.

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K.N.G.
