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should be decided by a civil court. As pointed out in the Calcutta case and in the case of this Court reported in I.L.R., 45 Allahabad, the proper order for the Magistrate to pass was one under section 139A to stay proceedings until the matter of the existence of such right had been decided by a competent civil court. I set aside the order of Mr. Ram Bihari Sahi, Magistrate, dated the 19th of February, 1928, under section 137 of the Code of Criminal Procedure and substitute in its place an order under section 139A that the proceedings be stayed until the matter of the existence of the right of Munna's party to build the *bandh* has been decided by a competent civil court.

Before Mr. Justice Dalal.

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May, 22

EMPEROR *v.* HASAN AHMAD.*

Act No. VIII of 1914 *(Indian Motor Vehicles Act), sections* 6, 8, 9 and 16—*United Provinces Motor Vehicles Rules,* 1924, *rules* 20, 21, 22 *and* 24—*Licence—Permit—Failure to produce permit—Power of district authority to prescribe route along which a public motor vehicle shall ply for hire.*

Held, (1) that there is no power given to the "district authority" either by the Indian Motor Vehicles Act, 1914, or by the rules framed thereunder, which enables that authority to prescribe the route along which a public motor vehicle authorized to ply for hire shall run, and (2) that there is no provision in either the Act or the rules which renders punishable the non-production of a "permit" issued under rule 24, as distinct from a licence prescribed by section 5 and rules 20—22.

This was a reference made by the District Magistrate of Muttra. The facts of the case are clearly stated in the referring order, which was as follows :—

"In my opinion the convictions and sentences passed in this case cannot possibly be upheld. The Magistrate has

*Criminal Reference No. 416 of 1928.

convicted the applicant on what he styles as two different charges under section 16 of the Indian Motor Vehicles Act, 1914. One charge appears in the judgement to be failure to produce his licence upon demand by a police constable, contrary to section 8, and the second charge appears to be driving a motor vehicle in an area for which his licence was not available, contrary to the provisions of section 9.

But when I come to examine the record in order to ascertain exactly with what offences and under what sections the applicant was charged in the trial of the case, I find that he was charged with quite different offences. The summons issued to him under section 16 of the Motor Vehicles Act was defective, since it omitted to specify the sections of the Act, or rules made thereunder, for breach of which the applicant was being prosecuted. The seriousness of this defect has been recently stressed by the Hon'ble High Court in *Emperor* v. *Kunwar Rananjai Singh* (1). When the applicant appeared in court, he was tried summarily. The record shows that the police report, Exhibit 1, was read over to him as containing the offence for which he was charged, and that he pleaded not guilty. The document, Exhibit 1, is the police charge-sheet, and the offences committed by the applicant are set out therein as follows :—

"*Mulzim Khana No.* 7 *apni motor lorry No.* 13 *sarak Sadabad janib Baldeo sawariya bithlaye hue Muthra ko ja raha tha. Ijazat-nama chalane sarak Sadabad talab kiya gaya, to nam-burda ne kaha ki hamare pas nahin hai.. Chunki yeh fail namburda ka dafa* 16 *Act Motor ki had tak pahunchta hai, lehaza naksha charge-sheet murattab karke bagarz qaimi jurm ijlas janab Hakim pargana Sahib Sadabad irsal hai. Is shakhs ne is sarak par motor chalane ki ijazat hasil nahin ki hai, khilaf sharait licence jurm kiya hai.*"

Now from this police report it is clear that the police took the view that the applicant was not entitled to drive his motor vehicle on the Muttra-Sadabad road, without some form of special permit. They were prosecuting him for driving on this route without a permit, or in the alternative for failure to produce his permit, if any such permit existed.

(1) (1928) 26 A. L. J., 331.

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But the sections of the Act under which the Magistrate has convicted the applicant do not refer to any special permit for driving a motor vehicle along any particular route. The licence to which they refer is the licence to drive a motor vehicle, which is made compulsory by section 6 of the Motor Vehicles Act, and shown in the form given in schedule "B" of the United Provinces Motor Vehicles Rules, 1924. This licence is given in accordance with rules Nos. 20-22 of these motor vehicles rules, but these rules do not authorize the licensing authority to specify the routes over which a driver of a motor vehicle may drive. As a matter of fact these driving licences are issued for the whole of the United Provinces.

The judgement of the Magistrate shows that during the trial he never directed either his mind or the evidence to the question whether the applicant was asked to produce his driving licence in the form given in schedule "B", as he could be required to do under rule 21 and also under section 8 of the Act, and whether he refused to produce his licence. He directed himself entirely to a consideration whether any form of permit has been issued to the applicant to drive a public motor vehicle on the route from Muttra to Sadabad, and whether the applicant had refused to produce this permit. Accordingly in his defence on these charges, for which he was placed on his trial, the applicant produced a form of permit which has been exhibited and marked Exhibit "2".

Now it is contended in support of the convictions that under the Motor Vehicles Rules, 1924, there was an authority constituted, called the District Authority, by rule 24 of the rules and that this authority had the right to issue permit for public motor vehicles to ply along certain specified routes, and that without such a permit no public motor vehicle could ply for hire and that it could only ply along the routes specified in the permit. It is also argued that the route specified in the permit granted to the applicant gave no right to ply on the route from Muttra to Sadabad, and he has therefore been rightly convicted.

Now I have already pointed out that the sections under which the Magistrate has convicted the applicant do not apply to permits at all. They do not apply to any permit issued

under rule 24, but to the driving licence prescribed by section 6 of the Act and rules 20 to 22. Consequently, on this account only, the convictions must be set aside.

But furthermore, there is nothing in the rules to make it compulsory for the driver of a public motor vehicle to produce on demand the permit issued to him under rule 24, and consequently the applicant committed no offence by failing to produce his permit, Exhibit 2.

Again I am unable to agree that rule 24 of the rules authorized a District Authority to limit the routes along which a particular public motor vehicle might ply.

Under rule 24(*b*), the authority was authorized to fix the rates for which public motor vehicles should ply.

Under rule 24(*c*) it was authorized to fix the maximum number of persons and the weight of luggage to be carried in a public motor vehicle, and in the case of motor lorries the weight of goods.

Under rule 24 (*d*) it was authorized to fix stands and places at which public motor vehicles might stand to ply for hire, as well as to fix the hours of departure of vehicles for specified places. But this does not mean that the District Authority was authorized to prescribe fixed routes for public motor vehicles and prohibit them from plying along any route other than these. My contention is borne out by the form of permit shown in schedule I attached to the rules. Incidentally, the permit, Exhibit 2, has not been issued strictly in accordance with the form given in schedule I.

The result is that not only do I hold that the applicant has been wrongly convicted under section 16 of the Motor Vehicles Act, 1914, for breach of the conditions imposed under sections 8 and 9, but I also find that he has committed no offence at all under the Motor Vehicles Act or rules.

I, therefore, direct that the record be submitted to the Hon'ble High Court, with the recommendation that the convictions, sentences and order for cancellation of the licence be set aside. The Magistrate should submit any explanation which he has to offer within seven days. Furthermore, under section 438 of the Criminal Procedure Code I suspend execution of the order for cancellation of the license."

The parties were not represented.

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DALAL, J. :—This is a very careful submission by the District Magistrate and may usefully be reported in the Law Journals.

I set aside the conviction and sentence of Hasan Ahmad and direct the fine, if any recovered, to be refunded. All other incidental orders of the trial court are also cancelled.

REVISIONAL CIVIL.

Before Mr. Justice Mukerji and Mr. Justice Banerji.

1928
May, 23.

LAKHPAT RAI (APPLICANT) *v.* DURGA PRASAD AND ANOTHER (OPPOSITE PARTIES).*

Act No. XIV of 1920 *(Charitable and Religious Trusts Act), section* 3—*Application for particulars relating to a trust* —"*Person interested in a trust.*"

Held that, in regard to a trust the object of which was the maintenance of a public dharamsala in a certain city, a person who was a resident of that city, entitled to say at the dharamsala, and secretary of the local Dharm Asthan Sudhar Committee, was a person interested in the trust within the purview of section 3 of the Charitable and Religious Trusts Act, 1920, and therefore entitled to apply to the District Judge to call up on the manager of the dharamsala to furnish certain particulars as specified in the Act.

THIS was an application for revision of an order passed by the District Judge of Meerut under the provisions of the Charitable and Religious Trusts Act, 1920. The facts of the case sufficiently appear from the judgement of the Court.

Babu *Surendra Nath Gupta*, for the applicant.

Dr. *N. C. Vaish*, for the opposite parties.

MUKERJI and BANERJI, JJ. :—This is an application in revision by one Lakhpat Rai, who was manager

*Civil Revision No. 137 of 1927.