1936

RANDHIR SINGH v. RANDHIR SINGH

revenue can be ascertained, the case would be governed by sub-section (*b*), while in the latter case by sub-section (*d*).

There is really no conflict of opinion in the case of *Haliman* v. *Media* (1) and the case of *Mst. Beti Kuari* v. *Harnath Singh* (2). In the former case the property in question was a fractional share of a khewat khata which was not separately assessed to revenue. It was, therefore, not possible to ascertain the proportionate liability of that property. On the other hand, in the latter case the property in question was a definite share of a particular patti which had been separately assessed to revenue and was recorded as such. It was, therefore, clear that sub-section (*d*) applied to the former case, while sub-section (*b*) to the latter.

In the present case the khewat produced shows that khewat No. $\frac{1}{2}$ is a distinct unit, a separate estate and assessed separately to revenue. A fraction of this distinct unit being in dispute, it is easy to ascertain the proportionate amount of revenue assessable on this property. We are, therefore, of the opinion that the case is governed by sub-section (*b*) and that the report of the stamp reporter is correct. There is, accordingly, no deficiency on account of the court fee paid in the court below.

REVISIONAL CRIMINAL

Before Mr. Justice Thom

1936
August, 14

EMPEROR *v.* GAJRAJ SINGH*

Motor Vehicles Act (VIII of 1914), section 16—Summons to accused not mentioning nature and particulars of offence charged—Opportunity not given to produce defence evidence—Criminal trial—Illegal.

*Criminal Revision No. 337 of 1936, from an order of Tufail Ahmad, Sessions Judge of Banda, dated the 29th of February, 1936.

(1) (1933) I.L.R., 55 All., 531. (2) S.A. No. 1239 of 1935, decided on 14th April, 1936.

When a person is to be tried for an offence under section 16 of the Motor Vehicles Act, the summons issued to him should not merely state that he is charged with an offence under that section but must define the exact nature of the offence charged and specify the time and place of the alleged offence.

Where no notice was given in the summons to the accused of the nature of the charge preferred against him, and, further, no opportunity was given to him of meeting the prosecution case and producing defence evidence, it was *held* that the conviction was illegal and must be set aside.

Dr. *M. N. Agarwala*, for the applicant.

The Assistant Government Advocate (Dr. *M. Waliullah*), for the Crown.

THOM, J.:—The applicant Gajraj Singh has been convicted by the stipendiary Magistrate of Banda under section 16 of the Motor Vehicles Act and sentenced to a fine of Rs.50 and his licence has been suspended for three months.

The charge against the accused was that on the 30th of September, 1935, he was carrying in his lorry 35 passengers, which were more than the number sanctioned for his lorry by the Motor Vehicles authorities under the Motor Vehicles Act.

It appears that a summons was issued against the applicant in which he was charged merely with an offence under section 16 of the Motor Vehicles Act. The offence was not defined and in the summons the applicant was given no notice of the nature of the charge which was to be preferred against him. In other words, he was hailed before the court, tried and convicted without the ordinary notice to which every accused is entitled before being put upon trial.

It appears that there is a practice in this province to issue summons under the Motor Vehicles Act without defining the exact offence with which the accused is being charged. This is a most reprehensible practice. It has been condemned by this Court in the past. It appears that no notice has been taken of the observations

1936

EMPEROR v. GAJRAJ SINGH

of the Judges of the High Court who have in the past expressed their opinions upon the practice above referred to.

I consider it necessary in this case to state emphatically and clearly that it is the duty of the clerk who issues the summons under the Motor Vehicles Act to define therein the exact nature of the charge which is being preferred against the person against whom the summons is being issued. The time, the place and the exact nature of the offence charged must be clearly set forth. If this is not done then clearly the clerk issuing the summons is guilty of gross breach of duty.

A conviction which follows upon a summons in which the accused is not given notice of the charge which is brought against him is an illegal conviction. In the present case Gajraj Singh was hailed before the court, tried, convicted and sentenced in one day. He was given no opportunity of meeting the case against him. Had he been afforded an opportunity of producing evidence in his defence after the evidence for the prosecution had been led, then, even although there had been a material irregularity in the proceedings in that no notice of the charge was contained in the summons, this Court would not normally interfere in revision if it were satisfied that upon the merits the accused was guilty of the offence charged and that justice had been done. It is impossible, however, in the present case to be certain that justice has been done, for the simple reason that not only was no notice given to the accused of the charge preferred against him in the summons but he was not given an opportunity of meeting the prosecution case after the close of the prosecution evidence. In these circumstances the conviction of the applicant Gajraj Singh cannot stand.

In the result the application is allowed, the conviction and sentence of the applicant under section 16 of the Motor Vehicles Act are set aside and the applicant is acquitted. The fine if paid will be refunded.