

REVISIONAL CIVIL

Before Mr. Justice Ziaul Hasan

MOHAMMAD HAFIZ (APPLICANT) *v.* KING-EMPEROR
(COMPLAINANT-OPPOSITE PARTY)*

1937
May, 11

Motor Vehicles Act (VIII of 1914), section 16—Charge under Motor Vehicles Act—Summons, if should specify the rule broken—Omission to specify the offence in summons, effect of.

A summons issued to an accused for an offence under the Motor Vehicles Act must specify the rule or rules made under the Act which the accused is said to have broken and unless this is done, the trial is bad. It is extremely unfair to an accused that a prosecution should be launched against him without the prosecution having made up their mind as to the exact offence with which it is intended to charge him.

Mr. Ganesh Prasad, for the applicant.

The Assistant Government Advocate (Mr. H. K. Ghose), for the Crown.

ZIAUL HASAN, J. :—These are two references made by the learned Sessions Judge of Rae Bareilly recommending that the convictions and sentences passed against one Muhammad Hafiz, a motor driver, in two separate cases tried summarily by a Magistrate of the first class of Partabgarh be set aside.

Both the cases were started against the accused "under section 16 of the Motor Vehicles Act" and the summonses issued to the accused did not specify the alleged offences any further.

It has been held more than once that a summons issued to an accused for an offence under the Motor Vehicles Act must specify the rule or rules made under the Act which the accused is said to have broken and that unless this is done, the trial is bad.

The learned Magistrate in his explanation says that the accused knew very well what the charge against him

*Criminal Reference No. 7 of 1937, made by M. Ziauddin Ahmad, Sessions Judge of Rae Bareilly.

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was. I doubt this very much seeing that in the case to which Criminal Reference No. 7 of 1937 relates, the learned Assistant Government Advocate was not himself sure which rule of the Motor Vehicles Rules was broken by the accused. At one time he said that it was rule 12 for the breach of which the accused was prosecuted but rule 12 imposes no duty on a driver but only lays down the procedure for the issue of permits. Then he referred to rule 93 but the same remarks apply to that rule. He also referred to rule 108(2) as the probable rule broken by the accused in this case but finding that there was no evidence on record to show that the accused's lorry obstructed traffic or caused danger or inconvenience to the public, he finally took his stand on rule 108(1); but a breach of that rule occurs only in two cases, namely (1) where there is in the driver's seat no person who holds a licence issued under the rules and (2) the mechanism has not been stopped and brake has not been applied and other necessary precautions have not been taken to ensure that the vehicle cannot be put in motion unintentionally. Now, even if it be granted that the accused was not in his seat and could not show a licence issued under the rules, there is absolutely nothing to show that the mechanism of the lorry had not been stopped and the brake had not been applied. It is extremely unfair to an accused that a prosecution should be launched against him without the prosecution having made up their mind as to the exact offence with which it is intended to charge him.

I accept the reference in both the cases and set aside the accused's conviction and sentences. I agree with the learned Sessions Judge that the cases do not call for an order of retrial.

Reference accepted.