

REVISIONAL CRIMINAL

*Before Mr. Justice Ziaul Hasan*1936
December, 8

KING-EMPEROR (COMPLAINANT) v. MAIKU LAL (ACCUSED)*

Motor Vehicles Act (VIII of 1914), section 16—Motor Vehicles Rules Nos. 87 and 131—Offence under rules 87 and 131—Summons mentioning only section 16 of Motor Vehicles Act—No particulars of charge given in summons—Trial, if legal—Conviction, if justified.

Section 16 of the Motor Vehicles Act applies to all contraventions of the provisions of the Act or of the rules made thereunder so that a mere reference to that section in the summons can give absolutely no idea to the accused of the exact nature of the offence with which he is being charged. Where, therefore, the actual charges against the accused are for breach of rule 131, Motor Vehicles Act, 1935, and of rule 87 first part, but the summons issued to the accused only mentions section 16 of the Act and no particulars of the charge are given in the summonses, the conviction following the trial on such charge should be set aside. *Lal Chand v. Emperor* (1), *Emperor v. Ranjanlal Singh* (2), and *Hasan Ahmad v. Emperor* (3), relied on. *Kehar Singh v. Emperor* (4), distinguished.

The Assistant Government Advocate (Mr. S. C. Das), for the Crown.

Messrs. *K. N. Tandon* and *Avadh Behari Varma*, for the accused.

ZIAUL HASAN, J.:—These two criminal references have been made by the learned Sessions Judge of Hardoi in two cases in which the same person Maiku Lal was the accused.

Maiku Lal plies a motor bus on hire. In one of the cases the charge against him was that on the 22nd of March, 1936, he carried passengers in excess of the sanctioned number, in his motor lorry twice, once at 9 a.m. and again at 1 p.m., so that the charge was for breach of rule 131 of the Motor Vehicles Rules, 1935. The other case was started against Maiku Lal on one

*Criminal Reference No. 47 of 1936, made by Pandit Tika Ram Misra, Sessions Judge of Hardoi.

(1) (1934) 11 O.W.N., 828.

(3) (1928) All., 492.

(2) (1928) All., 261.

(4) (1935) All., 219.

Behari Lal making a report to the police on the 29th of May, 1936, that his daughter had been knocked down and injured by a motor car on the 28th May. The police on investigation found that it was the motor which Maiku Lal was driving that injured the girl. So this was a case of breach of rule 87, first part, of the Motor Vehicles Rules. In both the cases, however, the summonses issued to the accused only mentioned section 16 of the Motor Vehicles Act, as the section under which the accused was to appear and answer a charge. No particulars of the charge were given in the summonses nor were the rules for the breach of which the prosecutions were launched, mentioned.

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The learned Sessions Judge relying on the cases of *Lal Chand v. Emperor* (1), *Emperor v. Kunwar Rananjai Singh* (2) and *Hasan Ahmad v. Emperor* (3) has made these references on the grounds that the trials were bad and has submitted the record to this Court for orders.

I have heard the learned Assistant Government Advocate as well as counsel for the accused at length and have come to the conclusion that these references must be accepted. The case of *Lal Chand v. Emperor* (1) was exactly similar to the cases now before me and I see no reason to differ from the opinion of my learned Brother THOMAS, J. In the case of *Emperor v. Rananjai Singh* (2) the description of the offence in the summons was not so meagre as in the present cases and yet the trial was held to be vitiated. The judgment of the Bench which heard the case was delivered by WALSH, J. who remarked :

“In the first place there is no such thing as an offence under section 16, Motor Act at all and in the second place there is no offence so far as we can discover in the Motor Vehicles Act coming within the description given by the Joint Magistrate of failing ‘to give notice to the police that your driver has killed a boy’.”

(1) (1934) 11 O.W.N., 828.

(2) (1928) All., 261.

(3) (1928) All., 492.

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And again :

“We have no hesitation in saying that a summons issued by a Magisterial court which does not contain in the form prescribed by the statute particulars of the place where, the time when and the nature of the offence charged, may be disregarded by the person concerned and proceedings taken thereon, if objected to must necessarily be invalid.”

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Referring to the words “state shortly the offence charged” in form 1 of the 5th Schedule of the Code of Criminal Procedure, the learned Judge says :

“That statutory requirement cannot be satisfied by a reference to a general omnibus clause, which may include a variety of charges, nor does it justify the omission of the place where, the date when and the precise nature of the offence which the accused person is supposed to have committed”.

In the case of *Hasan Ahmad v. Emperor* (1) also the conviction of the accused was set aside and it was held that omission in a summons to specify the sections of the Motor Vehicles Act or rules made thereunder for breach of which a person was being prosecuted is a serious defect.

The learned Magistrate in his explanation has relied on the case of *Kehar Singh v. Emperor* (2) but that was a case under the United Provinces Prevention of Adulteration Act and the real question for consideration was whether the trial of a person in less than a week from the service of the summons on him in contravention of section 15(2) of the Act was an illegality or merely an irregularity. The remark about ‘omission to state the particulars of the offence in the summons’ appears to be an *obiter dictum* as the judgment shows that there was no point taken that the accused had been prejudiced by any omission or irregularity in the summons which was served upon him.

I may observe that even in his judgment the learned Magistrate under the heading ‘offence complained of’ refers only to section 16 of the Motor Vehicles Act and

(1) (1928) All., 492.

(2) (1935) All., 219.

not to the rules for breach of which he was convicting the accused. Section 16 of the Act applies to all contraventions of the provisions of the Act or of the rules made thereunder so that a mere reference to that section in the summons can give absolutely no idea to the accused of the exact nature of the offence with which he is being charged.

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I accept the reference in both the cases and set aside the accused's conviction and sentence in each case. As the offences were not very serious the sentence being of fine only, and as the accused has had his driving licence suspended for several months and as he has been sufficiently punished for breaches of the rules, I do not consider it necessary to order a retrial of the cases.

Reference accepted

APPELLATE CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava,
Chief Judge and Mr. Justice H. G. Smith*

N. ULFAT HUSAIN KHAN AND OTHERS (DEFENDANTS-APPELLANTS) v. GIRDHARI LAL AND ANOTHER (PLAINTIFFS-RESPONDENTS)*

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Civil Procedure Code (Act V of 1908), order XXXIV, rule 6—Sale of part of mortgaged property—Decree-holder releasing part of mortgaged property in favour of one mortgagor on receipt of some money—Personal decree under order XXXIV, rule 6, if can be allowed—Execution of decree—Compromise—Person party to legal proceeding but not compromise, if barred by compromise.

Where a portion of the mortgaged property has been sold and the other portion is no longer available for sale owing to the decree-holder's own conduct in releasing that portion in favour of one of the judgment-debtors on receipt of a sum of money from him, then an application for a personal decree under order XXXIV, rule 6, Civil Procedure Code is not maintainable as the decree-holder's inability to sell that portion of the property is due to his own conduct. *Mahadeo Prasad Pal*

*First Civil Appeal No. 26 of 1936, against the decree of Saived Shaukat Husain, Civil Judge, Mohanlalganj, Lucknow, dated the 30th of November, 1935.