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SECRETARY OF STATE v. AMAR SINGH.

BHIDE J.

ordinate Judge's finding that the defendants were estopped from pleading that the mortgage had come to an end seems to be palpably erroneous; but the proper remedy was to appeal from the decree and it is unfortunate that the defendants did not do so. It is not open to this Court to interfere with the learned Subordinate Judge's findings of fact on a reference under section 21-A of the Punjab Alienation of Land Act, and consequently this application must be dismissed. But in view of all the circumstances, I would leave the parties to bear their costs.

ADDISON J.

ADDISON J.—I agree.

N. F. E.

Application dismissed.

REVISIONAL CRIMINAL.

Before Addison J.

DEVI DAYAL—Petitioner

versus

THE CROWN—Respondent.

1930

May 21.

Criminal Revision No. 370 of 1930.

Indian Motor Vehicles Act, VIII of 1914, section 16—Punjab Motor Vehicles Plying for Hire Rules, 1922, rule 3—Criminal liability of owner—for suffering his motor to be plied for hire not in conformity with the conditions in his road certificate.

The Driver was found with 17 passengers in his motor lorry, of whom one was on the mud-guard. Under the road certificate, only 10 passengers could be carried and the carriage of a passenger on the mud-guard was prohibited. Under rule 3 of the Punjab Motor Vehicles Plying for Hire Rules, 1922, it is the owner who has to get a road certificate, and he is not to let the vehicle, or to ply it, for hire, or suffer it to be let or plied for hire, without such certificate and except in conformity with the conditions in such certificate.

Held, that the owner was properly held guilty of "suffering" his motor lorry to be plied for hire, not in conformity with the conditions specified in his road certificate, even though he was not present.

Crown v. *Sohan Singh* (1), *Indra Mohan Roy* v. *Emperor* (2), and *Mahomed Surty* v. *King-Emperor* (3), distinguished.

Thornton v. *Emperor* (4), and *Baidya Nath Bose* v. *Emperor* (5), followed.

Faraj Lall v. *Emperor* (6), referred to.

Case reported by Lala *Chuni Lal, Sessions Judge, Karnal, with his No. 98-J., dated 1st March, 1930.*

Nemo, for Petitioner.

S. M. HAQ, Advocate, for Respondent.

The report of the Sessions Judge, Karnal.

The accused, on conviction by H. S. Malik, Esquire, exercising the powers of a District Magistrate in the Rohtak District, was sentenced, by order, dated 6th May, 1929, under section 16 of Act VIII of 1914, to pay a fine of Rs. 20 or in default to undergo two weeks' simple imprisonment.

The facts of this case are as follows :—

The petitioner Devi Dayal was the owner of motor lorry No. P-4969-A, plying on hire in Rohtak District, and Mumtaz Ali was its driver. On 24th April, 1929, the District Engineer, Rohtak, reported that he found the preceding day motor lorry No. P-4969-A, carrying 17 passengers, of whom one was on the mud-guard. The driver Mumtaz Ali admitted the above allegations, and as the lorry was licensed to carry 10 passengers only, and the carriage of a passenger on the mud-guard was prohibited, he was

(1) 27 P. R. (Cr.) 1918.
(2) 1928 A. I. R. (Cal.) 410.
(3) 1924 A. I. R. (Rang.) 63.
(4) (1911) I. L. R. 38 Cal. 415.
(5) (1918) I. L. R. 45 Cal. 430.
(6) (1924) I. L. R. 51 Cal. 948.

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convicted under section 16 for having contravened the rules of the Road Certificate, and was sentenced to pay a fine of Rs. 50.

The owner, Devi Dayal, stated that the driver had no authority from him to carry more passengers than allowed by the rules, and denied all knowledge. The learned Magistrate, however, held that the owner was responsible for the breach of the conditions of the Road Certificate as it was in his name, and he sentenced him as well to a fine of Rs. 20.

The proceedings are forwarded for revision on the following grounds :—

It was not contended that the owner was present in the lorry when 17 passengers were being carried by the driver, and the report of the District Engineer, the defence of the petitioner as also the trend of the order of the District Magistrate, confirm the conclusion that he was not present. The learned District Magistrate practically gave no reasons for holding the owner liable, but the Public Prosecutor relies on Rule 3 of the Punjab Motor Vehicles Plying for Hire Rules, 1922, which reads as under :—

" No person shall let or ply for hire or suffer to be let or plied for hire a motor vehicle in any public place unless a Road Certificate in Form A, specified in Schedule A hereto, has been granted in respect thereof by the Controlling Authority, and except in conformity with the conditions in such certificate." He argues that the owner suffered his motor vehicle to be plied for hire in contravention of the conditions of his Road Certificate and was, therefore, liable. The real question thus was whether in the above circumstances the petitioner can be said to have " suffered,"

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that is, allowed his driver to ply the lorry for hire in contravention of the terms of the Road Certificate. Now, it cannot be said that there was any evidence, either direct or circumstantial, from which any consent, express or implied, can be held to have been established or to be capable of being deduced. That being the case, it cannot by any stretch of interpretation be held that the petitioner allowed the driver to contravene the rules, and he could not, therefore, be held liable—*vide Indra Mohan Roy* v. *Emperor* (1), and *Mahomed Surty* v. *King-Emperor* (2).

An absent owner cannot be held liable, if the act provides for liability for permitting and causing a certain thing, unless it can be shown that the act was done with the master's knowledge and assent, express or implied. The use of the word " suffer " indicates that a particular intent or state of mind is of the essence of an offence, and as that intent or state had not been established, the conviction of the owner could not be said to be justifiable—*vide Crown* v. *Sohan Singh* (3).

As a result of the above discussion, I am of opinion that the petitioner Devi Dayal was wrongly convicted, and submit the records to the High Court with a recommendation that the conviction may be quashed and the sentence set aside.

ADDISON J.

ADDISON J.—Devi Dayal the owner of a motor lorry, plying for hire in the Rohtak District, was convicted under section 16 of the Indian Motor Vehicles Act by a Magistrate, 1st class, for a breach of rule 3 of the Punjab Motor Vehicles Plying for Hire Rules, 1922, and was sentenced to pay a fine of Rs. 20. The

(1) 1928 A. I. R. (Cal.) 410. (2) 1924 A. I. R. (Rang.) 63.
(3) 27 P. R. (Cr.) 1918.

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learned Sessions Judge has forwarded the proceedings with a recommendation that the conviction be quashed on the ground that an absent owner cannot be held liable unless it can be shown that the act was done with his knowledge and assent, express or implied. He relied upon *Crown* v. *Sohan Singh* (1), *Indra Mohan Roy* v. *Emperor* (2), and *Mahomed Surty* v. *King-Emperor* (3).

None of the authorities referred to by the learned Sessions Judge are in point. In *Crown* v. *Sohan Singh* (1), it was held that an absent owner cannot be fined because his servant drove his motor car without lights after lighting-up time. The breach in that case was of rules 10 and 17 of the Punjab Motor Vehicles Rules, 1915. The effect of these rules is that no person should drive a motor vehicle at night without lights. There is nothing in them about suffering another person to do so. It follows that *Crown* v. *Sohan Singh* (1), was properly decided and only the person driving the car was liable under the rules.

Similarly *Indra Mohan Roy* v. *Emperor* (2), is not an authority for the proposition advanced by the Sessions Judge. That was a breach of rule 6 of the Act which provides that no owner shall allow any person, who is not licensed, to drive his car. In the case before Mukerji J. the driver, who was licensed, in the absence of the owner, allowed a third person, who was not licensed, to drive it and clearly the owner was properly held not guilty.

The Rangoon case *Mahomed Surty* v. *King-Emperor* (3), is also not in favour of the view taken by the Sessions Judge. In that case the owner of a

(1) 27 P. R. (Cr.) 1918. (2) 1928 A. I. R. (Cal.) 410.
(3) 1924 A. I. R. (Rang.) 63.

motor car was held not criminally liable for negligence of the driver in driving the car without a properly illuminated rear-light, if the owner had made provision for such illumination. Under rule 26 (3) of the Burmah Motor Vehicles Rules provision has to be made in every motor vehicle for the illumination of the registered number on the rear number plate in such a manner as to render the number legible at a reasonable distance. This was done by the owner and the negligence of the driver in not having the lamp lit was clearly not within his power. Further, it was pointed out in that judgment that it did not come within the mischief of any of the rules; *Thornton* v. *Emperor* (1), was distinguished as the rule in that case was as to permitting a motor car to be used in a particular way. The learned Judge who decided the Burma case has clearly shown that there was no provision like that in the Burma rules and it was on that ground that the decision was based. On the authorities before the learned Sessions Judge, therefore, he should not have made the present reference.

There are, however, three Division Bench decisions of the Calcutta High Court on this question. The first is *Thornton* v. *Emperor* (1). It was held in it that the owner of a motor car who expressly or impliedly permitted his car to be used or driven by his servant was liable under rule 4 and section 4 of the Act for causing a breach of rule 20 of the rules framed in Bengal, though he was not in the car at the time and had given his servant general directions to observe the regulation speed. It was pointed out, however, that this principle was not to be applied when the

(1) (1911) I. L. R. 38 Cal. 415.

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chauffeur was improperly using the car for his own purpose without the permission of the owner. Rule 4 referred to in the above judgment is as follows :—

"No person shall drive, or * * * permit to be used any motor car * * * which does not in all respects conform to these rules, or which is so driven or used as to contravene any of these rules."

Rule 20 provided against dangerous driving and the owner was held guilty under rule 4. This decision was followed by another Division Bench in *Baidya Nath Bose* v. *Emperor* (1). It is true that *Thornton* v. *Emperor* (2), was not followed in *Varaj Lall* v. *Emperor* (3), but the first two decisions have equal authority with the last.

Coming now to the case referred, the driver was caught with 17 passengers in his lorry of whom one was on the mud-guard. Under the Road Certificate only 10 passengers could be carried and the carriage of a passenger on the mud-guard was prohibited. There was, therefore, a clear breach of the Road Certificate, and the only question is, was the owner liable. Now under the Punjab Motor Vehicles Plying for Hire Rules, 1922, it is the owner who has to get a Road Certificate and put it in his lorry. Rule 3 of those rules runs :—

"No person shall let or ply for hire or suffer to be let or plied for hire a motor vehicle in any public place unless a Road Certificate in Form A, specified in Schedule A hereto, has been granted in respect thereof by the controlling authority and except in conformity with the conditions specified in such certificate."

(1) (1918) I. L. R. 45 Cal. 430. (2) (1911) I. L. R. 38 Cal. 415.
(3) (1924) I. L. R. 51 Cal. 948.

This rule is in two parts. It is clear that under the first part, if the owner suffered his lorry to be plied for hire without a Road Certificate even though he was not present, he would be guilty of an offence under section 16 read with this rule. It follows logically that he would also be guilty of an offence if the lorry was being used not in conformity with the conditions specified in the certificate, as provided for in the second part of the rule. I am quite clear that the owner is liable under rule 3 of the rules referred to. It is impossible to hold that he will be liable under the first part of the rule and not under the second. Such an absurd interpretation has to be avoided at all costs.

In my judgment the owner was properly held guilty of suffering his motor lorry to be plied for hire not in conformity with the conditions specified in his Road Certificate even though he was not present. His driver in this particular case had been twice convicted of a breach of this rule and the owner had kept him on. This shows that the owner knew what his driver was in the habit of doing and accepted this. Apart from this consideration, however, the owner is, in my judgment, clearly guilty.

I, therefore, decline to interfere and direct that the record be returned.

N. F. E.

Revision dismissed.