

1939

KARTAR SINGH  
v.  
THE COURT OF  
WARDS ESTATE  
RAJA SIR BABA  
GURBAKHSI  
SINGH BEDI,  
THROUGH THE  
DEPUTY  
COMMISSIONER,  
RAWALPINDI.  
DIN  
MOHAMMAD J.

an equal right with the other members and it is immaterial whether his name is recorded or not in the revenue papers. His right is not lost on that account and this being so, none of the privileges with which the recorded owner is clothed can be denied to the unrecorded members.

I accordingly allow this appeal, set aside the decree of the Senior Subordinate Judge and dismiss the plaintiff's suit with costs throughout. If the respondent chooses to file a Letters Patent appeal against this order, I shall be willing to grant the necessary certificate.

A. N. K.

*Appeal accepted.***REVISIONAL CRIMINAL.***Before Skemp J.*

GHULAM QADIR (ACCUSED) Petitioner,  
*versus*

THE CROWN—Respondent.

**Criminal Revision No. 1273 of 1939.**

*Motor Vehicles Act (VIII of 1914), S. 16 — Summons — only mentioning the Section of the Act but not specifying the nature of the offence — Case taken up earlier on a date for which accused had no notice and had no opportunity to produce defence — Conviction — Legality of.*

The petitioner was convicted in two different proceedings under section 16 of the Motor Vehicles Act. The summons issued against him simply stated that he was charged under s. 16/8/14 Motor Act, which means that he was charged under s. 16 of Act, VIII of 1914, namely the Motor Vehicles Act. On the 27th March, 1939, the case was adjourned to the 15th of April, 1939, but it was taken up on the 31st of March when the petitioner had gone to Court on some other business and was taken by some Court official before the trial Magistrate and convicted on supposed plea of guilty on both the charges, though the register showed in

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*Dec. 1.*

respect of one charge that he pleaded that he had transferred the ownership of the vehicle and he was fined because there was no proof.

*Held*, that the convictions were bad and must be set aside (i) as the summons did not indicate to the accused the precise offence with which he was charged which means that he was hauled up before the Court, tried and convicted without the ordinary notice to which every accused is entitled, (ii) that the case was taken up on a date for which the accused had no notice and he was not allowed to produce his defence.

The practice to issue summons under the Motor Vehicles Act without defining the exact offence with which the accused is charged condemned.

*Gajraj Singh v. Emperor* (1), relied upon.

*Case reported by Lala Munshi Ram, Additional Sessions Judge, Hissar, with his letter No.555-R., dated 22nd August, 1939.*

QABUL CHAND, for Petitioner.

H. L. SONI, for Advocate-General, for Respondent.

The accused, on conviction by *Lala Sant Ram Maini*, Additional District Magistrate, Gurgaon, with Summary Powers, was sentenced by order, dated 31st March, 1939, under the above charge, to pay a fine of Rs.10 (ten) only, or in default four days' simple imprisonment.

*The facts of this case are as follows:—*

Both these revision petitions Nos. 29 and 30 of 1939, shall be disposed of by this single order, as both relate to the same lorry and the petitioner is same in both the cases.

*Lala Sant Ram Maini*, Magistrate, First Class, Gurgaon, on 31-3-1939, convicted the petitioner in

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two different proceedings, that is (a) for permitting his lorry to be driven without Punjab Driving License, without Punjab Motor Vehicle License and without inspection on due date, that is, 7-10-1938. and thus breaking Rules 24 (1), 48 and 49, Punjab Motor Vehicles Rules, made under Section 16 of Act VIII of 1914; and (b) permitting his lorry to be driven without Punjab Motor Vehicle License, in contravention of Rule 48 of Punjab Motor Vehicles Rules made under Section 16 of Act VIII of 1914. Both the trials took place summarily on the same date.

Regarding (a), it was noted that the accused pleaded guilty, but said that he transferred the ownership of the vehicle to a Company and had no proof regarding transfer. In proceedings (b), the Magistrate recorded that the accused pleaded guilty. The result was that, on conviction in proceedings (a), the petitioner was sentenced to pay a fine of Rs.10 (ten), while, on conviction regarding proceedings (b), he was sentenced to pay a fine of Rs.15 (fifteen). The Sessions Judge, Hissar, after issuing a notice to the Crown in either case, has transferred the cases to me for disposal.

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

Petitioner's counsel in either case has contended that in the summons issued to the petitioner, the nature of the offence which he was called upon to explain and defend was not notified and that the omission caused a serious handicap to the petitioner in both the cases. It appears that on 4-3-39, summons were issued to the petitioner to be present on 27-3-39 and answer a charge under section 16 of Act VIII of 1914. A copy of the printed summons purporting to

bear the signatures of the Magistrate is on the file (page 13), and in this summons a considerable space is to be found left blank, over which it is written in print that the space was meant for specifying briefly the nature of the offence. But the nature of the offence was not specified in either case. It was merely mentioned that he had committed an offence under section 16 of the Punjab Motor Vehicles Act. Again, the file shows that on the 27th of March, 1939, the Magistrate was not present and the attendance of the accused was not noted. The only note was that the summons had been served and the case should be put up before the Magistrate on the 15th of April, 1939. The case was not taken on that day but was taken much earlier, that is, on 31-3-39. The petitioner has filed an affidavit in either case to the effect that he had not been given any date on the 27th of March, but that on the 31st of March, he had come to Court on some other business when some Court official took him before the Magistrate where proceedings were taken in both the cases and that he showed a document of transfer of the lorry, to the Magistrate, and that the Magistrate did not give him any opportunity for producing his defence. In the affidavit he has contended that the lorry had been registered at Delhi Province and had been transferred to Crossways Company at Delhi and that he did not know to whom the Company made over the lorry for driving and that the lorry had been duly entered in the name of the purchaser in the Delhi Province. In my opinion, the trial was conducted in rather a hurried manner. The accused no doubt admitted the allegations of the prosecution but he denied the ownership of the lorry, for which he should have been given a date to prove his allegations of transfer, especially as 31st of March was not the date fixed for

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trial of the case. In *Gajraj Singh v. Emperor* (1) the practice of issuing summons under the Motor Vehicles Act, without defining the exact offence with which the accused was being charged, was severely condemned, and it was pointed out that it was the duty of the Clerk issuing such summons to define therein the exact nature of the charge which was being preferred against the person against whom the summons was being issued. The time, the place and the exact nature of the offence charged must be clearly set forth. It was laid down in this ruling "that the conviction which followed upon a summons in which the accused was not given notice of the charge, which was brought against him, was an illegal conviction". Counsel of the petitioner has urged that the cases are of some importance as it is general practice not to specify the nature of the offence in issuing summons under the Motor Vehicles Act. In my opinion, in the present two cases the petitioner was prejudiced in his defence; firstly, because the nature of the offence was not specified in the summons issued to him, and secondly, because the case was taken up before the date fixed and the petitioner was not granted adjournment to produce his evidence in support of his allegation that he had transferred the lorry before the commission of either offence, to a third person. Therefore, I forward the proceedings under section 438, Clause (1) of the Code of Criminal Procedure, to the High Court with the recommendation that the convictions and sentences be set aside and the petitioner be acquitted of either charge.

*Note.*—The report is that the fine of Rs.25 has been paid on the 31st March, 1939, at No. 95.

*Order of the High Court.*

SKEMP J.—This order will dispose of Criminal Revisions Nos. 1273 and 1274 of 1939. The facts are that the petitioner was convicted by a Magistrate with summary powers under section 16 of the Motor Vehicles Act for breaches of certain rules and sentenced in one case to pay Rs.10, in the other case Rs.15, fine.

The learned Additional Sessions Judge has sent up the case for revision on the grounds (1) that the case was taken up on a date for which the petitioner had no notice and he was not allowed to produce his defence; and (b) that the summons did not indicate to him the offence with which he was charged.

Both these grounds appear to be well founded. The record shows that on the 27th of March the case was adjourned to the 15th of April; but it was taken up on the 31st of March. It appears that the petitioner had gone to Court on some other business, was seen by the Naib Court Inspector or some body else and taken before the Traffic Magistrate. He is recorded as pleading guilty to both charges; but on one the register shows that he pleads that he had transferred the ownership of the vehicle. He was fined because there was no proof.

The driver had been caught driving with a defective license and without a license for the Punjab. The petitioner was prosecuted in accordance with the rules as the owner of the vehicle. His defence was that some time previously he had transferred the vehicle to the Crossways Company, Delhi, who had in turn transferred it to a third person. The summons not giving him notice of the offence and the case not being taken up on the date fixed he had no opportunity to produce his defence.

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I have seen the summons. It simply states that he is charged under "section 16/8/14 Motor Act", and "16/8/14" is not very legibly written. It appears that this means that he was charged under section 16, Act No. VIII of 1914, namely, the Motor Vehicles Act. This is quite insufficient notice. In a similar case reported as *Gajraj Singh v. Emperor* (1), Mr. Justice Thom remarked:—

"It appears that a summons was issued against the applicant in which he was charged merely with an offence under section 16, 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 hauled 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".

With these remarks I agree. Motor trials are frequently too summary and in this case I am far from satisfied that justice has been done.

I accept the recommendation of the learned Additional Sessions Judge for both the reasons which he has given, set aside the conviction and order that the fines, if paid, be refunded.

A. N. K.