APPELLATE CRIMINAL.

Before Mr. Justice Broomfield and Mr. Justice Norman.

EMPEROR *v.* VINAYAK MAHADEV HABBU ALIAS HABBUR (ORIGINAL ACCUSED).*

1938
August 3

Indian Motor Vehicles Act (VIII of 1914), ss. 11 (2), cls. (h) and (i), 16—Motor bus—District Magistrate prohibiting driving of bus with weight in excess of maximum—Breach of order—Rules, construction of—Rule 21.†

Rule 21 of the Bombay Motor Vehicles Rules, 1915, framed by the Government of Bombay under s. 11 (2) of the Indian Motor Vehicles Act, 1914, is not *ultra vires* of the Local Government.

Rule 21 is not framed solely under cl. (*h*) of s. 11 (2), nor does it derive its sole validity from that provision. The rule may properly come within the terms of cl. (*i*) of s. 11 (2).

Accordingly a notification issued by a District Magistrate in exercise of the powers vested in him under rule 21 prohibiting the driving on certain roads in his district of motor vehicles carrying a load above a certain weight is not invalid.

CRIMINAL APPEAL by the Government of Bombay against an order of acquittal made by D. C. Joshi, Sessions Judge, Kanara, setting aside an order of conviction and sentence passed by A. S. A. Nawab, Magistrate, First Class, Kumta.

Offence under s. 16 of the Indian Motor Vehicles Act, 1914.

One Vinayak Mahadev Habbu (accused) owned a bus (No. 8904) which plied for hire on the Kumta-Hubli Road. On April 10, 1937, the bus was being driven on the road in question with goods laden in excess of that prescribed by the District Magistrate, Kanara, in his Notification No. 2309/D, dated April 6, 1936, under rule 21 of the Motor Vehicles Rules, 1915.

* Criminal Appeal No. 211 of 1938.

† Rule 21 is as follows:—

"A motor vehicle shall not be driven on any footway, nor shall any motor vehicle of a specified class or classes of motor vehicles be driven on any road in any public place where such traffic has, either temporarily or permanently, been prohibited in the City of Bombay by the Commissioner of Police or elsewhere by the District Magistrate."

1938

EMPEROR v. VINAYAK MAHADEV

The Notification in question was as follows :—

"In exercise of the powers vested in him by rule 21 of the Bombay Motor Vehicles Rules, 1915, and by rule 7 (6) of the Motor Vehicles Rules sanctioned by Government in their Resolution No. 8623 (H. D.), dated 10th February 1927, as amended from time to time, and in supersession of the previous orders on the subject in so far as they are inconsistent with these orders, the District Magistrate, Kanara, hereby prohibits from 16th May 1936 until further notice the driving on any of the following roads of the Kanara District—

(1) of any heavy motor vehicle whether private or public;

(2) of any motor vehicle private or public maximum weight of goods in which exceeds 1½ tons; and

(3) of any motor vehicle which has been registered to ply for hire and licensed to carry more than 16 passengers (including the driver) or which exceeds 17 feet 6 inches in length."

The Notification then went on to describe the roads which included the Kumta-Hubli Road.

A Police constable on duty noticed the bus in question carrying goods in excess of the quantity allowed.

On these facts the accused was prosecuted under s. 16 of the Indian Motor Vehicles Act, 1914.

The accused admitted that his bus carried goods weighing 189 maunds, equivalent to 2 tons and 29 maunds, but he contended that the restriction made by the District Magistrate under rule 21 was illegal.

The trial Magistrate held that the accused committed a breach of the order and he accordingly convicted the accused, sentencing him to pay a fine of Rs. 51, in default to suffer simple imprisonment for one month.

On appeal, the Sessions Judge, Kanara, held that rule 21 as framed by the Local Government was *ultra vires* and that the Notification issued by the District Magistrate was illegal. He accordingly set aside the order of conviction and sentence, observing as follows :—

"Under clause (*h*), the driving of motor vehicles must be prohibited or regulated in places where their use, in the opinion of the Local Government, may be attended with danger or inconvenience to the public. It is therefore clear that the Local Government must first decide such places and cannot leave the decision to the

District Magistrate. The Motor Vehicles Act is an Act of the Indian Legislature, and certain rule-making powers are delegated to Local Governments under that Act. The Local Government themselves being delegates cannot further delegate their powers to the District Magistrate. There is no doubt that the Local Government would be naturally guided in such cases by the report of the District Magistrate, and will have to come to a decision regarding such roads or places from the District Magistrate's report. It would have been quite proper had the Local Government first notified certain roads or places in different districts with a view to prohibiting or regulating motor traffic on them by certain classes of motor vehicles, and left the carrying out of the rules to the District Magistrate. In that case it would have been quite *intra vires* of the Local Government. In this case however they have absolutely delegated their powers to the District Magistrate. It was contended by the learned Public Prosecutor that Government have themselves made the rules as required by s. 11 and have only left the execution of those rules to the District Magistrate. He referred in this connection to the case of *Emperor* v. *Balkrishna Phansalkar*, reported in 34 Bom. L.R. at page 1523. That case however will not avail him. In that case the emergency legislation in the form of an Ordinance had been validly proclaimed in full by the Governor-General as required, delegating to the Local Government the power of applying the same in respect of places and at times according to their discretion. The ordinance however was complete in all its respects. Its application only was left to the discretion of the Local Governments. In the present case, however, the Local Government have not decided the roads or places where in their opinion the motor traffic should be prohibited or regulated. Had they done so and only left the application of the same to the District Magistrate, leaving it to him to apply the same to certain of those roads and places and at such times as he thought fit, it would have been quite all right. This has not been done and everything has been left to the decision of the District Magistrate. I therefore do not think that the ruling in *Phansalkar's* case will help the prosecution.

I have already shown that clause (*h*) authorises Local Government and the Local Government only to decide the roads or places where the motor traffic is to be prohibited or regulated, and the legislature did not intend that the Local Government should delegate their power to any subordinate authority, or that the Local Government should be in a position to prescribe the authority by which the rule should be framed. If the legislature had so intended, a specific mention would have been made to that effect in clause (*h*). For reference we might look to clauses (*d*) and (*dd*) of sub-s. (2) which authorises the Local Government to prescribe the authority by which the granting of licenses etc. should be controlled. On a careful consideration of the above circumstances I have come to the conclusion that rule 21 has been framed under clause (*h*) and that it is *ultra vires* of the local Government, as that clause does not authorise them to delegate their powers of deciding the roads and places to be determined by the District Magistrate. The notification in question issued by the District Magistrate, Kanara, is therefore *ultra vires* and illegal. I find in the affirmative on the points raised in the appeal."

1938

EMPEROR v. VINAYAK MAHADEV

The Government of Bombay appealed.

Dewan Bahadur P. B. Shingne, Government Pleader, for the Crown.

G. R. Madbhavi, for the accused.

BROOMFIELD J. This is an appeal by Government against the acquittal by the Sessions Judge of Kanara of one Vinayak Mahadev Habbu who was convicted of an offence under s. 16 of the Indian Motor Vehicles Act. The offence was alleged to consist of a breach of a notification issued by the District Magistrate of Kanara under r. 21 of the Bombay Motor Vehicles Rules. The notification prohibited the driving on certain roads of the Kanara district of, *inter alia*, any motor vehicle, private or public, the maximum weight of goods in which exceeds one and a half ton. One of the roads specified in the notification was the Kumta-Hubli road.

The accused, who owns a bus or lorry, allowed it to be driven on the Kumta-Hubli road carrying a load of 189 maunds which is equivalent to two tons and twenty-nine maunds. There is no dispute about the facts nor is it disputed that the accused acted in contravention of the District Magistrate's notification.

The defence put forward in the trial Court and accepted in appeal by the Sessions Judge is that r. 21 of the Motor Vehicles Rules is *ultra vires* of the Local Government and that therefore a breach of the notification issued by the District Magistrate does not amount to any offence.

The only question in this appeal therefore is, whether this r. 21 is or is not *ultra vires* of the Local Government.

The Local Government has power to make rules under the Motor Vehicles Act VIII of 1914 under s. 11 of the Act. Sub-section (*1*) of that section gives a general power to make rules for the purpose of carrying into effect the provisions of the Act and regulating the use of motor

vehicles or any class of motor vehicles in public places. Sub-section (*2*) specifies the purposes for which rules may be made, these purposes being set out in cls. (*a*) to (*i*). It is expressly stated, however, that this specification of the purposes for which rules may be made by the Local Government is without prejudice to the generality of the powers given by sub-s. (*1*). The only clauses in sub-s. (*2*) with which we are directly concerned are cl. (*h*) prohibiting or regulating the driving of motor vehicles in public places, where their use may, in the opinion of the Local Government, be attended with danger or inconvenience to the public, and cl. (*i*) providing generally for the prevention of danger, injury or annoyance to the public or any person, or danger or injury to property, or of obstruction to traffic.

The Bombay Motor Vehicles Rules have been framed by the Local Government in exercise of the rule-making power given by s. 11 of the Act. Rule 21 with which we are particularly concerned is in these terms :—

"A motor vehicle shall not be driven on any foot-way, nor shall any motor vehicle of a specified class or classes of motor vehicles be driven on any road in any public place where such traffic has, either temporarily or permanently, been prohibited in the City of Bombay by the Commissioner of Police or elsewhere by the District Magistrate."

The learned Sessions Judge is of opinion that this r. 21 must have been framed under cl. (*h*) of sub-s. (*2*) of s. 11. If that view is correct, it might reasonably be said to follow that the rule, in so far as it delegates power to the Commissioner of Police and the District Magistrate, is *ultra vires*, for the power given by cl. (*h*) is to prohibit the driving of motor vehicles in places where their use may be attended with danger or inconvenience to the public, in the opinion of the Local Government, and the effect of r. 21 obviously is that the driving is prohibited where it is considered to be dangerous or inconvenient, in the opinion of the Commissioner of Police or the District Magistrate. This position was conceded in the lower Courts. The learned Government

1938

EMPEROR v. VINAYAK MAHADEV

Broomfield J.

Pleader in this Court was not prepared to admit that the Local Government must necessarily express its opinion in the case of particular roads or places. We should however have found it difficult to hold that r. 21 could be regarded as a valid rule if it could only be based upon the provisions of cl. (*h*).

We do not agree however with the learned Sessions Judge in his view that r. 21 is framed solely under cl. (*h*) and derives its sole validity from that provision. The learned Judge has attached considerable importance to the frame of the rules and the order in which they are made. He says that, if the rules are read together, it will appear that they have been framed in a serial order under cls. (*a*) to (*h*) of sub-s. (*2*). He gives an instance of this: cl. (*g*) of s. 11 (*2*) relates to the limiting of the speed at which motor vehicles may be driven and r. 20 also deals with speed limits. He infers that as r. 20 corresponds to cl. (*g*), r. 21 must correspond to cl. (*h*). But, as a matter of fact, if the rules are carefully read as a whole, they do not bear out the learned Judge's view at all. The order of the rules is evidently not based on the order of cls. (*a*) to (*i*) in s. 11 (*2*). Rules 2 to 5 deal with driving licences, a matter which comes under s. 11 (*2*) (*d*). Rules 6 and 7, and also rr. 10 to 12 and 15 to 18, deal with registration which is the subject of s. 11. (*2*) (*a*). Rules 8 and 9 which deal with distinguishing numbers on motor vehicles relate to s. 11 (*2*) (*b*). Rules 22 and 24 relate to s. 11 (*2*) (*c*), r. 27 to s. 11 (*2*)(*f*) and r. 31 to s. 11 (*2*) (*e*). Moreover, there are several of the rules which it is difficult to refer to any of the specific clauses in s. 11 (*2*) except possibly to cl. (*i*). I may mention r. 19 which deals with the rule of the road, r. 34 which deals with notice boards and danger signals, and r. 42 which prescribes a maximum width and length in the case of motor vehicles. What the learned Sessions Judge has omitted to notice is that the object of r. 21 may be, and the object of the notification issued by the District Magistrate in this case almost certainly

1938

EMPEROR v. VINAYAK MAHADEV

Broomfield J.

was, to prevent the risk of injury to the roads. Driving a motor with a load of a weight in excess of one and a half ton is not likely to cause danger or inconvenience to the public. At any rate, it is very much more likely to cause damage to the road, and we think that that is what the notification was intended to prevent. Mr. Madbhavi who appears for the accused in this appeal has conceded this. But unless the rule is intended to prohibit the driving of motor vehicles in places where it would be attended with danger or inconvenience to the public, it cannot be brought within the terms of cl. (*h*) of s. 11 (*2*). On the other hand, it may properly come within the terms of cl. (*i*).

Another point made by the learned Sessions Judge is that r. 21 begins by prohibiting the driving of a motor vehicle on any foot-way, and takes that to be an indication that the rule was meant to be framed under cl. (*h*). Mr. Madbhavi has also relied on the descriptive heading of r. 21: "prohibition as to use of Motor Vehicles on Foot-paths and in certain Localities". (In the latest edition of the Rules the word "Roads" has been substituted for foot-paths). It may be that r. 21 so far as it prohibits the driving of motor vehicles on footways may properly be said to have been framed under cl. (*h*), but it is not material for our present purposes that a part of the rule with which we are not concerned may be referred to that clause. The learned Sessions Judge's reasoning breaks down if the main part of the rule, for the breach of which the accused has been convicted, appears to have been framed not under cl. (*h*) but under cl. (*i*) or the general power given by s. 11 (*1*).

A reference has been made to *Emperor* v. *Baker*,[a] but in our opinion that case has no relevance here. The point there was whether the Local Government could provide by rule that the registration of motor vehicles should only be in force for limited period. Section 11 (*2*) (*a*), in the

[a] (1921) 46 Bom. 646.

1938

EMPEROR v. VINAYAK MAHADEV

Broomfield J.

form in which then it stood, said nothing about duration. The Court held that as the rule in question was obviously made under s. 11 (*2*) (*a*) and as that clause defined the rules which could be made regarding registration, it was not permissible to invoke the general powers of s. 11 (*1*).

Another point that was taken on behalf of the accused, which the learned Sessions Judge left undecided, was that the Act gives no power to regulate the weight of laden motor vehicles or the load carried and therefore the District Magistrate had no power to fix a maximum weight of load as he did in his notification. The learned Sessions Judge seemed to think that there was some force in this argument and he thought so because he was apparently under the impression that motor vehicles have been classified in the Act with reference to their unladen weight. This however is not the case. There is no classification of vehicles in the Act at all and all that we have in the rules is a definition of what is meant by "Heavy Motor Vehicles" and "Trailer" in r. 3, cls. (*d*) and (*e*). When r. 21 speaks of a specified class or classes of motor vehicles, we think that what is meant obviously is specified by the authority who is given power to prohibit, that is to say, the Commissioner of Police or the District Magistrate as the case may be. Further, we see no reason why the authority should not specify and prohibit motor vehicles carrying a load above a certain weight.

We see no reason to think that r. 21 is *ultra vires*. We are of opinion, therefore, that the accused in this case was properly convicted by the Magistrate and wrongly acquitted by the Sessions Judge. We set aside the order of acquittal and restore the conviction and sentence of the trial Court.

Order set aside.

Y. V. D.