

Transport Commissioner, Andhra ... vs Sardar Ali, Bus Owner on 26 August, 1983

Equivalent citations: 1983 AIR 1225, 1983 SCR (3) 729, AIR 1983 SUPREME COURT 1225, 1983 (4) SCC 245, (1983) 2 APLJ 51, 1983 UJ (SC) 835, (1984) 2 ACC 153, 1983 CRI APP R (SC) 402, 1983 SCC(CRI) 827

Author: O. Chinnappa Reddy

Bench: O. Chinnappa Reddy, D.A. Desai

PETITIONER:

TRANSPORT COMMISSIONER, ANDHRA PRADESH

Vs.

RESPONDENT:

SARDAR ALI, BUS OWNER

DATE OF JUDGMENT 26/08/1983

BENCH:

REDDY, O. CHINNAPPA (J)

BENCH:

REDDY, O. CHINNAPPA (J)

DESAI, D.A.

CITATION:

1983 AIR 1225 1983 SCR (3) 729

1983 SCC (4) 245 1983 SCALE (2) 206

CITATOR INFO :

RF 1987 SC 628 (5)

ACT:

Motor Vehicles Act, 1939-S. 129-A-Seizure and detention of a motor vehicle by a police officer or any other person authorised by State Government-Whether ultra vires as offending Art. 19(1) (g) of the Constitution ?

HEADNOTE:

Section 129-A of the Motor Vehicles Act, 1939 authorises the seizure and detention of a motor vehicle by a police officer or any other person authorised by the State Government in that behalf if such officer or person has reason to believe that the vehicle has been or is being used without a certificate of registration as required under s.

22 or without a permit as required under sub-s. (1) of s. 42 or in contravention of any condition of such permit. The appeals in this group of matters were directed against a judgment of the Andhra Pradesh High Court striking down s. 129-A as an unreasonable restriction on the fundamental right guaranteed by Art. 19(1) (g) of the Constitution for the reason that there was no discernible purpose behind the seizure authorised by the section, that the seizure was based on the subjective satisfaction of the police officer or the person authorised, that there was neither any obligation on him to produce the vehicle in the court nor was any power conferred on the court either to confiscate the vehicle or to pass any orders regarding its temporary custody, that there was no provision in the Act indicating as to what should be done after seizing and detaining the vehicle and that there was also no provision prescribing any maximum period for the detention of the vehicle or providing for an appeal against seizure.

Upholding the validity of s. 129-A and allowing the appeals,

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HELD: There is no lacuna in regard to the proper custody and disposal of the motor vehicle seized under s. 129-A of the Motor Vehicles Act. The provisions of the Act have to be read in conjunction with the provisions of the Code of Criminal Procedure. [739 A-B]

(i) Section 129-A contemplates three situations where the police officer or the person authorised may seize and detain the vehicle and these are precisely the three situations made punishable under s. 123(1). The power given to seize and detain the vehicle under s. 129-A has to be exercised by the police officer or the person authorised when he has reason to believe that an offence punishable under s. 123(1) has been or is being committed. After detecting the commission of an offence punishable under s. 123(1) the next step for him would be to consider whether the offence should be compounded as provided

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under s. 127-B and thereafter to lay a complaint before the Court competent to take cognizance of the offence. Section 4(2) of the Code of Criminal Procedure provides that all offences under any law other than the Penal Code shall also be investigated, inquired into, tried and otherwise dealt with in accordance with the provisions of the Code subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. Chapter XIII of the Code deals with "Jurisdiction of the Criminal Courts in inquiries and trials". So, subject to s. 132 of the Act, the Court before which the complaint may be laid has to be determined in accordance with Chapter XIII of the Code and after the complaint is laid before the appropriate court it has to be tried in accordance with the provisions of the

Code subject to s. 130 of the Act. This is how the offender has to be dealt with. [733 D; H; 734 A-B; G-H; 735 A-B]

(ii) A pre-condition to the seizure of a vehicle under s. 129-A is that the police officer or the person authorised must have reason to believe that one or the other of the offences specified in s. 123 has been or is being committed. The seizure is expected to serve a manifold purpose such as to prevent repetition of the offence, to use the thing seized as material evidence in the prosecution and so on. Section 129-A itself provides that the detention of the vehicle by the authorised officer or person is to be temporary, and obviously, until appropriate orders regarding its disposal are made. The vehicle may be released if the owner satisfies the authorised officer or person that no offence such as that mentioned in s. 129-A had been or was being committed. Again, since the detention is for temporary safe custody, the vehicle may be released to the owner subject to suitable security and an undertaking to produce it when called upon to do so. If the offence is compounded under s. 127-B, the vehicle has naturally to be returned to the owner. If a complaint is laid before the appropriate court, the court acquires jurisdiction to pass appropriate orders regarding the custody and the disposal of the vehicle under Chapter XXXIV and ss. 451 and 452 of the Code of Criminal Procedure.

[735 H; 736 C-H; 737 A]

2. The contention that s. 129-A should be held unreasonable as it does not provide any safeguard in regard to the several removable items which are usually found in tourist vehicles such as spare tyres, spare parts, radio, video, etc., has no substance. Section 100 of the Code of Criminal Procedure which was referred to in this context deals with searches and not seizures. In the very nature of things when property is seized and not recovered during a search, it is not possible to comply with the provisions of sub-ss. (4) and (5) of s. 100, Cr. P.C. In the case of a seizure under the Motor Vehicles Act, there is no provision for preparing a list of the things seized in the course of seizure for the obvious reason that all those things are seized not separately but as part of the vehicle itself. But it is in the interests of the very officer or person seizing the vehicle to prepare a list of detachable things which are ordinarily not part of the vehicle and give a copy of the list to the person in charge of the vehicle at the time of the seizure. [739 A-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2546- 2547 of 1983.

From the judgment and order dated the 13th February, 1981 of the Andhra Pradesh High Court in Writ Petitions Nos. 5458 and 5459 of 1980.

WITH Writ Petition Nos. 6051-64, 8226-28, 8284-97, 8321-37, 3952, 7569, 7572, 7574 and 7577 of 1983.

(Under Article 32 of the Constitution of India) T. V. S. N. Chari for the Appellant.

D. R. Gupta, B. R. Kapoor, S. R. Srivastava and N. N. Sharma for the Petitioners.

K G. Bhagat, Additional Solicitor General, Shanti Bhushan, P. R. Mridul, Dr. Y. S. Chitale, K N. Bhatt, P. K Pillai, R. N. Poddar, R. B. Datar, A. Subba Rao, N. Nettar, V. G. Mehta and Mrs. H. Wahi, for the appearing Respondents.

The Judgment of the Court was delivered by CHINNAPPA REDDY, J. The Andhra Pradesh High Court has declared sec. 129-A of the Motor Vehicles Act unconstitutional and void as offending Art. 19 (1) (g) of the Constitution of India. We may straight away say that the judgment of the High Court suffers from serious infirmities, not the least of which is the total failure to notice and consider the applicability of the provisions of the Code of Criminal Procedure to the situation.

On an oral application by the Advocate General, the High Court granted leave to appeal to the Supreme Court. Presumably, by 'leave' the High Court meant a certificate as provided under the Constitution. The order of the High Court regarding the grant of 'leave' to appeal to this Court is in the following terms: "An oral application for leave to appeal to the Supreme Court has been made by the Learned Advocate General. The question whether 129-A of the Motor Vehicles Act is ultra-vires the Constitution on the ground that it infringes Art. 19 (1) (g) of the Constitution relates to the interpretation of the Constitution and is also a substantial question of law of general importance, which requires to be decided by the Supreme Court. Therefore, we grant leave to appeal to the Supreme Court".

The order of the High Court states, (i) that the question relates to the interpretation of the Constitution; and (ii) the question is also a substantial question of law of general importance which requires to be decided by the Supreme Court. The order of the High Court while saying that the question relates to the interpretation of the Constitution refrained from certifying that the case involved a substantial question of law as to the interpretation of the Constitution. We cannot therefore, treat the certificate as one under Art. 132 of the Constitution. On the other hand the High Court has certified that the case involves a substantial question of law of general importance and it requires to be decided by the Supreme Court, employing the precise language used in clauses (a) and (b) respectively of Art. 133 (1) of the Constitution. The certificate, therefore, was clearly one under Art. 133 of the Constitution. We are mentioning these circumstances because at the very commencement, our attention was invited to Art. 145 (3) of the Constitution which provides that the minimum number of judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of the Constitution or for the purpose of hearing any reference under Art. 143 shall be five. The High Court had not certified that the cases involved a

substantial question of law as to the interpretation of the Constitution and we are also satisfied that the cases do not involve a substantial question of law as to the interpretation of the Constitution. We proceeded to hear the appeals and writ petitions after the position was clarified when the cases were opened by the learned counsel.

Section 129 A of the Motor Vehicles Act may be extracted here. It is as follows:-

"129-A Power to detain vehicles used without certificate of registration or permit.- Any police officer authorized in this behalf or other person authorized in this behalf by the State Government may, if he has reason to believe that a motor vehicle has been or is being used in contravention of the provisions of Sec. 22 or without the permit required by sub-section (1) of Sec. 42 or in contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, seize and detain the vehicle, and for this purpose take or cause to be taken any steps he may consider proper for the temporary safe custody of the vehicle. Provided that where any such officer or person has reason to believe that a motor vehicle has been or is being used without the permit required by subsection (1) of Section. 42, he may, instead of seizing the vehicle, seize the certificate of registration of the vehicle and shall issue an acknowledgement in respect thereof. Provided further that where a motor vehicle has been seized and detained under this section for contravention of the provisions of Section 22, such vehicle shall not be released to the owner unless and until he produces a valid certificate of registration under this Act in respect of that vehicle."

It is seen that Section 129-A contemplates three situations where the police officer or authorized person may seize and detain the vehicle. The three situations are, (i) where he has reason to believe that the motor vehicle has been or is being used in contravention of the provisions of Sec. 22, (ii) where he has reason to believe that the motor vehicle has been or is being used without the permit required by sec. 42 (1), and (iii) where he has reason to believe that the motor vehicle has been or is being used in contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used. These are precisely the three situations contemplated by Sec. 123 (1) of the Motor Vehicles Act and made punishable under that provision. Section 123 (1), which may also be extracted, is as follows:-

"S 123. Using vehicle without registration or permit. (1) Whoever drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of Section 22 or without the permit required by sub section (1) of Section 42 or in contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used or to the maximum number of passengers and maximum weight of luggage that may be carried on the vehicle shall be punishable for a first offence with fine which may extent to two thousand rupees and for any second or subsequent offence with imprisonment.

It is, therefore, clear that the power given to seize and detain the vehicle under sec. 129-(A) is to be exercised by the police officer or the authorised person when he has reason to believe that an offence punishable under sec. 123 (1) has been or is being committed. Now, after detecting the commission of an offence punishable under sec. 123 (1) of the Motor Vehicles Act, the next appropriate step for the police officer or the authorised person would be to consider the question whether the offence should be compounded as provided by Section 127- (B) of the Motor Vehicles Act and any notification issued by the Government in that behalf. Section 127-B may also be extracted here and it is as follows .-

"127-B (1) Any offence (whether committed before or after the commencement of section 26 of the Motor vehicles (Amendment Act, 1982) punishable under section 112, section 113, section 113A, section 113B, section 114, sub-section (1) and (2) or section 115, section 116, section 118, section 120 section 122, Section 123, section 124, section 125 or section 127 may, either before or after the institution of the prosecution, be compounded by such officers or authorities and for such amount as the State. Government may, by notification in the official Gazette, specify in this behalf.

(2) Where an offence has been compounded under sub-section (1), the offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of such offence."

Thereafter the next logical and appropriate step for the police officer or the authorised person would be to lay a complaint before the Court competent to take cognizance of the offence, subject to the over-riding provision of Section 132 of the Motor Vehicles Act which provides that no Court inferior to that of a Metropolitan Magistrate or a Magistrate of the second class shall try any offence punishable under the Motor Vehicles Act or any rule made thereunder. Section 4 (2) of the Code of Criminal Procedure provides that all offences under any law other than the Penal Code shall also be investigated, inquired into, tried, and otherwise dealt with according to the same provisions that is, the provisions of the Criminal Procedure Code, subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. Chapter XIII of the Code of Criminal Procedure deals with "Jurisdiction of the Criminal Courts in inquiries and trials". So, subject to section 132 of the Motor Vehicles Act, the Court before which the complaint may be laid has to be determined in accordance with the provisions of chapter XIII of the Code of Criminal Procedure. After the complaint is laid the case has to be tried in accordance with the provisions of the Code of Criminal Procedure. This again is subject to one special provision of the Motor Vehicles Act, namely Section 130. Sec. 130 is in the following terms:-

"The court taking cognizance of an offence under this Act,-(i) may, if the offence is an offence punishable with imprisonment under this Act and (ii) shall, in any other case, state upon the summons to be served on the accused person that he-(a) may appear by pleader and not in person, or (b) may by a specified date prior to the hearing of the charge plead guilty to the charge by registered letter and remit to the court such sum

(not exceeding the maximum fine that may be imposed for the offence) as the court may specify:

Provided that nothing in this sub-section shall apply to any offence specified in Part A of the Fifth Schedule.

Where the offence dealt with in accordance with sub-section (1) is an offence specified in Part of the Fifth Schedule, the accused person shall, if he pleads guilty to the charge, forward his licence to the Court with the letter containing his plea in order that the conviction may be endorsed on the licence. Where an accused person pleads guilty and remits 1 the sum specified and has complied with the provisions of sub-section (2), no further proceedings in respect of the offence shall be taken against him, nor shall he be liable to be disqualified for holding or obtaining a licence by reason of his having pleaded guilty."

That is how the offender is dealt with.

But, what happens to the vehicle seized under the provisions of S. 129-A ? To begin with, we notice that a pre-condition to the seizure and detention of the vehicle is that the police officer or authorised person must have reason to believe that one or the other of the offences specified, punishable as we have seen under S. 123, has been or is being committed. Whenever property involved in the commission of an offence is seized, the seizure is generally expected to serve a manifold purpose such as to prevent repetition of the offence, to use the thing seized as material evidence in the prosecution, to preserve the property so as to enable the court to pass appropriate orders for its disposal by way of destruction, confiscation, or delivery to any person claiming to be entitled to possession thereof or otherwise. There is no reason to assume that the seizure under S. 129-A is any different and is not to serve any of these purposes or any purpose at all. We then notice that the police officer or the authorised person may "Seize and detain the vehicle-, and for this purpose take or cause to be taken any steps he may consider proper for the temporary safe custody of the vehicle". Clearly, therefore, the detention by the authorised officer or person is to be temporary. For how long then ? obviously until appropriate orders regarding its disposal are made. Quite obviously the vehicle may be released if the owner of the vehicle satisfies the authorised officer or person, that no offence such as that mentioned in S. 129-A had been or was being committed. This is subject to the second proviso to S. 129-A which bars the release of a vehicle seized for a contravention of the provisions of S. 22 unless the owner of the vehicle produces a valid certificate of registration under the Act in respect of the vehicle. Conversely, in the context, it implies 15 that a vehicle seized for a contravention of S. 22 is to be released if the certificate of registration is produced. Again, since the detention is for 'temporary safe custody, until appropriate orders are made, the police officer or authorised person seizing the vehicle may arrange for the 'temporary safe custody' of the vehicle with the owner of the vehicle by releasing the vehicle to him subject to suitable security J and so undertaking to produce the vehicle when called upon to do so. We have indicated that the next step in the process of dealing with the offender is to consider whether the offence may not be compounded. If the offence is compounded, the vehicle has naturally to be returned to the owner. If it is not compounded, a complaint has to be laid before the Court empowered to take cognizance of

the case and the case proceeded with. As soon as the complaint is laid, the Court acquires jurisdiction to pass appropriate orders regarding 'the custody' and the 'the disposal' of the vehicle. We have already noticed how Section 4 (2) of the Code of the Criminal Procedure stipulates that offences under laws other than the Penal Code also are to be investigated, inquired into, tried and otherwise dealt with in accordance with the provisions of the Code of Criminal Procedure. The provisions of Chapter XXXIV of the Code relating to 'Disposal of Property' are also therefore attracted in dealing with offences under the Motor Vehicles Act. Section 452 of the Code enables the Court, at the conclusion of an inquiry or trial to "make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence". The Court thus has the power at the conclusion of the case to make appropriate orders regarding the disposal of the motor vehicle regarding which an offence appears to have been committed. So far as the custody of the vehicle pending the conclusion of the case is concerned, the Court may either treat the arrangement made by the officer or person acting under S. 129-A as sufficient or may itself make further or other orders. Section 451 of the Code of Criminal Procedure empowers the Court, when any property is produced before it during any inquiry or trial, to make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial. We think that a motor vehicle regarding whose temporary custody arrangements have been made under sec. 129-A of the Motor Vehicles Act by the police officer or the authorised person seizing the vehicle must be considered to have been produced before the Criminal Court as soon as a complaint is filed before the Court alleging the commission of an offence under sec. 123 regarding the vehicle. In any case, the Court has ample power under Chapter VII of the Code, Section 91 in particular, to compel the production of the vehicle before the Court. Thus if the provisions of the Motor Vehicles Act are read in conjunction with the provisions of the Code of Criminal Procedure and there is no getting away from the provisions of both the laws-it is seen that there is no lacuna whatsoever in regard to the proper custody and disposal of the motor vehicle seized under sec. 129-A of the Motor Vehicles Act. The custody of the vehicle in the hands the police officer or the authorised person is but temporary and he is therefore, obliged to act and take all further steps in the matter with all expedition. If he releases the vehicle on being satisfied that no offence has been committed or if he releases the vehicle on the offence being compounded, no further question arises. If, instead, he lays a complaint before the Court, the court acquires instant jurisdiction over the vehicle to pass suitable orders. In the remote event of the police officer or the authorised person not taking any further action after seizing and detaining the vehicle, the owner of the vehicle is not without remedy. Art. 226 is always available but one does not have to presume that the police officer or the authorised person may not act according to law.

The Andhra Pradesh High Court appeared to think that sec. 129-A of the Motor Vehicles Act was an unreasonable restriction on the fundamental right guaranteed by Art. 19 (1) (g) of the Constitution because (i) there was no provision in the Act providing for confiscation of the vehicle, (ii) there was no provision in the Act indicating what should be done after seizing and detaining the vehicle,

(iii) the seizure by the police officer or the authorised person was based on his subjective satisfaction, (iv) there was no discernible purpose behind the seizure, (v) there was no obligation on

the seizing authority to produce the vehicle in court, (vi) Nor was there any purpose to be served by producing the vehicle before the court as the court did not possess the power to confiscate the vehicle or to pass any orders regarding its temporary custody, (vii) no appeal was provided against the seizure, and (viii) no maximum period was prescribed for the detention of the vehicle.

None of these reasons bears any scrutiny, if properly examined in the light of the provisions of both the Motor Vehicles Act and the Code of Criminal Procedure, as we are bound to. Indeed, whenever an offence under a law other than the Penal Code is committed and that law does not itself regulate the procedure to be followed, there is no option but to look to the provisions of the Criminal Procedure Code for further action and to weave into a single texture the provisions of the code and the special law. The High Court has totally ignored the provisions of the Criminal Procedure Code and the judgment stands vitiated on that account. It has therefore, to be set aside. We have explained the context of Sec. 129-A in the scheme emerging from the inter-lacing of the provisions of the Motor Vehicles Act and the Criminal Procedure Code. We do not have the slightest hesitation in rejecting the contention that there is any infringement of the fundamental right guaranteed by Art. 19 (1) (g) of the Constitution and in upholding the vires of Sec. 129-A of the Motor Vehicles Act.

One of the Learned Counsel submitted that when a tourist motor vehicle was seized under Sec. 129-A, there should be some safeguard in regard to the several removable items which are usually found in tourist vehicles such as spare tyres, spare parts, radio, video etc. It was suggested that in the absence of a provision similar to that found in the Criminal Procedure Code, Sec. 129-A Should be held to be unreasonable. There is no substance in this contention. Sec. 100 of the Criminal Procedure Code to which reference was made by the Counsel deals with searches and not seizures. In the very nature of things when property is seized and not recovered during a search, it is not possible to comply with the provisions of Sub-Sections (4) and (5) of Sec. 100 of the Criminal Procedure Code. In the case of a seizure under the Motor Vehicles Act, there is no provision for preparing a list of the things seized in the course of the seizure for the obvious reason that all those things are seized not separately but as part of the vehicle itself. But it is in the interests of the very officer or person seizing the vehicle, so that they may not be open to any charge being laid against them later, that such officer or person takes care to prepare a list of detachable things which are ordinarily not part of the vehicle and give a copy of the list to the person in-charge of the vehicle at the time of the seizure.

In view of the discussion, the appeals are allowed with cost and the writ petitions filed in High Court are dismissed. Some of the operators have directly approached this Court under Art. 32 of the Constitution. Their writ petitions have been heard along with the civil appeals and for the same reasons they are dismissed with costs.

H.L.C.

Appeals allowed.