

R.B. Lal vs The State on 13 April, 1955

Equivalent citations: AIR1955ALL618, 1955CRILJ1443, AIR 1955 ALLAHABAD 618

JUDGMENT

Kidwai, J.

1. The applicant Sri R. B. Lal, is the Divisional Superintendent, posted at Lucknow, of the Northern Railway. Truck registered as U. S. J. 3125 was found being used, on 14-7-1952, without a permit and without a fitness certificate. Hazari Lal was driving the truck and since it was registered in the name of the Divisional Superintendent, who happened at the time to be Sri R. B. Lal he and the chauffeur were prosecuted under Ss, 38/112 and 42/123 of the Motor Vehicles Act.

2. The defence of Hazari Lal was that he acted under the orders of his superiors and carried nothing but cash. Sri R. B. Lal pleaded that the vehicle did not require a permit and in any case that was the impression both of the Railway and of the Transport Authorities.

3. Evidence was led to prove the fact that the vehicle was plying on a public road without a permit and without a fitness certificate. The defence produced a witness Ram Sunder Pandey to prove that he had gone to the Regional Transport Office on 12-7-1952, the day after that on which the fitness certificate expired, for its renewal. The witness was told by the office people to come some other day.

The next day was a Sunday and he went again on 14-7-1952, hut he was again told to come same other time and the office people were busy. On that very day the truck WAS stopped by Sub-Inspector Quraishi.

4. The trying Magistrate in an elaborate judgment discussed the whole matter and held :

"1. That though the vehicle belonged to the Central Government, Sri R. B. Lal "can rightly be held to be the person in whose possession and control the vehicle in question runs and as such he can rightly be called the owner of the vehicle."

2. That the vehicle in question is used for carrying Railway earnings from the station to the Imperial Bank and also for collecting other income earned by the railway and for carrying money from the Bank for the payment of salaries of the Railway staff :

3. That the vehicle in question "was a subsidiary instrument engaged for the purpose of the business of the Railway:"

4. That the Divisional Superintendent, who, on the relevant date was Sri R. B. Lal, is responsible for an infringement of the law since to him was assigned the duty of controlling the vehicle which stood registered in his name ;

5. That the delay in obtaining a certificate of fitness was not due to any action of the registering authority but owing to the fact that the person in whose name the vehicle was registered did not comply with Rule 28(d) of the U. P. Motor Vehicles Rules.

5. As a result the learned Magistrate found Sri R. B. Lal guilty under Sections 38(1)/112 and 42/123 of the U. P. Motor Vehicles Act and sentenced him to pay fines of Rs. 15/- and Rs. 230/- in respect of the two offences.

6. Sri R. B. Lal appealed and the learned Additional Sessions Judge considered the matter equally carefully in view of its importance and being more or less in the nature of a test case. He held :

1. That the truck in question, being used for the carriage of money from and to the station and the Bank, was used in connection with the business of the Railway; and
2. That those responsible for the truck were grossly negligent in not getting the fitness certificate renewed within time.

7. He accordingly upheld the conviction but he held that the appellant before him was labouring, under a bona fide mistake about the need for taking out a permit. He accordingly reduced the sentence under Section 42/123 of the Motor Vehicles Act to a mere warning but maintained the sentence under Section 38/112 of the Act.

8. Sri R. B. Lal has applied to this Court in revision and since an authoritative decision was required the application was referred to a Bench.

Before us the learned Advocate for the applicant contended :

1. That it is only the owner that is required to take out a permit and the applicant is not the owner of the vehicle and cannot be punished under Section 123 of the Act.
2. That the provision of Section 42(3) exempt the vehicle in question from the requirements of Section 42 (1) and
3. That the vehicle in question is not a transport vehicle and that consequently no permit is required.

9. It is no doubt true that though the vehicle is registered in the name of the Divisional Superintendent it is not his property but the property of the Central Government. Sri R. B. Lal cannot, therefore, be punished for not obtaining a permit. Section 123, however, does not unlike Section 42(1), limit the responsibility to the owner: it says :

"(1) Whoever drives a motor vehicle or causes or allows' a motor vehicle to be used or lets out a motor vehicle for use in contravention of Sub-section (1) of Section 42....."

10. Thus Section 123 is wider in scope than Section 42 (1) since the latter is limited to the owner while the former is applicable not only to the owner but to any person who is in charge of the vehicle and allows it to be used in contravention of the terms of a permit.

The use of the motor vehicle without a permit is also an infringement of Section 42(1) since that Section forbids the use of the vehicle by the owner" save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority authorising the use of the vehicle in that place in the manner in which the vehicle is being used."

If a vehicle is being plied without a permit, if is not being plied in accordance with the conditions I of a permit authorising its use in that place and , that manner --Vide -- 'Uma Shanker Tewary v. Rex', AIR 1950 All 234 (A).

11. In the case to which reference has just been made our learned brother Agarwala J. held that it is the owner alone that can be punished since it is he alone who is required to take out a permit. We respectfully differ from this view. Our learned 'brother pointed out what he considered to be a lacuna in the law : we find, however that there is no lacuna. It is not only the owner who is guilty under this Section but whoever causes or allows the vehicle to be used without any permit or in breach of any conditions of the permit.

These words are wide enough to cover the case of a person who is in charge of the vehicle. It is not disputed that the vehicle is registered in the name of the Divisional Superintendent and that he was in general charge of it. Although he may not have caused the vehicle to be used without a permit, he must be held to have allowed the vehicle to be used. Indeed he never disputed the responsibility for such an action : he only disputed the fact of ownership of the vehicle.

12. The next point for consideration is whether the vehicle was being used in connection with the business of the Railway. It was contended that it could only be said to be so used if it was used for the transport of passengers or goods. The business of a Railway is to can goods and passengers. For the performance of that business it must employ a staff and it is entitled to realise charges. Money realised from passengers or the consignors of goods must be kept in a place of security and money must be conveyed to places where payment has to be made to the servants of the Railway.

The conveying of money to the Bank from the station or other place where it is collected and from the Bank to the place where it is to be paid is ancillary to the business of the Railway and the vehicle used as a conveyance for these purposes is used, if not for the business of a Railway, at least " 'in connection' with the business of a Railway". The exemption from the necessity of taking a permit contained in Section 42(1) is therefore, not applicable to the vehicle in dispute.

13. The last contention is that the vehicle in question is not a "transport vehicle" and that consequently there was no necessity for anyone to take out a permit, in this connection reliance was first of all placed upon Sub-section (2) of Section 42. That sub-section does not assist us in determining what a transport vehicle is; it only lays Rules down for determining whether a vehicle which is a transport vehicle is used for the carriage of goods for hire or reward.

Sub-section (1) of Section 42 requires a permit to be taken for every transport vehicle and not only for those which are used for the carriage of goods for hire or reward. Sub-section (2) is, therefore, not relevant to the determination of the question which we are called upon to determine.

14. Transport vehicle is defined in Section 2 (33) as follows:

" 'Transport vehicle' means a public service vehicle, a goods vehicle, a locomotive or a tractor other than a locomotive or tractor used solely for agricultural purposes."

15. Admittedly the motor vehicle in question is not a locomotive or tractor or a public service vehicle as defined in Section 2 (14) 2 (30) and 2 (25) of the Act. Is it then a goods vehicle? A goods vehicle is defined in Section 2(8) as follows:

" 'Goods Vehicle' means any motor vehicle constructed or adapted for use for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods solely or in addition to passengers."

16. It has, therefore, to be seen whether as a fact the vehicle is "constructed or adapted for use for the carriage of goods;" it is not necessary that it should actually be used for that purpose. The first point to notice is that this question of fact was not raised in any of the Courts below and it is taken for the first time in the revision before us. It has, therefore, to be ascertained whether there is any evidence upon which a finding can be based.

17. P. W. 1 Sub-Inspector Quraishi, P. W. 2 Head Constable Akbar Ali and D. W. 1 Ram Sundar all call the vehicle a truck. In Ex. D-3, a letter from the office of the Divisional Superintendent to the Regional Transport Officer, Lucknow thus describes the "truck":

"U. S. J. 3125 (Cash lorry). Carries Railway earnings from Railway Station to Imperial Bank and vice versa."

18. This description is inconclusive because a truck may or may not "be constructed or adapted for the carriage of goods." What is, however, of great significance is the admission of the Railway Authorities and the statement of D. W. 1 Ram Sundar Pandey, a motor mechanic of the Road Transport of the Northern Railway that a fitness certificate used to be taken out for this vehicle.

Section 38 of the Motor Vehicles Act provides for the necessity of taking out a fitness certificate for "Transport Vehicles" only. From tin's evidence and on these facts the case of the Railway Authorities was that although the truck in question was a transport vehicle requiring a fitness certificate, it was

exempt from the requirements of Section 42 (1) of the Act because it was a vehicle belonging to the Central Government not used in connection with the business of a Railway. There is thus sufficient material to establish that the truck in question is a "Transport Vehicle". It, therefore, required both a permit and the fitness certificate.

19. The correspondence on the record establishes that the Railway Authorities were labouring under a bona fide mistake as to the need of a permit -- a mistake which was at one time shared even by the Transport Authorities. The learned Additional Sessions Judge, therefore, acted rightly in giving only a warning.

20. The conviction and the sentence in respect of the charge under Section 38/112 of the Motor Vehicles Act must be upheld. The evidence of D. W. 1 Ram Sundar Pandey shows that the Railway Authorities applied at the last minute for a renewal of the certificate. Under Rule 28 (d) of the Motor Vehicles Act Rules, they ought to have applied one month earlier. D. W- 1 admits that it takes about an hour to test the vehicle before a certificate is issued. He also states that on each occasion when he went to obtain a certificate there were other vehicles there being tested.

It is in order to obviate difficulties of this kind that a salutary Rule is laid down that an application for the renewal of fitness certificate must be made a month in advance and then the vehicle must be produced at the date and time fixed for its inspection. The Railway Authorities chose to ignore this Rule. The conviction was accordingly correct and must be upheld. In the circumstances we see no reason to reduce the fine.

21. This application is accordingly dismissed.

22. Leave to appeal is refused.