

## Narain vs Rex on 21 February, 1950

**Equivalent citations: AIR1950ALL441, AIR 1950 ALLAHABAD 441**

ORDER

P.L. Bhargava, J.

1. This is a reference, under Section 438, Criminal P. C. made by the learned Sessions Judge of Banaras in the following circumstances: On 12th July 1949, Narain Chali, a Marahata resident of Bangalore city, was found travelling without ticket in a third class compartment of 5 Up Mail Ex. Pratapgarh to Banaras Cantt. He thereby rendered himself liable to pay the excess charge and fare mentioned in Sub-section (1) of Section 113, Railways Act; but refused to pay the dues when demanded by the Travelling Ticket Examiner. Consequently, on the following day, that is, on the 13th July, 1949, he was produced before the railway Magistrate at Banaras, along with a written complaint, under Section 113, of the Act. In that complaint the only allegation made against him was that "he travelled without ticket in IIIrd class by 5 U. P. Mail Ex. Pratapgarh Oudh to Banaras Cantt. and refuses to pay".

2. The Magistrate put the following question to Narain:

" Q. Did you travel without ticket in III class by 5 Up Mail on 12 July 49 from Pratapgarh to Banaras Cantt, and refused to pay the railway dues on demand for so travelling?"

He replied:

" A. Yes. I am a poor man, I left Bombay about six months ago. I went to Delhi where I was ill for two months. I did no work at Delhi when I got well. I was now going to Calcutta when I was arrested. I cannot pay the dues."

Thereupon, the learned Magistrate made the following order:

"Accused pleads guilty to having travelled without ticket on the plea that he is a poor man. Not having any money with him with which ha could purchase a ticket his intention was clearly to defraud the Bail-ways. I accordingly convict him under Section 112, Railways Act and sentence him to fine of Rs. 60. or in default six. weeks' Rule I. Out of the fine, if realised, Rs. 15-12-0 will be credited to the Railways".

3. Narain was unable to pay the fine and was sent to jail, from where, after 27 days, he sent an application to the Sessions Judge of Banaras, who entertained it as a revision. The learned Judge was of opinion that Narain's conviction under Section 112, Railways Act, was illegal and the period

of imprisonment in default of payment of fine was disproportionate to the fine imposed upon him. Accordingly, he released Narain on his executing a personal bond and issued notice to the Government Pleader to show cause why the conviction be not set aside.

4. After hearing the Government Pleader the learned Sessions Judge came to the conclusion that it was never intended to prosecute Narain for an offence punishable under Section 113, Railways Act. Consequently, his conviction under that section was illegal and the Magistrate, before whom he was produced, on being satisfied that the amount demanded was payable, could only make an order for its recovery in the manner provided by law. Accordingly he made this reference recommending that the conviction of Narain under Section 112 of the Act be set aside and that the period of sentence of imprisonment in default of payment of fine be reduced to the period already undergone, by treating the case as one under Section 113 of the Act.

5. In his explanation the learned Magistrate has pointed out that the learned Sessions Judge did not consider the whole statement of Narain, which clearly indicated that he had no money to pay the dues, when checked by the T. T. E. and also when he started from Delhi. Relying upon his memory he has stated that 'Narain had frankly admitted that he had no money when he started from Delhi and that admission of his was, due to an oversight, not recorded by him. He has further pointed out that although the "charge sheet" was under Section 113, Railways Act, he was not bound to act only under that Section. On the basis of his experience he has stated:

"..... the T.T.E. will only challan a ticketless traveller under Section 112, Railways Act when he has some personal grudge against the accused, with whom he might have picked up a quarrel during the course of his duties. In the vast majority of cases of ticketless travelling that have come before me, the accused has admitted his having no money at the time he boarded a train. The present case is one of this category. In other types of cases when the accused could not purchase his ticket due to rush or hurry or having purchased the same has lost it, the accused will definitely make a statement to that effect. But In the present case the accused has sought to give no explanation of this kind whatsoever. To my mind the only inference that could be drawn from the statement of the accused when taken as a whole will be that the accused was penniless and could not possibly purchase a ticket and intentionally travelled without a ticket and thereby tried to cheat the Railway authorities of their dues."

He has then suggested "that the conviction under Section 112, Railways Act be maintained." In the end, he has pointed out that the sentence imposed by him in default of payment of fine was not disproportionate.

6. It is to be regretted that the Railway Magistrate, even after going through the well 'reasoned judgment of the learned Sessions Judge, did not realise his mistake and has attempted to justify an illegal order by introducing matters which were either irrelevant or not on the record. Moreover, while submitting an explanation, the Magistrate had no business to suggest to this Court that the conviction under Section 112, Railways Act be maintained. Section 112, Railways Act contemplates

an offence by a person who "(a) enters or remains in any carriage on a railway in contravention of Section 68, or

(b) uses or attempts to use a single pass or single ticket which has already been used on a previous journey or, in the case of a return ticket, a half thereof which has already been so used"

with intent to defraud a railway administration, and provides punishment for that offence Section 68 of the Act lays down that "No person shall, without the permission of a railway servant, enter or remain in any carriage on a railway for the purpose of travelling therein as a passenger unless he has with him a proper pass or ticket."

Before a person can be convicted of an offence under Section 112 of the Act, he has to be charged and tried for that offence. In order to make out an offence under Section 112 the main ingredient of that offence, namely, the intention to defraud a railway administration has to be established. If a person uses or attempts to use a single pass or single ticket, which has already been used on a previous journey, or, in the case of a return ticket, a half thereof which has already been so used, it is possible to infer that he intended to defraud a railway administration; but, it is not possible to attribute such an intention in the case of every person who is found travelling without a pass or ticket. In some cases of the latter category, it may be possible to prove that the person concerned intended to defraud a railway administration but there may be other cases, such as the case of a person who reaches the platform late and is unable to purchase a ticket; the case of a person who purchased a ticket and dropped it; the case of a person who has notified to the railway servant on duty with the train the fact of the charge having been incurred; the case of a person who has obtained a certificate granted under Sub-section (2) of Section 68, where no such presumption would arise. In such cases, it will be necessary for the prosecution to allege and prove as a fact that the person concerned intended to defraud the railway administration.

7. In this particular case Narain was not produced before the Magistrate charged with an offence punishable under Section 112 of the Act. It is apparent on the face of this record that he was never tried for that offence; and it is further clear from the question put to him that he was never asked to plead guilty or not guilty of any such offence.

8. Section 113, Railways Act does not speak of any offence. It merely creates a statutory liability for payment of penalty for breach of statutory obligations imposed upon every passenger travelling by railway, viz., the prohibition against travelling without a pass or ticket and to present his pass or ticket to the railway servant for examination when called upon to do so, under Sections 68 and 69 of the Act. It further provides the mode of enforcement of that liability.

9. Having regard to the definite allegations made against Narain in the complaint filed under Section 113, Railways Act, there can be no doubt whatsoever that the matter was placed before the Railway Magistrate for obtaining an order under Sub-section (4) of the said section.

That sub-section is in these terms:

"(4) If a passenger liable to pay the excess charge and fare mentioned in Sub-section (1), or the excess charge and any difference of fare mentioned in Sub-section (2) fails or refuses "to pay the same on demand being made therefor under any or other of those sub-sections, as the case may be, any railway servant appointed by the railway administration in this behalf may apply to any Magistrate of the first or second class for the recovery of the sum payable as if it were a fine, and the Magistrate if satisfied that the sum is payable shall order it to be so recovered, and may order that the person liable for the payment shall in default of payment suffer imprisonment of either description for a term which may extend to one month. Any sum recovered under this sub-section shall, as it is recovered, be paid to the railway administration."

10. As would appear from the statement of facts in the opening part of this judgment, the passenger, namely, Narain, had rendered himself liable to pay the excess charge and fare mentioned in Sub-section (1) of Section 113, Railways Act and he had refused to pay the same on being demanded by the Travelling Ticket Examiner. When the complaint was filed and the passenger was produced before the Magistrate, the latter had merely to satisfy himself that the sum demanded was payable and, on being so satisfied, he had to make an order for its recovery and to make a further order that the person liable for the payment should, in default of payment, suffer imprisonment. The question put to the passenger, when he was produced before the Magistrate, also suggests that the passenger was produced before the Magistrate for obtaining an order under Sub-section (4) of Section 113 of the Act. Only the T. T. E. was cited as a witness; but he was never produced, evidently because from the answer given by the passenger his liability to pay the excess charge and the fare demanded was established. Obviously, therefore, the Magistrate having been approached to enforce the liability arising under Sub-section (1) of Section 113 of the Act had no jurisdiction to try or convict the passenger under Section 112 of the Act.

11. The learned Sessions Judge was, therefore, right in holding that the conviction of and the sentence imposed upon Narain under Section 112, Railways Act were illegal. The reference is, therefore, accepted and the conviction of and the sentence imposed upon Narain under Section 113 of the Act are set aside.

12. As Narain was liable to pay the dues demanded from him and he expressed his in-ability to pay the same owing to poverty, the Magistrate should have made an order directing him to suffer imprisonment of either description for a term not exceeding one month. In consequence of the order made by the Magistrate! Narain suffered imprisonment for 27 days. In the circumstances of the case, he suffered sufficient imprisonment in default of his failure to discharge the liability. He need not, therefore, surrender to his bail. The bail bond executed by him is cancelled.