

Abdul Waqar vs State on 30 July, 1953

Equivalent citations: AIR1954ALL12, AIR 1954 ALLAHABAD 12

ORDER

Randhir Singh, J.

1. This is a reference by the Sessions Judge of Lucknow recommending that the conviction of Abdul Waqar under Section 112, Indian Railways Act and the sentence of fine of Rs. 50/- imposed on him be set aside.

2. It appears that Abdul Waqar was found travelling in a railway special train meant to convey railway servants holding passes or token, without a proper pass or ticket. He was detected by the special squad and was then produced before a Magistrate. A charge under Section 112, Railways Act was framed against Abdul Waqar and he was convicted as he pleaded guilty to the charge. Abdul Waqar went in revision to the Sessions Judge. In his application for revision he stated that he was a railway servant and had left his token at his house and could not therefore produce it to the railway squad when he was asked to produce a pass or a ticket. He further stated that he had mentioned all these facts to the learned Special Magistrate who did not record his statement. He denies having pleaded guilty to the charge.

3. The explanation submitted by the railway Magistrate is that Abdul Waqar must have pleaded guilty to the charge or else there was no reason why he should have recorded a plea of guilty in the proceedings. The Magistrate further states that when a raid is made by the special squad, quite a large number of persons travelling without ticket are detected and proceedings have to be taken quickly and summarily and it was for this reason that the Magistrate had in his possession printed forms on which the words "pleads guilty and prays for mercy" are cyclostyled so that they may be used in case where the accused pleads guilty. Ordinarily there is no reason to believe that the Magistrate recorded a plea of guilty when none was made by the accused. The main point, however, for consideration in this case is whether it was a case in which the accused should have been charge-sheeted under Section 112 or under Section 113 Railways Act.

If in fact Abdul Waqar held a token which he was unable to produce when demanded by the; railway servant and as a railway servant, there was no reason why he should have pleaded guilty to the charge under Section 112. No doubt a person is bound to produce a railway ticket or pass when demanded and would be liable to pay the fare and penalty if he is unable to produce the ticket when demanded. It would, however, be difficult to say that in all cases the omission to produce the ticket or pass could be referable to an intention to defraud the railway. It is possible that a person may lose his ticket or may even be unable to purchase one on account of rush at the booking office or want of sufficient time. In all such cases Section 112 Railways Act would be inapplicable and the person in

default could be held liable under Section 113 of the Act.

4. There is nothing on the record of this case in support of the allegations made by Abdul Waqar that ho was a railway servant and that he held a token which he left at his home. No doubt cases have to be tried by the Special Magistrate while he is on the line, but this would be no justification for refusing a proper trial if the accused wants to produce evidence to show that it was not his intention to defraud the railway. The proper course, therefore, would be to set aside the conviction of Abdul Waqar under Section 112. Railways Act and order a retrial. I accordingly accept the reference made by the Sessions Judge and set aside the conviction and sentence in this case.

The case shall be sent back to the Railway Magistrate who will give an opportunity to the accused to put no his defence and then decide the case according to law.