Supreme Court of India
Pooran Singh And Another vs State Of Madhya Pradesh on 3 February, 1965
Equivalent citations: 1965 AIR 1583, 1965 SCR (2) 853
Author: S C.
Bench: Shah, J.C.

PETITIONER:
POORAN SINGH AND ANOTHER

Vs.

RESPONDENT:
STATE OF MADHYA PRADESH

DATE OF JUDGMENT:
03/02/1965

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
GAJENDRAGADKAR, P.B. (CJ)
HIDAYATULLAH, M.
SIKRI, S.M.

CITATION:
1965 AIR 1583 1965 SCR (2) 853

ACT:
Motor Vehicles Act, 1939 (4 of 1939), s. 130(1)-Endorsement on summons-Failure-Whether vitiates.

HEADNOTE:
For offences under ss. 112 and 124 of the Motor Vehicles Act, the Magistrate issued process against the appellants for their appearance in court by pleader, but did not make any endorsement thereon in terms of s. 130(1)(b) of the Act. The appellants submitted that the summons served on them were not according to law and the failure to make this endorsement had deprived them of their right conferred by the Act to intimate without appearing in Court their plea of guilty and remitting an amount not exceeding Rs. 25 as may be specified. The trial Magistrate rejected this plea, but on being moved by the appellants, the Sessions Judge made a reference to the High Court recommending that the order passed by the Magistrate be set aside. The High Court declined to accept the reference. In appeal by certificate :
HELD : The Magistrate was not obliged in offences not specified in Part A of the Fifth Schedule to make an

endorsement in terms of s. 130(1) (b) of the Act. [857 D]
The Magistrate taking cognizance of an offence was bound to issue summons of the nature prescribed by sub-s. (1) of s. 130. But there is nothing in that subsection which indicates that he must endorse the summons in terms of both cls. (a) & (b) : to hold that he was commanded would be to convert the conjunction "or" into "and". [855 H-856 All]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 215 of 1963.

Appeal from the judgment and order dated April 30, 1963 of the Madhya Pradesh High Court in Criminal Revision No. 24 of 1963.

Ravinder Narain, O.C. Mathur and J. B. Dadachanji, for the appellants.

I. N. Shroff, for the respondent.

The Judgment of the Court was delivered by Shah, J. Station House Officer, Gharsiwa filed an informa- tion in the Court of the Magistrate, First Class, Raipur against the two appellants complaining that they had on March 10, 1962 allowed three passengers to occupy the front seat in a public carrier and had loaded goods in excess of the sanctioned weight, and had, thereby committed offences punishable under ss. 124 and 112 of the Motor Vehicles Act 4 of 1939. The Magistrate issued process against the appellants for their appearance in Court by pleader, but did not make any endorsement thereon in terms of s. 130(1)(b) of the Act. The appellants submitted that the summonses served upon them were not according to law and the Magistrate by failing to make an-endorsement on the summonses as required by cl. (b) of sub-s. (1) of s. 130 of the Act had deprived them of the right conferred by the Act to intimate without appearing in Court their plea of guilty and remitting an amount not exceeding Rs. 25/- as may be specified. The Magistrate rejected this plea and directed that the case against the appellants be "proceeded further according to law".

The Sessions Judge, Raipur in a petition moved by the appellants made a reference to the High Court of Madhya Pra- desh recommending that the order passed by the Magistrate be set aside, for in his view the Trial Magistrate having failed to comply with the mandatory terms of S. 130(1) (b) the proceeding against the appellants was unlawful. The High Court of Madhya Pradesh declined to accept the reference. Against that order, with certificate granted by the High Court, the appellants have preferred this appeal.

Section 130 of the Motor Vehicles Act which occurs in Ch. IX which relates to "Offences, penalties and procedure" provides:

" (1) A Court taking cognizance of an offence under this Act shall, unless the offence is an offence specified in Part A of the Fifth Schedule, 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 twenty-five rupees as the Court may specify.

(2) Where the offence dealt with in accordance with sub-section (1) is an offence specified in Part B of the Fifth Schedule, the accused person shall, if he pleads guilty of 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.

(3) Where an accused person pleads guilty and remits 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."

Offences under ss. 112 & 124 of the Act with which the appellants were charged are not included in the first part of the Fifth Schedule to the Act, and the Magistrate was therefore bound to comply with the terms of s. 130(1). There can be no doubt on the plain terms of s. 130(1) that the provision is mandatory. But there was difference of opinion about the nature of the duty imposed by sub-s. (1) upon the Court taking cognizance of the complaint. The Sessions Judge held that a Magistrate taking cognizance of an offence of the nature specified had, by virtue of s. 130(1), to make an endorsement on the summons in terms of cls. (a) & (b) and thereby to give an option to the person charged either to appear by pleader or to plead guilty to the charge by registered letter and remitting therewith the sum specified in the summons, and if the Magistrate failed to give that option, the proceedings initiated would be liable to be set aside as infringing the mandatory provision of the Act. The High Court was of the view that sub-s. (1) of s. 130 left an option to the Magistrate exercisable on a consideration of the materials placed before him when taking cognizance of an offence to issue a summons without requiring the accused to appear by pleader to call upon him to plead guilty to the charge by registered letter and to remit the fine specified in the summons. According to the High Court therefore the Magistrate had the option to issue a summons with an endorsement in terms of sub-s. (1) (a) or of sub-s. (1) (b) and only if a summons was issued with the endorsement specified by sub-s. (1) (b) it was open to the accused to avail himself of the option to plead guilty and to claim the privilege mentioned in sub-s. (3). In our judgment the High Court was right in the view it has taken. The Magistrate taking cognizance of an offence is bound to issue summons of the nature prescribed by sub-s. (1) of S. 130. But there is nothing in that sub-section which indicates that he must endorse the summons in terms of both the clauses (a) & (b): to hold that he is so commanded would be to convert the conjunc 4Sup./65-8 tion "or" into "and". There is nothing in the words used by the Legislature which justifies such a conversion, and there are strong reasons which render such an interpretation wholly inconsistent with the scheme of the Act. The procedure in sub-s. (1) of s. 130 applies to cases in which the offence charged is not one of the offences specified in Part A of the Fifth Schedule, but applies to the other offences under the Act. The maximum penalty which is liable to be imposed in respect of these offences defined by the Act is

in no case Rs. 25/- or less. It could not have been the intention of the Legislature that the offender, even if the case was serious enough to warrant the imposition of the maximum penalty which is permissible under the section to which the provision is applicable, to avoid imposition of a hi-her penalty than Rs. 25/- by merely pleading guilty. Section 130, it appears, was enacted with a view to protect from harassment a person guilty of a minor infraction of the Motor Vehicles Act or the Rules framed thereunder by dispensing with his presence before the Magistrate and in appropriate cases giving him an option to plead guilty to the charge and to remit the amount which can in no case exceed Rs. 25/-. If the view which prevailed with the Sessions Judge were true, a person guilty of a serious offence meriting the maximum punishment prescribed for the offence may by pleading guilty under sub-s. (1) (b) escape by paying an amount which cannot exceed Rs. 25/-. Again the Magistrate is authorised under s. 17 of the Act in convicting an offender of an offence under the Act, or of an offence in the commission of which a motor vehicle was used, in addition to imposing any other punishment to pass an order declaring the offender unfit for holding a driving licence generally, or for holding a driving licence for a particular class or description of vehicle. Such an order may be passed if it appears to the Court, having regard to the gravity of the offence, inaptitude shown by the offender or for other reasons, that he is unfit to obtain or hold a driving licence. But if the offender avails himself of the option given to him by the Magistrate of pleading guilty, no further proceeding in respect of the offence can in view of sub-s. (3) of s. 130 be taken against him, and he will not be liable to be disqualified for holding or obtaining a licence, though he may otherwise eminently deserve to be disqualified for holding a licence.

It is true that to an offence punishable with imprisonment in the commission of which a motor vehicle was used S. 130(1) does not apply: see Sch. Five Part A Item 9. But there are offences under the Motor Vehicles Act which do not fall within that description and also do not fall under other items, which are punishable with imprisonment e.g. S. 113(2). There are also certain offences which, if repeated but not otherwise, are liable to be punished with imprisonment e.g. certain offences under ss. 118A and under s. 123 of the Act. It would be difficult to hold that the Legislature could have intended that irrespective of the seriousness or gravity of the offence committeed, the offender would be entitled to compound the offence by paying the amount specified in the summons, which the Magistrate would be bound to accept, if the contention raised by the appellants is correct.

Having regard to the phraseology used by theLegislator which prima facie gives a discretion to the Magistrate exercisable at the time of issuing the summons, and having regard also to the scheme of the Act, we are of the view that the HighCourt was right in holding that the Magistrate is not obliged in offences not specified in Part A of the Fifth Schedule to make an endorsement in terms of cl. (b) of sub-s. (1) of s. 130 of the Act. We are of the opinion that the view to the contrary expressed by the High Court of Allahabad in State of U.P. v. Mangal Singh(1) and the High Court of Assam in State of Assam v. Suleman Khan(2) on which the Sessions Judge relied is not correct. The appeal therefore fails and is dismissed. Appeal dismissed.

(1)(1962) 1 Cr.L.J. 684.

(2)(1961) 2 Cr.L.J. 869.