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**(1956) 01 AHC CK 0018**

**Allahabad High Court**

**Case No:** Criminal Ref. No. 49 of 1955

Mohd. Jalil and Another

APPELLANT

Vs

The State

RESPONDENT

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**Date of Decision:** Jan. 4, 1956

**Acts Referred:**

- Motor Vehicles Act, 1939 - Section 123, 42, 42(1)

**Citation:** AIR 1956 All 400

**Hon'ble Judges:** Asthana, J

**Bench:** Single Bench

**Advocate:** Aqiq Hasan, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

Asthana, J.

Mohammad Jalil was the driver and Ram Lakhan was the conductor of motor vehicle No. UPL 1442 S. O. on 29-8-1953. This motor vehicle was being driven from Banaras to Moghal Sarai. On the way it was checked by Sri. M. Chaturvedi, Enforcement Officer. Allahabad. It was found to contain 38 1/2 passengers Instead of 32 passengers, the maximum seating capacity of the vehicle.

Both the driver and the conductor were prosecuted u/s 123, Motor Vehicles Act for carrying passengers in excess of the prescribed limit. They were both convicted and Mohammad Jalil was sentenced to a fine of Rs. 25/- and Ram Lakhan to a fine of Rs. 10/-. They filed a revision against their conviction.

The learned Sessions Judge agreed with the trial Magistrate that the motor vehicle in question was carrying more passengers than the prescribed limit. He was, however, of the opinion that the conviction of the applicants u/s 123 was not correct and in support of this view he relied on a decision of this Court reported in -- "

Jagroop and Another Vs. Rex, .

It was held in this case that the conviction u/s 123 of the driver and the conductor could not be maintained as that section was applicable only to the case of the owner of the motor vehicle and he alone could be convicted under that section for contravention of the provisions of Sub-section (1), of Section 42, Motor Vehicles Act. He has, therefore, recommended that the conviction of the applicants u/s 123 of the Act should be set aside and in lieu of it they should be convicted u/s 112 of the Act, and Mohammad Jalil should be sentenced to a fine of Rs. 20/- under this section and the fine of Rs. 10/- on Ram Lakhan should be maintained.

2. I have heard the learned counsel for the State and have also perused the judgment of the learned Sessions Judge. I have not been able to find any satisfactory reason as to why Section 123 is not applicable to the present case. This section provides that

"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 the provisions of Sub-section (1) of Section 42 shall be punishable for a first offence with fine which may extend to Rs. 500/- and for a subsequent offence if committed within 8 years of the commission of a previous similar offence with a fine which shall not be less than Rs. 100/- and may extend to Rs. 1000/-".

It will appear from a perusal of this section that it is not restricted in its application only to the owner of the motor vehicle but is equally applicable to the case of a driver who uses that vehicle in contravention of the conditions of the permit. Section 42(1) no doubt is applicable only to the owner of a transport vehicle and punishes him for using such vehicle or allowing the use of such vehicle, in contravention of the conditions of the permit granted in respect of such vehicle.

Section 123 in my opinion is wider in its application than Section 42. The accused in this case were found guilty for carrying passengers in excess of the number prescribed in the permit and as such they can be convicted u/s 123, Motor Vehicles Act. Section 123 provides for only those cases where the vehicle is used against the terms and conditions of the permit granted in respect of it, whereas Section 112 is a general section and provides for all those cases where the contravention is of any provision of the Act or of any rule made under it. I am, therefore, of opinion that the accused were rightly convicted u/s 123 Motor Vehicles Act.

3. The reference is, therefore, rejected and the conviction and sentence passed by the Magistrate are maintained.