(1938) 01 PAT CK 0048

Patna High Court

Case No: None

Muhammad Rafiq		APPELLANT
	Vs	
Emperor		RESPONDENT

Date of Decision: Jan. 25, 1938

Acts Referred:

- Motor Vehicles Act, 1988 - Section 16, 4(c), 5

Citation: AIR 1938 Patna 268

Hon'ble Judges: Mohammad Noor, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

Mohammad Noor, J.
This is a reference by the Sessions Judge of Gaya recommending that the conviction and sentence passed by a Magistrate of First Class of Gaya in a summary trial on one Muhammad Eafiq u/s 16 read with section (wrongly mentioned by the learned Magistrate rule) 4 (c), Motor Vehicles Act and also u/s 5, Motor Vehicles Act, be set aside, the sentences for each count being a fine of Rs. 20, and in default, two weeks'' simple imprisonment.

2. The case started on a report of a Sub-Deputy Magistrate of Gaya. The gist c it was that on 22nd August 1937, he Lad gone to certain villages within Sherghati Police Station and was waiting for a bus near about the mile 154 at a bridge on the Gaya-Sherghati Road. A lorry belonging to Nagmatia Motor Service came in sight, and the Sub-Deputy Magistrate ordered his orderly Chanderdeo Singh to stand on the road and stop the bus when it was at a distance of about two hundred yards. The orderly tried to stop the bus by extending his right hand and crying, roko, roko. The driver did not mind and refused to stop without lowering his speed. He drove so fast that the right hand of the orderly was injured with two cuts.

3. The report further stated that he (the Sub-Deputy Magistrate) losing all hope of getting any other bus, proceeded on foot and when he reached a shop near village Khandail he stopped to drink water and then he learnt that the name of the driver was Rafiq. On this report the learned Sub-Divisional Magistrate took cognizance of the case and summoned the accused u/s 16, Motor Vehicles Act, read with Rule 65(2) of the Motor Vehicles Rules for 8th September.

4. On the date fixed, the case was made over to the learned Magistrate who tried and convicted the accused. He examined the accused on that date; and the examination shows that the learned Magistrate had by that time not even read the report which was the basis of the prosecution. The question which he put to the accused was as follows:

The allegation against you is that on 4th August 1937, on the Gaya-Sherghati Road at mile 15 1/2 the orderly of Maulvi...Sub-Deputy Magistrate, asked you to stop the bus....

5. The report of the Sub-Deputy Magistrate shows that the occurrence which he reported was not of 4th August, but of 22nd August. How the learned Magistrate examined the accused in connection with the occurrence of 4th August 1937, is not clear. It is a pity that the learned Sessions Judge did not pointedly ask the learned Magistrate to explain this. The mistake was perhaps due to the fact that the Sub-Deputy Magistrate in the beginning of his report to the Sub-Divisional Magistrate had mentioned that he had gone for local inquiry in pursuance of his order of 4th August 1937. This 4th August, which was the date of the order of the deputation of the Sub-Deputy Magistrate, was taken by the learned Magistrate as the date of the occurrence. The accused was asked to meet three charges, one u/s 16, Motor Vehicles Act read with Rule 65(2) which relates to refusal, without good cause, to let vehicle for hire on demand, second u/s 16 read with Section 4(c) of the Act which relates to not stopping the vehicle knowing that an accident has taken place, and third u/s 5 of the Act which penalizes rash driving. The accused pleaded not guilty to all of them and the case was adjourned to 17th September 1937 on which date the accused was examined again u/s 242, Criminal P.C., and the same question was repeated, with this modification that the date of occurrence now was correctly stated as 22nd August 1937.

6. It is clear that on this date the Magistrate knew that the occurrence for which the accused was being tried was of 22nd August 1937, but curiously enough, for reasons which were not intelligible either to the Sessions Judge or to me the learned Magistrate in the column of the form kept u/s 263, Criminal P.C., mentioned both 4th August and 22nd August, as the dates of occurrence. This column shows that the accused was being tried for two offences of the same kind, one committed on 4th August, and the other on 22nd August 1937. In the column of the plea of the accused, his plea has been recorded twice and both his statements taken on the two previous days have been referred to. In the column of the finding, only the offences

committed on one day have been mentioned, but no date has been specified, though from the judgment it is clear that the finding is in respect of the offence committed on 22nd August 1937.

7. The learned Magistrate convicted the accused u/s 16 read with Section 4(c) of the Act for not stopping the bus after the orderly of the Sub. Deputy Magistrate was injured and u/s 5 of the Act for rash driving and acquitted him of the offence u/s 16 of the Act read with Rule 65(2) as he held that there was no evidence that the bus was not full.

8. The learned Sessions Judge has pointed out a mistake of the learned Magistrate, but there he has misunderstood a sentence. He thinks that the learned Magistrate has convicted the accused u/s 16 of the Act read with Sections 4(c) and 5 and points out that Section 5 is a self-contained section and has not to be read with other sections. In fact, the learned Magistrate has convicted him u/s 16 read with Section 4(c) and u/s 5. The word "and" connects the word "section" and not the words "read with". Now, it is clear that the real grievance of the Sub-Deputy Magistrate was that the driver did not stop the bus to pick him up.

9. But the accused has been acquitted of this charge but has been convicted for reckless and negligent driving and for not stopping the bus after an accident. The learned Sessions Judge has reported that there was no evidence to justify conviction for either of the two offences, and I entirely agree with him.

10. Coming to the question of reckless driving, there is no finding that the speed of the vehicle was in excess of any maximum prescribed for that vehicle. Whether a driving is reckless or not, depends upon the circumstances of each case. The section has not specified the definition of reckless and negligent driving. There is nothing to show that at that time the traffic on the road was such that the speed at which the accused was driving the bus can be considered to be either negligent or reckless. The report does not state how the slight injury was caused to the orderly. The orderly himself does not know from what part of the bus he was injured. The learned Magistrate also has not found how the injury was caused. The learned Sessions Judge has stated that the orderly put his hand on the mudguard and thus got hurt. I do not find any such thing on the record. It seems that perhaps the orderly having found that the driver was not willing to stop the bus to pick up a passenger thought that if he went too close to the bus with extended hand, the driver would certainly stop the bus in order to avoid an accident, and if so, he courted an accident, and the driver could not have anticipated that a man who was shouting out to stop the bus would be so reckless as to come so close to the bus as to hurt himself.

11. I therefore agree with the learned Sessions Judge that there was no evidence of rash, reckless or negligent driving.

12. Coming to the second point, that is, not stopping the car when an accident had taken place, there was nothing to show that the driver knew and had reason to believe that the orderly was hurt.

13. On the whole, I accept the reference, set aside the conviction of the accused and direct that the fine, if paid, be refunded.