State Vs Manoj Kumar

Court: Delhi High Court

Date of Decision: Feb. 23, 2011

Acts Referred: Constitution of India, 1950 â€" Article 142, 32
Criminal Procedure Code, 1973 (CrPC) â€" Section 207, 251, 374, 464
Motor Vehicles Act, 1988 â€" Section 130, 177, 192A, 207, 39

Citation: (2011) 3 AD 389 : (2011) 179 DLT 330 : (2011) 4 ILR Delhi 472 : (2011) 2 JCC 892

Hon'ble Judges: Hima Kohli, J

Bench: Single Bench

Advocate: M.N. Dudeja, app, for the Appellant; S.K. Anand, for the Respondent

Final Decision: Allowed

Judgement

Hima Kohli, J.
The present appeal arises out of the judgment and order dated 24.04.2007 passed by the learned Additional Sessions

Judge, setting aside the judgment of conviction dated 03.03.2007 passed by the learned Metropolitan Magistrate in a case pertaining to an offence

punishable under Sections 66(l)/192-A/7/177 of the Motor Vehicle Act, 1988 (hereinafter referred to as "the Act"). While passing the judgment of

conviction dated 03.03.2007, the learned Metropolitan Magistrate had held that there was no evidence to show that the Respondent/ accused was

not wearing the uniform while driving the RTV and, therefore, charges under Sections 7/177 of the Act were not proved. However, the

Respondent was held guilty for the offence punishable under Sections 66/192-A of the Act. By the order on sentence dated 24.03.2007, the

Respondent/accused was sentenced to pay a fine of "5,000/- for the offence punishable under Sections 66/192-A of the Act. Though the fine was

deposited, the Respondent/accused preferred an appeal u/s 374 of the Code of Criminal Procedure against the aforesaid judgment of conviction

and the order on sentence. The said appeal was allowed by the impugned judgment and the judgment of conviction and the order on sentence of

the trial court were set aside. Aggrieved by the aforesaid judgment of the Appellate Court, the State has preferred the present appeal.

2. Briefly stated, the facts of the case, as per the State, are that on 30.06.2004 at about 12:30 PM, the Respondent/accused, while driving RTV

No. DL-lVA-2858, stopped the said vehicle at Ajmeri Gate Bus Stand and started picking up passengers by calling them to be taken to Khajuri

Khas and Gagan, in violation of the permit"" conditions as the accused had been given a C.C. permit only. He was also found to be not wearing his

uniform at the time of the said incident. The Respondent was challaned for violation of conditions of permit u/s 66/192A of the Act and his vehicle

was impounded as per Section 207 of the Code of Criminal Procedure. Notice to show cause was served on the Respondent/accused, to which

he pleaded not guilty and claimed trial. The prosecution examined two witnesses namely, PW1, SI Attar Singh, the officer who challaned the

accused and P.W. 2, Ct. Kuldeep, who was accompanying PW-1 during all the proceedings. After completion of the evidence, statement of the

accused was recorded by the learned Metropolitan Magistrate. In his statement, the Respondent/ accused stated that he had a C.C. permit only

and that on 30.06.2004 at about 12:30 PM, he had been carrying passengers in his RTV for the destination of Khajuri Khas and Gagan by

charging money from them.

3. The argument of the counsel for the Respondent/accused before the learned Metropolitan Magistrate was that not only was the RTV improperly

impounded, the challan issued to the Respondent/accused was also improper. In this regard, he sought to rely or the judgment of the Supreme

Court in the case of M.C. Mehta v. Union of India and Ors. reported as 69 (1998) DLT 769, to state that as per the guidelines laid down therein,

flying squads made up of inter-departmental teams headed by an SDM were to be constituted and only such squads could enforce the

guidelines/directions laid down by the Supreme Court and exercise powers u/s 207 as well as Section 84 of the Motor Vehicles Act. The

aforesaid submission made on behalf of the Respondent/accused was rejected by the learned Metropolitan Magistrate, by holding that the

guidelines laid down in the aforesaid Sup/erne Court decision were in addition to the other responsibilities enjoined on the owner and driver of the

vehicle under the Act and that the powers u/s 207 of the Act were not meant to be only exercised by the SDM or ACP. In light of these

observations, it was held that the Respondent/ accused was not driving the vehicle as per the scheme of C.C. permit. As a result, while acquitting

the Respondent/accused in respect of charges against him under Sections 7/177 of the Act, for not wearing the uniform, he was held guilty for the

offence punishable under Sections 66/192-A of the Act.

4. In appeal, the learned Additional Sessions Judge differed from the conclusion arrived at by the trial court and set aside the said judgment on the

ground that once a notice was given to the Respondent/accused u/s 251 of the Code of Criminal Procedure, for violation of guidelines of the

Supreme Court, it was essential that the directions given in the case of M.C Mehta (supra) be followed in totality. It was held that since the

Respondent had been challaned by an officer below the rank of the Assistant Commissioner of Police, his conviction based on such a challan was

bad in the eyes of law and hence, ordered to be set aside.

5. Learned APP for the State submits that the Appellate Court erred in reversing the findings of the learned Metropolitan Magistrate inasmuch as

the said Court erred in overlooking the fact that the Respondent/ accused was not only issued a notice to show cause for violation of the guidelines

laid down, by the Supreme Court in the case of M.C. Mehta (supra), but was also challaned for violation of other relevant provisions under the

Act and the Delhi Motor Vehicle Rules and, therefore, merely because the challan was issued by a Sub-Inspector to the Respondent/accused

would not make the entire proceedings bad in law, as the challan was thereafter forwarded to the court of competent jurisdiction for being tried in

accordance with law.

6. This Court has perused the impugned judgment dated 24.04.2007 passed by the learned Additional Sessions Judge as also the judgment of

conviction dated 03.03.2007 and the order on sentence dated 24.03.2007 passed by the learned Metropolitan Magistrate. A perusal of the notice

to show cause dated 19.05.2005, issued by the learned Metropolitan Magistrate to the Respondent/ accused, shows that he was informed that on

the relevant date, time and place, he was found picking and dropping passengers and calling upon them and while doing so, he had stopped his

RTV away from the designated Bus Stop in violation of the guidelines issued by the Supreme Court of India. Secondly, he was informed that on

the relevant date, time and place, he was unable to produce the original documents in respect of the vehicle and was also found to be not wearing

his dress/uniform. As a result, he was issued a notice to show cause as to why he should not be tried for the offences under Sections 66(1) read

with Section 192-A of the Act and Sections 7/130 of the Delhi Motor Vehicle Rules read with Section 177 of the Act. As the

Respondent/accused pleaded that he was not guilty and claimed trial, the matter was taken to trial.

7. The learned APP for the State has argued that at this stage, it would not be correct for the Appellant to argue that the challan issued to him was

vague and he was unaware of the line of defence that he could have taken, as the notice to show cause issued to the Respondent/accused,

specifically mentions the provisions of the Act in respect of which, it was claimed that he had committed an offence. There is merit in the aforesaid

submission. Further, it is also settled law that unless the convict is able to establish that defect in framing the charges has caused real prejudice to

him and that he was not informed as to what was the real case against him, as a result of which he could not defend himself properly, no

interference is required on mere technicalities. This view was taken by the Supreme Court in the case of Sanichar Sahni Vs. The State of Bihar,

and reiterated in Anna Reddy Sambasiva Reddy and Others Vs. State of Andhra Pradesh, where it was held:

55. In unmistakable terms, Section 464 specifies that a finding or sentence of a court shall not be set aside merely on the ground that a charge was

not framed or that charge was defective unless it has occasioned in prejudice. Because of a mere defect in language or in the narration or in form of

the charge, the conviction would not be rendered bad if the accused has not been adversely affected thereby. If the ingredients of the section are

obvious or implicit, conviction in regard thereto can be sustained irrespective of the fact that the said section has not been mentioned.

In the present case, the Appellant was informed of the offences against him in the notice to show cause, but even if the argument urged on his

behalf is accepted that he was unaware of the offences charged against him, then also no prejudice caused to him has been shown on account of

such an omission, so as to render the conviction bad.

8. In the present case, vide order dated 19.05.2005, after hearing the parties on the point of charge, the learned Metropolitan Magistrate found

that prima facie charge u/s 66/192 and Section 7/130 read with Section 177 of the Act was made out against the Respondent/accused. Pertinently,

the provision of Section 66 of the Act, which deals with necessity for permits falls under Chapter v. of the Act which deals with control of transport

vehicles and lays down that no owner of a motor vehicle would be permitted to use the vehicle as a transport vehicle in any public place, save in

accordance with the permit granted, authorizing him to use the said vehicle in the manner so permitted. Section 192A falls under Chapter XIII of

the Act, which pertains to offences, penalties and procedure. The aforesaid provision stipulates that whoever drives a motor vehicle or allows a

motor vehicle to be used, in contravention of the provisions of Section 39, shall be punishable for the first offence with a fine which may extend to ''

5,000/- but shall not be less than '' 2,000/-and for second or subsequent offence with imprisonment which may extend to one year or with fine

which may extend to '' 10,000/but shall not be less than / 5,000/- or both.

9. In the case of M.C. Mehta (supra), relied upon by the learned Counsel for the Respondent, the Supreme Court, while exercising its powers

under Article 32 read with Article 142 of the Constitution of India, issued directions to the police and all other authorities entrusted with the

administration and enforcement of the Motor Vehicles Act and generally with the control of traffic, to take certain steps to ensure that transport

vehicles are used in a manner so as not to imperil public safety. One of the guidelines of the Supreme Court was as below:

...

(e) Any breach of the aforesaid directions by any person, apart from entailing other legal consequences, be dealt with as contravention of the

conditions of the permit, which could entail suspension/ cancellation of the permit and impounding of the vehicle.

...

(g) To enforce these directions, flying squads made up for inter-departmental teams headed by an SDM shall be constituted and they shall exercise

powers u/s 207 as well as Section 84 of the Motor Vehicle Act.

The Government is directed to notify u/s 86(4) the officers of the rank of Assistant Commissioner of Police or above so that these officers are also

utilized for constituting the flying squads.

10. A perusal of the aforesaid guidelines shows that the Supreme Court was mindful of the fact that the said guidelines were laid down and were to

be given effect to, over and above other legal provisions as set out in the Statute. Therefore, the learned Metropolitan Magistrate was quite

justified in holding that the guidelines formulated by the Supreme Court in the case of M.C. Mehta (supra) did not mandate that the provisions of

the Act would be set to naught or would stand substituted. Rather, the guidelines were to be in addition to the mandate of the Statute. The intent

and purpose of constituting flying squads was to ensure enforcement of the directions issued by the Supreme Court and for exercise of powers u/s

207 of the Act as also Section 84 of the Act. Section 207 of the Act empowers any police officer or other person authorized in this behalf by the

State Government to detain the vehicle used without certificate of registration permit. Section 84 of the Act lays down general conditions attaching

to all permits. In such circumstances, it cannot be held that the guidelines laid down by the Supreme Court were in derogation of the Act. Rather,

the said guidelines only supplemented the Motor Vehicle Act and were laid down to ensure that transport vehicles followed public safety norms on

the roads of the NCR and NCT of Delhi by operating, within speed limit, without overtaking any other four wheeled vehicle, by confining

themselves to bus lanes, and ensuring that the bus halted only at the bus stops designated for the said purpose etc.

11. In the aforesaid facts and circumstances, this Court is inclined to agree with the submission made on behalf of the State that merely because the

Respondent was challaned by an officer of the rank of Sub-Inspector, could not be treated as a ground to set aside the Impugned judgment of

conviction and the order on sentence, as the notice to show cause specifically mentioned the offences stated to have been committed by the

Respondent/accused under the Act and based on the said notice to show cause, the Respondent was charged and after conducting the trial, he

was held guilty of the offence punishable under Sections 66/192A of the Act, and called upon to pay a fine of " 5,000/.

12. For the aforesaid reasons, the appeal is allowed and the impugned judgment dated 24.04.2007 passed by the appellate Court is set aside,

while upholding the judgment of conviction dated 03.03.2007 and the order on sentence dated 24.03.2007 passed by the learned MM.

13. As it is stated by the learned APP for the State that the Respondent/accused has withdrawn the fine of " 5,000/- deposited by him earlier, he is

permitted to deposit the fine of " 5,000/- in the concerned court, within four weeks, or in the alternate, show proof of deposit made earlier, to the

said court.

14. The appeal is disposed of. There shall however be no order as to costs.