(1952) 02 BOM CK 0011

Bombay High Court

Case No: Criminal Revision Application No. 1130 of 1951

Madhav Raoji		APPELLANT
	Vs	
State		RESPONDENT

Date of Decision: Feb. 8, 1952

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 246
- Motor Vehicles Act, 1939 - Section 112, 115, 116, 131, 89

Citation: AIR 1952 Bom 385 : (1952) 54 BOMLR 433 : (1952) ILR (Bom) 1100

Hon'ble Judges: Chagla, C.J

Bench: Single Bench

Advocate: R. Jethmalani and B.K. Hirani, S.S. Kavalekar, D.M. Parulekar and V.N. Talpade, for the Appellant; H.M. Choksi, Govt. Pleader, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

(1) The case for the prosecution was that the accused was driving a station wagon on May 28, 1951, at the island around Wellington Fountain opposite the Regal Cinema, and he caused injury to a pedestrian. A summons was served upon him to the effect that he had failed to report the accident at the police station, and he was prosecuted u/s 89 read with Section 112, Motor Vehicles Act. When the case went on before the learned Chief Presidency Magistrate, on the evidence the learned Chief Presidency Magistrate came to the conclusion that the offence disclosed was a much more serious one; it was an offence u/s 116, viz., driving recklessly or dangerously; and thereupon the learned Chief Presidency Magistrate convicted the accused u/s 116 and fined him Rs. 75, and he directed that a sum of Rs. 80 out of this sum of Rs. 75 should be paid to the complainant as compensation.

(2) The point raised by Mr. Kavalekar before me is that the conviction u/s 116 is not proper in view of the provisions of Section 131. Section 131 provides that no person prosecuted for an offence punishable u/s 115 or Section 116 shall be convicted

unless one of the three conditions are satisfied, and the first is that he should be warned at the time the offence was committed that the question of prosecuting him would be taken into consideration, the second is that within fourteen days of the commission of the offence a notice specifying the nature of the offence and other particulars should be served upon him, and the third is that within 28 days of the commission of the offence a summons for the offence should be served upon him. It is clear that none of the three conditions was satisfied in this case. It is true that a summons was served within 28 days of the commission of the offence, but the summons that was served was not the summons for the offence, viz., an offence u/s 115 or Section 116. The summons was for an offence u/s 89. The learned Chief Presidency Magistrate has taken the view, and that view has been supported before me by the learned Government Pleader, that inasmuch as the prosecution was initially u/s 89 and not u/s 116, the power of a Court u/s 246, Criminal P.C., to convict the accused of any offence which from the facts admitted or proved he appears to have committed, whatever may be the nature of the complaint or summons, is unaffected, and therefore the proved facts having disclosed that he had committed an offence u/s 116, it was open to the Court to convict him u/s 116 although he was originally prosecuted u/s 89.

It is further contended by the learned Government Pleader that Section 131 only applies when the prosecution initially is u/s 116, and for that purpose the Government Pleader invites my attention to the language of Section 131. The language of Section 131 is not that "no person shall be convicted u/s 115 or Section 116 unless the conditions were satisfied," but the language of Section 131 is that "no person prosecuted for an offence punishable u/s 115 or Section 116 shall be convicted unless the conditions are satisfied." If I were to give this interpretation to Section 131, then it would be rendered entirely nugatory. It would be open to the prosecution to charge an accused u/s 89, serve the summons a year or two after the commission of the offence, give him no particulars with regard to rash or negligent driving, and in the course of the trial on the evidence led to apply to the Magistrate to try the accused u/s 116 and get a conviction u/s 116. Therefore once a prosecution was launched under some section other than Section 115 or Section 116, all the rights given to an accused person who is prosecuted u/s 115 or Section 116 would disappear into thin air and the prosecution could safely proceed to secure a conviction without observing the conditions laid down in Section 131. I am not prepared to put that interpretation on Section 131. When Section 131 speaks of "no person prosecuted for an offence," it means that he is prosecuted at the time when the order of conviction is passed. Although originally the accused was prosecuted u/s 89, ultimately his prosecution was u/s 116, and it was as a result of that prosecution that a conviction resulted. Therefore, in my opinion, Section 131 applies to the facts of this ease.

(3) The Government Pleader says that if that were so, the powers of the Court u/s 246 are taken away. In my opinion they are not taken away. It is open to the Court to

convict the accused in respect of any offence disclosed in the evidence u/s 246 provided the conviction is in accordance with law. In this case, although the offence ''disclosed was one u/s 116, the conviction was not in accordance with the law because the conditions laid down in Section 131 were not complied with. Surety-it cannot be suggested that the powers of the Court u/s 246 are so wide that it can convict an accused in respect of an offence although the conditions laid down by the Legislature for his conviction are not satisfied. Then the Government Pleader seeks to come under proviso (b) to Section 131, and that proviso is that nothing in this section shall apply where the Court is satisfied that such failure was brought about by the conduct of the accused. This sub-clause refers to the failure to serve the notice and summons referred to in Sub-sections (b) and (c) of Section 131. In this case there is no question of this proviso applying because in fact the summons was served upon the accused within 28 days as required by Section 131. The failure was not to serve the summons, but the failure was to state in the summons the nature of the offence. Therefore, in my opinion, the learned Chief Presidency Magistrate was in error in convicting the accused u/s 116, Motor Vehicles Act.

(4) But in my opinion it is equally clear on the facts found that the accused has committed an offence u/s 89 read with Section 112. His case was that it was not his car which knocked down the pedestrian and that some other car knocked him down, and because it was not his car that knocked down the pedestrian, he never reported the accident. It has been found as a fact that it was his car which knocked down the pedestrian. If that be the finding of fact, then clearly he is guilty in law in not having reported the accident at the police station.

(5) I would, therefore, convict him u/s 89 read with Section 112 and impose a fine of Rs. 20, and I will also direct that Rs. 15 out of this fine if paid should be paid, to the complainant as compensation. Fine in excess of Rs. 20 if paid should be refunded.

(6) Conviction & sentence altered.