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Popatlal Bhaichand Shah Vs Emperor

Court: Bombay High Court

Date of Decision: Nov. 29, 1929

Acts Referred: Railways Act, 1890 â€" Section 108, 109, 121

Citation: AIR 1930 Bom 160 : (1930) ILR (Bom) 326

Hon'ble Judges: Patkar, J

Bench: Division Bench

Judgement

Patkar, J.
In this case the accused was tried on charges under Sections 108, 109, and 121, Railways Act, and convicted under Sections

108 and 121, and sentenced to pay a fine of Rs. 25, in default simple imprisonment for one month, for, each offence. With regard, to the offence

u/s 109, the learned Magistrate found that it was not sufficiently proved that the accused entered the compartment after it contained the maximum

number of passengers, and therefore acquitted the accused u/s 258, Criminal P.C.

2. With regard to the offence u/s 108, Railways Act, the learned Magistrate, relying on the case in Ishwar Das Varshni v. Emperor AIR 1922 Pat.

8 held that the accused pulled the chain for sufficient and reasonable cause for removing the overcrowding. The finding of the Magistrate is that

there were forty-five passengers, whereas the utmost capacity allowed by law was for thirty passengers. u/s 63, Railways Act, it is the duty of the

railway administration to fix the maximum number of passengers for each compartment. Section 93 of the Act provides penalty for neglect of the

provisions of Section 63. Section 102 provides penalty on a railway servant compelling passengers to enter carriages already full. Section 109 lays

down the penalty on a passenger entering a compartment already containing the maximum number of passengers exhibited thereon u/s 63. Whether

the cause is reasonable and sufficient would depend on the facts of each particular case. In the present case the necessity for pulling the chain arose

from the neglect of the railway administration to observe the provisions of Section 63. We think the accused had reasonable and sufficient cause to

pull the chain in order to remove the overcrowding, which it was the duty of the railway administration to prevent u/s 93 of the Act. But the learned

Magistrate convicted the accused on the ground that in the written statement of the accused he stated that one of the reasons for pulling the chain

was to obtain the names of Eurpean passengers who were in the first or second class compartments and who came and used abusive language to

him. The accused in his statement stated:

In this way on account of overcrowding as there was a havoc in the compartment and in order to reduce the overcrowding the railway authorities

in spite of their having been told from time to time did not pay heed. I had no other remedy but to pull the chain for the safety of myself and other

passengers and only for as many times as was necessary. Two European passengers abused me and came to assault me. I asked the railway

authorities and the police to get me their names. But they did not do so and this is also one of the reasons for pulliug the chain.

3. If the learned Magistrate considered that one of the reasons for pulling the chain, viz., the removal of the overcrowding, was a sufficient and

reasonable cause u/s 108 of the Act, we think that the learned Magistrate erred in holding that the accused was deprived of the defence of

sufficient and reasonable cause merely because there was an additional reason for pulling the chain which in the opinion of the Magistrate was not

sufficient and reasonable. We think, therefore, that the conviction u/s 108 must be set aside.

4. With regard to the conviction u/s 121, Railways Act, we think that in a case where a person without sufficient and reasonable cause pulls the

emergency chain, he renders himself liable for prosecution u/s 108 only, and not u/s 121 for preventing the running of the train and thus obstructing

or impeding a railway servant in the discharge of his duty. In the case of Girjashankar Dayashankar v. B.B. & C.I. Ry. Co. [1919] 43 Bom. l03,

Batchelor, J., observes (p. 120):

Reading the sections together, the fair conclusion seems to me to be that the stopping of the train by the wrongful pulling of the communication

chain is one special kind of obstruction, for which the legislature has made special provision. It has ordained a particular punishment, which is

lighter than that allowed for other obstructions presumably because the stopping of the train by this mechanical means is not likely to be attended

with any danger to the travelling public. This differentiation of the consequences or results seems to me strongly in favour of the view that the

special provisions of Section 108 are not to be controlled by the more general language of the wider sections.

5. It was, therefore, held by Batchelor,J. following the maxim qeneralia speoialibus non derogant, that the offence committed by theÃ¯Â¿Â½ plaintiff in

that case was punishable u/s 103 and not u/s 121 or Section 128. The facts proved in the present case are not sufficient to attract the operation of

Section 108 of the Act. We think therefore, that the accused cannot be convicted u/s 121, Railways Act.

6. For these reasons we would set aside the convictions and sentences, and order the fines, if paid, to be refunded.