

1933

Present : Akbar J.

## SUB-INSPECTOR OF POLICE v. FERNANDO.

258—P. C. Chilaw, 38,547.

*Motor Car—Licensed to carry passengers—Used mainly for carrying fish—Ordinance No. 20 of 1927, s. 30 (1), 31.*

Where a private car licensed wholly or mainly to carry passengers was used wholly or mainly to carry fish for the owner,—

Held, that the car had been used for a purpose not authorized by the licence within the meaning of section 30 (1) of the Motor Car Ordinance.

**A** PPEAL from a conviction by the Police Magistrate of Chilaw.

The accused was charged under section 30 (1) of the Motor Car Ordinance in that, being the driver of a motor car, he had used the car on three dates for a purpose not authorized by the licence, to wit, to carry fish for the owner.

*J. R. Jayewardene*, for accused, appellant.—Form 14, schedule 3, of Ordinance No. 20 of 1927, says, car is “licensed for wholly or mainly carrying passengers”. But the Ordinance must be considered as a whole; other schedules must be examined (*Katugastota Police Inspector v. Siyadoris Appuhamy*). The Ordinance draws a clear distinction between “motor cars constructed wholly or mainly to carry goods” and “motor cars constructed wholly or mainly to carry passengers”. The latter class is again divided into cars for private use and cars for hire. The duty paid is different. Cars for hire pay duty according to the number of passengers. Therefore it is an offence to hire a car licensed for private use because the revenue is defrauded. Private cars and cars constructed to carry goods pay duty according to the weight of the car. (First schedule, Ordinance No. 20 of 1927.) Cars constructed to carry goods require a report of the examiner of motor cars before licence is granted. (Form 13, schedule 3.) Accused has not changed the construction of the car. Therefore there is no contravention of the licence.

[AKBAR J.—Why are motor cabs prohibited from carrying goods? Do you say the principle in *Vanderstraaten v. Narayanaswamy*<sup>1</sup> does not apply?]

It is true that motor cabs and omnibuses are cars constructed to carry passengers; but these are hiring cars, and licence duty is paid according to the number of passengers, motor cabs carrying less than seven passengers, and omnibuses carrying more than seven passengers. Forms 12 and 16 of schedule 3 show that an omnibus may carry passengers and goods up to a certain weight. No such concession is granted to motor cabs. The convenience of passengers is consulted. Therefore a motor cab carrying goods is a contravention of the licence.

In *Aziz v. Fonseka*<sup>2</sup>, a private car carrying fish was held to contravene the licence. The point now raised is that “cars are licensed on their construction”, and the purpose for which they are used is immaterial was not raised. The English case of *Payne v. Allcock*<sup>3</sup> helps the appellant.

<sup>1</sup> 30 N. L. R. 410.

<sup>2</sup> 34 N. L. R. 103.

<sup>3</sup> 1 Ceylon Law Weekly 392.

<sup>4</sup> (1932) 2 K. B. 413.

The Court held that a person who held a licence for a private motor car and used it to carry goods was guilty, though the construction of the car was unchanged. The wording of the English statute is different. Cars are there licensed for the purpose for which they are used<sup>1</sup>, and the statute makes it an offence to use the car for any other purpose or to change the construction. Yet Macnaughten J. dissented and held that it was no offence to carry goods unless the construction of the car was altered. Our Ordinance is concerned with the construction. The Ordinance is enacted for two purposes—(1) protection of pedestrians, (2) public revenue. A private car may carry any weight in passengers; therefore there is no danger in carrying any weight in goods. The revenue is not defrauded, for a private car constructed to carry passengers cannot be licensed in any other way and cannot pay any other duty.

The penal section creates a charge on the subject. The language must be unambiguous. If there is doubt, benefit must be given to appellant.<sup>2</sup> The Court may say, appellant's act was within the words but not within spirit of the Ordinance<sup>3</sup>. On the facts, appellant carried passengers whenever he carried goods. It cannot be said that the car was not used wholly or mainly to carry passengers.

*Ilangakoon, Deputy S.-G.* (with him *Wendt, C.C.*), for the Attorney-General (on notice). The facts show that appellant had the rear seat and luggage carrier laden with fish on several dates. Therefore the car was used for mainly carrying goods not passengers. This was done systematically. The object of the Ordinance is (1) to provide for the safety of the public and (2) to obtain revenue. The scheme of the Ordinance is to regulate (1) the construction of motor vehicles, (2) their registration and licensing, and (3) their use. This car was licensed for wholly or mainly carrying passengers. Therefore when it is used for mainly carrying goods, section 30 (1) is contravened. Where the owner of a private car occasionally carries his own goods, the Police are not likely to prosecute. But when carriage of goods in a car becomes a business, then revenue is defrauded. Appellant should have used a lorry or car constructed to carry goods. In Form (2) in Third Schedule the applicant for registration of vehicle is required to state whether his purpose is to use the car for the conveyance of persons or of goods. If purpose is the conveyance of goods, then the motor car licence in Form 14 cannot be issued. The English case cited held that the construction of the car need not be changed for the offence to be committed. The Finance Act, 1932, amended the English Law, and Macnaughten J.'s views were followed in the amendment. The decision of the Chief Justice in *Vanderstraaten v. Narayanaswamy* (*supra*) covers this case and is in point.

August 3, 1933. AKBAR J.—

This is an appeal from a conviction on three charges under sections 30 (1) and 84 of the Motor Car Ordinance, 1927, in that the accused, being the driver of car No. W—1066, had used it on three dates for a purpose

<sup>1</sup> S. 14, Finance Act 1922 (12 & 13  
Geo. V. c. 17) and s. 5 Finance  
Act 1920 (10 & 11 Geo. V. c. 18).

<sup>2</sup> (1922) 1 K. B. p. 680.

<sup>3</sup> (1872) L. R. 4 P. C. p. 191.

not authorized by the motor licence in force for the use thereof, to wit, carrying fish. There were two or three men in the car but the rear seat and the luggage carrier were laden with fish.

It was not contended for the prosecution that the accused carried the fish for hire. This was entirely a case which referred to the use of a private car for the purpose of carrying fish for the owner.

As the case was covered by the *obiter dictum* of the Chief Justice in a case referred by me to a bench of two Judges, viz., *Vanderstraaten v. Narayanaswamy*<sup>1</sup> and as Mr. Jayewardene raised a new point, viz., that motor cars were licensed according to the purpose for which they were *mainly or wholly constructed* and that the use to which they were put did not matter, I issued notice on the Attorney-General's Department and the Deputy Solicitor-General was good enough to help me with his argument. After consideration of the argument, I am of opinion that the case is covered by the *dictum* of the Chief Justice in the case cited by me above, with which I respectfully venture to agree. Under sections 30 and 31 the test seems to be the conditions inserted in the motor car licence and if there is any positive or negative infringement of the conditions, an offence is committed either under the one section or the other as pointed out by the Chief Justice. The licence in this case was of the ordinary type for a private motor car (Licence Form No. 14), i.e., for wholly or mainly carrying passengers.

The learned Police Magistrate has found it, as a fact, that on the three dates mentioned in the charges the car was used wholly or mainly for carrying fish. And he has come to this conclusion on the evidence although there were two passengers in the front seat.

On the dates January 6 and December 7, one Inspector said that the rear seat and luggage-carrier were laden with fish. On the latter date the car halted near the Chilaw market and the driver got down and distributed the fish to the dealers at the market who sold the fish. On December 17, another Inspector found the whole of the back seat stacked to the hood with small fish. It is not surprising that the Magistrate came to the conclusion that these loads of fish were not personal luggage and that the car was used on these three dates for a purpose not authorized by the licence. I cannot say he came to a wrong conclusion.

I agree with the Chief Justice that the case reported in *147 Law Times*, p. 96 (also in (1922) 1 K. B. p. 674) depended on the words used in the English Statute. The English Law was later amended by 22 & 23 George V. c. 25 (see section 14).

As I have said, our law seems to be unambiguous, and we are only concerned with the motor car licence and the terms inserted in it, when it is a prosecution under section 30 (1) of the Motor Car Ordinance. If a strict interpretation of these sections will lead to cases of hardships the remedy must be sought for in other directions as indicated by the Chief Justice.

The appeal is dismissed.

*Appeal dismissed.*