

1935

*Present : Maartensz J.*MARRIOT *v.* RATNAPALA.1,115—*M. C. Colombo, 14,093.*

Motor car—Charge of using indecent language against driver—Person travelling in bus—Ordinance No. 20 of 1927, Schedule IV., rule 26.

The driver of an omnibus is a "person travelling in the omnibus" within the meaning of rule 26 in Schedule IV of the Motor Car Ordinance. He may be convicted of using indecent and offensive language while travelling in the omnibus.

A PPEAL from a conviction by the Municipal Magistrate of Colombo.

Peter de Silva, for the accused, appellant.

April 8, 1935. MAARTENSZ J.—

Two questions of law have been raised by counsel for the appellant. The first is that the accused, being the driver of an omnibus, should not have been convicted of a breach of rule 26 in the 4th Schedule to the Motor Car Ordinance, No. 20 of 1927, for using obscene, indecent, and offensive language while travelling in the omnibus. In support of this contention it is submitted that the rule only applies to passengers as it is provided by sub-section (3) of the rule that any person travelling in a bus who obstructs or impedes the driver in the exercise of his duty is guilty of an offence. I am unable to accede to this contention. I do not see why the driver of an omnibus should not be considered to be travelling in the omnibus as much as any passenger in it.

The second objection was that no charge was framed against the accused until after the two witnesses for the prosecution had given evidence. It appears from the record that after these two witnesses had been examined and cross-examined, the Magistrate discovered that a charge had not been framed against the accused and he at once framed a charge and called upon the accused to plead to it. The accused's proctor in reply to the Magistrate's question said he did not wish the witnesses recalled. I do not think I can sustain the objection as the accused has not been prejudiced. It is true that the Magistrate commenced the proceedings without framing a charge but when he discovered the omission he framed a charge and was prepared to go through the trial afresh if the accused desired it. The only reason why he did not do so was because the accused's proctor did not wish to have the witnesses recalled. That the accused was in no way prejudiced is obvious from the fact that the objection is one not taken in the petition of appeal.

As regards the facts, I think the evidence amply justifies the finding of the Magistrate. I see no reason to interfere with the sentence passed by the Magistrate and I dismiss the appeal.

Affirmed.

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