

1951

Present : Gratiaen J.

KADIRGAMER, Appellant, and ROSAIRO (Inspector of Police),
Respondent

S. C. 909—M. C. Mallakam, 952

Motor Car Ordinance, No. 45 of 1938—Section 42 (1)—Private car—Cannot be used for carrying passengers for hire.

Section 42 (1) of the Motor Car Ordinance prohibits the carrying of passengers for hire in a motor car for which the only licence in force is a licence issued in Form 16 appearing in the Second Schedule to the Ordinance.

APPEAL from a judgment of the Magistrate's Court, Mallakam.

S. Nadesan, with *A. Vythilingam*, for the accused appellant.

J. W. Subasinghe, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

November 21, 1951. GRATIAEN J.—

This is an appeal against a conviction for using a motor car in breach of section 42 (1) of the Motor Car Ordinance, No. 45 of 1938, for a purpose "not authorised by the licence in force for that car".

The evidence very clearly established that the appellant had on the date mentioned in the charge carried a passenger for hire in his motor car which was in fact licensed as what is commonly known as a private car—i.e. a car "licensed wholly or mainly for the conveyance of persons" (Form 16) as opposed to a "motor cab" licensed to carry passengers (Form 17).

Mr. Nadesan has argued with much ingenuity that if the Legislature intended to prohibit the use of "motor cars" as "motor cabs", the language of section 42 has failed to achieve its purpose. He submits

that, whereas the word "passenger" is defined in the Ordinance, the word "person" must be given its ordinary connotation and therefore embraces all members of the human race including "passengers". I am therefore invited to hold that a licence to "convey persons" without qualification is a sufficient authority to "carry passengers".

The argument is indeed attractive, but does not appear to me to be supportable. A "passenger" is defined in the Ordinance as a person "carried in a hiring car" and is clearly intended to be used in this context in contradistinction to a person who is conveyed without fee or reward in a motor vehicle other than a hiring car. Moreover, the statutory Forms 17 and 18 for licences prescribed by the Ordinance in respect of motor cabs and motor omnibuses adopt the word "carry" as opposed to "convey" and seem intentionally to introduce the idea of a *contract of carriage* which in law has a special significance inappropriate to the gratuitous conveyance of persons in a motor car.

No doubt the clear intention of the Legislature might have been couched in language which would have defied the ingenuity of even Mr. Nadesan. This slight defect has now been remedied in the recent Motor Traffic Act, No. 14 of 1951.

I am satisfied upon an examination of the entire scheme of the Ordinance, that the language of Section 42 (1) was intended to, and does in terms, prohibit the carrying of passengers for hire in a motor car for which the only licence in force is a licence issued in Form 16 appearing in the Second Schedule to the Ordinance. The same view was recently taken by Basnayake J. in an unreported case *Ediriweera v. Tennekoon*¹ and, with reference to similar language employed in the earlier Ordinance No. 20 of 1927, by Akbar J. in *Katugastota Police v. Siyadoris*².

The appeal is dismissed.

Appeal dismissed.
