

1934

Present : Dalton J.

P. C. DE MEL v. BALASURIYA.

485—P. C. Kurunegala, 35,652.

Motor bus—Contravention of driving rule by driver—Liability of owner—No evidence of abetment—Motor Car Ordinance, No. 20 of 1927, ss. 43 (2) and 80 (3) (b).

Where the owner of a motor-bus was charged with allowing his driver to halt the bus on a high road for a longer period than was necessary to pick up and set down passengers,—

Held, that the owner was not liable unless he abetted the commission of the offence.

The provisions of section 80 (3) (b) do not apply to the contravention of a driving rule.

A PPEAL from a conviction by the Police Magistrate of Kurunegala.

Navaratnam, for accused, appellent.

Cur. adv. vult.

August 31, 1934. DALTON J.—

The accused is the owner of bus No. F 1347. He has been convicted on a charge of allowing his driver to halt the bus on the high road in the bazaar at Mawatagama on February 2 last for a period longer than was necessary to pick up and set down passengers. There was no charge that accused aided and abetted his driver to commit the offence, and the Magistrate points out that, although the accused was present at the time of the alleged offence, there is no evidence that he aided or abetted his driver, but he finds th accused as owner guilty in view of the provisions of section 80 (3) (b) of the Motor Car Ordinance, 1927. I have not had the benefit of hearing any argument in support of the conviction.

The particular offence charged here of standing in the highway longer than was reasonably necessary is defined in section 2 (c) of Part I. of Schedule IV. of the Ordinance. Section 84 of the Ordinance provides the penalty.

Section 80 of the Ordinance provides for the liability of the owner as well as the driver in the case of certain offences. The section is as follows :—

80 (1) If any motor car is used which does not comply with or contravenes any provision of this Ordinance or of any regulation, or of any order lawfully made under this Ordinance or any regulation; or

(2) If any motor car is used in such a state or condition or in such a manner as to contravene any such provision ; or

(3) If anything is done or omitted in connection with a motor car in contravention of any such provision ; then unless otherwise expressly provided by this Ordinance,—

(a) The driver of the motor car at the time of the offence shall be guilty of an offence unless the offence was not due to any act, omission, neglect, or default on his part; and

(b) The owner of the motor car shall also be guilty of an offence, if present at the time of the offence, or, if absent, unless the offence was committed without his consent and was not due to any act or omission on his part, and he had taken all reasonable precautions to prevent the offence.

Chapter VII. of the Ordinance lays down certain driving rules. Amongst other things, rules are here provided setting out how a motor car shall be driven, how obstructions to other traffic are to be avoided, how and where cars shall be placed when halted, how when halted they shall not be allowed to remain in such position so as to obstruct or be likely to obstruct other traffic, and regulations for parking generally. Section 43 (1) directs that the driver of a car shall observe the provisions of this chapter, and sub-section (2) states that section 80 (3) (b) shall not apply to a contravention of this chapter. It goes on to provide that the owner of a motor car, not being the driver thereof, shall only be convicted of a contravention of a provision of this chapter, not being specially applicable to the owner, if he has abetted such contravention.

The Magistrate has convicted the appellant on the ground that he has contravened clause 2 (c) of Schedule IV. of the Ordinance and not any provision of Chapter VII. Hence he states he cannot claim the benefit of the provisions of section 43 (2).

The Ordinance is not an easy one to construe, and there appears to be some overlapping in the different parts of it in regard to various provisions dealing with cars, buses, and motor cabs. This may possibly be difficult to avoid in an Ordinance dealing with such varied matters as the construction and equipment of cars, registration, identification plates, licences, certificates of competence, driving rules, restriction of the use of highways, speed limits, and various matters incidental thereto. Schedule IV., for instance, sets out amongst other things rules for the equipment of omnibuses and also driving rules for the driver. Sections 2 and 3 of the schedule are definitely driving rules, and section 3 may well be included in part of section 52 (1) of Chapter VII. Some contraventions of section 2 of the schedule could also doubtless be brought under section 52 of the Ordinance, such as offences for halting or standing in a position not indicated by a notice exhibited by the licensing authority. Section 2 (c) of the schedule is aimed at preventing obstruction of other traffic by buses taking up and setting down passengers. The provisions of section 44 of Chapter VII. provides for the prevention of obstruction on a far wider scale, and I am not satisfied a charge for the specific offence set out in section 2 (c) could not also in certain circumstances be laid under one or other of the provisions of section 44 also.

Turning now to section 80 of the Ordinance, it is there provided by sub-sections (1) and (2) that if any motor car is used which does not comply with any provision of the Ordinance, or is used in such a state or

condition as to contravene any such provision, the owner shall be guilty, if present at the time the offence is committed, or in certain circumstances if absent also. The provisions of the Ordinance referred to in sub-sections (1) and (2) are, it seems to me, provisions to which motor cars must comply or conform before they are used, in respect of such matters as equipment, construction, registration, licensing, or condition. One can understand the owner being made responsible, for instance, for the proper equipment and safe condition of the car he allows his driver to use. Sub-section (3) refers to a contravention of those same provisions. It would appear to provide for anything that may be omitted from sub-sections (1) and (2), for all three sub-sections must be read together. If anything is done or omitted in connection with a motor car in contravention of any such provision, then in the cases set out in sub-section (3) (c) the owner is also guilty.

Against this construction it might possibly be urged that it renders the enactment of the provisions of section 43 (2) unnecessary in Chapter VII., but, as I have pointed out, there is some overlapping in different parts of the Ordinance, hence the sub-section may have been inserted there as a matter of precaution. It seems to me to make it reasonably clear that the intention of the legislature was that the owner was not to be held responsible for the contravention by his driver of what are purely driving rules, unless he abetted such contravention.

The offence of which the owner has been convicted here is not the contravention of any requirement of the Ordinance to which a motor car must conform before use. The offence is the contravention of what is called in the Ordinance a driving rule, to which, in my opinion, the provisions of section 80 do not apply. In the absence then of any evidence to show he abetted the offence he must be acquitted.

The appeal must therefore be allowed, the conviction being quashed.

Appeal allowed.

