

1963

Present : H. N. G. Fernando, J.

K. KUNARATNAM (Police Sergeant), Appellant, and E. SELLIAH,
Respondent

S. C. 115/1963—M. C. Chavakachcheri, 16606

Offence of carrying more than 7 passengers in a private car—Proof—“ Private car ”—“ Motor car ”—Motor Traffic Act, as amended by Act, No. 63 of 1961, ss. 5, 180 (2), 235, 240.

In a prosecution under section 180 (2) of the Motor Traffic Act for carrying more than seven passengers in a private car, the accused was acquitted by the Magistrate on the ground that, according to the evidence, the vehicle had seating arrangement for more than eight persons and, therefore, was not a “ motor car ”.

Held, that in the absence of evidence to the effect that the seating accommodation had been increased after the date of the registration of the vehicle the only material before the Court as to the seating capacity was to be found in the certificate of registration containing the Commissioner’s determination as to the class to which the vehicle belonged.

Obiter : In a charge under section 180 of the Motor Traffic Act it is not permissible to look outside the certificate of registration for the purpose of determining whether or not a particular vehicle is a private car.

APPPEAL from a judgment of the Magistrate’s Court, Chavakachcheri.

V. S. A. Pullenayegum, Crown Counsel, for the Complainant-Appellant.

No appearance for the Accused-Respondent.

Cur. adv. vult.

June 27, 1963. H. N. G. FERNANDO, J.—

This was a prosecution for an alleged offence against section 180 (2) of the Motor Traffic Act as amended by Act No. 63 of 1961. The vehicle was registered on 17th February, 1960 as a private car and its seating capacity as specified in the certificate of registration was 7 persons excluding the driver.

Upon the facts, there is no doubt that 17 passengers were carried on the vehicle on the date of the alleged offence, and the Magistrate would undoubtedly have convicted the Accused of carrying more than 7 passengers, but for a rather interesting construction he has placed on the relevant provisions of the Act.

“Private car” is defined in section 240 of the Act as a “motor car registered as a private car”. The expression “motor car” is defined as “a motor vehicle, not being a which is constructed or adapted for the carriage of not more than 8 persons”. In considering the definition of private car, the Magistrate holds that in order to be a “private car” a vehicle must firstly be a motor car and must secondly be registered as a private car. He agrees that the second condition is fulfilled, but considers that the first question has yet to be determined, namely, whether the vehicle is “constructed or adapted for the carriage of not more than 8 persons”. The evidence being to the effect that there are seating arrangements for the accommodation of more than 8 persons, he reaches the conclusion that this vehicle is not a motor car.

An examination of the definition in section 240 of the several different types of motor vehicles shows that all the definitions taken together are intended to be an exhaustive list of all types of vehicles for the purposes of the application of the Act to vehicles. In regard to passenger carrying vehicles, a main line of distinction is drawn between those intended for the carriage of persons for a fee or reward and those not so intended. In the latter case the prefix “private” is generally employed in the Act. Of these private vehicles, some are classified as motor cycles, ambulances and invalid carriages, and apart from the types just mentioned, a vehicle which is “private” has to be registered either as a coach or as a car, the distinction between them being made by reference to the question whether the vehicle is constructed or adapted for the carriage of more than 8 persons or not more than 8 persons. Section 6 of the Act deals with the registration of cars and coaches.

Section 235 provides that when any question, as to the class to which a motor vehicle of any type or classification should be deemed to belong, arises in connection with a registration or licensing of the vehicle, the decision of the Commissioner on that question shall be final and conclusive. At the stage therefore when the Accused's vehicle was registered as a “private car”, the Commissioner finally and conclusively decided in connection with that registration that the vehicle is a car and not a coach. But the learned Magistrate in this case has formed the opinion that the determination is not conclusive for purposes other than

that of registration and that accordingly if the seating accommodation is subsequently altered, a vehicle may subsequently be regarded as not being a car; even if this opinion be correct, there was no evidence in this case to the effect that the seating accommodation had been increased after the date of registration of the vehicle, and in the absence of such evidence the only material before the Court as to the seating capacity was to be found in the certificate of registration containing the Commissioner's determination.

For this reason alone the Magistrate's order of acquittal cannot be upheld. In addition, it is perhaps useful for me to express disagreement with the opinion expressed by the learned Magistrate. It will be seen that section 5 provides that a motor car may be registered as a private car or as a hiring car, and that a motor coach may be registered as a private coach or as an omnibus. The definitions in section 240 of a "private car" as a motor car registered as a private car and of a "private coach" as a motor coach registered as a private coach, merely invoke the respective classifications which are determined at the time of registration. In other words, the definition declares to be a private car that which has been registered as a private car under section 5. Although the definition does contain the expression "motor car", that expression is used in the definition only because what is registrable as a private car under section 5 is that which has been determined for the purpose of section 5 to be a motor car. I do not therefore agree with the Magistrate that in a charge under section 180 it is permissible to look outside the certificate of registration for the purpose of determining whether or not a particular vehicle is a private car.

The order of acquittal is set aside. I convict the Accused and sentence him to a fine of Rs. 100/-.

Acquittal set aside.