

1934

Present : Garvin S.P.J.

FERDINANDO *v.* NAGALINGAM

611—P. C. Badulla-Haldummulla, 3,753.

Motor lorry—Driving along prohibited roads—“Maximum weight when fully loaded”—Meaning of by-law—Motor Car Ordinance, No. 20 of 1927, ss. 6 and 58.

Where a motor lorry, which when fully loaded would weigh 4 tons 13 cwt. 11 lb. was driven along a road over which a by-law prohibited the use of lorries, which, when fully loaded exceeds 4½ tons,—

Held, the use of the lorry offended against the by-law, even though the lorry and the load it was actually carrying did not exceed 4½ tons.

A PPEAL from an order of acquittal by the Police Magistrate of Badulla-Haldummulla.

M. F. S. Pulle, C.C., for the complainant, appellant.

H. V. Perera, for accused, respondent.

September 6, 1934. GARVIN S.P.J.—

The accused was prosecuted for having infringed certain regulations made under the provisions of sections 6 and 58 of the Motor Car Ordinance, No. 20 of 1927, in that he did, on January 24, 1934, at Nugatalawa between the 62nd and 63rd mileposts, drive motor lorry No. X-3320 along a road specified in those by-laws as one declared to be suitable for use by lorries provided that the maximum weight of the lorry when fully loaded and equipped shall not exceed 4½ tons in the case of four-wheel lorries. This was a four-wheel lorry and its total weight when fully loaded was said to be 10,483 pounds which is 4 tons 13 cwt. and 11 lb. The weight therefore is said to be 3 cwt. and 11 lb. in excess of the limit set out in the by-law.

Now there is no very precise evidence as to whether this lorry was loaded and if so what the weight of the load was, but it is contended on behalf of the Crown that it is sufficient that the weight of the lorry plus the weight that it was licensed to carry exceeded the limit of 4½ tons specified in the rule. For the respondent it was contended, if I understood Counsel aright, that unless the lorry was actually carrying such a load at the time at which it was driven which with the weight of the lorry exceeded the limit prescribed, no offence was committed. The appeal, therefore, involves an interpretation of the words “provided that the maximum weight of the lorry when fully loaded and equipped shall not exceed 4½ tons”.

It is contended for the Crown that what those words mean is that the weight of the lorry plus the weight which it is licensed to carry, and not the weight of the load it actually carries at any particular point of time, shall not exceed the weight specified. A little difficulty is caused by the presence of the word "maximum" and the word "fully" in the expression "when fully loaded", Counsel for the accused contends that the words "maximum weight of the lorry when fully loaded" imply that the weight of a lorry and its full load may vary and that maximum load has reference to the cubic capacity of the lorry and not to the weight which a lorry may carry. It is clear to my mind that under the provisions of the Motor Car Ordinance a lorry is fully loaded when it contains a weight of goods equivalent to the weight which it is licensed to carry. The expression therefore, in my opinion, has reference to weight and not to the cubic capacity of the lorry. In this view there are only two factors which need be considered, first the weight of the lorry, and second, the weight which it is licensed to carry. In any case in which the total of these two weights exceeds the limit prescribed the offence is committed. It is a matter of no importance, therefore, that the lorry should be loaded or that evidence should be adduced of the actual weight it was carrying. These words must, I think, be construed exactly as they would have been construed if the word "maximum" did not appear in the rule. The maximum is prescribed later in the rule in so far as it states that the combined weight of the lorry plus that of the load which it is licensed to carry is not to exceed the weight specified.

I would therefore set aside the order of the Police Magistrate. The accused will be convicted. As to the sentence, there is nothing to indicate that this is other than a test case. It is sufficient therefore to pass upon the accused a nominal sentence, namely, a fine of Rs. 5, in default one week's simple imprisonment.

Set aside.

