

1934

Present: Maartensz J.

GODAGAMA v. HINNIAPPU

828/829—P. C. Matale, 11,771

*Motor Car Ordinance—Carrying passengers in lorry—Servants of owner—
Travelling on their own business—Ordinance No. 20 of 1927, s. 62 (3).*

Sub-section (2) of section 62 of the Motor Car Ordinance which permits the owner of a lorry to carry his servants as passengers thereon does not apply where the servants travel on their own business and not in the capacity of servants of the owner.

A PPEAL from a conviction of the Police Magistrate, Matale.

R. C. Fonseka, for accused, appellants.

M. F. S. Pulle, C.C., for complainant, respondent.

October 29, 1934. MAARTENSZ J.—

The first accused in this case, the driver of lorry No. F 1328, was convicted of carrying nineteen passengers besides the driver in the lorry who were not the servants or agents of the owner or hirer of the lorry, in breach of section 62 (3) and section 31 of Ordinance No. 20 of 1927, as amended by Ordinance No. 22 of 1929; the amending section of that Ordinance is section 26. The second accused was convicted of being the owner of the lorry and permitting or allowing the first accused to carry passengers who were not his servants or agents in breach of section 62 (3), section 31, and section 83 (b) of Ordinance No. 20 of 1927, as amended by Ordinance No. 22 of 1929. The accused appeal from this conviction.

It was submitted in appeal that the Magistrate's ruling that a permit is necessary to carry passengers is incorrect where the passengers are the agents or servants of the owner or hirer of the lorry. It was also submitted that the conviction could not be sustained as the statement made by the first accused that the nineteen passengers were the employees of the owner is not rebutted.

It is unnecessary for me in this case to decide whether the permit required by section 26 of Ordinance No. 22 of 1929 refers to persons other than the servants or agents of the owner or hirer of the lorry as I am of opinion that the conviction can be supported on another ground.

It appears from the proceedings that these nineteen passengers who were in the lorry were travelling in it as pilgrims and, although they were the employees of the owner, not travelling in the lorry in the capacity of the owner's servants, but were in fact travelling on their own business. In my judgment sub-section (3) of section 62 which enacts that "no person shall be carried in a lorry other than the owner or hirer of the lorry or the goods therein or the servants or the agent of the owner or hirer" does not apply to the case of servants travelling in a lorry on their own business and

not in the capacity of servants of the owner. The business of the owner in which they are employed and the purpose for which they are travelling in the lorry need not necessarily be business connected with the lorry. It may be for the purpose of any other business in which their employer is engaged.

I may also add that in this case beyond the statement of the first accused that the passengers were employees of Peter Dias & Co., the owners of the lorry, there is no evidence that the passengers were in fact employees of the Company.

It was submitted on behalf of the owner of lorry that it had not been proved that the passengers were carried with his knowledge and consent. I am unable to deal with this submission as the point is not taken in the petition of appeal.

The appeals are dismissed.

Affirmed.

