

1962

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

B. A. PIYADASA PERERA, Appellant, and TISSERA (P. S. 3968),
Respondent

S. C. 682—M. C. Colombo, 9621/B

*Lorry—User of it without a stage carriage permit—Culpability—Motor Traffic Act,
s. 46 (1).*

Section 46 (1) of the Motor Traffic Act which prohibits the user of an omnibus on a highway except under the authority of a stage carriage permit does not apply to the user of a motor lorry without a stage carriage permit.

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

M. M. Kumarakulasingham, for the Accused-Appellant.

K. Abhanayake, Crown Counsel, for the Attorney-General.

October 1, 1962. H. N. G. FERNANDO, J.—

The accused has been convicted on a charge that "being the driver of motor vehicle to wit hiring motor coach No. 33 Sri 3185" he did drive the same on a public highway when there was no stage carriage permit granted by the Commissioner in respect of the vehicle in breach of section 46 (1) of the Motor Traffic Act.

There was evidence which the Magistrate appears to have accepted to the effect that a number of persons were being carried on the vehicle on the occasion in question, and it is also apparent that the vehicle was not licensed either as a motor coach or as an omnibus. Prima facie, therefore, it was in all probability being used in contravention of those provisions of the Act which require a licence specifically authorizing a carriage of passengers on motor vehicles.

But at the end of its case the prosecution produced, marked P1, a certified extract of the registration of this particular vehicle. It is clear from that extract, and indeed the matter was not contested, that

¹ (1962) 64 N. L. R. 141.

this vehicle has been registered as a motor lorry. That being so, and in the absence of any evidence to the contrary, the vehicle is not a motor coach within the meaning of the Act. Since it was not a motor coach, no stage carriage permit would have been issued authorizing its use for the carriage of passengers as an omnibus.

The charge against the accused was laid under section 46 (1) of the Act which provides that an omnibus cannot be used on a highway without a stage carriage permit. This vehicle not having been shown to be an omnibus but the vehicle having been shown *prima facie* to be a motor lorry; section 46 of the Act does not apply to its user.

It may well be that some offence has been committed by using a lorry for the carriage of passengers, but that was not the charge brought in this case, and there is nothing in the relevant provisions of the Criminal Procedure Code which will enable me now to substitute a conviction for some different offence. Indeed it would be unreasonable to do so in any event, since the defence obviously desisted from leading evidence because they relied on the question of law which had to succeed.

The conviction and sentence are set aside.

Appeal allowed.
