

1940

*Present : Wijeyewardene J.*EKANAYAKE *v.* DEEN.286—*M. C. Teldeniya, 11,650.*

Motor omnibus—Bus stopped by Police Constable—Right of Constable to give evidence of overloading—Motor Car Ordinance, No. 45 of 1938, s. 111 (2) and (6).

A Police Constable who has stopped an omnibus for the purpose of ascertaining whether it has been duly licensed may state in evidence the fact that the omnibus was carrying at the time more than the authorised number of passengers.

Semble, a Constable who has acted in breach of section 111 (6) of the Motor Car Ordinance in stopping a bus to ascertain whether it has been overloaded may give evidence of such overloading.

A PPEAL from a conviction by the Magistrate of Teldeniya.

U. P. Weerasinghe, for appellant.

G. E. Chitty, C.C., for respondent.

September 18, 1940. WIJEYWARDENE J.—

The accused-appellant, who was the conductor of the motor omnibus No. X. 5239, was charged with conveying five passengers in excess of the minimum number specified in the licence for that omnibus.

A Police Constable who gave evidence for the prosecution stated that he and another Police Constable stopped the omnibus in question in order to ascertain whether the vehicle was duly licensed and that he then found that the number of passengers exceeded the maximum number.

specified in the licence. No evidence was led for the defence and the Magistrate convicted the accused under sections III. (2) and 158 of the Motor Car Ordinance, No. 45 of 1938, and sentenced him to pay a fine of Rs. 30.

It was argued in appeal that the conviction was wrong in view of section III. (6) of the Ordinance which reads—

“No omnibus shall be stopped by any police officer for the purpose of ascertaining whether any offence under this section has been committed in respect of that omnibus, unless that officer is of a rank not below that of a sergeant in charge of a station.”

It is sufficient for the purposes of this appeal to state that in fact the vehicle in question was stopped by the Constable to find out whether it was duly licensed and that therefore his action is not in violation of the provisions of section III. (6). I may add that I do not see any reason why a Police Constable who has acted in breach of section III. (6) in stopping an omnibus to ascertain whether it has been overloaded should not give evidence of such overloading.

Disregard of the provisions of section III. (6) by a Police Constable may perhaps amount to an offence under section 150 of the Ordinance or some other provision of the law but cannot possibly affect the competency of the officer in question as a witness in a case under section III. of the Ordinance.

The appeal is dismissed.

Affirmed.
