

1939

Present : Wijeyewardene J.

SMITH v. FERNANDO.

276—M. C. Chilaw, 8,587.

Motor car—Charge against driver of omnibus—“Parking” of car—Halting a bus for taking up and setting down a passenger—Meaning of term “Parking”—Motor Car Ordinance, No. 20 of 1927, ss. 6, 56, 61, 74, regulation 10 (Cap. 156).

The accused, the driver of a bus, was charged under regulation 10 framed under sections 6, 53, and 70 of the Motor Car Ordinance, No. 20 of 1927, with halting the bus on the public road at a place other than a public bus stand or bus halting place for the purpose of taking up or setting down passengers.

The regulation is as follows:—The driver of a hiring car plying for hire within the limits of the Sanitary Board of Madampe, on the roads mentioned, shall not park his hiring car except (a) at a public stand or (b) at a halting place set apart for the purpose by the Chairman and then only so long as is reasonably necessary for the purpose of taking up or setting down passengers.

Held, that the halting of a hiring car on the public road for the purpose of taking up and setting down passengers was not “parking” of the car within the meaning of the regulation.

¹ (1860) 8 Moore's Indian Appeals 262.

A PPEAL from a conviction by the Magistrate of Chilaw.

J. R. Jayawardene, for accused, appellant.

Douglas Janszé, C.C., for complainant, respondent.

September 6, 1939. WIJEYWARDENE J.—

This is an appeal by the accused against his conviction by the Magistrate of Chilaw, under section 84 of the Motor Ordinance, 1927 (*vide* Legislative Enactments, Volume IV., Chapter 156—section 90) and a regulation made under the provisions of the Ordinance. The charge against the accused as set out in the summons served on him reads :

“ You did within the limits of the Sanitary Board area of Madampe being the driver of bus No. X. 6493 halt the same on the public road at a place other than a public bus stand or bus halting place for the purpose of taking up and setting down passengers in breach of regulation No. 10 framed under the Motor Ordinance, No. 20 of 1927, appearing in *Government Gazette* No. 7,858 of June 4, 1931, and you thereby committed an offence punishable under section 84 of Ordinance No. 20 of 1927 ”.

When the accused appeared in Court on the summons served on him the Magistrate read and explained to him the statement of the particulars of the offence contained in the summons in terms of section 187 of the Criminal Procedure Code.

The accused pleaded not guilty and the prosecution called a Police Constable who stated that the omnibus driven by the accused stopped at a place 50 yards away from the bus stand, provided by the Sanitary Board of Madampe and “ dropped two passengers and picked up one passenger ”. He added, “ No buses are allowed to drop or pick up passengers at Madampe except at the bus stand ”.

The proctor appearing for the accused called no evidence but contended that on the evidence led by the prosecution the accused had not committed a breach of regulation 10 referred to in the charge.

The Magistrate held against the contention of the accused’s proctor and found that the accused had “ infringed the provisions of section 10 of *Gazette* No. 7,858 of June 4, 1931 ”. He convicted the accused and sentenced him to pay a fine of Rs. 5.

The motor regulation for the breach of which the accused has been found guilty is one of the regulations framed under sections 6, 53, 58, and 70 of the Motor Car Ordinance, 1927 (*vide* corresponding sections 6, 56, 61, and 74 of Chapter 156).

Regulation 1 defines a “ Public Stand ” and regulation 2 empowers the Sanitary Board to establish public stands and halting places. Regulations 4 to 9 set out the conditions governing the parking of hiring cars in public stands.

Regulations 3 and 10 are as follows :—

Regulation 3.

“ No hiring cars shall be parked within the limits of the Sanitary Board of Madampe except at a public stand so established and notified ”.

Regulation 10.

“The driver of a hiring car plying for hire within the limits of the Sanitary Board of Madampe on the roads below mentioned shall not park his hiring car except (a) at a public stand, or (b) at a halting place set apart for the purpose by the Chairman and then only for so long as is reasonably necessary for the purpose of taking up or setting down passengers or goods.

“Negombo-Chilaw road, Bazaar street also known as Chetty street, Kurunegala road including portion called Jayawardana Crescent, Galahitiyawa road including a portion called Collin place, and Goods Shed road”.

The question of law that arises for decision is whether on the evidence for the prosecution the accused could be said to have “parked” his hiring car within the meaning of regulation No. 10. The word “park” is not defined either in the Motor Car Ordinance, 1927, or in the regulation. The Shorter Oxford English Dictionary gives the meaning of the verb “to park” as “to leave in a park” and defines the noun “park” as “a place where motor cars may be left unattended”.

Webster’s New International Dictionary (1936, 2nd edition) gives a very interesting definition of the word which I reproduce below:—

“To stop and keep (a vehicle, especially a motor vehicle) standing for a time on a public way or to leave temporarily on a public way or in an open space, especially in a space assigned for the occupancy of a number of automobiles. Statutes and Ordinances placing restrictions on parking define the terms variously. In some jurisdictions keeping a vehicle standing with a driver in his place is called live parking, without a driver dead parking. A vehicle halted while awaiting a traffic signal or while allowing an occupant to alight or a waiting passenger to get aboard is not usually regarded as a parked vehicle. A vehicle placed temporarily indoors as in a public garage, is usually said to be stored

“”

If the word “park” in the regulation is given the meaning assigned to it in the Dictionaries the conviction of the accused cannot stand as all that the accused did was to stop the omnibus to “drop two passengers and pick up one passenger”. Is the word “park” then used in any other sense in the regulation under consideration?

Now the word “parked” in regulation 3 cannot possibly mean also “halted” for in that case there will be no meaning in regulation 2 providing for the establishment of halting places. Is there then any reason why the word “park” in regulation 10 should be given a meaning different from what it has in regulation 3? Regulation 3 prohibits the parking of hiring cars in Madampe except at a public stand. Regulation 10 has been framed to make some special provision with regard to the parking of a particular group of hiring cars, namely, cars plying for hire in Madampe on certain public roads. It prohibits the parking of such cars, but creates two exceptions. They may be “parked” at a public stand as under regulation 3 or they may be “parked” at a halting place but only for so long as is reasonably necessary for the purpose of taking up or setting down passengers or goods. According to this view what the framers of the regulations intended to do by regulation 10 was to prohibit

the parking of hiring cars plying on certain roads except in two groups of places and subject to certain conditions. Regulation 10 which then prohibits the parking of cars cannot be invoked to sustain a charge against a driver for halting a car. The driver of a hiring car charged under regulation 10 could plead any one of the following defences:—

- (a) That his car did not ply for hire on certain roads.
- (b) That he did not park his car anywhere.
- (c) That the place he parked his car was a public stand.
- (d) That the place he parked his car was a halting place and that he did not keep his car for a period of time longer than was reasonably necessary for the purpose of taking up or setting down passengers or goods.

The accused in this case pleads the defence set out in (b) above.

The question may also be considered in another way. If the word "to park" has the meaning "to halt" in regulation No. 10 then the regulation prohibits the halting of a hiring car except (a) at a public stand, (b) at a halting place for so long as is reasonably necessary for the purpose of taking up or setting down passengers or goods.

But the fourth schedule to the Motor Car Ordinance contains regulations applicable to hiring cars and regulation 3 of these regulations enacts—

"No omnibus shall be stopped or allowed to stand on a highway in an urban area, except—

- (a) in the event of a breakdown and then only for so long as may be necessary to enable reasonable repairs to be effected; or
- (b) on a public stand provided or allotted for that purpose and indicated as such by a notice exhibited by the licensing authority and then only on payment of such fees, and subject to such regulations for the use thereof as may be prescribed or made under the Motor Car Ordinance and subject to regulation 4 of these regulations; or
- (c) at a stopping place indicated as such by a notice exhibited by the licensing authority and then only for so long as is reasonably necessary for the purpose of taking up or setting down passengers or goods and subject to regulation 4 of these regulations; or
- (d) in a parking place provided or indicated by regulations or notice under section 56 of the Motor Car Ordinance.

These regulations could be altered or added to by regulations under section 71 of the Ordinance (*vide* Legislative Enactments, Vol. 4, Chapter 156, section 75). Regulation 10 published in the *Government Gazette* No. 7,858 of June 5, 1931, is not a regulation made under section 71 of the Ordinance. Moreover, if the word "park" in regulation 10 means "halt" the only effect of that regulation would be to replace regulation 3 in the Fourth Schedule to the Ordinance as otherwise the two regulations will be overlapping. If the effect of regulation 10 is to replace regulation 3 in the Fourth Schedule then the framers of regulation 10 must be taken to have intended to refuse the right to the driver of an omnibus to halt his car at any place in the event of a breakdown which right had been specifically given by regulation 3 in the Fourth Schedule. It is not possible to say that the framers of the regulation No. 10 had such an intention.

In this connexion it is interesting to refer to the definition of "parking" given in the new Motor Ordinance, No. 45 of 1938, to which my attention has been drawn by the Crown Counsel. "Parking" is defined in that Ordinance as meaning "the bringing of a motor car to a stationary position or causing it to wait for any purpose other than that of immediately taking up or setting down persons or goods".

I am therefore of opinion that regulation No. 10 does not enable a charge to be framed against a driver for "halting his hiring car for the purpose of taking up and setting down passengers".

The proctor who appeared for the accused in the lower Court contended that the charge could not be sustained under regulation 10 but the prosecution did not move to amend the charge. I do not think that in the circumstances of the case I should alter the charge and send the case back for further proceedings.

I shall therefore quash the conviction and leave it to the proper authorities to take any other proceedings if they think it desirable to do so.

Quashed.
