

expression in the proviso to paragraph B of Part I of the Act. We are not concerned with this aspect of the matter in the present appeal. However, in dealing with the question raised before them, the learned judges have incidentally construed the relevant words "rate applicable" as meaning the rate actually applied; and their observations do support the view taken by the Saurashtra High Court in the present case.

The result is the appeal fails and is dismissed with costs.

Appeal dismissed.

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(and connected appeal)

(JAFER IMAM and J. L. KAPUR, JJ.)

Motor Vehicle—Driving in contravention of terms of permit—Driver, if liable—Motor Vehicles Act (IV of 1939), ss. 42(1) and 123.

The respondents who were drivers, not being owners, were found driving motor vehicles in contravention of the terms of the permits granted under s. 42(1) of the Motor Vehicles Act. They were prosecuted and were convicted under s. 123 of the Act and sentenced to pay fine. The High Court held that under s. 42(1) it was the owner alone who was interdicted from using or permitting the use of the vehicle save in accordance with the conditions of the permit and that, accordingly, if the vehicle was used against the conditions of the permit only the owner, and no one else, including the driver, could be guilty of the contravention under s. 123.

Held, that drivers of the motor vehicles were also liable under s. 123 of the Act for driving in contravention of the terms of the permits. Section 42(1) contemplates not only prohibition against the user by the owner of the vehicle or his permitting its user contrary to the conditions of the permit but it also contemplates that the vehicle itself shall be used only in the manner authorised by the permit. Section 123 penalises all

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persons who drive a motor vehicle or cause or allow a motor vehicle to be used or let out a motor vehicle to be used in contravention of the provisions of s. 42(1).

CRIMINAL APPELLATE JURISDICTION : Criminal Appeals Nos. 115/56 & 83/57.

Appeal by special leave from the judgment and order dated September 13, 1955, of the Allahabad High Court in Criminal Reference No. 359 of 1952, arising out of the Reference dated August 4, 1952, by the Sessions Judge, Gorakhpur, under section 438 of Criminal Procedure Code.

G. C. Mathur and *C. P. Lal* for the appellant (In both the appeals).

The respondent did not appear.

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Kapur J.

KAPUR, J.—These two appeals involve a common question of law and may be disposed of by one judgment.

In Criminal Appeal No. 115/56 the respondent Bansraj, driver of a public carrier, of which he was not an owner, was found carrying 23 passengers instead of 6 allowed under the conditions of permit No. 42-926/123 granted to the owner. The vehicle was checked by a Head Constable who on counting the number of passengers found them to be 23. Bansraj respondent was prosecuted under s. 42 read with s. 123 of the Motor Vehicles Act, (IV of 1939), as it existed at the date of the offence; (to be called the Act in this judgment). Bansraj respondent pleaded not guilty and stated that only six passengers were being carried. He was tried summarily by a First Class Magistrate at Gorakhpur and found guilty under s. 123 of the Act and sentenced to pay a fine of Rs. 200 and in default three months' rigorous imprisonment. He went in revision to the Sessions Judge, Gorakhpur, and there it was contended that he was only a driver and therefore could not be convicted under s. 123 of the Act. The learned Judge accepted that contention and being of the opinion that a mere driver could not be so convicted, he recommended the case to the High Court

under s. 438 of the Criminal Procedure Code. The matter came up as Criminal Reference No. 359/52 before Mukherji J., who referred it to a Division Bench and was heard by Desai and Upadhyaya JJ. The interpretation which the High Court put on s. 42(1) was that under the section it was the owner alone who was interdicted from using or permitting the use of the vehicle save in accordance with the conditions of a permit and therefore if the vehicle was used against the conditions of the permit, no one else, including the driver, could be guilty under s. 123 of contravention of the terms of the permit.

The reference was therefore accepted and the conviction and sentence of the respondent was set aside. The State has come up in appeal pursuant to special leave against the judgment and order of the High Court of Allahabad.

In Criminal Appeal No. 83/57 respondent Vishwanath the driver of a private station wagon W.B.C. 8744 and the owner Sunder Singh were both prosecuted for carrying 13 passengers from Moghulsarai to Banaras in the station wagon which had no permit for carrying passengers on hire. Out of these 8 persons were travelling as passengers who had been charged fares. The Magistrate acquitted Sunder Singh giving him the benefit of doubt and sentenced the driver to a fine of Rs. 500 under s. 123 of the Act and in default to simple imprisonment for six months. This enhanced sentence was given because he had four previous convictions under the Act. The respondent Vishwanath took an appeal to the Sessions Judge, Banaras, who set aside the conviction holding that the driver of a vehicle could not be convicted under s. 123 for contravention of the conditions of the permit. The State took an appeal to the High Court and this appeal also was heard by Desai and Upadhyaya JJ. who dismissed the State's appeal and the State has come to this Court pursuant to special leave.

The question for decision in both these appeals is the same i.e. the liability of the driver of a motor vehicle used in contravention of the terms of the permit under s. 42(1) of the Act and this will depend

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upon the construction to be put on ss. 42 and 123 of the Act. At the time when the Respondents in the two appeals are alleged to have committed the offence s. 42(1) provided :—

“No owner of a transport vehicle shall use or permit the use of the vehicle in any public place, save in accordance with the conditions of a permit granted or countersigned by a Regional or Provincial Transport Authority authorising the use of the vehicle in that place in the manner in which the vehicle is being used.....”

And s. 123 of the Act provided :—

“Whoever drives a motor vehicle or causes or allows a motor vehicle to be used or lets out a motor vehicle for use in contravention of the provisions of sub-section (1) of section 42 shall be punishable for a first offence with fine which may extend to five hundred rupees and for a subsequent offence if committed within three years of the commission of a previous similar offence with a fine which shall not be less than one hundred rupees and may extend to one thousand rupees”.

The Act regulates the use of motor vehicles and for that purpose its various provisions provide for control on motor vehicles and on those who own them and those who drive them. Chapter II provides for licensing of motor vehicles, Chapter II-A for licensing of conductors, Chapter III for registration of motor vehicles and Chapter IV for control of transport vehicles. Chapter IX deals with offences, penalties and procedure. Section 3 in Chapter II is headed necessity for driving licences. Section 22 in Chapter III is headed necessity for registration. The marginal note of section 42 in Chapter IV is necessity for permits. There are several provisions in the Act contained in Chapter VI which provide for control of traffic, requiring the drivers of motor vehicles to observe speed limits, to obey duty signals and there are other provisions for subserving safety in regard to driving of motor vehicles. The provisions of Chapter IX show how particular the legislature is in regard to the road safety.

With that object in view the Act makes provision for

a complete control over the owners of motor vehicles and over the drivers of such vehicles and makes elaborate provisions in regard to every aspect of motor traffic and penalises every one who contravenes the provisions of the Act including the seller of a defective motor vehicle.

Section 42 is headed "necessity for permits". The language of the section employs prohibitive or negative words and therefore its legislative intent is that the statute is mandatory. The negative words convey a forbidding of the doing of the act prohibited and from the use by the legislature of the words "no owner of a transport vehicle shall use or permit the use" in s. 42(1) a total prohibition against user of the vehicle except in accordance with the conditions of the permit is indicated. Further the words "authorizing the use of the vehicle in that place in the manner in which the vehicle is being used" have reference to the transport vehicle itself and not to the owner that is to say s. 42(1) does not only prohibit the owner from using the transport vehicle contrary to the conditions of the permit but there is an express provision in the section that the permit authorises the use of the vehicle in the place and in the manner it is being used, and that it is to be used in accordance with the conditions of the permit. Thus construed s. 42(1) contemplates not only prohibition against the user by the owner of the vehicle or his permitting its user in a manner contrary to the conditions of the permit but it also contemplates that the vehicle itself shall be used in the manner authorised by the permit. The prohibition therefore is not merely against the use by the owner but against the use contrary to the conditions of the permit of the vehicle itself.

Section 123 is in the chapter dealing with offences and penalties. The marginal note shows what the section intends to punish, and that the intention was to provide for punishment of every person who drives a motor vehicle in contravention of the provisions of sub-s. (1) of s. 42. We have said above that s. 42(1) requires the use of a transport vehicle in accordance

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with the conditions of the permit and that it does not merely prohibit its user by the owner contrary to the conditions of the permit. Therefore when a transport vehicle is driven by any one in contravention of the terms of the permit, it is in contravention of the provisions of s. 42(1). Section 42(1) is not a penalising section. For its breach s. 123 provides the penalties. The legislature advisedly did not use the word 'owner' in s. 123 of the Act. Having by s. 42(1) prohibited an owner from using or permitting the use of a transport vehicle contrary to the conditions of the permit and having clearly stated therein that the permit granted by the Regional or the Provincial Transport Authority authorised the use of the vehicle in the manner in which the vehicle was to be used, the legislature provided punishment for anyone who drove a motor vehicle or caused or allowed a motor vehicle to be used or lets out a motor vehicle to be used in contravention of the provisions of sub-s. (1) of s. 42. It is for this reason that the Legislature used the word 'whoever' and did not limit the punishment set out in s. 123 to the owner himself. The Legislature intended that no motor vehicle should be driven by anyone contrary to the provisions of s. 42(1) and that if it was driven in contravention of those provisions he was liable to punishment. The two sections read together do not lead to the conclusion that s. 123 only makes the owner liable to punishment. The words "or causes or allows a motor vehicle to be used, or lets out a motor vehicle for use in contravention of the provisions of sub-s. (1) of section 42" may well refer to the owner. That is to say, this part of s. 123 punishes an owner for contravening the provisions of s. 42(1). The driving of the motor vehicle, however, is a different matter. It could be driven by the owner himself or by some one other than the owner. Therefore, the words "whoever drives a motor vehicle.....in contravention of the provisions of sub-s. (1) of section 42" would cover both the owner and one who is not the owner. What is made punishable is the driving of the motor vehicle by anyone contrary to the provisions of s. 42(1). That is to say, the motor vehicle

cannot be driven by anyone contrary to the conditions of the permit relating to that vehicle.

It may here be remarked that there is a preponderance of judicial opinion in favour of the view that a driver of a motor vehicle who is not its owner and who drives in contravention of the conditions of a permit under s. 42(1), would fall within s. 123 of the Act. Except the High Court of Allahabad the other High Courts are in accord in holding that such driver would be guilty under s. 123. *Public Prosecutor v. Jevan* ⁽¹⁾; *Provincial Government, C. P. & Berar v. Mohan Lal* ⁽²⁾; *Chandra Deo Singh v. The State* ⁽³⁾; *Teja Singh v. The State* ⁽⁴⁾; *Kalyan Lal v. The State* ⁽⁵⁾; *The State v. Ram Chandra* ⁽⁶⁾; *The State v. Motilal* ⁽⁷⁾. All these cases have proceeded on the view that the words 'whoever drives' are wide enough to include the case of a non-owner driver who contravenes the provisions of s. 123. Even in the High Court of Allahabad in an earlier decision *Uma Shankar v. Rex* ⁽⁸⁾, Aggarwala J., was of the opinion that a driver driving in contravention of the conditions of a permit would fall within s. 123 of the Act.

In our opinion, the interpretation put in this case by the Allahabad High Court on ss. 42 and 123 is erroneous. We would therefore allow these appeals, set aside the orders of acquittal and restore those of the Magistrates convicting the respondents.

Appeals allowed.

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(1) A.I.R. 1941 Mad. 845.
(3) (1954) 59 C. W. N. 787.
(5) A.I.R. 1954 Raj. 250.
(7) A.I.R. 1957 Raj. 63.

(2) A.I.R. 1944 Nag. 89.
(4) A.I.R. 1952 Punj. 45.
(6) A.I.R. 1955 Raj. 183.
(8) A.I.R. 1950 All. 234.