

1937

Present : Fernando A.J.

COOPER v. DE SARAM.

365—M. C. Colombo, 37,335.

*Motor car—Driver overtaking traffic—Charge of causing obstruction—Risk of accident—Failing to keep to left side of road—Ordinance No. 20 of 1927, s. 44 (2) and (4).*

Where the driver of a motor car is charged under section 44 (4) of the Motor Car Ordinance with overtaking traffic so as to obstruct traffic proceeding in the opposite direction,—

*Held*, that it must be established that the act of the accused caused the risk of an accident to a vehicle proceeding in the opposite direction.

Where the driver failed to keep to the left side of the road by reason of the fact that he was attempting to overtake another car,—

*Held*, that he was not guilty of an offence under section 44 (2) of the Motor Car Ordinance.

**A** PPEAL from a conviction by the Municipal Magistrate of Colombo.

*Gratiaen.* for accused, appellant.

T. S. Fernando, C.C., for respondent.

*Cur. adv. vult.*

August 30, 1937. FERNANDO A.J.—

The accused-appellant in this case was charged with overtaking traffic proceeding along Darley road in the direction of Maradana so as to obstruct traffic proceeding in the opposite direction in breach of section 44 (4) of Ordinance No. 20 of 1927. He was also charged with failing to keep to the left side of the road in breach of section 44 (2) of the Ordinance. The Municipal Magistrate found the appellant guilty of both these charges and imposed a fine of Rs. 5 on each charge in default five days' simple imprisonment.

The facts as found by the Magistrate are these. The accused was driving along Darley road towards Maradana, and near St. Joseph's College, the accused attempted to overtake a car which was going ahead. While attempting to overtake that car, the appellant saw another car coming from the opposite direction, and that car was apparently about to overtake three bullock carts that were also coming from the direction of Maradana. When he saw the car overtaking the carts, and coming towards him, the appellant thought that there was a possibility of a collision as that car was driven very fast, and he then cut across the road to the extreme right apparently in front of the bullock carts. The Magistrate then came to the conclusion that there was no immediate danger of any collision, and that the action accused took in cutting across the road was unnecessary. With this view I do not disagree, but the charge against the accused was that he did obstruct traffic proceeding in the opposite direction, meaning the three bullock carts and the motor car that was coming from Maradana, and on this point it seems to me that there is no evidence of any obstruction. Sub-Inspector Cooper of the traffic Police gave evidence, but there is nothing in that evidence to

indicate that when the accused crossed the road to his right, he passed so close to the bullock carts as to create any risk of an accident. Sub-section (10) of section 44 lays down that "for the purpose of this section a motor car obstructs other traffic if it causes risk of accident thereto," and however unnecessary or negligent the act of the accused may be, I do not think the conviction can be upheld in the absence of evidence that the act of the accused did obstruct either the bullock carts or the car coming from Maradana, in the sense in which that expression is defined in sub-section (10). As far as I read this section, there is nothing to prevent the driver of a motor car crossing the road for any purpose, but in so crossing the road he must take care that he does not cause the risk of any accident to a vehicle proceeding in the opposite direction, and in the absence of evidence to the effect that the act of the accused did cause risk of accident, I do not think a conviction can be sustained.

With regard to the second charge it seems to me that the accused did not commit any offence in failing to keep to the left side of the road. Sub-section (2) provides that a car which is being overtaken by another car or which meets another car shall be kept to the left side, but the sub-section proceeds to enact that a car which is overtaking other traffic shall be kept on the right side of such traffic, and if the accused did attempt to overtake a motor car which was ahead of him, it seems obvious that he was no longer bound to keep to the left side of the road. It seems to me that the act of the accused, if it could be the basis of any charge at all, might give rise to a charge of obstruction under sub-section (4) or (5), and that is the first charge which I have already dealt with. In these circumstances, I think the conviction was wrong and I would acquit the accused.

*Appeal allowed.*

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