

1938

*Present : Keuneman J.*

HODSON v. CASSIM.

395—P. C. Kandy, 58,439.

*Motor Car Ordinance—Possessing a car without a licence—Presumption of possession—Rebuttal of presumption—Ordinance No. 20 of 1927, ss. 20, 24, and 80.*

The accused was charged with possessing or using a car for which a licence was not in force. The accused admitted the ownership of the car but stated that, although he was the registered owner, he had not used it and that it had been in the garage since he bought it. He had not given notice of non-user nor had the registration been cancelled.

*Held*, that the accused was guilty of possessing a car without a licence. Mere production of the register and proof that the accused's name appears there as the registered owner is not sufficient to prove that the accused possessed or used the car.

<sup>1</sup> I. L. R. Allahabad, Vol. 28, p. 207, reported at p. 136 of Vol. 3, Allahabad in the Reprint of Indian High Court Reports.

The dictum of Driberg J. in *G. A., Central Province v. Beeman* (33 N. L. R. 343) that the presumption of possession can only be rebutted by establishing compliance with section 22 or 24 of the Motor Car Ordinance doubted.

*G. A., Western Province v. Bilinda* (3 Cr. A. R. 38) referred to.

**A** PPEAL by the complainant with the sanction of the Solicitor-General.

*Cur. adv. vult.*

*Jansze, C.C.*, for complainant, appellant.

No appearance for accused, respondent.

August 30, 1938. KEUNEMAN J.—

This is an appeal by the complainant with the sanction of the Solicitor-General. The accused-respondent was charged with possessing or using on or about January 1, 1938, motor car D 1,393 for which a motor car licence was not in force, in contravention of section 30 (1) of the Motor Car Ordinance, No. 20 of 1927, an offence punishable under section 84 of the Ordinance. The learned Police Magistrate after trial discharged the accused.

The evidence in the case is very short. The licensing clerk of the Kandy Kachcheri gave evidence that the accused was the registered owner of the car D 1,393 from December 17, 1937, and had obtained no license for 1938, and that no notice of non-user was given and registration had not been cancelled. This clerk had no knowledge of possession or user.

The accused also gave evidence, and stated that from the time he bought the car, the car had been in the garage, and it had not been used at all on the road. In cross-examination the accused stated that he was the registered owner of the car, that the car was registered in his name, that he had not sold it to anyone but that he had not used it.

I have been referred to a number of authorities. In *G. A., Central Province v. Beeman*<sup>1</sup>, Driberg J. after considering sections 18, 22, and 24 and Form 2 in the Third Schedule of the Ordinance held that "once a person has been registered as owner of a car on his declaration that he is entitled to the possession of it, he must be regarded as the person in possession of it, unless there has been a transfer of possession in the manner provided for in the Ordinance, or unless by the cancellation of the registration it ceases to be a car which can be the subject of possession for the purposes of the Ordinance".

This decision was followed by McDonell C.J. in *De Silva v. Rosen*<sup>2</sup>, and by Soertsz A.J. in *Misso v. De Zoysa*<sup>3</sup>.

In *Government Agent, Western Province v. Bilinda*<sup>4</sup>, decided by Garvin J. there was evidence that though the accused in the case had bought a car at a garage, and though he was registered as the owner of it, he never took possession of it at all. In that case a motor licensing clerk produced

<sup>1</sup> 33 N. L. R. 343.

<sup>2</sup> C. L. Weekly 98.

<sup>3</sup> 4 C. L. Weekly 81.

<sup>4</sup> 3 C. A. R. 38.

a register, which showed that the car in question appeared in the register and that the name of the owner of the car set out in the register was the name of the accused. Apart from those entries in the register there was nothing to show that the accused had possessed or used the car. The accused was acquitted. Garvin J. held that there was no evidence of possession.

In *Chairman, Sanitary Board, Jaffna v. Sebamali*<sup>1</sup>, decided by Dalton J. the only evidence was that of a licensing clerk who produced the certificate of registration showing that the bus in question was registered in the name of the accused woman from December 9, 1935, and that the bus had not been licensed for 1936. The accused in that case gave evidence on her own behalf and stated that she had never used or possessed the bus in question, and did not know anything about it. The accused in this case also was acquitted.

These cases are not easy to reconcile, but I think it is possible to do so. I agree with Justices Garvin and Dalton that the mere production of the register, and proof that the accused's name appears there as the registered owner is not sufficient to prove that the accused possessed or used the vehicle in question. But where it has been proved that application has been made for the registration of the vehicle in the name of the accused by the accused himself or at his instance, I think different considerations apply, and that it is possible in such circumstances to presume *prima facie* that the accused possessed the vehicle thereafter. The signing of the declaration in accordance with Form 2 of the Third Schedule to the effect that the applicant "is entitled to possess" the vehicle has been emphasized by Driberg J. himself. With deference, however, I do not think that the presumption of possession can only be displaced by a compliance with sections 22 or 24. Certainly the declaration is only to the effect that the applicant is "entitled to possess" the vehicle, and not that the applicant is in actual possession of the vehicle. I think the presumption of possession may be rebutted by the accused in any way he wishes, for example by such facts as were established by the accused in the case of *The Government Agent, Western Province v. Bilinda* (*supra*).

It now remains for me to apply these findings of law to the facts of the present case. Had the only evidence in this case been the evidence for the prosecution, I think I should not have interfered with the order of discharge. The witness for the prosecution did not produce the register, and made no attempt to produce the application for registration. The case however did not rest there, for the accused himself gave evidence. He stated that he was the registered owner and that the car was registered in his name. He admitted that he had bought the car and had not sold it, but said that since he bought the car, the car had been in the garage. It is not clear on this evidence whether the car was in the accused's garage or in some other garage and if in another garage, under what circumstances it remained there. On this evidence, I think it may be presumed that the accused was in possession of the car, and that the presumption of possession had not been rebutted.

<sup>1</sup> 16 C. L. Rec. 6.

I set aside the order of discharge and convict the accused under section 30 (1) of possessing the car for which a motor car licence was not in force. In the circumstances of the case I think a fine of Rs. 35, viz., the amount of the licence fee due for 1938, under section 30 (3) is sufficient, and I accordingly impose that sentence.

*Set aside.*

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