

1932

Present : Macdonell C.J. and Garvin S.P.J.

VANDERSTRAATEN v. NARAYANASWAMY.

39—P. C. Matale, 4,968.

*Motor car—Cab licensed to carry passengers—Used for conveying mails—
Infringement of licence—Ordinance No. 20 of 1927, ss. 30 and 31.*

It is an offence to use a motor cab licensed to carry passengers for conveying mail bags.

CASE referred by Akbar J. to two Judges. The accused, the driver of a motor cab licensed to carry passengers, was convicted of a breach of section 31 of the Motor Car Ordinance in that he used the car in contravention of the conditions inserted in his licence, to carry mail bags.

It would appear that the accused carried a few mail bags on behalf of the owner, who had a contract with the Postmaster-General for the carriage of mails.

E. Navaratnam (with him *C. T. Olegesagaram*), for accused, appellant.—There is no provision in the Ordinance which accused has contravened. There is no express prohibition against carriage of goods in hiring car.

In case of omnibuses there is express provision made for carriage of goods. There is no such provision in case of hiring car.

Section 31 does contemplate the insertion of certain provisions in licence. If legislature intended to prohibit carriage of goods in hiring car, the licence would bear such prohibition.

Section 68, sub-section (1), makes provision for conductor searching for property left behind. Hence there is no absolute prohibition against carriage of property in hiring car.

The Ordinance has been enacted for two purposes—safety of public and revenue. In case of private car, the scale of charges depends on weight of car. There is no loss caused to revenue in this instance.

¹ (1906) 3 Cal. L. J. 475.

² 46 Madras 90.

To bring an act under the penal law, such act must be within the words of the Ordinance and also within the spirit of that Ordinance (*Maxwell on Interpretation of Statute 464, ch. 10.*) This maxim should be applied to this case.

The accused may have treated the mail bags as property of his master which had been entrusted to him.

M. W. H. de Silva, Acting D.S.-G. (with him *Wendt, C.C.*), for the Crown.—The law might contemplate other things besides loss of revenue, for instance, the safety of the public.

Section 30 says that no motor car should be used for any purpose other than that for which licence has been issued. If a person goes beyond purpose of licence then he commits an offence. Personal luggage does not come into question in this case. This is a case of purely carrying goods.

Chapter 86, page 17, of *English Hackney Carriage Act* provides that a vehicle may carry a reasonable quantity of luggage. There is no such provision in our Ordinance. Counsel cited *Pillai v. Moss*?

October 4, 1932. MACDONELL C.J.—

This was a case referred by Akbar J. to a bench of two Judges.

Accused, the driver of a motor cab licensed to carry five passengers including the driver, carried in it on the day in question 7 mail bags, 5 empty mail bags and 1 letter box, and is said thereby to have committed a breach of section 31 in that he used the car in contravention of the conditions lawfully inserted in his licence. It was not denied that he had carried the mail bags as stated in the charge. His licence was not produced here or below but it seems to have been agreed that it was identical with that given as No. 15 in the Third Schedule of Ordinance No. 20 of 1927, which states that the licence is "To carry . . . passengers." He was convicted, warned and discharged, being also convicted on another charge not material to the present appeal.

It was argued for the appellant that as the carriage of goods by motor cab is not forbidden in a motor cab licence, the accused could not be convicted.

In reply it was argued that sections 30 and 31 of Ordinance No. 20 of 1927 make a comprehensive enactment. Section 30 (1) says "No person . . . shall use a motor car" (this by definition includes motor cab) "for a purpose not authorized by the motor car licence in force for the use thereof", and section 31 says "A motor car shall not be used in contravention of any condition or other provision lawfully inserted in the motor car licence." It is not contended that the condition in the licence "to carry . . . passengers" is one that cannot be lawfully inserted in a motor cab licence; clearly it can. The combined effect of these sections seems to be this, that by section 31 it is an offence to infringe any condition or provision inserted in the licence, and that by section 30 it is an offence to use the motor car for some purpose that is not authorized. If you use a car for something that is forbidden, that

would be an offence against section 31; if you use it for something not expressly permitted, that would be an offence also, but against section 30 (1). The sections together say that a motor car may not be used contrary to what the licence provides, and likewise that it may not be used for something as to which the licence is silent. To do the former would be the infringement of a positive provision, to do the latter, of a negative provision, but the effect of section 31 and 30 (1) is to make each an offence.

Now the condition contained in a motor cab licence is that it is to be used for carrying a certain number of passengers—for the carriage of “passengers” be it noted; then it can be argued that in carrying goods such as mail bags, this would be to contravene the condition of a licence, section 31, which makes mention only of passengers, and so to commit an offence against section 31. Suppose it to be argued that the licence does not say that you may not carry goods, and that what is not expressly prohibited must be supposed to be tacitly allowed, then section 30 has to be considered, which says that a person must not use a car for a purpose not authorized by his licence, and since confessedly carriage of goods is not a thing authorized in a motor cab licence, then this section 30 cuts away the argument that what is not expressly prohibited is tacitly permitted, and establishes the proposition that, the carriage of goods in a motor cab not being a purpose authorized by the licence, it is an offence to do so by the force of this section 30; see *Pillai v. Moss*¹ to a like effect.

If we examine the rest of the law, Ordinance No. 20 of 1927, we find that it seems intended that a motor cab should carry passengers only. Its definition in section 2 (1) is “a hiring car having seating accommodation for not more than 7 passengers”, and hiring car itself is defined in the same section as “a motor car used for the conveyance of passengers for fee or reward”. We may also notice the form 11 in the Third Schedule of this Ordinance. This is an application for “motor car” licence for “motor cab”, and in it the applicant asks for “a motor car licence to use the said motor car as a motor cab to carry passengers in addition to the driver”. Below this form is given another form, namely, the report of the examiner on the motor cab in question. In that report he certifies that the motor car “is fit to be licensed to carry passengers in addition to the driver, and to ply for hire as a motor cab in” In this connection it is important to contrast the form 12 in the same schedule which is that of application for a motor car licence for an omnibus. In this the applicant asks for a licence to use a motor car “as an omnibus carrying passengers in addition to the driver and conductor and goods up to a weight of”, and the report of the examiner has to certify to its fitness for those purposes, that is to say, passengers and goods.

The English case cited to us—a brief report of which appeared in *The Times Weekly Edition* of April 28, 1932, and a fuller report in a daily *Times* of a just previous date—turns too much on the particular words of the English statute infringed to be very helpful. Besides, that statute dealt with a different matter, namely, the class in which the particular vehicle ought to be placed for revenue purposes.

¹ 31 N. L. R. 240.

The present appeal deals solely with a case of carrying goods in a motor cab; it does not affect the personal luggage of the passengers that the motor cab is licensed to carry. Mail bags are surely goods rather than personal luggage. It would be a great inconvenience to persons using motor cabs if they could not take with them their personal luggage, but the present case does not deal with that question. If the meaning of the law is that a motor cab is not licensed when carrying a passenger to carry his personal luggage also, and that to do so is an offence—as to which I express no opinion—then it is for the legislature to apply such remedy as may be necessary, and in the meantime for the police to exercise discretion as to what prosecutions they institute.

For the above reasons I think this appeal must be dismissed.

GARVIN S.P.J.—I agree.

Appeal dismissed.

