

1956

*Present: Sinnetaṃby, J.*

SRI LANKA OMNIBUS CO., LTD., Appellant, and PERERA  
(P. S. 2466), Respondent

*S. C. 136—M. M. C. Colombo, 89,369*

*Motor Traffic Act, No. 14 of 1951—Vehicle emitting excessive smoke—Liability of owner or driver—Sections 3, 19, 192, 216 (2) (b), 239—Motor Traffic (Construction of Vehicles) Regulations, 1951, Regulation 12—Quantum of evidence.*

Failure to comply with a Regulation which does not expressly prohibit user, but only relates to construction and equipment, of a motor vehicle does not amount to an offence under the Motor Traffic Act. A contravention, therefore, of Regulation 12 of the Motor Traffic (Construction of Vehicles) Regulations by "failing to so construct and maintain a motor vehicle in such condition as to prevent the emission of smoke in such quantity as to be a nuisance" is not punishable under section 216 (2) (b) of the Motor Traffic Act.

Assuming that a failure to prevent emission of smoke in consequence of faulty construction or lack of proper maintenance of a vehicle is an offence, there must be specific evidence that the vehicle in question was examined by a competent person at the time of the offence or thereafter.

**A**PPEAL from a judgment of the Municipal Magistrate's Court, Colombo.

*R. A. Kannangara*, for the accused-appellant.

*B. E. de Silva*, Crown Counsel for the complainant-respondent.

*Cur. adv. vult.*

November 26, 1956. SINNETAMBY, J.—

The appellant Company was charged in this case with failing to so construct and maintain motor bus bearing No. I.C. 1217 in such condition as to prevent the emission of smoke from the said vehicle in such quantity as to be a nuisance to P. S. 2466 Perera. It was sought to make the Company liable under section 216 (2) (b) of the Motor Traffic Act. The appellant Company is the registered owner of the vehicle and the charge alleges that it acted in contravention of Regulation 12 of the Motor Traffic (Construction of Vehicles) Regulations of 1951. The learned magistrate found the appellant guilty. This appeal is against that conviction.

The regulations in question, it will be observed, were made under sections 19 and 239 of the Motor Traffic Act. Section 239 is the section which empowers the minister to make regulations under the Act and section 19 provides that regulations may be made in regard to the construction and equipment of motor vehicles. Section 3 provides that no vehicle should be registered unless it complies with the provisions of the regulations made in regard to construction and equipment. It is thus manifest that the primary object of the regulations in question was to lay down conditions in regard to construction and equipment which had to be complied with before a vehicle was first registered. Section 192 provides for the making of regulations in regard to the use of motor vehicles and the minister has made some regulations under the provisions of this section which had been published in the same Gazette of 27/2/1952. It will thus be seen that one set of regulations dealt with "construction" while another set dealt with "use". Section 12 of the (Construction of Vehicles) Regulations under which the charge was preferred is to the following effect:

"Every vehicle must be so constructed and maintained in such condition as to prevent the emission of smoke, grease, oil, ashes, water, steam or visible vapour from the motor vehicle in such quantity as to be a nuisance or to cause damage to any highway or annoyance or damage to any person."

There is no regulation under the (Use of Vehicles) Regulations which prohibits the user of a motor vehicle which is not constructed or maintained in the manner provided for by Regulation 12 quoted above.

It was contended in appeal that there was no prohibition against user provided for either in the Act or by regulations of a vehicle which did not comply with the requirements of the (Construction of Vehicles) Regulations. Reliance was placed upon the judgment in the case of *Thomas Singho v. S. I. Police, Gampaha*<sup>1</sup>. Palle, J. there held that in the absence of a prohibition against the user of a motor vehicle which does not conform to the (Construction of Vehicles) Regulations it could not be said that the use of a vehicle which did not so conform was in contravention of the regulations within the meaning of section 216 (2) of the Motor Traffic Act. The learned judge drew attention to the absence in the Motor Traffic Act of a section corresponding to section 5 of the

<sup>1</sup> (1954) 55 N. L. R. 395.

Motor Car Ordinance of 1938 which expressly prohibited the user of a motor vehicle which did not comply with regulations made under the Ordinance. There is also similar provision in the Motor Traffic Act in England. But in the Motor Traffic Act of 1951 this provision has been omitted. Failure, therefore, to comply with a regulation which did not expressly prohibit user but only related to construction and equipment did not, the learned judge held, amount to an offence. With this view I respectfully agree.

Though Counsel did not refer to it, my attention was drawn to a case in which Fernando, J. had made some observations by way of obiter on the reasoning of Pulle, J. in the above case. This is the case of *Fernando v. Amerasekera*<sup>1</sup>. In that case the charge was laid under regulation 6 of the (Construction of Vehicles) Regulations which required a vehicle to be equipped with at least one efficient braking system with two means of operation. The vehicle in question was in fact equipped with a braking system that conformed to the requirements of the regulation in question but it was not at optimum efficiency. The learned judge held that there was no breach of Regulation 6 of the (Construction of Vehicles) Regulations but that there was a breach of Regulation 4 of the Motor Traffic (Use of Vehicles) Regulations which required the braking system to be maintained in good and efficient working order while the vehicle is being used on the highway. The learned judge then referred to the case of *Thomas Singho v. S. I. Police, Gampaha*<sup>2</sup>, and stated that he did not agree that the legislature did not intend that a failure to equip a motor vehicle with an efficient braking system in terms of Regulation 6 of the (Construction of Vehicles) Regulations should be punishable as an offence. He referred to sub-section (2) of section 216 and stated that although it did not cover the use of a vehicle the sub-section penalised the owner and the driver "if anything is omitted to be done in connection with a motor vehicle in contravention of . . . . . any regulation". He added that the terms of this provision "are wide enough to include the case of a vehicle in relation to which an efficient braking system or any other equipment is required by any regulation to be fitted to motor vehicles". With this view I regret I am unable to agree. Sub-section (2) of section 216 obviously contemplates the user of a motor vehicle; for, unless the vehicle is being used it will not be possible to ascertain the driver who is made equally liable as the owner for anything which is done or omitted to be done. In the case of an Omnibus Company no one can say who the driver of an omnibus is unless the vehicle at the time was being used on the highway.

A provision in section 80 of the Motor Car Ordinance No. 20 of 1927 similar to the provisions of section 216 was construed by the Supreme Court in *de Mel v. Balasuriya*<sup>3</sup>. Section 80 of this Ordinance provided as follows:

80 (1) "If any motor car is used which does not comply with or contravenes any provision of this Ordinance or of any regulation, or of any order lawfully made under this Ordinance or any regulation; or

<sup>1</sup> (1956) 57 N. L. R. 503.

<sup>2</sup> (1954) 55 N. L. R. 395.

<sup>3</sup> (1934) 36 N. L. R. 215.

- (2) If any motor car is used in such a state or condition or in such a manner as to contravene any such provision ; or
- (3) If anything is done or omitted in connection with a motor car in contravention of any such provision ; then unless otherwise expressly provided by this Ordinance, —
- (a) The driver of the motor car at the time of the offence shall be guilty of an offence unless the offence was not due to any act, omission, neglect, or default on his part ; and
- (b) The owner of the motor car shall also be guilty of an offence, if present at the time of the offence, or, if absent, unless the offence was committed without his consent and was not due to any act or omission on his part, and he had taken all reasonable precautions to prevent the offence.

Dalton, J. made the following observations in regard to section 80 (3) which is very similar to section 216 (2) :

“Turning now to section 80 of the Ordinance, it is provided by sub-sections (1) and (2) that if any motor car is used which does not comply with any provision of the Ordinance, or is used in such a state or condition as to contravene any such provision, the owner shall be guilty, if present at the time the offence is committed, or in certain circumstances if absent also. The provisions of the Ordinance referred to in sub-sections (1) and (2) are, it seems to me, provisions to which motor cars must comply or conform before they are used, in respect of such matters as equipment, construction, registration, licensing or condition. One can understand the owner being made responsible, for instance, for the proper equipment and safe condition of the car he allows his driver to use. Sub-section (3) refers to a contravention of those same provisions. It would appear to provide for anything that may be omitted from sub-sections (1) and (2), for all three sub-sections must be read together. If anything is done or omitted in connection with a motor car in contravention of any such provision, then in the cases set out in sub-section (3) (c) the owner is also guilty.”

I take these views expressed by the learned judge to mean that section 80, sub-section (3) is intended to cover contraventions which are not caught up by sub-sections (1) and (2) and apply only in circumstances when sub-sections (1) and (2) would apply : that is, when the vehicle is being used and the user is prohibited by any provision of, or by any regulation made under, the Ordinance. I agree respectfully with the opinion expressed by the learned judge. In this view of the matter the charge against the defendant Company must fail.

There was yet another objection to the conviction urged by learned Counsel which in my view should succeed. The vehicle itself was not examined by any competent person either at the time of the alleged

offence or at any time thereafter. The only evidence is that it was emitting smoke at the relevant time and there is nothing on record to show that this particular vehicle had not been constructed or maintained in accordance with the provisions of Regulation 12 of the (Construction of Vehicles) Regulations. To establish this part of the case the prosecution called an expert employed by the Gal Oya Development Board who has been described as a Mechanical Engineer and who holds a degree in Engineering in addition to certain other qualifications. He gave some general evidence in regard to vehicles of the Gal Oya Development Board using Diesel engines and he made a general statement that the reasons for a Diesel engine emitting smoke are bad compression, faulty filters, faulty fuel injection, excessive fuel injection and wrong timing. These, he said, are the main causes which make a vehicle to emit smoke and that it is chiefly due to faulty maintenance. He added that 99% of smoking is due to that cause. In my view general evidence of this nature is insufficient to bring home to an accused person liability in respect of a criminal charge. There must be specific evidence that the vehicle in question was examined and that the emission of smoke was due either to faulty construction or lack of proper maintenance. For these reasons I would set aside the conviction and acquit the accused-appellant.

*Appeal allowed.*

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