

1954

Present : Palle J.

W. A. DON THOMAS SINGHO, Appellant, and S. I. POLICE,
GAMPAHA, Respondent

S. C. 494—M. C. Gampaha, 8,129

Motor Traffic Act, No. 14 of 1951—Regulations 15 and 45—Section 216 (2) (b)—Meaning and effect of expression “in contravention of”.

Driving an omnibus not fitted with an accurate speedometer or with seats not fitted with cushions does not amount to a use of the vehicle in contravention of regulations 15 and 45 of the regulations made under sections 19 and 239 of the Motor Traffic Act so as to render the driver guilty of an offence under section 226 read with section 216 (2) (b).

APPPEAL from a judgment of the Magistrate's Court, Gampaha.

H. W. Jayewardene, for the accused appellant.

C. N. Goonewardena, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

March 1, 1954. PULLE J.—

The appellant was convicted on three charges under the Motor Traffic Act, No. 14 of 1951. The conviction on the first charge that he, being the driver of omnibus No. Z-9944, failed to keep the vehicle to the left or near side of the road when being overtaken by other traffic is clearly right. The convictions on the remaining charges raise the broad question whether the driver of a motor vehicle is guilty of an offence under section 226, read with section 216 (2) (b), where the vehicle does not conform to the Regulations made under sections 19 and 239 and published in *Gazette* No. 10,360 of February 27, 1952.

Regulation 15 provides as follows :—

“ A speedometer shall be fitted in such a position in every motor coach or lorry to indicate readily at all times to the driver the speed at which he is driving the motor coach or lorry. Such instrument shall be sufficiently accurate to within 10 per centum of the correct speed at which the vehicle is travelling. ”

Regulation 45 provides :—

“ Every seat of a motor coach shall be fitted with cushions. ”

On the second and third charges the evidence was that the speedometer of the omnibus was not in working condition and the seats were not fitted with cushions.

It was argued on behalf of the appellant that, in the absence of a *prohibition against the user* of a motor vehicle which does not conform to the regulations quoted above, it could not be said that the user in the present case was in *contravention* of these regulations within the meaning of section 216 (2). In the forefront of the argument reliance is placed on the absence of a provision in the Motor Traffic Act corresponding to section 5 of the Motor Car Ordinance, No. 45 of 1938, which expressly prohibited the user on any highway of a motor vehicle not complying with any regulation in the first schedule to that Ordinance as to construction, weight, dimensions or equipment. Section 5 has its counterpart in section 3 of the Road Traffic Act, 1930 (20 & 21 Geo. 5, Cap. 43) sub-section 3 of which provides,

“ If a motor vehicle or trailer is used on a road in contravention of this section, any person who so uses the vehicle or causes or permits the vehicle to be so used shall be guilty of an offence. ”

It will thus be seen that both in the repealed Ordinance of 1938 and in the English Act provision is first made prohibiting user and, thereafter, a user contrary to the prohibition is made an offence. Undoubtedly, the person on whom the obligation lay to have the omnibus fitted with an accurate speedometer or the seats therein fitted with cushions was in breach of the regulations but, in my opinion, it cannot be said that the driver used the omnibus in *contravention* of those regulations.

I have not found it profitable to speculate on the reasons for the Legislature omitting to include in the Act a provision similar to section 5 of the repealed Ordinance. It is possible, as was argued for the appellant, that the regulations made under section 19 of the Act were intended primarily to lay down the conditions for registration under Part I. A failure, after the registration, to comply with the conditions would attract the provisions of section 196 which enables the Registrar to prohibit the user of a motor vehicle, which, by reason of lack of equipment, is not in a serviceable condition. Whatever might have been the reason for omitting to reproduce section 5 of the repealed Ordinance I feel I would be straining unduly the language of section 216 (2) were I to hold that the act of the appellant in driving an omnibus with a defective speedometer or with seats not fitted with cushions amounted to the using of a motor vehicle in contravention of the regulations as that expression is used in the opening sentence of section 216 (2).

I affirm the conviction and sentence on the first charge and quash the convictions and sentences on the second and third charges.

Appeal partly allowed.

