

Present : Akbar J.

1929 KATUGASTOTA POLICE INSPECTOR *v.* SIYADORIS
APPUHAMY

177—P. C. Kandy, 27,731.

Motor Car—Private car used for carrying passengers—Purpose not authorized by the licence—Ordinance No. 20 of 1927, s. 30 (1).

Where a motor car, licensed under form 14 in the third schedule of the Motor Car Ordinance, is used for carrying passengers for hire such a use is a purpose not authorized by the licence within the meaning of section 30 (1) of the Ordinance.

A PPEAL from a conviction by the Police Magistrate of Kandy. The accused who held a licence for a car under form 14, the third schedule of the Motor Car Ordinance, No. 20 of 1927, was charged with plying the car for hire in breach of section 30 (1) of the Ordinance, and convicted and sentenced to pay a fine of Rs. 100.

Navaratnam, for accused, appellant.—The charge laid against the accused is that he used his private car “for a purpose not authorized by his motor car licence.” The purpose indicated on the face of the licence itself reads as follows: “for wholly or mainly carrying passengers.” No express prohibition against the carrying of strangers in a private car, for hire, is to be found in the Ordinance. Apart from this, the prosecution must fail, in view of the absence of proof of payment of hire or of any agreement to pay a fee. The bare intention to pay something at the end of the journey does not amount to a contract of hire and service.

L. M. D. de Silva, Deputy Solicitor-General (with Pullé), for Crown, respondent.—To ascertain the purpose of a licence one must consider the Ordinance as a whole. An examination of the interpretation section and the various forms appearing in the third schedule make it clear that licences are applied for and issued, subject to clearly defined limitations. The purpose of a licence and the limitations subject to which it is issued are well within the knowledge of a licence-holder. Thus there is good ground for the conclusion that the carriage of strangers, in the circumstances established by the evidence in the case, was for a purpose not authorized by the licence. The accused has not given any explanation as to the presence of strangers in his car, and has therefore failed to displace the presumption that does necessarily arise against him.

1929

*Katugastota
Police
Inspector
v.
Siyadoris
Appuhamy*

May 27, 1929. AKBAR J.—

The accused in this case has been convicted of the offence of plying a private car for hire in breach of section 30, sub-section (1), of the Motor Car Ordinance, No. 20 of 1927, an offence punishable under section 84 of the Ordinance, and has been fined Rs. 100.

As I had some difficulty in construing the Ordinance, the Deputy Solicitor-General appeared on notice, and I am greatly indebted to him for the help which he has given me. Under section 30, sub-section (1), what is prohibited is the use of a motor car for a purpose not authorized by the licence. The forms of licence are given in the third schedule of the Ordinance. As there is nothing on the face of the motor car licence in form No. 14 prohibiting the use of the car for carrying passengers on hire or for reward, I thought at first that there was a defect in the Ordinance. This, however, is not so. When the Ordinance is closely scrutinized it will be found that it differentiates between a "private car" and a "hiring car."

Section 2 of the Ordinance defines a "hiring car" as a motor car used for the conveyance of passengers for fee or reward. A "motor cab" is defined as a hiring car having seating accommodation for not more than seven passengers. An "omnibus" is defined as meaning a hiring car having seating accommodation for more than seven passengers. Chapter IX. of the Ordinance deals exclusively with hiring cars and lorries. And "lorry" is defined in section 2 as meaning a motor car or trailer constructed wholly or mainly for carrying goods or hauling another vehicle.

Forms 10, 11, 12, and 13 refer to applications for licences for ordinary cars, for motor cabs, for omnibuses, and for lorries respectively. Further, under section 33, sub-section (3), no motor car licence is to be issued unless a certificate of registration of the car is produced.

Form 2 gives the particulars which must be supplied by an applicant for the registration of a motor car, and item 6 shows that the purpose for which the car is to be used must be indicated.

1929

AKBAR J.

*Katugastota
Police
Inspector
v.
Siyadoris
Appuhamy*

namely, whether it is for private use as a conveyance of persons, or for the conveyance of goods, or as a motor cab, or as a motor omnibus.

Form 3, *i.e.*, the form of the certificate of registration, must contain a certified copy of the registered particulars mentioned in form 2. Again, in the first schedule we find the duties that are payable on motor car licences. There is here a clear distinction between the duties payable for passenger cars other than hiring cars, and hiring cars (according to the number of passengers to be carried) and lorries. Therefore, it is clear to me that the whole Ordinance makes a distinction between private cars and hiring cars. As every person is presumed to know the law, the accused should have known if the licence was in the form 14 of the third schedule that it was a licence for private use, and that if it was in form 15 it was for a hiring car carrying seven passengers or less. Therefore, under section 30, sub-section (1), if a motor car licensed under form 14 is used for carrying passengers on hire, it is a use of the motor car for a purpose not authorized by the motor car licence. The second point taken by the accused's Counsel was that there was no evidence to prove that this was a car licensed with a licence in form 14. There is, however, the evidence of the police sergeant that the accused's car was a private car. I think this is sufficient evidence which the accused could have rebutted by the production of the licence in force, which he has not done. The third point taken by Mr. Navaratnam was that there was no evidence to prove that this car was used on the occasion for the conveyance of passengers for fee or reward. We have, however, the evidence of one of the passengers, a man called Bodiya, who states that he came to Katugastota to get medicine, that he saw the car coming, that he raised his hand and the car halted and that he got into the car and it started off at once. He further states that he meant to pay the accused 50 cents, being the usual fare to the place to which he was going, but before he could get there the sergeant came and questioned him. I think that there is sufficient evidence to prove that this car was being used for hiring purposes on the occasion in question. Bodiya stated further that there were two or three other passengers, one of whom was a Moor man according to another witness. If a car stops on a stranger's signal and takes him in at once, the usual presumption is that it was being used for hiring purposes. The fact that no money was taken before the passengers got in, in no way affects the presumption, because this was not a bus having a conductor on board. At any rate it was for the accused to have rebutted this presumption. He has not given evidence, and I must, therefore, dismiss his appeal.

Affirmed.