

HON'BLE SRI JUSTICE P. KESHAVA RAO

CRIMINAL REVISION CASE No.1284 of 2018

ORDER:

Heard the learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondent State.

The present revision case is filed questioning the orders passed in CrI.A.No.1304 of 2017 dated 30.04.2018 on the file of the Metropolitan Sessions Judge, Hyderabad, confirming the judgment passed in STC.No.8494 of 2017 dated 21.11.2017 on the file of the IV Metropolitan Magistrate, Hyderabad, directing the petitioner to undergo simple imprisonment for five (05) days and also to pay a fine of Rs.3,000/- and further sentenced to pay Rs.100/- for the offences under Sections 185(a) and 130/177 of the Motor Vehicles Act, 1988 (for short, "the Act"). In default of payment of fine, the petitioner shall suffer simple imprisonment for two days for each offence.

The case of the prosecution is that on 29.10.2017 at 0055 hours Sri N. Vidya Sagar, Inspector of Police, Traffic, Banjarahills police station along with his force were conducting vehicle checking at check point road No.36/10, Jubilee hills. At that time, the petitioner came in that direction. His vehicle was stopped and he was subjected to alcohol test with breath analyzer, wherein the printed result of the test shown the BAC level as 49 mg/100 ml which exceeded the permissible BAC level of 30 mg/ml as mentioned

under Section 185 of the Act. The concerned police have obtained the signatures of the petitioner on such reading slip as well as on the challan. When the petitioner was questioned about the documents, he failed to show the relevant documents and thereby he is liable for punishment under Section 130/177 of the Act. On such incident, a case was registered and the petitioner was produced before the Court along with petty case charge sheet. On 21.11.2017, the learned Magistrate has taken cognizance of the offence under Sections 185(a) and 130/177 of the Act. As required under Section 207 Cr.P.C., the petitioner was furnished with the copies of the case documents. He was examined under Section 251 Cr.P.C. for the above said offences. On such examination the petitioner has admitted the substance of the prosecution case. The said admission of guilt by the petitioner was said to be true and voluntary one. Therefore, the learned Magistrate found the petitioner guilty for the above said offences and convicted him under Section 252 Cr.P.C. It is relevant here to mention that this is the second similar offence committed by the petitioner in three years. On the quantum of sentence, the petitioner submitted that he is the only earning member of his family and he will not repeat the same and requested the Court to take a lenient view in imposing the sentence. Basing on the said facts, the learned Magistrate convicted the petitioner for the offences under Section 185(a) of the Act and directed him to undergo simple

imprisonment for five (05) days and also sentenced him to pay a fine of Rs.3,000/-. The petitioner was also convicted for the offence under Section 130/177 of the Act and directed him to pay a fine of Rs.100/-. In default of payment of fine, the petitioner shall suffer simple imprisonment for two days for each offence by judgment dated 21.11.2017. Aggrieved by the said judgment, the petitioner filed an appeal vide CrI.A.No.1304 of 2017 before the learned Metropolitan Sessions Judge, Hyderabad. After hearing, the learned Sessions Judge was pleased to dismiss the appeal confirming the judgment in STC.No.8494 of 2017 by judgment dated 30.04.2018. Aggrieved by the said judgment, the present revision case is filed.

Learned counsel appearing for the petitioner contended that both the Courts below erred in convicting the petitioner for the offence under Section 185(a) of the Act. The petitioner was misguided by the traffic police to admit the guilt so that he can be acquitted and took his signatures. The petitioner, without knowing the consequences of the case, followed the instructions given by the concerned police. Though the learned Magistrate has asked questions, the petitioner could not understand the same and admitted the guilt. In those circumstances, the counsel requested the Court to set aside the judgment of the learned Metropolitan Sessions Judge, Hyderabad, which is impugned in the present revision case.

Per contra, the learned Public Prosecutor appearing for the respondent State opposed the contentions raised by the learned counsel for the petitioner.

Having heard both the learned counsel and a perusal of the material on record, it is revealed that the petitioner is doing private job. On producing before the Magistrate and after examining under Section 251 Cr.P.C., the petitioner said to have admitted the substance of the prosecution case for the above said offences and pleaded guilty, which is true and voluntarily one. On the quantum of sentence, the petitioner appears to have requested the learned Magistrate that since he is the only earning member of his family, he will not repeat the same offence and requested to take a lenient view in imposing sentence of fine. A further perusal would also reveal that on an earlier occasion, the petitioner has committed a similar offence and he was convicted by the very same Magistrate vide STC.No.8134 of 2014. Therefore, both the Courts below having taken into consideration the past conduct, convicted the petitioner to undergo simple imprisonment for five days and to pay a fine of Rs.3,000/-. In default of payment of fine, the petitioner shall suffer simple imprisonment for two days each for the offence.

Section 185 of the Act contemplates punishment to be imposed while driving in a drunken condition or under the influence of drugs. The same is as under:

“185. Driving by a drunken person or by a person under the influence of drugs —Whoever, while driving, or attempting to drive, a motor vehicle,—

(a) has, in his blood, alcohol exceeding 30 mg. per 100 ml. of blood detected in a test by a breath analyser, or

(b) is under the influence of a drug to such an extent as to be incapable of exercising proper control over the vehicle, shall be punishable for the first offence with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both; and for a second or subsequent offence, if committed within three years of the commission of the previous similar offence, with imprisonment for a term which may extend to two years, or with fine which may extend to three thousand rupees, or with both.

Explanation—For the purposes of this section, the drug or drugs specified by the Central Government in this behalf, by notification in the Official Gazette, shall be deemed to render a person incapable of exercising proper control over a motor vehicle.”

A perusal of the above said provision would indicate that when an offence has been committed under the said provision for the first time, the legislation in its wisdom thought fit to impose a lesser punishment such as imprisonment for a term, which may extend to six months or with fine, which may extend to Rs.2,000/- or with both. But, if the same offence is committed for the second time or subsequent to that, that too within three years of the commission of the previous similar offence, he shall be punished with an imprisonment for a term which may extend to two years or with fine which may extent to Rs.3,000/- or with both.

Section 130 of the Act contemplates a duty on the driver to produce licence and certificate of registration on demand by any police officer in uniform for examination. The same is as under:

“130. Duty to produce licence and certificate of registration—

(1) The driver of a motor vehicle in any public place shall, on demand by any police officer in uniform, produce his licence for examination:

Provided that the driver may, if his licence has been submitted to, or has been seized by, any officer or authority under this or any other Act, produce in lieu of the licence a receipt or other acknowledgment issued by such officer or authority in respect thereof and thereafter produce the licence within such period, in such manner as the Central Government may prescribe to the police officer making the demand.

(2) The conductor, if any, of a motor vehicle on any public place shall on demand by any officer of the Motor Vehicles Department authorized in this behalf, produce the licence for examination.

(3) The owner of a motor vehicle (other than a vehicle registered under section 60), or in his absence the driver or other person in charge of the vehicle, shall, on demand by a registering authority or any other officer of the Motor Vehicles Department duly authorised in this behalf, produce the certificate of insurance of the vehicle and, where the vehicle is a transport vehicle, also the certificate of fitness referred to in section 56 and the permit; and if any or all of the certificates or the permit are not in his possession, he shall, within fifteen days from the date of demand, submit photo copies of the same, duly attested in person or send the same by registered post to the officer who demanded it.

Explanation — For the purposes of this sub-section, “certificate of insurance” means the certificate issued under sub-section (3) of section 147.

(4) If the licence referred to in sub-section (2) or the certificates or permit referred to in sub-section (3), as the case may be, are not at the time in the possession of the person to whom demand is made, it shall be a sufficient compliance with this section if such person produces the licence or certificates or permit within such period in such manner as the Central Government may prescribe, to the police officer or authority making the demand:

Provided that, except to such extent and with such modifications as may be prescribed, the provisions of this sub-section shall not apply to any person required to produce the certificate of registration or the certificate of fitness of a transport vehicle.”

Under the above said provision, the driver of a motor vehicle in any public place, shall on demand by a police

officer in a uniform produce his driving licence, registration certificate and in the case of a transport vehicle driving licence, registration certificate and fitness certificate respectively.

In the case on hand, on questioning, the petitioner failed to produce any of the above said certificates for examination before the police officer thereby committed an offence under the above said provision.

The basic object and reasons for inclusion of the above said provision in the enactment is for punishment for driving under the influence of alcohol or drug and for not carrying the required certificates and in default punishment thereof.

Section 203 of the Act deals with breath test, which is as under:

“203. Breath tests.—

(1) A police officer in uniform or an officer of the Motor Vehicles Department, as may be authorised in this behalf by that Department, may require any person driving or attempting to drive a motor vehicle in a public place to provide one or more specimens of breath for breath test there or nearby, if such police officer or officer has any reasonable cause to suspect him of having committed an offence under section 185.

Provided that requirement for breath test shall be made (unless, it is made) as soon as reasonably practicable after the commission of such offence.]

(2) If a motor vehicle is involved in an accident in a public place and a police officer in uniform has any reasonable cause to suspect that the person who was driving the motor vehicle at the time of the accident had alcohol in his blood or that he was driving under the influence of a drug referred to in section 185 he may require the person so driving the motor vehicle, to provide a specimen of his breath for a breath test—

(a) in the case of a person who is at a hospital as an indoor patient, at the hospital,

(b) in the case of any other person, either at or near the place where the requirement is made, or, if the police officer thinks fit, at a police station specified by the police officer:

Provided that a person shall not be required to provide such a specimen while at a hospital as an indoor patient if the registered medical practitioner in immediate charge of his case is not first notified of the proposal to make the requirement or objects to the provision of a specimen on the ground that its provision or the requirement to provide it would be prejudicial to the proper care or treatment of the patient.

(3) If it appears to a police officer in uniform, in consequence of a breath test carried out by him on any person under sub-section (1) or sub-section (2) that the device by means of which the test has been carried out indicates the presence of alcohol in the person's blood, the police officer may arrest that person without warrant except while that person is at a hospital as an indoor patient.

(4) If a person, required by a police officer under sub-section (1) or sub-section (2) to provide a specimen of breath for a breath test, refuses or fails to do so and the police officer has reasonable cause to suspect him of having alcohol in his blood, the police officer may arrest him without warrant except while he is at a hospital as an indoor patient.

(5) A person arrested under this section shall while at a police station, be given an opportunity to provide a specimen of breath for a breath test there.

(6) The results of a breath test made in pursuance of the provisions of this section shall be admissible in evidence.

Explanation — For the purposes of this section “breath test”, means a test for the purpose of obtaining an indication of the presence of alcohol in a person's blood carried out on one or more specimens of breath provided by that person, by means of a device of a type approved by the Central Government by notification in the Official Gazette, for the purpose of such a test.”

From the above, it is clear that a police officer in uniform or an officer of the motor vehicles department as may be authorized in this behalf by that department may require any person driving or attempting to drive a motor vehicle in a public place to provide one or more specimens of breath for breath test there or nearby, if such police officer or officer has

any reasonable cause to suspect him of having committed an offence under Section 185.

Under Section 208 of the Act, the Court taking cognizance of any offence under the Act, the cases booked under the provisions of the Act can be disposed of by following the summary procedure.

Taking into consideration the above facts, the petitioner appears to be a well educated and qualified person doing private job and he knows the consequences of commission of the above said offence. If the petitioner has been convicted for the first time, he can be shown some sort of sympathy by both the Courts below and by this Court. However, in spite of conviction on an earlier occasion for the similar offence, the petitioner has repeated the same. From this it appears that the earlier conviction awarded against the petitioner appears to have no effect at all and it is not acted as a deterrent one on the petitioner leading to the commission of the present offence once again. Now coming to the conviction awarded against the petitioner asking him to undergo simple imprisonment for a period of five days is concerned, the petitioner being a private employee, if he is asked to undergo simple imprisonment for five days, there may be a possibility of losing the job. He being the only earning member in the family, the family may also face some difficulties and the same will have a greater impact resulting mental agony for the family before the society in general and the friends and

relatives in particular. Any punishment that will be imposed in these types of offences shall act as a deterrent one so that the same offence cannot be repeated next time. This Court is conscious of the fact that simple imprisonment for a period of five days would result in lot of serious complications not only on the petitioner but also on the family members. But, this Court has to balance the rights of the petitioner as guaranteed under the Constitution of India vis-à-vis the interest of the public at large for the reason that while driving in a drunken condition, the petitioner not only causes harm to himself, but endangers the rights of other public, who are the pedestrians and etc. Sometimes it may lead to serious casualties resulting in death also. As such, when the petitioner has not learnt from his earlier mistake and had committed a similar offence for the second time within two years, it cannot be taken lightly and at the same time he should be conscious of commission of offence once again and should not repeat it in future.

In a case of drunken driving, the Apex Court had an occasion to deal with the above said provisions in **State through PS Lodhi Colony, New Delhi vs. Sanjeev Nanda**¹. In the said case, the driver of the vehicle irresponsibly drove the vehicle under the influence of alcohol leading to the death of six persons and injuring one person as a result of high

¹ (2012) 8 SCC 450

speed driving. Some of the relevant portions of the said judgment are extracted as under:

“We are in this case not merely dealing with a traffic violation or a minor accident, but an accident where six human beings were killed. We find no relevance in the argument that the accused was coming from a distance of 16 kms., before the accident, causing no untoward incident and hence it is to be presumed that he was in a normal state of mind. First of all, that statement is not supported by evidence apart from the assertion of the accused. Assuming so, it is a weak defence, once it is proved that the person had consumed liquor beyond the prescribed limit on scientific evidence. This court in *Kurban Hussain v. State of Maharashtra* [AIR 1965 SC 1616] approved the plea that simply because of the fact that no untoward incident had taken place prior to the occurrence of the accident, one cannot infer that the accused was sober and not in a drunken state. In the instant case, the presence of alcohol content was much more (i.e. 0.115%) than the permissible limit and that the accused was in an inebriated state at the time of accident due to the influence of liquor and in the accident, six human lives were lost.

Drunken driving has become a menace to our society. Everyday drunken driving results in accidents and several human lives are lost, pedestrians in many of our cities are not safe. Late night parties among urban elite have now become a way of life followed by drunken driving. Alcohol consumption impairs consciousness and vision and it becomes impossible to judge accurately how far away the objects are. When depth perception deteriorates, eye muscles lose their precision causing inability to focus on the objects. Further, in more unfavourable conditions like fog, mist, rain etc., whether it is night or day, it can reduce the visibility of an object to the point of being below the limit of discernibility. In short, alcohol leads to loss of coordination, poor judgment, slowing down of reflexes and distortion of vision.

Punishment meted out to a drunken driver, is at least a deterrent for other such persons getting away with minor punishment and fine. Such incidents are bound to increase with no safety for pedestrians on the roads. The contention raised by learned senior counsel that the accused was not under the influence of liquor or beyond the limit prescribed under the Motor Vehicles Act and he was in his senses and the victims were at fault being on the middle of the road, is without any substance and only to be rejected.”

In the case on hand, the presence of alcohol content in the petitioner was at 49 mg/100 ml, which is exceeding the permissible BAC level of 30 mg/ml as mentioned in Section

185 of the Act i.e., about one and half times more than the permissible level. Though the petitioner has violated the mandatory procedure as contemplated under the provisions of the Act, more particularly, Section 185 of the Act and though no untoward incident has taken place even he was under the influence of liquor, it cannot be said that the petitioner is not guilty of the offence. The petitioner has committed the same offence within three years. The drunken driving has become a menace for our society. In many cases it is leading to many casualties. The innocent pedestrians are losing their lives and families are being shattered. The punishment to be awarded to a drunken driver at least should act as a deterrent for others, who are resorting to such type of violations.

However, taking into consideration the alcohol content, this Court is inclined to modify the judgment dated 30.04.2018 passed by the learned Metropolitan Sessions Judge, Hyderabad, in CrI.A.No.1304 of 2017 to the extent of imposition of sentence to undergo simple imprisonment from five (5) days to three (3) days and to pay a fine of Rs.20,000/- (Rupees Twenty thousand only) to be deposited into the account of the Telangana Police Welfare Fund bearing Account No.151901000009003, IFSC code: 10BA0001519, Saifabad, Hyderabad, within a period of two weeks from the date of receipt of a copy of this order. It is needless to observe

that the conviction awarded for the offence under Section 130/177 of the Act shall remain the same.

Accordingly, the criminal revision case is disposed of.

Miscellaneous petitions, if any, shall also stand disposed of.

P. KESHAVA RAO, J

Date: 26.06.2018.
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