

## APPELLATE CRIMINAL

*Before Gurdev Singh and H. R. Khanna, JJ.*

THE STATE,—Appellant.

*versus*

AMRIK SINGH,—Respondent.

**Criminal Appeal No. 1000 of 1961.**

1963  
 Feb., 7th.

*Motor Vehicles Act (IV of 1939)—S. 71—Speed-limit fixed by the Eighth Schedule of the Act—Whether can be exceeded in case no speed-limit is fixed by competent authority under S. 71(2)—“By this Act” and “Under this Act”—Distinction between.*

*Held*, that sub-section (1) of section 71 of the Motor Vehicles Act prohibits the driving of a motor vehicle in any public place at a speed exceeding the maximum speed fixed for such motor vehicle (a) by the Act, or (b) under the Act, or (c) under any law for the time being in force. The proviso to this sub-section makes it clear that even where the speed-limit is fixed by the State Government, or any other authority under sub-section (2) of this section, or by any law for the time being in force, such maximum limit cannot be in excess of that fixed for the vehicle in the Eighth Schedule of the Motor Vehicles Act, 1939. From this it is obvious that if no speed-limit is laid down by the competent authority under sub-section (2) of this section, or by any other law, the speed of the motor vehicle cannot exceed that which is the maximum fixed under the Eighth Schedule, and if a person oversteps those limits, he would be guilty of the breach of sub-section (1) of section 71 of the Motor Vehicles Act.

*Held*, that the expression “by this Act” obviously refers to the maximum speed-limit laid down in the Eighth Schedule of the Act itself, while the expression “under this Act” refers to the fixation of the speed under sub-section (2) of section 71, which empowers the State Government either itself to fix the maximum speed in the interest of public safety or convenience or because of the nature of any road or bridge, or to authorize an authority subordinate to it to so fix it. It is only in the cases relating

to violation of the speed-limit fixed under sub-section (2) of section 71 of the Motor Vehicles Act that the procedure laid down in that sub-section applies. Where the speed is fixed by the Act itself, there is no question of making the publication of such speed as a pre-requisite to its enforcement, because it was only after publication in the official gazette of the Act itself that it came into force.

*Appeal from the order of Shri H. K. Jain, Magistrate, 1st Class, Rohtak, dated the 10th July, 1961, acquitting the respondent.*

K. L. JAGGA, ASSISTANT ADVOCATE-GENERAL, for the Appellant.

R. S. MITTAL, ADVOCATE, for the Respondent.

#### JUDGMENT

The judgment of the court was delivered by—

GURDEV SINGH, J.—Amrik Singh (respondent) Gurdev Singh, J. was tried by the Additional District Magistrate, Rohtak, in exercise of his summary jurisdiction under Chapter XII of the Code of Criminal Procedure for contravention of section 71 of the Motor Vehicles Act, 1939. It was alleged that at 12-25 p.m. on 29th March, 1961, while he was driving his passenger-bus No. PNR. 2520 on Rohtak-Gohana Road, he was found by Inspector Siri Ram, P.W. 1, of the Motor Mobile Patrol, going at the speed of 41 miles per hour, which was 11 miles per hour in excess of the maximum speed fixed by law for the passenger-bus. The prosecution in support of its case had examined Inspector Siri Ram, P.W. 1.

Amrik Singh, however, denied the allegation of over speeding, and in support of his plea that he was going at a speed less than 30 miles per hour examined Ishar Dass, D.W. 1, and Charan Das,

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D.W. 2, who claimed to have been travelling in the same bus.

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The learned trial Magistrate without, going into the merits of the case, acquitted Amrik Singh recording the brief order, which reproduced *in extenso* runs as follows:—

“In absence of any notification regulating speed on the road in question, no conviction is possible under section 71 of the Motor Vehicles Act, 1939. Moreover, a speed of 41 miles per hour is not very excessive. The accused is, therefore, acquitted.”

Aggrieved by this order of the Magistrate, dated 10th July, 1961, the State has come up in appeal under section 417 of the Criminal Procedure Code.

In challenging the acquittal of the respondent Amrik Singh, the Assistant Advocate-General has contended that the view of law taken by the trial Court that no offence can be committed under section 71 of the Motor Vehicles Act unless the speed-limit is fixed by a notification published in the official Gazette is wrong and he was not justified in ignoring the conduct of the respondent by observing that the speed of 41 miles per hour at which the respondent was alleged to have been driving was ‘not very excessive’. Both these contentions, in our opinion, are well-founded and must prevail. It is not disputed that the speed of 30 miles per hour, for exceeding which the respondent was prosecuted, is not fixed by any notification of the State Government or local authority. The prosecution case, has, however, been that this speed is the maximum prescribed by the Motor Vehicles Act itself in its 8th Schedule.

Section 71 of the Motor Vehicles Act; 4 of 1939, the breach whereof is complained, runs as follows:—

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“71. *Limits of speed.*—(1) No person shall drive a motor vehicle or cause or allow a motor vehicle to be driven in any public place at a speed exceeding the maximum speed fixed for the vehicle by or under this Act or by or under any law for the time being in force:

Provided that such maximum speed shall in no case exceed the maximum fixed for the vehicle in the Eighth Schedule.

(2) The State Government or any authority authorized in this behalf by the State Government may, if satisfied that it is necessary to restrict the speed of motor vehicles in the interests of public safety or convenience or because of the nature of any road or bridge, by notification in the official gazette, and by causing appropriate traffic signs to be placed or erected under section 75 at suitable places, fix such maximum speed limits as it thinks fit for motor vehicles or any specified class of motor vehicles or for motor vehicles to which a trailer is attached, either generally or in a particular area or on a particular road or roads:

Provided that where any restriction under this section is to remain in force for not more than one month, notification thereof in the official gazette shall not be necessary.

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(3) Nothing in this section shall apply to any vehicle registered under section 39 while it is being used in the execution of military manoeuvres within the area and during the period specified in the notification under sub-section (1) of section 2 of the Manoeuvres, Field Firing and Artillery Practice Act, 1938."

Sub-section (1) prohibits the driving of a motor vehicle in any public place at a speed exceeding the maximum speed fixed for such motor vehicle (a) by the Act, or (b) under the Act, or (c) under any law for the time being in force. The proviso to this sub-section makes it clear that even where the speed-limit is fixed by the State Government, or any other authority under sub-section (2) of this section, or by any law for the time being in force, such maximum limit cannot be in excess of that fixed for the vehicle in the Eighth Schedule of the Motor Vehicles Act, 1939. From this it is obvious that if no speed-limit is laid down by the competent authority under sub-section (2) of this section, or by any other law, the speed of the motor vehicle cannot exceed that which is the maximum fixed under the Eighth Schedule, and if a person oversteps those limits, he would be guilty of the breach of sub-section (1) of section 71 of the Motor Vehicles Act.

Since the condition of road and traffic may vary from locality to locality, in the interest of public safety it sometimes becomes imperative to restrict the speed of the motor vehicles and fix it much below the maximum laid down by the Act in the Eighth Schedule. Accordingly, by sub-section (2) of section 71 the legislature empowered the State Government, or an authority authorized by it in this behalf, to restrict the speed of motor vehicles. It has at the same time laid down

the method of fixing the speed-limit by the State Government or such authority and provided that this should be done by a notification in the official gazette, as well as by causing appropriate traffic signs to be placed or erected under section 75 at suitable places. If the breach complained of is of the speed-limit fixed under sub-section (2) of section 71 of the Motor Vehicles Act, it is obvious that (except in the cases covered by the proviso to that sub-section) no person can be convicted unless the prosecution proves that such speed-limit had been duly fixed under that provisions of law. Before recording conviction in such cases the Court will have to be satisfied:—

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- (a) that the speed-limit, which the offender is alleged to have exceeded, was fixed by the State Government, or by an authority duly authorized by it in that behalf.
- (b) that such order restricting the speed has been notified in the official gazette, and
- (c) that the appropriate traffic signs relating to such speed had been placed or erected at suitable places under section 75 of the Act.

If any of these facts is not proved, the speed cannot be considered to have been fixed under sub-section (2), and, accordingly, the driving of a motor vehicle in excess of that speed would not constitute an offence, unless it be also in excess of the speed fixed by the Act itself.

The speed-limit which the driver of a motor vehicle is prohibited from exceeding under sub-section (1) of section 71 of the Motor Vehicles Act

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is the maximum fixed by or under this Act or by any law for the time being in force." The expression "by this Act" obviously refers to the maximum speed-limit laid down in the Eighth Schedule of the Act itself, while the expression "under this Act" refers to the fixation of the speed under sub-section (2) of section 71, which empowers the State Government either itself to fix the maximum speed in the interest of public safety or convenience or because of the nature of any road or bridge, or to authorize an authority subordinate to it to so fix it. It is only in the cases relating to violation of the speed-limit fixed under sub-section (2) of section 71 of the Motor Vehicles Act that the procedure laid down in that sub-section applies. Where the speed is fixed by the Act itself, there is no question of making the publication of such speed as a pre-requisite to its enforcement, because it was only after publication in the official gazette of the Act itself that it came into force. The provision contained in sub-section (2) of section 71 of the Motor Vehicles Act is a salutary and necessary one since various speed-limits may be fixed for different localities by the State Government or the local authorities depending upon local conditions, and in such cases it is but proper that there should be wide publicity as to the fixation of the speed, not only by publication in the official gazette, but also by appropriate signs at suitable places.

In support of the view taken by the learned trial Magistrate, the respondent's counsel has referred to *in re Jambulingam Pillai* (1), *in re Bichol Naidu and others* (2), *in re Raju Naidu and another* (3), *in re Kappuswami Naidu* (4), and *Salvadore C. Pinto v. The State of Mysore* (5).

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- (1) A.I.R. 1943 Mad. 61.  
 (2) A.I.R. 1943 Mad. 217.  
 (3) A.I.R. 1943 Mad. 391 (1).  
 (4) A.I.R. 1943 Mad. 491.  
 (5) A.I.R. 1959 Mysore 144.

All these decisions are clearly distinguishable since they relate to the cases of exceeding the speed-limits fixed by authorities subordinate to the State Government under sub-section (2) of section 71 of the Motor Vehicles Act. In none of those cases there was any allegation that the maximum speed fixed for the motor vehicle in question by the Act itself, as laid down in Eighth Schedule, had been exceeded. It was in dealing with the cases relating to the exceeding of the speed-limit fixed under sub-section (2) of section 71 that both the Madras and the Mysore High Courts held, in the decisions referred to above, that the offender could not be penalized unless it was proved that the maximum speed-limit in question was fixed in accordance with the provisions of sub-section (2) of section 71 of the Motor Vehicles Act, one of the conditions prescribed being the publication of the notification in the official gazette.

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In *Salvadore C. Pinto v. The State of Mysore* (5), it was held that where the charge indicated that the speed restricted to the area mentioned in the charge was less than the speed at which the accused was driving, the offence fell under section 71(2), but before a conviction could be secured the prosecution had to establish that appropriate traffic signs were placed at suitable places in accordance with the provisions of section 75 of the Motor Vehicles Act.

In *in re Jambulingam Pillai* (1), it was ruled that mere fixing of a sign giving the maximum speed at which motor vehicles could be driven in a particular municipality was not sufficient to prove that the speed had been fixed by the authority duly empowered under section 71 (2) of the Act. Horwill, J., who decided that case subsequently



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held in *In re Bichal Naidu and others* (2), that no decision with regard to the speed-limit to be imposed in any particular area could come into operation before the date of its publication, and until the restriction had been duly notified, the speed could not be said to have been fixed under sub-section (2) of section 71 of the Motor Vehicles Act. To the same effect is the decision of Byers, J., in *in re Raju Naidu and another* (3).

In that case, the petitioners were convicted of exceeding the local speed-limits in Coimbatore punishable under section 115 read with section 71 of the Motor Vehicles Act. In acquitting them, the learned Judge observed:—

“The provisions of section 71(2) of the Act are mandatory, and it is necessary before the imposition of a speed-limit can be enforced that there should be a prior notification in the gazette”.

In the case reported as in *re Kappuswami Naidu* (4), though there was evidence of the fact that the speed-limit fixed under sub-section (1) of section 71 by the Road Transport Board had been published in the District Gazette, Horwill, J., held that this was not enough, and before the speed-limit could be enforced, it had to be published in the official gazette as defined in section 37-A of the General Clauses Act, meaning the Gazette of India or, as the case may be, the Official Gazette of the State concerned.

Not a single authority has been cited before us, nor has any been brought to our notice, in

which it has been held that a person who exceeds the maximum speed-limit fixed by the Motor Vehicles Act in the Eighth Schedule commits no offence, or that notwithstanding the fact that the Act is in force, publication of such maximum speed by notification in the official gazette was necessary for its enforcement.

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The view taken by the learned Magistrate is clearly untenable. Though the learned trial Magistrate did not go into the merits of the case, the trial before him had concluded on merits and evidence adduced by the prosecution and the defence was examined. The testimony of Inspector Siri Ram, P.W. 1, of the Motor Mobile Police, who had apprehended the respondent after checking the speed with the help of a stop watch, leaves no doubt that the respondent was driving at 41 miles per hour, whereas the maximum speed for the passenger buses laid down in Eighth Schedule of the Act is 30 miles per hour. In support of his plea that he had not exceeded the speed of 30 miles, the respondent examined Ishar Das, D.W. 1, and Charan Das, D.W. 2, both of whom claimed that they were passengers in the bus. Apart from the fact that none of them produced the bus ticket to support his assertion that he was travelling in the bus at the relevant time, Ishar Das, D.W. 1, merely stated that the bus was going at a slow speed. Charan Das, D.W. 2, however, asserted that the speed of the bus was 29 or 30 miles per hour as the road was not in order. None of these two persons claimed to have looked at the speedometer, and their statement about the speed is nothing but an opinion unsupported by any tangible material. It is significant that when Inspector Siri Ram, P.W. 1, was in the witness-box, it was not even suggested to him that these two persons were travelling in the same bus, or that they protested against his alleged high-handed action in

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challaning the respondent. We see no reason for rejecting the testimony of Inspector Siri Ram, P.W. 1, and in view of his evidence, we hold that the respondent was going at 41 miles per hour, exceeding the maximum speed fixed by the Act for motor buses by eleven miles.

In the result, the appeal succeeds. Setting aside the order of the trial Court, we hold respondent Amrik Singh guilty of contravening the provisions of section 71(1) of the Motor Vehicles Act, and convict him under that section read with section 115 of the same Act. He is sentenced to pay a fine of Rs. 25.

K.S.K.

CRIMINAL MISCELLANEOUS

*Before H. R. Khanna, J.*

DILBAGH SINGH,—*Petitioner.*

*versus*

THE TEHSILDAR, DASUYA AND OTHERS.—*Respondents.*

**Criminal Miscellaneous No. 67 of 1963.**

1963  
Feb., 7th.

*Land Improvement Loans Act (XIX of 1883)— S. 7—  
Borrower dying without repaying the loan—Heir of the  
borrower—Whether can be arrested for non-payment of  
the loan.*

*Held*, that according to section 7 of the Land Improvement Act, 1883, in case default is made in payment of the loan the Collector can proceed against the borrower or his surety as if the loan constituted arrears of land revenue. In other cases, the loan is to be realised out of the land for the benefit of which the loan was granted as if it were arrears of land revenue in respect of that land or out of the property comprised in the collateral security, if any.