

Support is lent to this conclusion by the fact that in the consolidation *khataunis* and other consolidation records prepared afterwards, she was throughout shown as the owner. These entries have been repeated in all subsequent jamabandis from 1955 onwards,—*vide* Exhibits P/9, P/10 and P/12. Exhibit P/20 in *khasra girdawari* (crop inspection report) of 1963-64 which also shows her as owner.

Reference may also be made to the statement of P.W. 2, Chhajju Ram, Quanungo who appeared as plaintiff's witness and stated that the arrangement was that the ownership of Kishni was to continue. A similar statement was made by P.W./9, Magh Singh.

From what has been stated above, I feel satisfied that surrender of her life estate on the part of Mst. Kishni has not been proved. The lower courts arrived at a correct conclusion. The appeal fails and is dismissed with costs.

B.R.T.

CIVIL MISCELLANEOUS

Before Tek Chand, J.

LACHHMAN SINGH, —*Petitioner*

versus

STATE OF PUNJAB AND ANOTHER, —*Respondents*

Civil Writ No. 1709 of 1967

November 29, 1967

Motor Vehicles Act (IV of 1939)—S. 60—Power to cancel or suspend permit—When to be exercised—Transport Authority—Whether bound to compound offences if permit-holder willing to pay composition fee according to scale prescribed—Compounding of penalties—Whether proper.

Held, that under section 60, sub-section (1) of the Motor Vehicles Act, 1939, the Transport Authority which granted a permit has the power to cancel the permit, or to suspend it, for such period as it thinks fit, on the breach of conditions indicated in the section. Sub-section (3) of this section is an enabling provision

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empowering the Transport Authority to recover from the holder of the permit a sum of money instead of cancelling or suspending the permit. In so far as the matter of composition-fee is concerned, it is within the discretion of the Transport Authority which is the Judge of the circumstances of the expediency by which it is to be guided in matter of compounding the transgression. The Transport Authority is not bound to compound the offence by accepting the composition fee according to the prescribed scale if the offender is willing to pay the same. This power is meant to be exercised in extremely rare cases, and the discretion is intended to be used after serious circumspection, and in the presence of genuinely mitigating circumstances. The wholesome and deterrent effect of penalties of suspension and cancellation of permits, ought not to be thrown away by ready acceptance of composition fees.

Held, that compounding of penalties in the manner indicated in sub-section (3) of section 60 of the Motor Vehicles Act and on the basis of the scale of composition-fee prepared by the Regional Transport Authority is reprehensible; it virtually means that breaches of conditions of permit may not be punished and the penalty of cancellation or suspension of a permit may be avoided on payment of a composition-fee. In the course of time the permit-holders cease to treat a breach, on their part, of the provisions as a punishment, but on a licence, which they can buy by making the payment according to the artificially fixed scale of composition-fee devised by the Regional Transport Authority. The scale of composition fee does not take into consideration the inconvenience to which the passengers may be subjected as a result of overloading. The formula must be deprecated as the breach is no longer visited by a deterrent penalty of suspension or cancellation of the permit, and the circumvention becomes a purchasable privilege. A scheduled sale of immunity is wrong in principle, and encourages recurrent contravention of statute, so long as transgression is profitable. Moreover, the composition in lieu of suspension or cancellation of permit which is left to the unrestricted and unchannelised discretion of the Regional Transport Authority can lead to making of invidious distinctions and even pervert or defeat public justice.

Held, that a dangerous propensity motivated by avarice, characterised by reckless exposure of the travelling public to grave dangers, and invariably subjecting them to serious discomfort, must be suppressed rather than licensed. The breach of a condition against overloading is not a mere peccadillo which may be lightly overlooked. A strict enforcement of the provision as to suspension or cancellation of permit will be conducive to making travelling safer and in reducing preventible hazards of the journey. On the other hand, a laxity shown by compounding infractions, and that too for a paltry sum, as indicated in the composition fee scale would be tantamount to abatement of breaches which have lethal potentialities.

Petition under articles 226 and 227 of the Constitution of India, praying that a writ in the nature of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the order, dated 3rd August, 1967, attached at annexure B after summoning the record of the case.

LAXMI GROVER, ADVOCATE, for the Petitioner.

GOPAL SINGH, ADVOCATE-General, PUNJAB WITH G. R. MAJITHIA, ADVOCATE, for the respondent.

ORDER

TEK CHAND, J.—The petitioner carries on the business of passenger transport and is holder of a contract carriage permit which was issued to him by the Regional Transport Authority, Jullundur. On 3rd of August, 1967, the Regional Transport Authority suspended the petitioner's permit for a period of six months on the ground that the petitioner was detected carrying ten passengers against six as authorised by the Motor Mobile Patrol Sub-Inspector, Amritsar, on 15th of September, 1966. A show-cause notice was issued to the permit-holder, to which he made no response. It was pointed out that there were already seven convictions against the petitioner and two cases of overloading were pending in the court. The Regional Transport Authority felt that the petitioner was habitual offender and overloading in his vehicle resulted in extreme inconvenience to the travelling public. As he had contravened the provisions of section 60 of the Motor Vehicles Act, the Regional Transport Authority suspended his permit, No. 197/MCR/64, covered by vehicle No. PNQ 1501, for a period of six months. This order of the Regional Transport Authority is dated 3rd of August, 1967.

The petitioner's contention is, that he had been discriminated against. The Regional Transport Authority has fixed a scale of composition-fee payable by the permit-holders for overloading tempos and other Vehicles. A copy of the scale-sheet has been attached as annexure 'A'. It was said that the Regional Transport Authority had been compounding such offences, but in his case the alleged offence was not compounded, although the petitioner offered to pay the composition-fee. This order of the Regional Transport Authority (annexure 'B') is sought to be quashed.

Under Section 60, sub-section (1) of the Motor Vehicle Act, the Transport Authority which granted a permit has the power to cancel

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the permit, or to suspend it, for such period as it thinks fit, on the breach of conditions indicated in the section. Sub-section (3) of this section was added by section 54 of the Motor Vehicles (Amendment) Act, 1956, and provides—

“60. (3) Where a permit is liable to be cancelled or suspended under clause (a) or clause (b) or clause (e) of sub-section (1) and the transport authority is of opinion that having regard to the circumstances of the case, it would not be necessary or expedient so to cancel or suspend the permit if the holder of the permit agrees to pay a certain sum of money, then, notwithstanding anything contained in sub-section (1), the transport authority may, instead of cancelling or suspending the permit, as the case may be, recover from the holder of the permit the sum of money agreed upon.”

It is an enabling provision empowering the Transport Authority to recover from the holder of the permit a sum of money instead of cancelling or suspending the permit. The petitioner's case is that he has been discriminated against in so far as the Regional Transport Authority has prepared a scale of composition-fee payable by the permit-holders for overloading in tempos, *vide* annexure 'A'. The scale is as under:—

S. No.	Extent of overloading	Rate of composition-fee
1.	1 to 3 passengers	... Rs. 15 per passenger.
2.	4 to 5 passengers	... Rs. 20 per passenger.
3.	6 to 8 passengers	... Rs. 25 per passenger.
4.	9 to 10 passengers	... Rs. 30 per passenger or suspension.
5.	Beyond 10 passengers	... Suspension.

In my view the petition is totally devoid of merit. In so far as the matter of composition-fee is concerned, it is within the discretion of the Transport Authority which is the judge of the circumstances of the expediency by which it is to be guided in the matter of compounding the transgression. In this case the Regional

Transport Authority declined to exercise its discretion in petitioner's favour, as it came to the conclusion that the petitioner was habitual offender, and that he had been convicted seven times before, and two cases of overloading were pending in the Court. He was detected carrying ten passengers against six which he could carry. I cannot help observing that compounding of penalties in the manner indicated in annexure 'A', is reprehensible; it virtually means that breaches of conditions of permit may not be punished and the penalty of cancellation or suspension of a permit may be avoided on payment of a composition-fee. In the course of time, the permit holders cease to treat a breach, on their part, of the provisions as a punishment, but only a licence, which they can buy by making the payment according to the artificially fixed scale of composition-fee devised by the Regional Transport Authority. For instance, a person may get away with the penalty in the form of cancellation or suspension of his licence, on payment of a sum of Rs. 30 and yet carry nine to ten passengers in a vehicle providing room for six only. The scale of composition-fee does not take into consideration the inconvenience to which the passengers may be subjected as a result of overloading. The formula must be deprecated, as the breach is no longer visited by a deterrent penalty of suspension or cancellation of the permit, and the circumvention becomes a purchasable privilege. A scheduled sale of immunity is wrong in principle, and encourages recurrent contravention of statute, so long as transgression is profitable.

Moreover, the composition in lieu of suspension or cancellation of permit which is left to the unrestricted and unchannelised discretion of the Regional Transport Authority can lead to making of invidious distinctions and even pervert or defeat public justice.

Over-crowding of passengers, more especially in three wheeled vehicles which have a tendency to tilt and overturn, apart from the great inconvenience caused to them, is one of the causes of mishaps, sometimes disastrous.

A dangerous propensity motivated by avarice, characterised by reckless exposure of the travelling public to grave dangers, and invariably subjecting them to serious discomfort, must be suppressed rather than licensed. The breach of a condition against overloading is not a mere peccadillo which may be lightly overlooked. A strict enforcement of the provision as to suspension or cancellation of permit will be conducive to making travelling safer and in reducing preventable hazards of the journey. On the other hand, a laxity shown

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by compounding, infractions, and that too for a paltry sum, as indicated in the composition-fee scale would be tantamount to abetment of breaches which have lethal potentialities. The power given to the transport authority to recover from the permit holder a sum of money as may be agreed upon, is meant to be exercised in extremely rare cases, and the discretion is intended to be used after serious circumspection, and in the presence of genuinely mitigating circumstances. The wholesome and deterrent effect of penalties of suspension and cancellation of permits, ought not to be thrown away by ready acceptance of composition fees.

The plea of the petitioner, that his permit should not have been suspended, and instead a composition fee of thirty rupees as per scale should have been charged in the background of the facts, and of his previous record of habitual violations, borders on the frivolous; and more so, his contention that he has been discriminated against out of *mala fides* of the transport authority.

The petition is devoid of merit and no interference with the order of the suspension of the permit is called for. Consequently, it is dismissed with costs.

B.R.T.

CRIMINAL MISCELLANEOUS

Before J. S. Bedi and R. S. Sarkaria, JJ.

PARSANO,—*Complainant*

versus

HAZARA SINGH,—*Respondent*

Criminal Miscellaneous No. 719 of 1967

December 4, 1967

Code of Criminal Procedure (V of 1898)—S. 417—Limitation Act (XXXVI of 1963)—Ss. 5 and 29—Application filed under S. 417(3) for grant of special