

SASHI MAHENDRA SINGH *v.* DUDLEY THOMAS  
SAINT

[Appellate Jurisdiction (Vaughan, C.J.) September 18th, 1951]

*Traffic Ordinance, 1946—s. 53—Driving at night without exhibiting lights as prescribed hereunder—s. 54 and 85—whether omission to refer to these sections vitiates charge.*

A police officer, Assistant Superintendent Saint, was charged before the 1st Class Magistrate at Ba upon the complaint of a private person with the offence of driving a car at night without exhibiting the lights prescribed in section 53 of the Traffic Ordinance, 1946.

The penalty for breaches of this section is specified in section 85.

The 1st Class Magistrate held that since the charge sheet did not refer either to section 54 or 85, therefore no offence was disclosed thereon.

The complainant appealed by case stated.

**HELD.**—That failure to refer to sections 54 or 85 in the charge sheet, the accused being charged with an offence under section 53 of the Traffic Ordinance, 1946, does not vitiate the offence.

[**EDITOR'S NOTE.**—Section 54 of the Traffic Ordinance, 1946, which is repealed by the Traffic Ordinance, 1954, reads as follows:—

“ 54. No person shall drive or being the owner shall permit any other person to drive a motor vehicle upon a public road unless such vehicle conforms in all respects to the provisions of this part.” ]

*P. Rice* for the appellant.

The respondent did not appear.

**VAUGHAN, C.J.**—I think it advisable that I should deal with the question as to whether, because of the omission to refer to section 55 (1) or section 85 or both, the charge disclosed an offence. The Magistrate's ruling on this point is not stated in a very satisfactory manner and I find difficulty in following it. He first rules that the accused's submission is valid—that submission was that section 54 (*sic*) created the offence and the failure to specify it resulted in no offence being disclosed. The learned Magistrate, however, continues his “ruling” by saying: “Section 54 does not create a penalty: the penalty section is 85.” He then dismissed the case under section 204 and acquitted the accused. His finding appears to amount to this: that the charge sheet discloses no offence because it refers only to section 53, which describes in detail the acts and omissions prohibited, and does not refer to section 54, which declares to be offences the acts and omissions set out in section 53, or to section 85, which provides the penalty. It is true that a strict compliance with section 125 (a) (ii) of the Criminal Procedure Code would require a reference to section 54 and possibly to section 85 also, as well as to section 53; but by no process of reasoning known to me can it be said that a failure to refer to either or both of those two sections results in no offence being disclosed on the charge sheet, nor, in view of the fact that by no conceivable means could the accused have been misled or prejudiced in any way whatsoever by this omission, could it invalidate the charge. I find therefore that the Magistrate erred in law in his finding on this submission.

This appeal must be allowed.