

A

**HEMRAJ**

v.

**REGINAM**

B

[SUPREME COURT, 1965 (Hammett P.J.), 4th December 1964,  
22nd February 1965]

Appellate Jurisdiction

C

*Criminal law—traffic offences—disqualification—power to order in proceedings initiated by Notice to Attend Court—like power on conviction of contravention of traffic order—Traffic Ordinance (Cap. 235) ss.26(1)(a), 65,66,66(3)—Traffic (Speed Limit) Order 1955 s.2—Criminal Procedure Code (Cap. 9) ss.81(1)(2)(4)(4a). Interpretation—Ordinance—construction “ut res magis valeat quam pereat”—Criminal Procedure Code (Cap. 9) s.81(4a)—Traffic Ordinance (Cap. 235) s.26(1)(a).*

D

The appellant was convicted in the Magistrate's Court of exceeding the speed limit imposed by the Traffic (Speed Limit) Order, 1955, and, in addition to other penalties imposed, he was disqualified from holding or obtaining a motor vehicle driving licence for a term of two months. The appellant had been served with a Notice to Attend Court under section 81(1) of the Criminal Procedure Code which, under section 81(2), is to be regarded for all purposes as a summons, but the use of which is restricted to the offences specified in section 81(4).

E

*Held*: Neither the fact that the procedure under a Notice to Attend Court is restricted by section 81(4) (a) of the Criminal Procedure Code to offences under the Traffic Ordinance punishable only by a fine or imprisonment (with or without a fine) for a period not exceeding three months, nor the provision in section 66(3) of the Traffic Ordinance that a person contravening a traffic order shall be liable to a fine not exceeding ten pounds, limited the general power of the court to impose disqualification given by section 26(1) (a) of the Traffic Ordinance.

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G

Cases referred to: *Whitney v. Inland Revenue Commissioners* [1926] A.C. 37; 134 L.T. 98; *Purshottam Singh v. Reginam* [1958] E.A. 324.

Appeal against conviction and sentence.

S. M. Koya for the appellant.

H

B. A. Palmer for the Crown.

HAMMETT P.J. : [22nd February, 1965]—

The appellant was convicted by the Magistrate's Court, Sigatoka, of the following offence —

“ *Statement of Offence*

*EXCEEDING SPEED LIMIT*: Contrary to Section 66 and 65 of the Traffic Ordinance (Cap. 235) and Order 2 of the Traffic (Speed Limit) Order 1955.

*Particulars of Offence*

HEMRAJ son of Ram Dhani on the 8th October, 1964, on Queen's Road at Koromumu in the Western Division drove Motor Vehicle No. H940 at a speed of 40 m.p.h. such speed being in excess of the maximum speed permitted in a restricted area, namely, 30 m.p.h.

On conviction he was sentenced to a fine of £8.10.0 and in default 3 weeks' imprisonment and ordered to pay 5/- costs and in default 1 day's imprisonment, and it was further ordered that he be disqualified from holding or obtaining a motor vehicle driving licence for a term of 2 months.

He has appealed against conviction and sentence on the following grounds —

- (a) That inasmuch as your petitioner was not summoned but was required to attend Court under a Notice to Attend Court purported to be issued under the provisions of section 83A (1) of the Criminal Procedure Code (Cap. 9), the learned trial Magistrate erred in law in disqualifying your petitioner from holding or obtaining motor vehicle driving licence for a period of two (2) months.
- (b) That the learned trial Magistrate had no jurisdiction to disqualify your petitioner from holding or obtaining motor vehicle driving licence inasmuch as the maximum penalty prescribed by law for the offence was a fine not exceeding £10.0.0 (see section 66(3) of the Traffic Ordinance 1954 (Cap. 235)),
- (c) That in any event the sentence is harsh and excessive.

The appellant was served with a Notice to Attend Court under the provisions of Section 81(1) of the Criminal Procedure Code. By Sub-section (2) such a notice is for all purposes regarded as a summons but it can only be used for the limited number of offences which are set out in section 81(4), of which sub-paragraph (a) reads —

“Any offence under the Traffic Ordinance or any regulation thereunder which is punishable only by a fine or by imprisonment (with or without a fine) for a period not exceeding three months.”

In support of the first ground of appeal it was contended that the provisions of section 81(4) (a) of the Criminal Procedure Code preclude the court from ordering disqualification in addition to a fine.

At first sight I was inclined to the view that there was substance in this ground of appeal. A careful study of the section of the law concerned and the authorities does not however support that view.

A I would refer first to the provisions of section 26(1) (a) of the Traffic Ordinance which read as follows —

“Any court before which a person is convicted of any criminal offence in connexion with the driving of a motor vehicle —

(a) may in any case, and shall when so required by this Part of this Ordinance, order him to be disqualified for holding or obtaining a driving licence for such period as the court thinks fit.”

B The majority of the offences under the Traffic Ordinance are “in connexion with the driving of a motor vehicle.”

C The clear intention of section 81(4) (a) of the Criminal Procedure Code is to provide a simple and expeditious form of procedure avoiding the considerable amount of clerical work and the service of process involved in the issue and service of a formal summons and providing a means by which an offender can, if he chooses, plead guilty to a minor traffic offence without going to the inconvenience of attending Court personally or writing formally to the Court to that effect. The penalty sections of the Traffic Ordinance, with certain possible exceptions which are not material, impose penalties of a fine or imprisonment (with or without a fine). The words in section 81(4) (a) “punishable only by a fine or by imprisonment (with or without a fine) for a period not exceeding three months” do, in my opinion, clearly refer to the same or similar wordings in the particular penalty section or sections in the Traffic Ordinance concerned, and do not refer to the general power to order disqualification contained in section 26(1) (a) of the Ordinance. To construe section 81(4) (a) otherwise, as I am invited by learned counsel for the appellant to do, would result in excluding from its scope all offences in connexion with the driving of a motor vehicle. This would for all practical purposes defeat the obvious object of the section and render its apparent purpose almost nugatory. Statutes ought to be construed “*ut res magis valeat quam pereat*”. As was said by Lord Dunedin in F *Whitney v. Inland Revenue Commissioners* [1926] A.C. at p. 52 —

“A statute is designed to be workable, and the interpretation thereof by a Court should be to secure that object, unless crucial omission or clear direction makes that end unattainable.”

G I am fortified in my view by the judgment delivered by Sir Ronald Sinclair C.J. in *Purshottam Singh v. Reginam* [1958] E.A. 324, in which he came to the same conclusion when construing similar provisions in the Laws of Kenya on the same subject matter. He there based his decision on a passage in *Maxwell on “The Interpretation of Statutes”*, which now appears in the 11th Edition at page 221, as follows —

H “Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or

absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence."

In my view the provisions of section 81(4) (a) of the Criminal Procedure Code do not preclude the Court from ordering disqualification in addition to a fine and the first ground of appeal must therefore fail.

The point which is raised in the second ground of appeal arises out of the construction of section 66(3) of the Traffic Ordinance which reads as follows —

"Any person contravening a traffic order made under this section is guilty of an offence and on conviction shall be liable to a fine not exceeding ten pounds."

It is contended that the limitation on punishments which may be imposed in respect of breaches of a Traffic Order precludes the Court from exercising its general powers of ordering disqualification under section 26(1) (a) of the Traffic Ordinance. With this contention I am unable to agree. Section 66(3) authorises the imposition of fines up to a sum not exceeding £10. It does not either directly or by implication affect or limit the general power to order disqualification given by section 26(1) (a).

One further point taken before me by counsel for the appellant is that section 26(1) (a) must be read and construed only as applying to offences under Part II of the Traffic Ordinance which covers sections 6 to 39. He submits that it cannot be called in aid in respect of breaches of a traffic order under section 66, which falls within Part III of the Ordinance. With this I cannot agree. In section 26(1) (a), the words "may in any case" are not governed by the words "this part of this Ordinance". The words "this part of this Ordinance" refer only to the words immediately preceding them, namely "shall when so required by".

In my view there are no merits in the first two grounds of appeal. I am of the opinion that a Magistrate's Court has jurisdiction, when dealing with offences under the Traffic Ordinance brought before the Court on a Notice to Attend Court issued under the provisions of section 81 of the Criminal Procedure Code, or when dealing with offences against a Traffic Order made under the provisions of section 66 of the Traffic Ordinance, to exercise the general power to order disqualification given by section 26(1) (a) of the Traffic Ordinance.

The last ground of appeal is against sentence. The appellant was travelling at 40 m.p.h. in an area where a speed limit of 30 m.p.h. was in force. He has no previous convictions and the maximum fine prescribed by the Traffic Order concerned is £10. In these circumstances, the Crown has conceded that the penalty imposed, consisting of a substantial fine and disqualification, was excessive for a first offence.

The sentence passed and order of disqualification made by the Court below are set aside and the sentence of a fine of £4 and 5/- is imposed and, in default of payment, 3 weeks' imprisonment.

*Appeal against conviction dismissed.*

*Appeal against sentence allowed.*