

REGINA

v.

SERU RATUDRADRA

[SUPREME COURT, 1970 (Moti Tikaram P.J.), 29th May, 19th June]

Appellate Jurisdiction

A *Criminal law—traffic offences—driving motor vehicle—road roller with diesel motor—used for repair of road surface—whether constructed for use on roads—proper test—Traffic Ordinance (Cap. 152) ss. 2, 9 (1) (2), 23 (1), 85—Motor Vehicles (Third Party Insurance) Ordinance (Cap. 153) s. 4 (1) (2).*

Interpretation—Ordinance—“motor vehicle”—test of whether constructed for use on roads—Traffic Ordinance (Cap. 152) s. 2.

B The respondent was charged in the Magistrate's Court with the offences of driving a motor vehicle without a driving licence, driving an unlicensed motor vehicle (contrary respectively to sections 23 (1) and 9 (1), (2) of the Traffic Ordinance) and driving an uninsured motor vehicle (contrary to s. 4 (1), (2) of the Motor Vehicles (Third Party Insurance) Ordinance.)* The vehicle concerned was a diesel motor road roller which was being used by the respondent for the purpose of repairing a road surface. The trial magistrate dismissed the charges on the ground that the vehicle was not “constructed for use on roads” within the meaning of those words in the definition of “motor vehicle” in section 2 of the Traffic Ordinance and was not therefore a motor vehicle. On appeal—

C *Held:* 1. The test of whether a vehicle is constructed for use on roads within the meaning of section 2 of the Traffic Ordinance, is whether a reasonable person, looking at the vehicle, would say that one of its users was a road user.

D *Burns v. Currell* [1963] 2 K.B. 433; [1963] 2 All E.R. 297, and *Childs v. Coghlan* (1968) 112 Sol. Jo. 175; [1968] Crim. L.R. 225, followed.

2. The road roller clearly fulfilled this test and, being mechanically propelled, was a motor vehicle.

Other cases referred to:

Daley v. Hargreaves [1961] 1 All E.R. 552; [1961] 1. W.L.R. 487

Macdonald v. Carmichael [1941] S.C. (J.) 27.

F Appeal by the Attorney-General from the dismissal by a magistrate of charges relating to the driving of a motor vehicle.

J. R. Reddy for the appellant.

C. Gordon for the respondent.

The facts are sufficiently ascertainable from the judgment..

E MOTI TIKARAM P.J.: [19th June, 1970]—

The Respondent was acquitted by the Magistrate's Court of the First Class sitting at Lautoka of the following offences:—

“FIRST COUNT

Statement of Offence

G *Driving Motor Vehicle without Driving Licence:*

Contrary to Section 23 (1) and 85 of the Traffic Ordinance, Cap. 152.

*NOTE:—Section 2 (2) of the Motor Vehicles (Third Party Insurance) Ordinance imports into that Ordinance definitions from the Traffic Ordinance—Ed.

Particulars of Offence

Seru Ratudradra On the 16th day of June, 1969 at Lautoka in the Western Division, drove a motor vehicle namely Road Roller on Tukani Street, when not being the holder of a valid driving licence. **A**

SECOND COUNT

Statement of Offence

Driving an Unlicensed Motor Vehicle: **B**

Contrary to Section 9 (1), (2) and 85 of the Traffic Ordinance, Cap. 152.

Particulars of Offence

Seru Ratudradra On the 16th day of June, 1969 at Lautoka in the Western Division, drove a motor vehicle namely Road Roller on Tukani Street, when the said vehicle was not duly licensed under the provisions of Part III of the above Ordinance. **C**

THIRD COUNT

Statement of Offence

Driving an Uninsured Motor Vehicle: **D**

Contrary to Section 4 (1) and (2) of the Motor Vehicles (Third Party Insurance) Ordinance, Cap. 153.

Particulars of Offence

Seru Ratudradra On the 16th day of June, 1969 at Lautoka in the Western Division, drove a motor vehicle namely Road Roller on Tukani Street, when there was not in force in relation to the use of the said motor vehicle by the said *Seru Ratudradra* a policy of Insurance in respect of the third party risk as complies with the provisions of the Motor Vehicles (Third Party Insurance) Ordinance." **E**

The learned Attorney-General has appealed against the order of acquittal upon the following grounds:— **F**

" That the Trial Magistrate erred in law and fact in ruling that the road roller hereinafter referred to was not a motor vehicle as defined by section 21 of the Traffic Ordinance, Chapter 152 "

The findings of fact and the reasons for acquittal are stated in the learned trial Magistrate's judgment, the complete context of which is as follows:— **G**

" JUDGMENT

1.12.69.

This man is charged on three separate counts:

- (a) of driving a motor vehicle without a driving licence.
- (b) of driving an unlicensed motor vehicle.
- (c) of driving an uninsured motor vehicle. **H**

His employer Ram Dayal s/o Mahadeo is also separately charged that he permitted this man to do all three actions and thereby himself commits an offence.

A By reason of the defence raised in the submissions of Mr. Gordon who appeared for both defendants at the hearing my Judgment here will be equally applicable to both cases. The evidence establishes, and is not denied, that this man, while employed by Ram Dayal, above referred to, was driving a diesel motor 'road roller' in Tukani Street, Lautoka on the morning of the 16th June, 1969, while in the course of repairing the road surface. The roller was unlicensed under the provisions of the Traffic Ordinance and likewise was uninsured under the provisions of the Motor Vehicle (Third Party) Ordinance. The Defendant also, admittedly, held no motor driver's licence.

B The point was taken at the hearing by Mr. Gordon for the Defendant and also his employer that the road roller is not a motor vehicle within the meaning of the Traffic Ordinance.

The whole issue therefore turns on whether the road roller in this instance does fall within the ambit of the provisions of the Traffic Ordinance.

Section 2 defines a "motor vehicle" as follows:—

C "motor vehicle" means any vehicle propelled by mechanical power and constructed for use on roads and not on rails or specially prepared ways, and shall include any vehicle riding on a cushion of air, a trailer, and any other vehicle of a class declared by the Governor by notice in the Gazette to be motor vehicles.

D One may note in passing that the Legislature clearly envisages that further vehicles other than those described may need from time to time to be included in the definition by the powers vested in the Governor. Thus clearly it is contemplated not all vehicles fall within the definition.

Section 2 likewise defines what is a "vehicle" thus:

E "Vehicle" means a contrivance that is equipped with wheels or revolving runners upon which it moves or is moved; but does not include a push cart, wheelbarrow, perambulator mowing machine or any other contrivance which is normally operated only by a person on foot, whether or not the same be power driven.

Clearly, therefore, the road roller is a "vehicle" under the Ordinance and as such could well be included in the definition of "motor vehicle" by the action of the Governor and the necessary publication of a notice to that effect in the Gazette. I have been unable to discover any such notice and must therefore assume none exists.

F The only decision of the Court's I am able to discover which assists me in determining whether the roller is in this context a "motor vehicle" is a decision of the Queen's Bench on Appeal in the case of *Daley and Others v. Hargreaves* [1961] 1 All E.R. 552.

G Here the circumstances under consideration were broadly analogous save that the machine there was a mechanical dumper and the breach of the law alleged was in respect of the prescribed equipment for "motor vehicles". The dumper was used for a short distance in a lane adjacent to a Subdivision in which it was working in constructing a road. It was held there, following an earlier Scottish decision of *Macdonald v. Carmichael* [1941] S.C. (J) 27 for conformity, that it was not a motor vehicle within the definition in the English Statute.

H It is therefore necessary to consider the English definition, at that time. It is referred to in the text of the decision, per Salmon J. as "amechanically propelled vehicle intended or adapted for use on roads."

It is thus slightly different from the definition in the case before me. The

difference is not, however, such that I find that I must distinguish the two. The difference lies in the term "intended or adapted" for in contradistinction to "constructed for". I find that in the context in which both are used they are approximately synonymous as "constructed" for imports an intention. The English definition is therefore, if anything, wider in its ambit.

A

Mr. Justice Salmon, in his Judgment reported at page 555 refers to the findings in the Scottish Decision and quotes:

"That (the dumpers) are solely used in connexion with road construction and are not constructed to carry goods on any ordinary highway. They are so constructed as to be capable of and are, in fact, occasionally used for carrying road making materials along short stretches of a public highway in the vicinity of the work of construction."

B

The evidence in this case clearly establishes that the roller was being used in repairing the road surface. We do not know how it got there or got away or whether the driver used it to go home for lunch. It is also abundantly clear that a road roller, while capable of being driven on a road for purposes other than the construction and repair of roads is not constructed with this wider use in view. It is clearly a machine for making and repairing roads not for use on them in the ordinary accepted use of this term when applied to motor vehicles.

C

Accordingly I find that the road roller in this case is not a motor vehicle within the meaning of the Traffic Ordinance, and the police case must fail on this account, the Accused is found not guilty and is therefore acquitted on all three counts."

D

The question for determination by this Court is whether the road roller was a motor vehicle as defined in Section 2 of the Traffic Ordinance. I agree with the learned trial Magistrate that for all practical purposes there is no real difference between the definition of a motor vehicle as found in the English Statute and that as given in our Traffic Ordinance, notwithstanding the difference in phraseology.

E

It is clear that the learned trial Magistrate based his ruling on the decision in *Daley v. Hargreaves* 1961 1 All E.R. 552. I think it is important to remember that the decision in *Daley v. Hargreaves* turned on the peculiar facts of that case. There was no evidence of general user of roads of the mechanical dumpers. Mr. Justice Salmon who gave the leading judgment in that case circumscribed his own view by stating as follows:—

F

"My conclusion might, and probably would, have been different if the findings had shown that the dumpers were reasonably suitable for being driven along the public roads in transit or for the purpose of carrying material from one site to another. Nor must it be thought that I am acceding to the appellant's submission that the intention referred to in the relevant sections is the manufacturer's intention alone. It may be that the Legislature had no particular person's intention in view, whether manufacturer's, wholesaler's, retailer's, owner's or user's. "Intended... for use on road's" may mean no more than suitable or apt for use. I prefer, however, to express no concluded view on this point but to base my decision, following *Macdonald v. Carmichael*, on the ground that in no event does the evidence of very limited user in this case establish that the vehicles were intended for use on roads within the meaning of the statutes concerned."

G

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Lord Parker C.J. who agreed with Lord Salmon's judgment was nevertheless constrained to add (at page 556) the following words:—

A " I would only like to emphasise that it must not be taken as a result of this decision that dumpers of the type used in this case are not vehicles intended or adapted for use on the road."

In short, *Daley's case* was decided on the basis that, whatever the words 'intended or adapted for use on roads' exactly meant it had not been proved in that case.

B In *Burns v. Currell* [1963] 2 All E.R. 297 the defendant was found seated in a self-propelled vehicle known as a Go-Kart on a road. It was not fitted with a horn, mirror, springs and other materials required under the Motor Vehicles (Construction and Use) Regulations, 1955. The justices held that a Go-Kart was *inter alia* a motor vehicle and so convicted the defendant for using it in contravention of the Regulations. Allowing the appeal the Queen's Bench Division (per Lord Parker C.J.) said that the question of whether or not a "Go-Kart" was a "motor vehicle" depended on whether it was "intended or adapted" for use on roads. The test under these words, it was held, was whether a reasonable person, looking at the vehicle would say that one of its users would be a road user. The reasonable person would not have to envisage user by a lunatic nor an isolated user nor one in an emergency. The real question was: was some general use on the road contemplated as one of the users? There was in the present case no evidence before the justices to justify them on this point. The evidence was that this vehicle had been used in this way on this day alone. There was no evidence of use by other people, and it was not suggested by the justices that they relied upon their own experience and knowledge. The Court was also inclined to agree with Salmon J's observation in *Daley v. Hargreaves* that in using the word "intended" it may be that the Legislature had no particular person's intention in view, whether manufacturer's, wholesaler's, retailer's, owner's or user's. "Intended . . . for use on roads" may mean no more than suitable or apt for use.

E In a more recent case—*Childs v. Coghlan* [1968] Crim. L.R. 225, the Queen's Bench Division allowing the prosecutor's appeal held that a mechanical scraper was a motor vehicle. The scraper weighed more than thirty tons and capable of speeds of up to forty-five miles an hour was primarily used as a piece of construction plant on building sites; it had no mirrors, springs, speedometer, windscreen or other features of ordinary road vehicles, but because of its size it had to go from site to site along roads under its own power. While engaged in a journey of eighty miles it was alleged that its driver had driven dangerously, and an information was laid under section 2 of the Traffic Act, 1960. The justices dismissed the information holding that scraper was not a motor vehicle within the meaning of the Act. The Queen's Bench Division allowing the appeal said that the sole question was whether the machine was "intended or adapted for use on roads". When one found plant which had regularly to go on the roads from one site to another it was clearly intended to be used on the roads. Applying the test that whether a reasonable person looking at the vehicle would say that one of its users was a road user, the Queen's Bench Division held that it seemed clear that such a person would have said that.

G In my view the proper test in deciding whether or not a vehicle was a "motor vehicle" within the meaning of section 2 of the Traffic Ordinance, is as laid down by Lord Parker C.J. in *Burns v. Currell* and applied in *Child v. Coghlan*. Applying this test to the undisputed facts found by the learned trial Magistrate I have on hesitation in holding that the road roller was a motor vehicle within the meaning of section 2 of the Traffic Ordinance. The machinery in question was a mechanically propelled diesel road roller. It was being driven by the Respondent on a public road in circumstances clearly indicating that it was primarily constructed as its very name suggests, for use on roads. Any reasonable person looking at the

road roller cannot but say that at least one of its uses was a road user. Consequently I allow the appeal, set aside the order of acquittal and hold that the Respondent is guilty on all three counts.

A

Under normal circumstances I would have remitted this case to the trial Magistrate with directions to deal with the question of conviction and penalty on the basis that the accused was guilty on all three counts. However since the trial Magistrate in question is now not available I shall deal with the question of both conviction and penalty myself but before doing so the Respondent will first be heard in mitigation.

B

Appeal allowed.