

Criminal Revision  
PRESENT:  
**The Hon'ble Justice Ashim Kumar Roy**

*C.R.R. No. 1511 of 2010*

*Abul Sk.*  
*versus*  
*The State of West Bengal & Ors.*

JUDGMENT ON: 23.07.2010

**Point:**

**PERMIT:** Petitioner converted a van rickshaw, which has been manually fitted with motor- Whether can be plied without obtaining necessary permissions under the Motor Vehicles Act - Motor Vehicles Act, 1988, Ss. 2 (28), 39, 65, 146, 192.

**Fact:** The petitioner filed the instant application for return of his Van Rickshaw, which was fitted by him with motor without taking any permission under the Motor Vehicles Act and for this reason the same was seized by the police under Sections 181/192/192A/196 of the Motor Vehicles Act.

**Held:**

According to the provisions of Section 65 of the Motor Vehicles Act, no owner of the motor vehicle is permitted to use for carrying either passengers or goods save and except without a permit issued in accordance with the provisions of the Motor Vehicles Act and any violation thereof is an offence made punishable under Section 192A of the Motor Vehicles Act. Moreover, according to the provisions of Section 146 of the Motor Vehicles Act, no motor vehicle shall be driven and plied in a public place without a policy of insurance and the contravention of the same is also punishable under Section 196 of the Motor Vehicles Act. (Paragraph – 6)

The petitioner has converted his manually operated three wheeler Rickshaw Van to a mechanically propelled vehicle by fitting diesel pump in it and engaged in employing his such Rickshaw Van, fitted with diesel pump set for the purpose of carrying both passengers and goods, without obtaining registration, route permit and insurance in terms of the Motor Vehicles Act, made himself liable for being prosecuted under Sections 181/192/192A/196 of the Motor Vehicles Act. Thus, the police has not committed any mistake by seizing his Rickshaw Van in exercise of the power conferred under Section 207 of the Motor Vehicles Act and in instituting a criminal case in accordance with law. On the other hand, if the aforesaid Rickshaw Van is released and thus the petitioner is permitted to ply the same in the same manner and for same purposes without registration, permit and insurance in terms of the Motor Vehicles Act, that would certainly perpetuate the violation of the statutes. Accordingly, question of release of this motor Van in question does not at all arise. (Paragraph – 7)

For Petitioner : Mr. S.K. Humayan Reza

For State : Mr. Swapan Kumar Mullick

**The Court:** The petitioner moved this Court for return of a Van Rickshaw fitted with motor seized by the police in connection with a case registered under Sections 181/192/192A/196 of the Motor Vehicles Act. purchased a diesel pump set from the market and fitted such pump set in his such Rickshaw Van so as to propelled it mechanically and engaged in carrying passengers and goods in the said Rickshaw Van against fares.

2. Heard the Learned Counsels appearing on behalf of the parties. Perused the materials on record.

3. Admittedly, the Rickshaw Van in question is a mechanically propelled vehicle and thus falls within the category of motor vehicles as defined in Section 2 (28) of the Motor Vehicles Act. The provisions of Section 2 (28) of the Motor Vehicles Act is quoted below;

**Section 2 (28) of the Motor Vehicles Act :-**

(28) “motor vehicle” or “vehicle” means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding [twenty-five cubic centimeters];

4. According to the provisions of Section 39 of the Motor Vehicles Act, registration of such vehicle is compulsory and if any vehicle is plied in public place without such registration same is an offence punishable under Section 192 of the Motor Vehicles Act. In this regard both the provisions are quoted below;

**Section 39 and Section 192 of the Motor Vehicles Act :-**

**“39. Necessity for registration.**-No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner:

Provided that nothing in this section shall apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government.”

**“192. Using vehicle without registration.**-(1) Whoever drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of section 39 shall be punishable for the first offence with a fine which may extend to five thousand rupees but shall not be less than two

thousand rupees for a second or subsequent offence with imprisonment which may extend to one year or with fine which may extend to ten thousand rupees but shall not be less than five thousand rupees or with both:

Provided that the Court may, for reasons to be recorded, impose a lesser punishment.

(2) Nothing in this section shall apply to the use of a motor vehicle in an emergency for the conveyance of persons suffering from sickness or injuries or for the transport of food or materials to relieve distress or of medical supplies for a like purpose:

Provided that the person using the vehicle reports about the same to the Regional Transport Authority within seven days from the date of such use.

(3) The Court to which an appeal lies from any conviction in respect of an offence of the nature specified in sub-section (1), may set aside or vary any order made by the Court below, notwithstanding that no appeal lies against the conviction in connection with which such order was made.”

5. It was the case of the petitioner that he was the owner of a manually operated three wheeler Rickshaw Van and it was his further case due to his old age and advice of his well wishers he purchased a diesel pump set from the market and fitted such pump set in his such Rickshaw Van so as to propelled it mechanically and engaged in carrying passengers and goods in the said Rickshaw Van against fares.

6. Now, according to the provisions of Section 65 of the Motor Vehicles Act, no owner of the motor vehicle is permitted to use for carrying either passengers or goods save and except without a permit issued in accordance with the provisions of the Motor Vehicles Act and any violation thereof is an offence made punishable under Section 192A of the Motor Vehicles Act. Moreover, according to the provisions of Section 146 of the Motor Vehicles Act, no motor vehicle shall be driven and plied in a public place without a policy of insurance and the contravention of the same is also punishable under Section 196 of the Motor Vehicles Act.

7. Now, having regards to the admitted position the petitioner has converted his manually operated three wheeler Rickshaw Van to a mechanically propelled vehicle by fitting diesel pump in it and engaged in employing his such Rickshaw Van, fitted with diesel pump set for the purpose of carrying both passengers and goods, without obtaining registration, route permit and insurance in terms of the Motor Vehicles Act, made himself liable for being prosecuted under Sections 181/192/192A/196 of the Motor Vehicles Act. Thus, the police has not committed any mistake by seizing his Rickshaw Van in exercise of the power conferred under Section 207 of the Motor Vehicles Act and in instituting a criminal case in accordance with law. On the other hand, if the aforesaid Rickshaw Van is released and thus the petitioner is permitted to ply the same in the same manner and for same purposes without registration, permit and insurance in terms of the Motor Vehicles Act, that would certainly perpetuate the violation of the statutes. Accordingly, question of release of this motor Van in question does not at all arise.

8. This criminal revision has no merit and accordingly stands dismissed. Interim order, if any, stands vacated.

9. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

*( Ashim Kumar Roy, J. )*