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In our opinion, therefore, the answers that we should give to both the questions put to us are in the affirmative. We are also of the opinion that *Govind* v. *Mohoniraj*[1] and *Chunilal* v. *Broach Urban Co-op. Bank, Ltd.*,[2] were wrongly decided and they must be considered to be overruled.

Answers accordingly.

M. W. P.

[1] (1901) 3 Bom. L. R. 407. [2] (1937) 39 Bom. L. R. 815.

APPELLATE CRIMINAL

Before Mr. M. C. Chagla, Chief Justice.

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PALLONJI N. MEHTA *v.* STATE.*

Indian Railways Act (IX of 1890), ss. 47, 70, 113—Rule 39 (b)† framed by railway under administrative power—Rule requiring holder of season ticket to sign it and mention his age on it—Validity of rule.

Although a Railway Company may, apart from s. 47 of the Indian Railways Act, 1890, frame a rule in the exercise of its general powers of administration to regulate its own traffic, the rule to be valid must satisfy two conditions: first, the rule must not be inconsistent with any provision of the statute or any rules framed under s. 47; secondly, the rule must not be unreasonable. Railway Authority cannot, however, by a rule so framed provide that if the rule is contravened, the person contravening shall be liable to a particular penalty. The power to impose penalties is a power which only the Legislature may exercise, and the Railway Authority has no such power delegated to it. It is only when a rule is framed under s. 47 that, by its very terms, the rule may provide any penalty for its breach.

The G. I. P. Railway framed a rule, viz. Rule 39 (*b*) which provided that a season ticket would not be valid unless it was signed in ink by the person in whose favour it was issued and his age was entered in

* Criminal Revision Application No. 1242 of 1951.

† The rule reads as under:

R. 39 (*b*). "A Season Ticket will not be valid unless it is signed in ink by the person in whose favour it is issued and his age is entered in the space provided. Any person who is unable to sign his name in any language may however affix his left thumb impression in the space for the signature. If a passenger is found travelling with a Season Ticket wherein these conditions have not been fulfilled, he will be liable to pay the excess charge mentioned in Rule 46 in addition to the ordinary single fare for the distance mentioned in the Season Ticket."

the space provided. Under s. 113 of the Indian Railway Act, 1890, if a passenger travelled in a train without having a proper pass or a proper ticket with him, he became liable to pay excess fare, and if he failed to pay the excess fare, it could be recovered as if it were a fine. The accused having failed to comply with the provisions of the rule was convicted by a Presidency Magistrate under s. 113 and ordered to pay the excess fare by way of fine. In revision, the question having arisen as to whether the rule was validly framed:

Held, (*i*) that the rule was a reasonable rule intended to carry out the provision contained in s. 70 of the Railways Act; nor was it inconsistent with any of the provisions of the Act;

(*ii*) that the penalty to which the accused subjected himself was not due to the rule but it was the result of the statutory provision contained in s. 113, inasmuch as the season ticket held by him was not a proper season ticket in accordance with the rule;

(*iii*) that, therefore, the rule was not *ultra vires*, and the conviction of the accused was justified.

Emperor v. *Weir*,[1] *Emperor* v. *Mohammad Aurangzebkhan*,[2] distinguished.

Emperor v. *Narayan Krishna*[3] and In re *Komran*,[4] referred to.

CRIMINAL REVISION APPLICATION from conviction and sentence passed by K. S. Dhurandhar, Presidency Magistrate, First Additional Court, Victoria Terminus, Bombay.

Pallonji N. Mehta (accused) held a first class season ticket for stations between Dadar and Victoria Terminus on the G. I. P. Railway. On July 5, 1951, when he was travelling between these stations, his ticket was checked and it was found that it was not signed by him and his age was not mentioned on it. He was thereupon asked to pay travelling charges from Dadar to Victoria Terminus which amounted to Rs. 1-12-0. On his refusal to pay the charges, he was prosecuted by the Railway company under s. 113 of the Indian Railways Act, 1890. The trying Magistrate convicted him and ordered him to pay a sum of Rs. 1-12-0 to the railway.

The accused applied in revision to the High Court.

A. G. Kirpalani, for the applicant.

H. M. Choksi, Government Pleader, for the State.

K. J. Khandalawalla, with *Messrs. Little & Co.*, for the Railway.

(1) (1910) 12 Bom. L. R. 930.
(2) (1942) 44 Bom. L. R. 916.
(3) (1922) 47 Bom. 465.
(4) (1921) 45 Mad. 215.

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CHAGLA C. J. This is an application in revision against the order of conviction and sentence passed by the learned Presidency Magistrate, First Additional Court, Victoria Terminus, Bombay.

In this case, I have had the advantage of a very able judgment by the learned Presidency Magistrate, and also of the very able arguments at the bar, both by Mr. Kirpalani and by Mr. Khandalawalla.

The facts in this case are not in dispute and they are as follows. The accused travelled between Dadar and Byculla on July 5, 1951. He had a season ticket, and when his ticket was checked, he showed this ticket. This season ticket was not signed by him, and his age was not mentioned on it. He was thereupon asked to pay the travelling charges from Dadar to Victoria Terminus. These charges amounted to Rs. 1-12-0. The accused refused to pay the charges. Thereupon a case was filed by the railway company before the Presidency Magistrate to recover the fine, and the learned Presidency Magistrate convicted the accused and ordered him to pay a sum of Rs. 1-12-0.

The railway company has framed a rule, which is r. 39 (*b*); and that rule provides that a season ticket will not be valid unless it is signed in ink by the person in whose favour it is issued and his age is entered in the space provided. Under s. 113 of the Indian Railways Act, if a passenger travels in a train without having a proper pass of a proper ticket with him he becomes liable to pay excess fare, and if he fails to pay the excess fare, that can be recovered as if it were a fine under sub-s. (*4*) by a case being preferred before a Presidency Magistrate. The contention of the Railway authorities is that, in view of r. 39 (*b*), the season ticket which the accused had was not a proper pass, and, inasmuch as he travelled without a proper pass, he contravened the provisions of s. 113 and became liable to pay the excess fare. Mr. Kirpalani's contention on the other hand, is, that the railway company has not only framed r. 39 (*b*), but has also enacted a penalty for the breach of that rule; and Mr. Kirpalani says that, unless the railway company frames a rule under s. 47, it cannot provide for a penalty for the breach of any rule framed by it otherwise than under s. 47.

Now, s. 47 enables a railway company to frame general rules for various purposes defined in that section. A rule

framed under that section cannot take effect unless it has received the sanction of the Central Government and has also been published in the Official Gazette; and such a rule may provide that any person committing a breach of it shall be punished with a fine not exceeding Rs. 50. It is common ground that r. 39 (*b*) has not been framed under this section. Now, as I shall presently point out from the authorities, it is well settled that a railway company can frame rules otherwise than under s. 47 to regulate its own traffic, and these rules can be framed in the exercise of the general powers of administration of a railway company. In order that these rules should be valid, two conditions have to be satisfied: one is that the rules must not be inconsistent with any provision of the statute or any rules framed under s. 47, and the other condition is that the rules must not be unreasonable. If these two conditions are satisfied, then a railway authority has very wide powers to frame, what I might call, administrative rules for the day to day administration of the company and for regulating its traffic. It is clear why Courts of law here and in England have recognised this right of a railway company. Rules made under s. 47 involve a very cumbrous procedure, and the railway authority may require rules to be framed to meet the exigencies of a situation. Rules may have to be framed, and may have to be changed, from day to day or from week to week or from month to month, and it is impossible to expect the railway authority to go through the procedure required under s. 47. But I entirely agree with Mr. Kirpalani that if an administrative rule is framed by the railway authority, the railway authority cannot by that rule provide that if the rule is contravened, the contravener shall be liable to a particular penalty. The power to impose penalties is a power which only the Legislature can exercise, and the railway authority has no such power delegated to it. It is only when a rule is framed under s. 47 that, by its very terms the rule can provide a penalty for its breach. Now, it will be noticed that r. 39 (*b*) itself does not provide any penalty for its breach. If the rule itself does not provide for its breach and the contravention of that rule may result in the contravention of some provision of the statute, then I see no reason why a breach of that rule should not be punished, not because the rule itself provided for the penalty, but because by contravening that rule the offender contravened some provision of the statute. That exactly is the position here.

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Now, it will be noticed that under s. 113 what is prohibited is, not travelling in a train without a pass or a ticket, but travelling in a train without a proper pass or a proper ticket. "A proper pass" or "a proper ticket" has not been defined anywhere in the statute. Mr. Kirpalani has drawn my attention to the relevant provisions with regard to the issue of a ticket or a pass. Section 66 provides that every person desirous of travelling on a railway shall, upon payment of his fare, be supplied with a ticket, specifying the class of carriage for which, and the place to which the fare has been paid, and the amount of the fare. Section 68 provides that no person shall, without the permission of a railway servant, enter or remain in any carriage on a railway for the purpose of travelling therein as a passenger unless he has with him a proper pass or ticket. And s. 70 provides that a return ticket or season ticket shall not be transferable and may be used only by the person for whose journey to and from the places specified thereon it was issued. According to Mr. Kirpalani, on his having tendered the necessary amount, the accused had a statutory right to the issue of a ticket or a season ticket; and once he was in possession of such a season ticket, he had a right to travel by the railway authority's train, and if he so travelled, it could not be said that under s. 113 he was travelling in a train without taking a proper pass or a proper ticket. In advancing his argument, Mr. Kirpalani attaches no importance whatsoever to the expression "proper" used by the Legislature. It would be very difficult for a Court of law, unfamiliar with the needs and necessities of a railway authority, to decide objectively what a proper pass or a proper ticket was. In my opinion, if once it is conceded that the railway authority can make administrative rules for regulating its own traffic, it must be left to the railway authority to decide what is a proper pass or a proper ticket in different circumstances. My attention has been drawn to the administrative rules framed by the G. I. P. Railway, and I find that these rules provide, with regard to each kind of train, what persons holding what tickets are entitled to travel by those trains. Therefore, according to these rules, a proper ticket or a proper pass varies with the train in which the holder of the ticket or the pass travels, and, obviously, for administrative reasons, it must be so. A passenger who holds a ticket from say, Victoria Terminus to an intermediate station, would not be allowed to travel by a through or a mail train, because

otherwise the mail train would get congested and serious inconvenience might be caused to persons who are travelling a long distance. I am only giving one instance to show how necessary it is for the railway authorities to frame rules as to what a proper pass or ticket is with regard to a particular train.

Now, in this particular case, it has been pointed out in evidence that the reason which led the railway authority to frame this particular rule, that is, r. 39 (*b*), was that they found that there were several instances where season tickets had been used by persons who were not entitled to them. Although s. 70, as I have just pointed out, provides that a return ticket or a season ticket shall not be transferable, still people permitted other persons to make use of their own season tickets. In order to prevent this, the railway company thought that a very good and safe device would be to insist upon the holder of the season ticket signing his name and giving his age, so that, when the season ticket was checked, it could be immediately discovered whether the person holding the season ticket was the person whose signature appeared on the season ticket and whose age was indicated on the ticket. Therefore, in my opinion, this r. 39 (*b*) is a very reasonable rule intended to carry out a provision of the Act, namely, the provision contained in s. 70. Nor is it inconsistent with any of the provisions of the Act. Far from being so, as I have just said, its very object is to carry out the very provision which the Legislature intended to be carried out. Therefore, it is not true to say that r. 39 (*b*) not only enacts that a particular condition shall attach to the issue of a season ticket, but that it also provides that the contravention of that provision will be penal. The penalty to which the accused has subjected himself is not due to r. 39 (*b*); it is the result of the statutory provision contained in s. 113. All that r. 39 (*b*) does is to define what a proper season ticket is, and, inasmuch as the season ticket which the accused held was not a proper season ticket in accordance with r. 39 (*b*), he subjected himself to the penalty imposed by s. 113. If the matter is looked at in that light, it is clear that r. 39 (*b*) is not *ultra vires*, and that the conviction of the accused under s. 113 was fully justified.

Mr. Kirpalani has argued that the subject-matter of r. 39 (*b*) fell within the terms of s. 47, and, therefore, there was nothing to prevent the railway authority from framing a rule

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under s. 47 and getting the necessary sanction published in the *Gazette* and making the breach of it penal. It is true that the railway authority could have framed this rule under s. 47. But that does not take away the authority and the power of the railway company to frame any rule for administrative reasons. I have already pointed out that it is not always easy to frame a rule under s. 47.

Turning to the authorities, there are three decisions of this Court on which reliance has been placed. The first is *Emperor* v. *Weir*.[1] In that case, the guard of the railway company failed to obey a certain rule which had been framed by the G. I. P. Railway; and it was pointed out that the rule framed was a valid rule because there was no inconsistency between that rule and the Act or the general rules under the Act. Mr. Kirpalani is right that this case does not very much help the prosecution, because it was a matter between an employer and an employee and the decision largely turned on the fact that, according to the terms of the employment, the guard was bound to obey any rules framed by the railway authority. But the importance of the decision lies in this, that a rule which was not framed under s. 47 was upheld by the Court because there was no inconsistency between the rule and the general provisions of the Act. The next is a decision of Mr. Justice Marten, as he then was, to whom the matter was referred on a difference of opinion between Mr. Justice Shah and Mr. Justice Crump, and that is reported in *Emperor* v. *Narayan Krishna*.[2] There a person, who was neither a European nor an Anglo-Indian—and we were living in days in which it was of considerable political importance whether one belonged to that class or not—entered a compartment reserved for Europeans and Anglo-Indians, and he was convicted under s. 109 of the Indian Railways Act. The reservation of a compartment for Europeans and Anglo-Indians had been made by the railway company under administrative rules, and the question was whether the conviction was justified. Mr. Justice Marten held that, as the rule did not give undue preference nor did it cause undue prejudice to any particular passenger, it was properly made and the conviction was valid. In this case Mr. Justice Marten cited with approval the observation of Lord Halsbury in *Perth General Station Committee* v. *Ross*[3] in which the

[1] (1910) 12 Bom. L. R. 930. [2] (1922) 47 Bom. 465.
[3] [1897] A. C. 479.

learned Law Lord stated that he would be sorry to throw any doubt on the absolute right of the railway company in the first instance to regulate their own traffic in their own way. The last decision is of Sir Beaumont and Mr. Justice Wassoodew, reported in *Emperor* v. *Mohammad Auranzebkhan*[1]. That is a decision on which considerable reliance has been placed by Mr. Kirpalani. In that case, a passenger, who had reserved seats in a second class compartment and was allotted the upper berth, occupied the lower berth in the same compartment. He was convicted under s. 109 (*1*) of the Indian Railways Act, and Sir John Beaumont, delivering the judgment, held that the conviction was bad. Now, the railway company had passed rules and regulations for reservations of berths, and Sir John Beaumont pointed out, at page 918, that the power to punish for breach of any of the regulations or arrangements made by a railway company forms no part of the general powers of such company, and must be conferred by statute or rules made thereunder either by express, words or by necessary implication. Therefore, Sir John Beaumont reiterated the principle which I have myself tried to set out namely, that a railway authority has no power to punish the breach of any of its regulations. Then Sir John Beaumont points out that under s. 109, a conviction can only be justified if a passenger enters a compartment which is reserved, and inasmuch as this particular compartment was not reserved, the conviction under s. 109 was obviously bad; and the learned Chief Justice expresses surprise that there should be no provision in the Act by which a person occupying a berth other than the one reserved for him could be punished. Then the learned Chief Justice considered whether he could be convicted under s. 120 (*c*), and he again came to the conclusion that, on the facts of the case, a conviction would not have been justified under s. 120 (*c*). Thereupon the learned Chief Justice came to the conclusion that the conviction of the accused was bad and set it aside. Now, the important point to note in this case is that the learned Chief Justice came to the conclusion that he did because the conviction of the accused could not be justified under any provision of the statute; and the learned Chief Justice, with respect, rightly held that, if there was no provision in the statute which made the act of the passenger an offence, the railway company, by its rules, cannot make the act an offence. The facts before me are

[1] (1942) 44 Bom. L. R. 916.

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entirely different. The conviction of the accused is justified under s. 113, because he has been travelling without a proper season ticket or a proper pass, and, as I said before, he has not been convicted by reason of the fact that the railway company has made his act an offence when the statute did not make it an offence. It is the statute itself which lays down that travelling without a proper pass is an offence, and all that r. 39 (*b*) did was to define what "a proper pass" was.

Then my attention has been drawn by Mr. Khandalawalla to the observations of Mr. Justice Oldfield in *In re Komaran.*[1] There also the Madras High Court was considering the case of reservation of compartments for the use of Anglo-Indians. The rule reserving the compartment was not framed under s. 47, and Mr. Justice Oldfield observes (p. 219):

> "...It is not obligatory to obtain that sanction, if the Railway sees its way to enforce the rule without it or a penalty is provided incidentally in some other portion of the Act."

In the present case, the railway authority has seen its way to enforce r. 39 (*b*) by relying upon the provisions of s. 113, and, therefore, it did not require the sanction of the Central Government for this rule. I must say that the accused was trying to assert the rights of the public, and no moral turpitude whatever attached to what he did. But as his act constitutes a contravention of s. 113, I must uphold the order passed by the learned Presidency Magistrate.

Rule discharged.

M. W. P.

[1] (1921) 45 Mad. 215.

APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Bhagwati.

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JAGWANT KAUR KESARSING DANG *v.* THE STATE OF BOMBAY.*

Bombay Land Requisition Act (XXXIII of 1948), ss. 5, 15—Constitution of India, Articles 15 (1), 46—Order made by Collector requisitioning land for establishment of Harijan colony—Formation of opinion by Collector that requisition necessary and expedient, whether could be delegated to Collector by State Government—Whether Order violates

* Civil Application No. 773 of 1951.