

1962
Sept. 28
COSTAS
ALKIVIADES
IOANNOU
& ANOTHER
v.
THE POLICE

[WILSON, P., ZEKIA, VASSILIADES & JOSEPHIDES, JJ]

1. COSTAS ALKIVIADES IOANNOU,
2. ERMIS STEFANOU

Appellants.

v.
THE POLICE.

Respondents.

*(Criminal Appeals No. 2529-2530
Consolidated).*

Motor Traffic—Motor Vehicles—Tractor—Licensed under the Motor Vehicles Regulations, 1959, regulation 19(1)—Licence issued without payment of fee—The Motor Vehicles and Road Traffic (Exemptions) Order, 1959, clause 3—Licence defective in that it omits the class of vehicle for which it is issued and the purposes for which such vehicle has to be used—Licence defective, not invalid—Under clause 3 (supra) a licence can be issued without payment of any fee only in respect of vehicles to be used solely for agricultural purposes—Therefore the tractor in question could not be used for any other purpose—The Motor Vehicles Regulations, 1959, regulation 19(6).

By regulation 19(6) of the Motor Vehicles Regulations, 1959, no person shall use or allow to be used, a motor vehicle except as a motor vehicle of the type or class and for the purpose for which such vehicle is licensed under this regulation. By clause 3 of the Motor Vehicles and Road Traffic (Exemptions) Order, 1959, motor tractors used solely for agricultural purposes are exempted from the fees set out in Part I of the Schedule to the Motor Vehicles and Road Traffic Laws 1954 to 1959 (now Cap. 332 as amended by Law No. 25/1959). The appellant No. 2 was the owner and the appellant No. 1 was the driver of a tractor which was used for loading chromium for export. The tractor was licensed under regulation 19(1). The licence was issued without payment of any fee and it omits to mention the class of vehicle for which it is issued and the purposes for which the motor vehicle has to be used. On those facts it was contended by the prosecution that the said tractor was used for a purpose for which it was not licensed contrary to regulation 19(6) (*supra*). On the other hand it was argued by the defence that under the circumstances the tractor could be used for

any purpose, alternatively, that in view of the aforementioned omissions the licence was invalid and, therefore, there could have been no breach of its terms and that no offence of any kind was committed. The trial judge convicted both accused (the appellants) of the offences charged under Regulation 19(6) (*supra*) On appeal, the High Court, upholding the convictions.

Held. (1) The purpose for which the tractor was used did not come within the exemptions of fees listed in the Order in Council No. 3084, published in the Cyprus Gazette No. 4246 of July 20, 1959, viz the Motor Vehicles and Road Traffic (Exemptions) Order, 1959, clause 3.

(2) For the purposes of this case the licence cannot be said to be invalid but only defective in some respects.

(3) As appellant No. 2 accepted the licence through his employee and used the tractor upon this basis he is now estopped from questioning the validity of the licence.

(4) It is clear that the accused, and particularly the owner of the vehicle who is presumed to know the law, must have known that this vehicle was licensed to be used only for agricultural purposes and was not licensed to be used for the purposes for which it was being used

(5) The conclusions of the trial Judge were correct and the convictions should stand against each of the accused.

Appeal dismissed.

Appeal against conviction.

The appellants were convicted on the 12/6/62 at the District Court of Famagusta (Cr. Case No. 7410/61) on 2 counts of the offences : appellant 1 for using a tractor, not for the purpose for which it is licensed, contrary to regulations 19(6) and 66 of the Motor Vehicles Regulations, 1959 and appellant 2 for permitting appellant 1 to use a tractor, not for the purpose for which it is licensed, contrary to regulations 19(6) and 66 of the Motor Vehicles Regulations, 1959, and were sentenced by Kourris, D.J. to the following sentences :—

Appellant 1 : to pay a fine of £1.250 mils.

Appellant 2 : to pay a fine of £30.-- (out of which the sum of £27.100 are licence fees).

M.L. Montanios for the appellants.

E. Munir for the respondents.

The judgment of the Court was delivered by :-

WILSON, P. : This is an appeal against the conviction and sentence imposed by the District Court of Famagusta on June 12, 1962, in which the accused were sentenced to pay fines and costs.

The charges arise out of the operation of a tractor owned by the accused Stefanou and driven by his employec Ioannou. The tractor was used at Famagusta for loading chromium ore which was to be exported. In respect of this tractor Stephanou had a licence which was put in as Exhibit 1. It is Form F.49, issued under the Motor Vehicles Regulations 1959, regulation 19(1). It is alleged Ioannou used the tractor for a purpose for which it was not licensed and that Stefanou, the owner, permitted him so to use it, contrary to regulations 19(6) and 66. The facts are not in dispute in this case.

The question arises whether or not the licence is valid because it omits to mention the class of vehicle for which it is issued and the purposes for which such motor vehicle has to be used. The appellants contend that under these circumstances it may be used for any purpose.

The argument of the Prosecution is that this licence was issued without payment of a licence fee, as it appears from the face of the licence and that, therefore, under the Law, it was clear the tractor could only be used for agricultural purposes.

If it were used for any other purposes a licence fee ought to have been paid. The exemption from payment of fees, upon the facts in this case, could not come within the exemptions listed in Order in Council 3084, published in the Cyprus Gazette No. 4246 of July 20, 1959. With this we agree.

For the accused it was contended in the alternative that the omissions from the licence which have just been mentioned; rendered the licence invalid, there could have been

no breach of its terms and the accused could not be found guilty of any offence.

For the purposes of this case it is our view that the licence cannot be said to be invalid. It is defective in the respects mentioned, but not invalid. Moreover, Stefanou accepted the licence, through his employees used the tractor upon this basis and he should not be heard now to question its validity. It is clear that the accused, and particularly Stefanou, the owner of the vehicle who is presumed to know the Law, must have known that this vehicle was licensed to be used only for agricultural purposes and was not licensed to be used for the purposes for which it was being used.

We think the conclusions of the trial judge were correct and the convictions should stand against each of the accused, namely, Stefanou on count 2 for permitting the tractor to be used for purposes for which it was not licensed, in respect of which he was fined £30, and against Ioannou for operating the tractor for purposes contrary to the Regulations and in respect of which he was fined £1.250 mils. The assessment of £3.500 mils costs will also stand.

We should add that at the opening of the appeal the appellants abandoned ground No.5 of the grounds of appeal, namely, that the learned trial judge was wrong in holding that the Motor Vehicles and Road Traffic Law, Cap.332, was not a Law imposing duties or taxes within the meaning of article 188.2 of the Constitution of the Cyprus Republic.

We have not dealt with this point.

Appeal dismissed.

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