

,Stereo. HCJDA 38
JUDGMENT SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Writ Petition No. 3854/2022

Falak Sher

Vs.

Government of the Punjab etc.

JUDGMENT

Date of hearing	28.03.2022
For the Petitioner:	Mian Awais Suleman, Advocate.
For the Respondents:	Malik Akhtar Javaid, Additional Advocate General, with Kashif Mushtaq Warraich, Chief Law & Procurement Officer Punjab Safe Cities Authority; Muhammad Tahir-ul-Mubeen, Legal Advisor; and Tanvir-ul-Hassan, Incharge Legal Branch, City Traffic Police, Lahore.

Tariq Saleem Sheikh, J:-

Introduction

1. The Petitioner is a transporter by profession. He is maintaining a fleet of transport vehicles and has employed a team of drivers for its operations. On 28.10.2021 he purchased Bus No. STT-5010 which was duly transferred in his name by the Motor Registration Authority whereafter he inducted it into his fleet. On 10.12.2021 while visiting the website of the Punjab Safe Cities Authority (the "PSCA") he learnt that he had been issued e-Ticket No. 07444605 and fined Rs.750/- for an alleged traffic violation committed by his driver on 16.11.2021 at 05:24 hours. The Petitioner also learnt that there were 54 other unpaid e-tickets (commonly known as *e-challans*) of Bus No. STT-5010 issued between 2nd March 2019 and the date he purchased it. He inquired from the PSCA about them and was told that he was liable to pay them as well because he was the present owner of the vehicle. He was also warned that his bus would be impounded if the fine was not paid immediately. Through this petition under Article 199 of the Constitution of Islamic

Republic of Pakistan, 1973 (the “Constitution”), the Petitioner assails the authority of the PSCA to issue e-tickets and his liability for e-Ticket No. 07444605 and 54 others which are outstanding against Bus No. STT-5010 as mentioned above.

2. This Court issued notice to Respondents on this petition and, considering that it involved important questions requiring interpretation of the Constitution and statutory law, also issued notice under Order XXVII-A CPC to the Advocate General Punjab.

3. Respondents No.2, 4 and 5 have filed parawise comments to this petition.

Submissions

4. The counsel for the Petitioner contends that there is no legal sanction for the e-ticketing system so the impugned tickets have been issued without lawful authority. He further contends that traffic offence is like other offences on the Statute Book. The offender is personally responsible for it and his liability cannot be passed over to a third person – in this case to the owner of the vehicle. According to him, the Petitioner cannot be asked to pay fine against any of the impugned e-tickets, particularly those issued before the date when he purchased Bus No. STT-5010.

5. The Additional Advocate General submits that the Provincial Motor Vehicles Ordinance, 1965 (the “Ordinance”), is a special law relating to motor vehicles and is being administered jointly by the Home Department, the Excise & Narcotics Control Department, the Transport Department and the PSCA. Section 116-A of the Ordinance expressly deals with the ticketing system and the impugned tickets were validly issued. As regards the fine, he contends that it has to be paid by the driver of the vehicle or its owner. Every person intending to purchase a vehicle must check whether there are any outstanding tickets and ensure that are paid before the transaction is consummated. In the instant case, the Petitioner has not disclosed what were the terms of his contract with the vendor. If the latter had made any misrepresentation regarding Bus No. STT-5010 he has a remedy against

him but cannot avoid liability in respect of the 54 tickets issued prior to the date of his purchase.

6. The Additional Advocate General further submits that PSCA was established by the Punjab Safe Cities Authority Ordinance, 2015, which was subsequently replaced by the Punjab Safe Cities Authority Act, 2016 (the “2016 Act”), and is working under the superintendence of the Inspector General of Police. Its object was to develop and maintain a city-wide integrated command, control and communication system in the major cities of the Punjab to ensure security of the people. To this end, the PSCA has installed extremely sophisticated and state-of-the-art cameras at strategically important and sensitive locations throughout Lahore. As regards the e-tickets, the Law Officer states that they are issued by the officers of the Lahore Traffic Police duly authorized under the Ordinance on the directions given by this Court vide Order dated 13.9.2018 passed in Writ Petition No. 225987/2018 titled: “*Mall Road Traders Association v. Deputy Commissioner, Lahore etc.*” (the “LHC Order”). The Additional Advocate General contends that the e-ticketing regime is in the public interest and draws its legitimacy from section 116-A of the Ordinance and this Court’s order dated 13.9.2018.

7. In rebuttal, the counsel for the Petitioner contends that section 116-A of the Ordinance does not authorize e-ticketing at all. He argues that the Respondents’ defence is anchored on the LHC Order but it cannot help in filling the lacunae. It is true that the Government is obligated to implement court orders but, at the same time, it must see that the requisite legal framework is in place.

Opinion

8. Traffic offences are generally divided into three principal classes: (i) parking and other standing violations; (ii) moving violations where no collision is involved; and (iii) moving violations where a collision is involved.¹ The moving violations are considered as criminal because they are serious – and dangerous. Every country has its own set

¹ Wolf Middendorff, “*A Criminology of Traffic Offences*”, (1963) 27 Fed Probation 36.

of laws to check traffic offences. In Pakistan this is a provincial subject so in Punjab we have the Ordinance to deal with them. However, in certain circumstances the provisions of the Pakistan Penal Code, 1860 (“PPC”), may also be attracted.

9. The increase in road traffic has brought new challenges so technology is being used to check violations of rules. Inasmuch as the e-ticketing system is highly efficient, more and more countries are replacing the manual systems with it. According to the parawise comments submitted by PSCA, it has developed the Intelligent Traffic Management System for Lahore in collaboration with the traffic police under which e-tickets are issued for the following six violations in the city:

- (i) Failure to observe a traffic signal;
- (ii) Speeding;
- (iii) Disregard of the one-way rule;
- (iv) Violation of lane discipline and taking wrong turns;
- (v) Violation of zebra crossing discipline; and
- (vi) Excessive smoke emission.

10. The e-tickets are purportedly issued under section 116-A of the Ordinance which is reproduced hereunder for ready reference:

²[116-A. Ticketing System.– ³[(1) Notwithstanding anything contained in the Ordinance or any other law, if a person commits an offence mentioned in the Twelfth Schedule, an authorized police officer or a person authorized by the Government may, at the spot, draw a charge against him stating the offence.]

⁴[(2) The police officer or the authorized person shall draw the charge on five copies of Form-J and shall immediately–

- (a) deliver three copies of Form-J to the accused and get the acknowledgement;
- (b) forward the fourth copy and the seized document to the bank branch, the post office or the traffic sector office from where the accused may get his document after payment of the fine; and
- (c) retain the fifth copy in office for record.]

(3) A person charged with an offence under this section shall, if he does not want to contest the charge, pay within ten days from the

² Substituted by s.2 of the Provincial Motor Vehicles (Amendment) Ordinance, 2001 (XIX of 2001), w.e.f. 25.8.2001, and published in Punjab Gazette (Extraordinary), pages 1563-1565, which were earlier inserted by s.2 of the West Pakistan Motor Vehicles (Amendment), 1969 (XXII of 1969), w.e.f. 5.9.1969, and published in the Gazette of West Pakistan (Extraordinary), pages 1457-1459.

³ Substituted by s.14 of the Provincial Motor Vehicles (Amendment) Act 2009 (XV of 2009), w.e.f. 18.11.2009, and published in Punjab Gazette (Extraordinary), pages 1631-1635.

⁴ Substituted by s.14 of the Provincial Motor Vehicles (Amendment) Act 2009 (XV of 2009), w.e.f. 18.11.2009, and published in Punjab Gazette (Extraordinary), pages 1631-1635.

date of delivery of the charge to him under sub-section (2), the penalty specified for the offence in the Twelfth Schedule, as mentioned in the charge, through cash in the notified branch of the bank of the town, or post office or traffic sector office as indicated in the charge.

⁵[(4) Where the accused pleads guilty and pays the prescribed fine within the specified time, no further proceedings in respect of the offence shall be taken against him.]

(5) The bank, post office or the traffic sector office shall retain one copy of the charge for record, send second copy to the treasury and shall hand over the third copy to the depositor.

⁶[(6) If the fine is not paid within the specified time, the police officer or the authorized person shall file a complaint against the accused before the court of competent jurisdiction.]

(7) If during the trial, the offender is found guilty of the offence by the trial court, he shall be convicted to fine double to that mentioned in the charge.]⁷

11. The PSCA also seeks support from the LHC Order passed in a constitutional petition instituted by the Mall Road Traders Association which sought directions to the Government of Punjab for resolution of their problems. The relevant portion of paragraph-8 of that order is relevant for our present purposes which reads as under:

“8. Mr. Akbar Nasir Khan, Chief Operating Officer, Punjab Safe Cities Authority, was appointed as Court Representative in connection with the traffic problems faced in Lahore particularly at the Mall Road, Lahore (as the Mall Road has already been declared Model Road). The Chief Operating Officer being the representative of this Court shall establish contact and may convene the meeting with all the concerned departments regarding formation of the Model Road Traffic Management System, for the time being at the Mall Lahore, to adjust and solve the following issues:

- i. Prohibition of illegal parking.
- ii. Foolproof system to issue the driving licence in a transparent manner.
- iii. Raising of fines relating to violation of traffic rules.
- iv. Introduce the Points System to cancel the driving licence.
- v. To observe the line/markings system on the roads, particularly to control the motorcyclists, and use of helmets (by the motorcyclists) and seat belts (by the car drivers).
- vi. To launch awareness campaign on social media as well as electronic media (PEMRA) through Visual Ads.
- vii. E-Ticketing with the help of Safe Cities Project.”

⁵ Substituted by s.14 of the Provincial Motor Vehicles (Amendment) Act 2009 (XV of 2009), w.e.f. 18.11.2009, and published in Punjab Gazette (Extraordinary), pages 1631-1635.

⁶ Inserted by s.14 of the Provincial Motor Vehicles (Amendment) Act 2009 (XV of 2009), w.e.f. 18.11.2009, and published in Punjab Gazette (Extraordinary), pages 1631-1635.

⁷ Inserted by s.14 of the Provincial Motor Vehicles (Amendment) Act 2009 (XV of 2009), w.e.f. 18.11.2009, and published in Punjab Gazette (Extraordinary), pages 1631-1635.

12. A bare perusal of section 116-A of the Ordinance shows that it provides for ticketing system only. It does not cater for e-ticketing. Section 116-A empowers the police officer and a person authorized by the Provincial Government to draw a charge against the person if he commits an offence mentioned in the Twelfth Schedule. The authorized officer has to prepare Form-J at the spot and deliver three copies thereof to the accused at the spot against due acknowledgement, send the fourth copy to the bank and retain the fifth for the office record. Indubitably the authorized officer may seek assistance of PSCA for enforcement of section 116-A but the latter cannot issue any e-ticket on his behalf under the current legal dispensation unless there are arrangements to deliver it to the offender at the spot. No such mechanism is presently available.

13. The 2016 Act also does not licence the PSCA to issue e-tickets for any traffic violation. The Respondents cannot draw on the LHC Order because it merely suggests certain steps for developing a traffic management system for the Mall Road, Lahore, and directs that a meeting of the concerned departments be convened for that purpose. It is neither a decree in the sense understood by the Respondents nor a substitute for legislative mandate. Beccaria said:

“Only the laws can decree the punishments for crimes, and this authority can only reside in the legislator, who represents society united in the social contract. No judge (who is part of the society) can with justice impose [unlegislated] punishment on other members of the same society.”⁸

14. In view of the fact that the e-ticketing system has no sanction of law, it cannot sustain. *Nullum crimen sine lege* (“no crime without law”) is one of the fundamental principles of criminal law. “It comprises the following rules: (i) the rule against retrospective criminalization; (ii) the rule that criminal statutes be construed narrowly; (iii) the rule against judicial creation of common law offences; and (iv) the rule that vague criminal statutes are void.”⁹ The aforesaid canon is sometimes also called the principle of legality and is interchangeable

⁸ Beccaria, Cesare, 1764/1963. *Of Crimes and Punishments*. (H. Paolucci trans. 1963)

⁹ Weston, Peter K., *Two Rules of Legality in Criminal Law, Law and Philosophy*, Vol. 26, No.3, pp. 229-305, May 2007, U of Michigan Public Law Working Paper No.78. Available at SSRN: <https://ssrn.com/abstract=977768>

with *nullum poena sine lege* which translates to “no punishment without law”. It guarantees fundamental freedoms and rights and promotes the rule of law. One scholar writes: “The principle of legality represents one of the most important principles of the rule of law.”¹⁰ Another scholar states that “in addition to protecting rule of law values, the principle [of legality] also polices the separation of powers by ensuring legislative primacy, and thus democratic legitimacy, in substantive rule-making. *Nullum crimen sine lege* has constitutional significance ... and is a feature of all the human rights instruments.”¹¹ In the Constitution of Pakistan (1973) the principle of legality is enshrined in Articles 4, 9, 10A, 12, 13 and 14.

15. The interest of the society is that every crime should be punished. The punishment may be in the form of imprisonment or fine or both. In some cases the law may also provide for forfeiture of property.¹² Generally the offender is responsible for the offence himself but in certain situations the law may hold another person vicariously liable for it. A traffic offence entails personal liability and only the person who commits it can be penalized. The buck cannot be passed to the owner of the vehicle unless he is the offender himself. The subsequent purchaser of the vehicle cannot be held liable in any eventuality. The current e-ticketing regime also infringes the principles relating to criminal liability.

16. The Petitioner’s case goes beyond what has been discussed above. The impugned e-tickets are also bad in law because they are not in Form-J prescribed by section 116-A of the Ordinance. It is mandatory inasmuch as it draws a charge. Next, they contain a notice that the vehicle can be impounded if the fine is not paid. This is patently illegal. Section

¹⁰ Alexandru Stoian, Teodora Draghici, *The Principle of Legality, Principle of Public Law*, 2015. DOI: 10.1515/kbo-2015-0087.

¹¹ Beth Van Schaack, *Legality & International Criminal Law*. Available at: <https://www.jstor.org/stable/10.5305/procanmeetasil.103.1:0101a>

¹² Section 53 PPC states that the following punishment may be awarded to the offenders for offences under the Code:

- i) Qisas;
- ii) Diyat;
- iii) Arsh;
- iv) Daman;
- v) Ta’zir;
- vi) Death;
- vii) Imprisonment for life;
- viii) Imprisonment which is of two descriptions, namely—
 - a. Rigorous, i.e., with hard labour;
 - b. Simple.
- ix) Forfeiture of property;
- x) Fine.

115 of the Ordinance only authorizes detention of a vehicle that is used without certificate of registration or permit.

Disposition

17. In view of the foregoing, this petition is **accepted** and the impugned e-tickets are quashed.

18. According to the parawise comments submitted by the PSCA, the Intelligent Traffic Management System introduced in Lahore has been widely acclaimed. They highlight it's benefits as under:

- “(a) According to a study of LUMS, 35% time saving has been observed for road users.
- (b) As per 1122 data, there is on average 25% reduction in fatal accidents in Lahore during first two years since commencement.
- (c) 40-50% reduction is observed in red light violation during first two years since commencement.
- (d) According to an International Website *Numbeo*, Lahore was ranked in World Traffic Index at 38 in 2018, 56 in 2019, 106 in 2021, (where 01 is the worst in ranking) amongst 250 mega cities of the world. The ranking was based on various variables regarding Traffic Management System, updated on daily basis. This means that the international perception about Lahore, pertaining to traffic management, has improved in the past years from 38 to 121 among 250 mega cities of the world. (https://www.numbeo.com/crime/rankings_current.jsp)
- (e) While violations are being monitored electronically by the traffic staff can dedicatedly perform their duties to regulate traffic operation instead of focusing on issuance of violation tickets.
- (f) Better observation of traffic laws especially (i) traffic signals, (ii) speed limits, and (iii) line and lane discipline.”

19. It is saddening that the government introduced the above-mentioned system without doing proper homework and providing the required legal framework. The Chief Secretary Punjab is directed to bring this lapse to the notice of the Chief Minister who shall take immediate steps to rectify the situation.

(Tariq Saleem Sheikh)
Judge

Announced in open court on _____

Judge

Naeem

Approved for reporting

Judge