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IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Review No: R148/2019
Magistrates Court Case No: C1260/19

In the review between:

THE STATE

versus

SABATA PETRUS MOSIA

Accused

CORAM:

NAIDOO J et RAMLAL, AJ

JUDGMENT:

NAIDOO, J

DELIVERED ON:

18 OCTOBER 2019

REVIEW JUDGMENT

[1] This matter was referred to us by the Magistrates Court, Viljoenskroon in terms of section 303(4) of the Criminal Procedure Act 51 of 1977 (the CPA), with the request for the court give assistance and guidance. The accused was charged with one count of contravening section 102, read with other relevant provisions of the Free State Public Transport Act 4 of 2005 (the Free State Act), the allegation being that he conveyed four adult passengers for reward, without a Road Transportation Permit to do so. The accused who was legally represented, pleaded guilty and was found guilty. The court *a quo* dealt with the matter in terms of section 112(1)(a) of the CPA and sentenced him (loosely translated) as follows:

1. Fined R500 or two months' imprisonment
2. In terms of section 89(2)(b) of Act 5 of 2009 the National Land Transport Act, it is ordered that the following vehicle must be returned to the owner without payment of the amount to the MEC:

Vehicle: Volkswagen LMV

Registration Nr: [....].

The accused paid the fine of R500.00 on 24 July 2019.

[2] The magistrate referred the matter to the High Court under cover of a letter explaining that the Traffic Department refused to return the vehicle to the owner, and upon investigation, he found that he had ordered the return of the vehicle under section 89(2)(b) of the National Land Transport Act 5 of 2009 (the National Transport Act). The magistrate further asserted that the order for the return of the vehicle should have been made in terms of section 99 (2)(b) of Free State Act 4 of 2005, as the accused was convicted in terms

of the latter Act. He further explained that the relevant provisions of the two statutes are the same and that the Viljoenskroon court often receives matters where offenders are charged under one or the other of the two statutes. He asserted that he had made a mistake in not ensuring that the correct statute was cited in his order. The Reviewing Judge before whom the matter was initially placed addressed certain queries in respect of this matter to the magistrate, to which he duly responded.

- [3] Section relevant provisions of 99(2) of the Free State Act provides as follows:

“99 Impoundment of vehicles

- (1)
- (2) A vehicle impounded under subsection (1) must be delivered to the head of the depot contemplated in subsection (4), who must retain the vehicle in the depot and release it to the person concerned only-
 - (a) when the criminal charges against the person have been withdrawn or the person has been acquitted of the offence charged; or
 - (b) in the case where the person is convicted of the offence charged, and unless the court has ordered otherwise, on payment to the head of the depot of the amount determined by the MEC.”

The provisions of section 87(2)(a) and (b) of the National Transport Act are identical to section 99(2)(a) and (b) of the Free State Act, save that at the end of section 87(2)(b) of the National Transport Act, the words *“which is an impoundment fee”* are added.

- [4] What is also clear is that the magistrate committed a further error in citing section 89(2)(b) of the National Transport Act as authority for the return of the vehicle. This is, no doubt, why one of the queries addressed to the magistrate by the initial reviewing judge

was why he relied on section 89(2)(b) of Act 5 of 2009. The latter mentioned section deals with the powers of authorised officers, and the magistrate ought to have, in any event, referred to section 87 of the National Transport Act

[5] As I indicated, the accused was legally represented, and has paid the fine of R500.00. The magistrate in this matter appears to have held the rank of magistrate since 6 November 1987 (refer to the J4 attached to the record), so that the sentence he imposed would not be ordinarily reviewable in terms of section 302 of the CPA. Section 304(4) of the CPA would be the appropriate section to invoke in this case. In my view, it seems that a technical error was committed by the magistrate, due to his failure to properly check the correctness of the statute in terms of which he made the order for return of the vehicle, referred to above. This court is entitled to deal with the matter as if it had been brought before us in terms of section 303 of the CPA. I am of the view that the interests of justice would be served by substituting the reference in the order with a reference to the correct statute.

[7] In the circumstances, the following order is made:

7.1 The conviction in this matter is confirmed.

7.2 The sentence imposing a fine of R500.00 or two months' imprisonment is confirmed

7.3 The order of the magistrate in respect of the return of the vehicle, is set aside and replaced with the following:

“In terms of section 99(2)(b) of the Free State Public Transport Act, it is ordered that the motor vehicle, a Volkswagen LMV, bearing registration number [...], be returned to the person concerned, without him/her being required to pay the fee determined by the MEC”.

S. NAIDOO, J

I agree.

A RAMLAL, AJ