

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(CRL) 925/2015**

Reserved on: 09.12.2015

Date of Decision: 18.12.2015

RAJESH KUMAR

..... Petitioner

Through

Mr.Sumit Kumar, Mr.Pulkit
Agarwal & Mr.Palav Agarwal,
Advs.

versus

STATE (NCT OF DELHI)

..... Respondent

Through

Ms. Nandita Rao, ASC for the
State with Ms. Srilina Roy,
Adv.

SI Yashpal, Traffic Circle Civil
Lines.

SI Udai Singh PS Traffic/HQ.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J.

1. The petitioner is the owner of Auto Rickshaw bearing no. DL 1RP 5127 (TSR) and holder of permit bearing no. DL 1 RP 5127. For violation of licence/permit rules, the vehicle of the petitioner was challaned on 28.06.2014. The petitioner appears to have been prosecuted for such violation of provisions of Motor Vehicles Act (hereinafter referred as 'MV Act') and was slapped with a fine of Rs.3,000/- by the learned Metropolitan Magistrate, Tis Hazari Courts, Delhi. The learned Metropolitan Magistrate directed for release of

the vehicle of the petitioner on payment of the aforesaid fine.

2. The vehicle of the petitioner, though, was released but the documents namely permit and registration papers were held back. The petitioner was handed over a show cause notice under Section 86 of the MV Act, 1988.

3. The notice under Section 86 of the MV Act reads as follows:

NOTICE UNDER SECTION 86 OF M.V. ACT, 1988

Whereas it has been reported that vehicle No.DL1RP5127 (TSR) plying under route No. Under State Permit/State Carriage Permit No._____ valid upto _____ committed traffic violation of permit violation was prosecuted vide challan No-25680057 on 28-Jun-14 by TI INSPR BHAGWAN SINGH in the area of CIVIL LINES circle Delhi. MM Delhi has imposed a fine of Rs.3,000/- on the driver.

Whereas the traffic violation committed by the said vehicles amounts to violation of the permit condition.

Now therefore, I, DURGA PRASAD JOSHI, Asstt. Commissioner of Police, Traffic-North District in exercise of power delegated Under Section 68(5) read with 86(4) M.V. Act, 1988 by STA vide resolution No.1/98 dated 25.05.1998 hereby require you Shri/Smt. RAJESH KUMAR, S/o Sh. SHIV RAJ SINGH R/o 9/4208, GALI NO.11, AJIT NAGAR, GANDHI NAGAR, DELHI. Permit holder to show cause as to why said permit should not be suspended for period of 30 days for the said violation within seven days of

the receipt of this notice. Your reply should reach the undersigned by 25-Jul-2014 at 11:00 AM. You may also appear before the undersigned along with reply if so desired. It may please be noted that notice shall be decided ex-parte in case you fail to file the reply on the stipulated date and time.

Note:- Original document PERMIT is kept in this office upto 25-Jul-2014 for further proceeding.

*(DURGA PRASAD JOSHI)
ASSTT. COMMISSIONER OF POLICE
TRAFFIC, NORTH DISTRICT, DELHI."*

4. The petitioner replied to the aforesaid notice stating that he had pleaded guilty and a fine was imposed by the learned Metropolitan Magistrate for violation of the conditions of the permit. However, it was stated by him that Section 208(3) of the MV Act prohibits any further proceedings with respect to the offence committed, if the offender has already pleaded guilty and has remitted the fine.

5. Section 208 of the MV Act reads as hereunder:

208. Summary disposal of cases.

- 1. The Court taking cognizance of any offence (other than an offence which the Central Government may by rules specify in this behalf) under this Act,--*
 - i. may, if the offence is an offence punishable with imprisonment under this Act; and*

- ii. *shall, in any other case, state upon the summons to be served on the accused person that he--*
 - a. *may appear by pleader or in person; or*
 - b. *may, by a specified date prior to the hearing of the charge, plead guilty to the charge and remit to the Court, by money order, such sum (not exceeding the maximum fine that may be imposed for the offence) as the Court may specify, and the plea of guilt indicated in the money order coupon itself:*

Provided that the Court shall, in the case of any of the offences referred to in sub-section (2), state upon the summons that the accused person, if he pleads guilty, shall so plead in the manner specified in clause (b) and shall forward his driving licence to the Court with his letter containing such plea.

- 2. *Where the offence dealt with in accordance with sub-section (1) is an offence specified by the Central Government by rules for the purposes of this sub-section, the Court shall, if the accused person pleads guilty to the charge and forward his driving licence to the Court with the letter containing his plea, make an endorsement of such conviction on his driving licence.*
- 3. *Where an accused person pleads guilty and remits the sum specified and has complied with the provisions of sub-section (1), or as the case may be, sub-sections (1) and (2), no further proceedings in respect of the offence shall be taken against him nor shall he be liable, notwithstanding anything to the contrary contained in this Act, to be disqualified for holding or obtaining a licence by reason of his having pleaded guilty.*

(emphasis provided)

6. The original permit of the vehicle in question was impounded and kept in the office of the ACP, Traffic, North District till 25.07.2014 for further proceedings. It was, thus, also contended by the petitioner that under the MV Act, there was no provision for impounding any document under Section 86 of the MV Act. The petitioner, therefore asked for release of the impounded permit.

7. The ACP, Traffic, North District, after having perused the show cause reply preferred by the petitioner, came to the conclusion that the petitioner, as a permit holder, had failed to exercise such supervision as was necessary for his employee. The violation committed by the driver of the vehicle of which the petitioner is the owner was also found to be violation of permit conditions. The ACP, Traffic, by his order dated 28.07.2014 suspended the permit of the vehicle of the petitioner for a period of 5 days with immediate effect and directed the vehicle to be parked in the Civil Lines circle.

8. The petitioner, being aggrieved by the aforesaid suspension of permit for 5 days, approached the Appellate Tribunal under Section 89 of the MV Act vide appeal no.1838/2014.

9. The petitioner contended before the Appellate Tribunal that the order passed by the ACP, Traffic, was in teeth of the provisions of Section 86(5) and Section 208(3) of the MV Act. It was also argued that once a fine was imposed by the learned Metropolitan Magistrate and which amount of fine was paid by the petitioner any suspension of the permit was in the nature of double jeopardy which is prohibited under Section 300 of the Cr.P.C. read with Article 20(3) of the Constitution of India.

10. The Appellate Tribunal rejected the aforesaid contentions of the petitioner and upheld the order of the ACP whereby the permit of the petitioner was suspended for 5 days.

11. The present petition seeks to challenge the aforesaid Appellate order dated 25.02.2015.

12. Learned counsel for the petitioner has reiterated the same grounds in the present petition which was urged before the Appellate Tribunal.

13. For the application of Section 300 of the Cr.P.C., it is necessary that a person must be accused of an offence; he must have been prosecuted and punished in the previous proceedings; and the offence must be the same for which he was prosecuted and punished in the previous proceedings.

14. Violation of conditions of license or violation of permit conditions provide for penal action.

15. Chapter VIII of the MV Act 1988 deals with offences, penalties and procedure. Section 181 of the Act deals with contravention of Section 3 & 4 of the Act which relate to the conditions of license. Section 182 also deals with offences relating to licenses.

16. Section 192(a) of the MV Act provides for fine and punishment for using vehicles without permit, so on and so forth. These provisions operate in a different field and the offender is either fined or punished by a competent court of law.

17. Section 86 of the Act, as has been seen earlier, arms the transport authority which grants a permit, to cancel or suspend the same for such period as it thinks fit under certain conditions: one

being breach of any condition specified in Section 84 of the Act or of any condition contained in the permit.

18. Section 84 lists certain general conditions attaching to all permits. Section 84 and 86 of the MV Act read as here under:

84. General conditions attaching to all permits.

The following shall be conditions of every permit--

- a. that the vehicle to which the permit relates carries valid certificate of fitness issued under section 56 and is at all times so maintained as to comply with the requirements of this Act and the rules made there under;*
- b. that the vehicle to which the permit relates is not driven at a speed exceeding the speed permitted under this Act;*
- c. that any prohibition or restriction imposed and any fares or freight fixed by notification made under section 67 are observed in connection with the vehicle to which the permit relates;*
- d. that the vehicle to which the permit relates is not driven in contravention of the provisions of section 5 or section 113;*
- e. that the provisions of this Act limiting the hours of work of drivers are observed in connection with any vehicle or vehicles to which the permit relates;*
- f. that the provisions of Chapters X, XI and XII so far as they apply to the holder of the permit are observed; and that the name and address of the operator shall be painted or otherwise firmly affixed to every vehicle to which the permit relates on the exterior of the body of that vehicle on both sides thereof in a colour or colours*

vividly contrasting to the colour of the vehicle centered as high as practicable below the window line in bold letters.

86. Cancellation and suspension of permits.

- 1. The transport authority which granted a permit may cancel the permit or may suspend it for such period as it thinks fit--*
 - a. On the breach of any condition specified in section 84 or of any condition contained in the permit, or*
 - b. If the holder of the permit uses or causes or allows a vehicle to be used in any manner not authorised by the permit, or*
 - c. If the holder of the permit ceases to own the vehicle covered by the permit, or*
 - d. If the holder of the permit has obtained the permit by fraud or misrepresentation, or*
 - e. If the holder of the goods carriage permit, fails without reasonable cause, to use the vehicle for the purposes for which the permit was granted, or*
 - f. If the holder of the permit acquires the citizenship of any foreign country:*

Provided that no permit shall be suspended or cancelled unless an opportunity has been given to the holder of the permit to furnish his explanation.

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3.

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5. Where a permit is liable to be cancelled or suspended under clause (a) or clause (b) or clause (e) of sub-

section (1) and the transport authority is of opinion that having regard to the circumstances of the case, it would not be necessary or expedient so to cancel or suspend the permit if the holder of the permit agrees to pay a certain sum of money, then, notwithstanding anything contained in sub-section (1), the transport authority may, instead of cancelling or suspending the permit, as the case may be, recover from the holder of the permit the sum of money agreed upon.

(emphasis provided)

6.

19. Any action by transport authority under Section 86 is in the nature of administrative/quasi-judicial function where there is no provision of any trial. The operation of Section 86 of the Act is independent of Chapter VIII of the Act which deals with offences, penalties and the procedure.

20. Sub-section 5 of the Section 86 provides for substitution of fine in place of suspension of the permit. The fine which has been paid by the driver of the vehicle is for the violation of the some of the sections falling under Chapter VIII of the MV Act and not under Section 86 of the MV Act. Under Section 86 (5) of the Act, there is provision of fine in place of suspension of permit if the holder of the permit agrees for the same and if the same is considered to be expedient by the authorities. The petitioner, in the present case could have offered to pay fine instead of suspension of permit for 5 days.

21. In the present circumstance, the transport authority, in its wisdom has only suspended the permit of the petitioner for 5 days.

There was no agreement and thereby remittance of any fine in lieu of suspension or revocation of the permit under Section 86 of the Act. The payment of the fine under the orders of the learned Metropolitan Magistrate could not be said to be a fine under Section 86(5) of the Act and therefore the arguments regarding application of Section 208(3) is without any substance.

22. The petitioner has neither been tried for the same offence nor has been subjected to double jeopardy.

23. The impugned Appellate order is fit to be sustainable in the eyes of law.

24. The petition is dismissed as being without merits.

(ASHUTOSH KUMAR)
Judge

DECEMBER 18, 2015
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