



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.11.2016

C O R A M

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THE HON'BLE DR.JUSTICE S.VIMALA

W.P.(MD) No.22340 of 2016 and
W.M.P.(MD)No.16015 of 2016

A.Devasakayam

... Petitioner

Vs.

1. The Regional Transport Officer,
Madurai (RTO Office, Pudukulam)

2. The Inspector of Police,
TIW-II Police Station, Madurai

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents to return the driving License No.TN67-19950000963 to the petitioner.

For petitioner : Mr. J.Ashok

For Respondents : Mr. T.S.Mohammed Mohideen, AGP.,

O R D E R

This is a writ of Mandamus seeking direction to the respondent to return the driving license of the petitioner bearing No.TN67-19950000963 to him forthwith.

2. Heard the learned counsel for the petitioner and learned Additional Government Pleader for the respondents.

3. The petitioner was appointed as a driver in the Tamil Nadu State Transport Corporation (Madurai) Limited, Virudhunagar Division, Kariyapatti Branch. While functioning as a driver, on 24.09.2016, there was an accident involving the bus belonging to the Transport Corporation. On 25.09.2016, First Information Report was registered in Crime No.293 of 2016 under Sections 279, 337 and 304(A) IPC on the file of the second respondent, in which, the petitioner was shown as accused.

3.1. The second respondent seized the driving license of the petitioner and handed over the same to the first respondent to <https://hcservices.punjab.gov.in/hcservices/> under Section 19 (1) of the Motor Vehicles Act, 1988 (in short "the Act"). The petitioner had been making demand



for return of the driving license, but the first respondent declined to return the driving license. Subsequently, the petitioner has been suspended from service by the first respondent.

4. The contention of the learned counsel for the petitioner is that the first respondent has no right to retain the driving license and as held by this Court in the order made in W.P.(MD) No.18186 of 2013, dated 14.11.2013, it is only the police, who have power to seize the driving license and to produce the same before the concerned Judicial Magistrate Court and not to the first respondent. In the said order, it has also been held that the first respondent has to hand over the driving license to the Investigating Officer, who shall in turn issue the acknowledgement to the petitioner, then to produce the same before the learned Judicial Magistrate.

5. Section 206 of the Act deals with the power of police officer to impound a driving licence which reads as follows:-

"206. Power of police officer to impound document.

- (1) Any police officer or other person authorised in this behalf by the State Government may, if he has reason to believe that any identification mark carried on a motor vehicle or any licence, permit, certificate of registration, certificate of insurance or other document produced to him by the driver or person in charge of a motor vehicle is a false document within the meaning of section 464 of the Indian Penal Code, (45 of 1860.) seize the mark or document and call upon the driver or owner of the vehicle to account for his possession of or the presence in the vehicle of such mark or document.

(2) Any police officer or other person authorised in this behalf by the State Government may, if he has reason to believe that the driver of a motor vehicle who is charged with any offence under this Act may abscond or otherwise avoid the service of a summons, seize any licence held by such driver and forward it to the Court taking cognizance of the offence and the said Court shall on the first appearance of such driver before it, return the licence to him in exchange for the temporary acknowledgement given under sub- section (3).

(3) A police officer or other person seizing a licence under sub- section (2) shall give to the person surrendering the licence a temporary acknowledgement therefor and such acknowledgement shall authorise the holder to drive until the licence has been returned to him or until such date as may be specified by the police officer or other person in the acknowledgement, whichever is earlier:



Provided that if any magistrate, police officer or other person authorised by the State Government in this behalf is, on an application made to him, satisfied that the licence cannot be, or has not been, returned to the holder thereof before the date specified in the acknowledgement for any reason for which the holder is not responsible, the magistrate, police officer or other person, as the case may be, may extend the period of authorization to drive to such date as may be specified in the acknowledgment."

6. From a perusal of Section 206(2) of the Act, it is apparent that the power of the Police, who seized the Driving Licence is not automatic as soon as the Driver is charged with any offence, but the power is given only when the Police Officer has reason to believe that the Driver may abscond or otherwise avoid service of a summons.

7. So far as the power of Licensing Authority is concerned, it is governed by Section 19 of the Act. This provision deals with the power of the licensing authority. As per clause (c) of sub-section (1) of Section 19 of the Act, the licensing authority has got the power to disqualify a person from holding the licence on the ground that he is using or has used a motor vehicle in the commission of a cognizable offence. On the same ground, the licensing authority may also revoke such driving licence. If once such an order is passed, the remedy for the aggrieved is to file an appeal to the appellate authority as provided in sub-section (3) of Section 19 of the Act. Sub-Sections 1 to 3 of Section 19 of the Act, read as follows:

"19. Power of licensing authority to disqualify from holding a driving licence or revoke such licence.--

(1) If a licensing authority is satisfied, after giving the holder of a driving licence an opportunity of being heard, that he--

(a) is a habitual criminal or a habitual drunkard; or

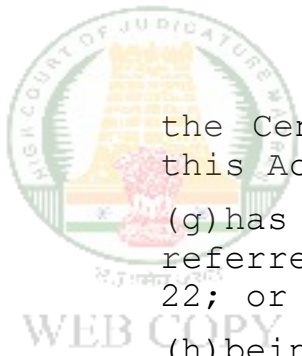
(b) is a habitual addict to any narcotic drug or psychotropic substance within the meaning of the Narcotic Drugs and Psychotropic Substances Act, 1985; or

(c) is using or has used a motor vehicle in the commission of a cognizable offence; or

(d) has by his previous conduct as driver of a motor vehicle shown that his driving is likely to be attended with danger to the public; or

(e) has obtained any driving licence or a licence to drive a particular class or description of vehicle by fraud or misrepresentation; or

(f) has committed any such act which is likely to cause nuisance or danger to the public, as may be prescribed by



the Central Government, having regard to the objects of this Act; or

(g) has failed to submit to, or has not passed, the tests referred to in the proviso to sub-section (3) of Section 22; or

(h) being a person under the age of eighteen years who has been granted a learner's licence or a driving licence with the consent in writing of the person having the care of the holder of the licence and has ceased to be in such care;

it may for reasons to be recorded in writing, make an order--

(i) disqualifying that person for a specified period for holding or obtaining any driving licence to drive all or any classes or descriptions of vehicles specified in the licence; or

(ii) revoke any such licence.

(2) Where an order under sub-section (1) is made, the holder of a driving licence shall forthwith surrender his driving licence to the licensing authority making the order, if the driving licence has not already been surrendered and the licensing authority shall,--

(a) if the driving licence is a driving licence issued under this Act, keep it until the disqualification has expired or has been removed; or

(b) if it is not a driving licence issued under this Act, endorse the disqualification upon it and send it to the licensing authority by which it was issued; or

(c) in the case of revocation of any licence, endorse the revocation upon it and if it is not the authority which issued the same, intimate the fact of revocation to the authority which issued that licence:

Provided that where the driving licence of a person authorises him to drive more than one class or description of motor vehicles and the order, made under sub-section (1) disqualifies him from driving any specified class or description of motor vehicles, the licensing authority shall endorse the disqualification upon the driving licence and return the same to the holder.

(3) Any person aggrieved by an order made by a licensing authority under sub-section (1) may, within thirty days of the receipt of the order, appeal to the prescribed authority, and such appellate authority shall give notice to the licensing authority and hear either party if so required by that party and may pass such order as it



thinks fit and an order passed by any such appellate authority shall be final."

8. The above provisions would go to show that the licensing authority has got no power to retain the licence without passing an order under sub-section (1) of Section 19 of the Act. As provided in Sub-Section (2) of Section 19 of the Act, only after passing of an order under Sub-Section (1) of Section 19 of the Act, the holder of the driving licence is bound to surrender the driving licence to the licensing authority.

9. In the reported judgment, Rule 21 of the Central Motor Vehicles Rules, 1981, which defines as to what constitute nuisance or danger to public as dealt with in Clause (c) and (f) of Sub-section 1 of Section 19 of the Act, has been referred to:

"1) If a licensing authority is satisfied, after giving the holder of a driving licence an opportunity of being heard, that he--

(a)

(b)

(c) is using or has used a motor vehicle in the commission of a cognizable offence; or

(d)

(e)

(f) has committed any such act which is likely to cause nuisance or danger to the public, as may be prescribed by the Central Government, having regard to the objects of this Act; or

(g)

(h)

(i)

(ii) revoke any such licence."

10. So far as the use of the vehicle under Section 19 (1) (c) of the Act is concerned, whether it is the mere use of the vehicle or the negligent use or intentional use of the vehicle is yet another question to be addressed.

10.1. What is the interpretation that has been given in the Motor Vehicles Act, 1988, is relevant. Section 165 of the said Act uses the expression "use of motor vehicle". The provision reads as under:-

<https://hcservices.ecourts.gov.in/hcservices/>

"Claims Tribunals.-



(1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, **persons arising out of the use of motor vehicles**, or damages to any property of a third party so arising, or both.

Explanation.—For the removal of doubts, it is hereby declared that the expression "claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles includes claims for compensation under section 140 and section 163A."

10.2. In present times, the role of transportation, be it public or private, has become essential for our social interactions and commercial transactions. Transportation is getting technologically more advanced every other day. There is a huge expansion in use of motor vehicles, be it for the purpose of businesses or for private purposes.

10.3. Even with the advancement of technology we have to deal with untoward incidents of road accidents. Some of the reasons for road accidents are over speeding, drunken driving, distractions to driver like smart phones, non-adherence to traffic rules, overtaking in wrong manner and jumping the red light, i.e., signal violations.

10.4. Therefore, the accidents arising out of use of motor vehicle have to be interpreted in different perspective depending upon as to whether the use of motor vehicle was with reference to the victim or it was with reference to the person using the vehicle. Certainly, the perspective must be different when the use of vehicle is by the driver holding the certificate that he has the requisite skill to drive the vehicle. In the reported decision of this Court (by Division Bench consisting of V.Ramasubramanian, J., and N.Kirubakaran, J.), it has been held that the driver cannot be made responsible unless there is a finding of negligence either by the Claims Tribunal or by the Criminal Court. The action on the part of the Licensing Authority passing an order of suspending / revoking the driving licence was criticized as a preconceived action.

10.5. This Court, in the reported decision, has taken a view that only if the vehicle is used in the commission of offence, i.e., when the vehicle itself is used as a tool to commit any other offence and does not denote when the vehicle itself is accidentally involved in the occurrence leading to a cognizable



offence. In other words, there is a distinction between involvement of a vehicle and use of the vehicle, that has been taken note of in the cited decision.

11. Under such circumstances, without passing any orders under Section 19(1) of the Act, the first respondent has no authority to retain the driving license. In other words, the power of the first respondent is only to initiate proceedings either to cancel or revoke the driving license and without initiating the proceedings and concluding the enquiry, the first respondent has no authority to retain the driving licence.

12. When the Police Officer / second respondent seizes a driving licence, it is expected of him to give a temporary acknowledgement and such acknowledgement would have the effect of authorizing the holder to drive, until the license has been returned to him. This authorization may be extended either by the Police Officer or by the Court.

13. This Court in several cases have followed the earlier orders passed by this Court, directing the respondent to hand over the license to the Investigating Officer, who in turn, shall, after issuing acknowledgement to the driver, shall produce the same to the Criminal Court. In this case, this process is not been followed. Hence, the first respondent is directed to handover the driving licence of the petitioner to the Investigating Officer, who in turn, shall, hand over the same to the Criminal Court, while issuing an acknowledgement to the petitioner. Subject to the outcome of the Criminal Case, the Criminal Court shall decide the issue of return of driving licence.

14.

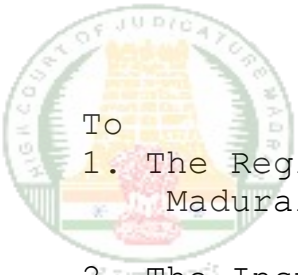
14. With the above observation and direction, the writ petition is disposed of. No costs. Consequently, the connected WMP is closed.

Sd/-

Assistant Registrar(Writs)

/True Copy/

Sub Assistant Registrar



To

1. The Regional Transport Officer,
Madurai (RTO Office, Pudukulam)

2. The Inspector of Police,
TIW-II Police Station, Madurai

+1 cc to MR.J.ASHOK, Advocate SR.No.71980

+1 cc to Special Government Pleader SR.No.72668

W.P.(MD) No.22340 of 2016 &
W.M.P.(MD)No.16015 of 2016

23.11.2016

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