

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION NO. 17657 of 2016

ORDER :

Heard learned counsel for the petitioner and learned Government Pleader for transport and perused the records.

The present writ petition came to be filed seeking issuance of writ of mandamus declaring the action of the third respondent i.e. the Assistant Secretary, Regional Transport Authority (RTA), Ranga Reddy District, suspending the driving license of the petitioner vide proceedings R.No.A2/RRE/2015, dated 13.05.2016, as illegal and contrary to the provisions of the Motor Vehicle Act.

The facts which lead to filing of the present writ petition are as under:

The petitioner is a driver by profession having valid driving license upto 30.05.2018. It is the case of the petitioner that he was working as a driver of a vehicle bearing No.TS 08 UA 0359 belonging to one V.Madhava Reddy. On 13.05.2016 while he was proceeding with a load of sand, the same was seized vide vehicle check report No.200251 alleging that the said vehicle was found plying with an overload of 7,960 Kgs. of sand. On the said ground, the Assistant Secretary, RTA, Ranga Reddy District, issued the impugned proceedings suspending the driving license for six months from 13.05.2016 to 12.11.2016, which is the subject matter of challenge in this writ petition.

The main ground urged by the learned counsel for the petitioner is that once an offence is compounded by paying the compounding fees, the question of suspending the driving license for the same offence does not arise and as such the authorities erred in

suspending the driving license.

A counter came to be filed by Motor Vehicle Inspector denying the averments made in the affidavit. Relying upon the judgment of the Supreme Court in ***S.Rajasekaran Vs. Union of India and others***^[1] and the directions issued by Supreme Court Committee on road safety, he submits that the petitioner is not entitled for any relief, more particularly, revoking the suspension of his license. According to him, under Section 194 of the Motor Vehicle Act, 1988 (for short, 'the Act of 1988') whoever drives the vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of Section 113, 114 or 115 of the Act shall be punishable. Hence, it is urged that both i.e., the owner of the vehicle which was over loaded and the driver are liable to be punished under Section 194 of the Act of 1988. Since the compounding fee is collected from the owner of the vehicle in lieu of prosecution being registered against him, the driver cannot escape from the liability. Hence submits that there is nothing illegal or incorrect in passing the impugned order.

In order to appreciate the rival arguments, it would be appropriate to refer to the directions issued by the Hon'ble Supreme Court Committee on road safety which was chaired by Hon'ble Justice K.S.Radhakrishnan. After taking into consideration various aspects of the matter, more particularly a detail analysis of traffic accidents, it has come to the conclusion that unless a strong and urgent measures are taken to deal with over speed driving, drink and drive, red light jumping, violation of helmet laws, seat belts laws, use of mobiles while driving and over loading, the number of accidents will continue to remain high. In view of the above, the committee directed the states and United Territories to take following actions forthwith:

“Suspension of license for a period of not less than 3 months under Section 19 of the Act of 1988 read with Rule 21 of the Central Motor Vehicles Rules, 1989 for:

- (i) Driving at a speed exceeding the specified limit which is in the committee's view would also include red light jumping;
- (ii) Carrying overload in goods carriages and carrying persons in goods carriages.
- (iii) Driving vehicles under the influence of drink and drugs;
- (iv) Using mobile phone while driving a vehicle.

The Committee further directs that in case of driving a vehicle under the influence of drinks or drugs, the police should prosecute the offender and seek imprisonment as prescribed under Section 185 of the Motor Vehicle Act, 1988 even for the fifth offence,

The Committee also directs that the helmet laws be made applicable all over the State/UT both for main riders and the pillion riders. In case where the law relating to the use of helmet is violated by either the main rider or the pillion rider, they should both be subject to Road Safety Education and Counselling for not less than two hours before imposition of fine as prescribed under the Act.”

From a reading of the above, it is clear that the Committee has also directed the authorities to take stringent action against those who are involved in carrying over loaded goods carriages and carrying persons in goods carriage. Therefore, there cannot be any dispute with regard to the argument advanced by the learned Government Pleader for Transport that stringent action has to be taken, more particularly, suspension of license in cases where an individual is involved in the offences referred to above. Infact, it is to be noted that the Transport Commissioner has issued guidelines in dealing with disposal of cases of over load vide circular

No.3/11627/E/2006, dated 20.02.2014. But here is a case where the authorities resorted to compounding of the offence on 13.05.2016 itself by collecting requisite compounding fee.

The issue then would be whether the owner of the vehicle alone gets exonerated on payment of compounding fees or whether it takes within its fold the owner and the driver also?

In order to answer the same, it would be necessary to refer to certain provisions of Act, 1988. Before referring to the same, it is to be noted that the vehicle of the petitioner was seized while the same was found transporting sand beyond its capacity. Section 194 of the Act, 1988 deals with driving of vehicles carrying goods exceeding permissible limits. The same reads as under:

“Driving vehicle exceeding permissible weight:

(1) Whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of section 113 or section 114 or section 115 shall be punishable with minimum fine of two thousand rupees and an additional amount of one thousand rupees per tonne of excess load, together with the liability to pay charges for off-loading of the excess load.

(2) Any driver of a vehicle who refuses to stop and submit his vehicle to weighing after being directed to do so by an officer authorised in this behalf under section 114 or removes or causes the removal of the load or part of it prior to weighing shall be punishable with fine which may extend to three thousand rupees.

Section 113 of the Act of 1988 reads as under:

Limits of weight and limitations on use.—

(1) The State Government may prescribe the conditions for the issue of permits for (transport vehicles) by the State or Regional Transport Authorities and may prohibit or restrict the use of such vehicles in any area or route.

(2) Except as may be otherwise prescribed, no person shall drive or cause or allow to be driven in any public place any motor vehicle which is not fitted with pneumatic tyres.

(3) No person shall drive or cause or allow to be driven in any public place any motor vehicle or trailer—

(a) the unladen weight of which exceeds the unladen weight

specified in the certificate of registration of the vehicle, or
(b) the laden weight of which exceeds the gross vehicle weight specified in the certificate of registration.

(4) Where the driver or person in charge of a motor vehicle or trailer driven in contravention of sub-section (2) or clause (a) of sub-section (3) is not the owner, a Court may presume that the offence was committed with the knowledge of or under the orders of the owner of the motor vehicle or trailer.

From a reading of the above provisions, it is clear that whoever drives a motor vehicle or whoever causes or allows a motor vehicle to be driven in contravention of Section 113, 114 and 115 of the Act of 1988, shall be punishable with fine of Rs.2,000/- and an additional amount of Rs.1,000/- per ton on exceeding load together with liability to pay charges for off-loading on excess load. Section 113 deals with limits of weight and limitations on use as per which the State Government may prescribe the conditions for the use of permits for (transporting vehicles) and may also prohibit or restrict such vehicles in any area or road.

Section 114 of the Act reads as under:

Power to have vehicle weighed.—

(1) Any officer of the Motor Vehicles Department authorised in this behalf by the State Government shall, if he has reason to believe that a goods vehicle or trailer is being used in contravention of section 113, require the driver to convey the vehicle to a weighing device, if any, within a distance of ten kilometres from any point on the forward route or within a distance of twenty kilometres from the destination of the vehicle for weighment; and if on such weighment the vehicle is found to contravene in any respect the provisions of section 113 regarding weight, he may, by order in writing, direct the driver to off-load the excess weight at his own risk and not to remove the vehicle or trailer from that place until the laden weight has been reduced or the vehicle or trailer has otherwise been dealt with so that it complies with section 113 and on receipt of such notice, the driver shall comply with such directions.

(2) Where the person authorised under sub-section (1) makes the said order in writing, he shall also endorse the relevant

details of the overloading on the goods carriage permit and also intimate the fact of such endorsement to the authority which issued that permit.

Section 115 of the Act deals with power of the State Government to restrict the use of the vehicle.

From the reading of the above provisions, it is clear that only those persons, who either drive the vehicle or who causes or allows motor vehicle to be driven shall in contravention of Sections 113, 114 and 115 be punishable with a minimum fine of Rs.2,000/- and one thousand rupees per ton of excess load, together with the liability to pay charges for off-loading of the excess load.

At this stage, it would be necessary to refer to Section 200 of the Act of 1988, which reads as under:

Composition of certain offences.—

(1) Any offence whether committed before or after the commencement of this Act punishable under section 177, section 178, section 179, section 180, section 181, section 182, sub-section (1) or sub-section (2) of section 183, section 184, section 186, 1[section 189, sub-section (2) of section 190]; section 191, section 192, section 194, section 196, or section 198, may either before or after the institution of the prosecution, be compounded by such officers or authorities and for such amount as the State Government may, by notification in the Official Gazette, specify in this behalf.

(2) Where an offence has been compounded under sub-section (1) the offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of such offence.

Section 200 of the Act of 1988 makes it clear that if an offence is compounded under Sub Section (1), the offender, if in custody shall be discharged and no further proceedings shall be taken against him in respect of such offence. Meaning thereby that he has been exonerated of the charge leveled against him. It is also to be noted that compounding of offence is not mandatory. It is conditional upon the willingness of the accused to have the offences compounded. In

fact, the Division Bench of this Court in Satyanarayana Rao's case (1989 2 Law Summary 87 DB) held that when once an offence is compounded under Section 200 (127-b of the old Act), then the cancellation of permit or any other action or proceedings in respect of the same offence becomes invalid. Further, in ***P.Ratnakar Rao Vs. Government of A.P.***^[2], the Apex Court held as under:

“....In the event of the petitioners willing to have the offence compounded, the authorized officer gets jurisdiction and authority to compound the offence and call upon the accused to pay the same. On compliance thereof, the proceedings, if already instituted, would be closed or no further proceedings shall be initiated.”

As seen from the above, the judgment of the Apex Court in ***Rajasekaran Vs. Union of India(supra)*** and the guidelines given by the State Government does not deal with a situation where the offence alleged to have been committed by the driver or the owner of the vehicle resulted in a compromise. It is true that the judgment of the Apex Court in Rajasekaran case and also the road safety recommendations made by the Apex Court need to be strictly followed. Having allowed compounding the offence after collecting necessary fees, which fact is not disputed by the Government Pleader for Transport, the question is whether the owner or the driver are still liable for any prosecution. Though the Government Pleader for Home, tried to convince the Court by urging that as the owner has paid the compounding fee, he alone can be exonerated and not the driver who was found driving the vehicle, at the time of its interception, but a reading of Sections 194 or 200 of the Act of 1988 does not indicate the same. On the other hand Section 194 categorically states that whoever drives or causes or allows to drive the vehicle, shall be liable for punishment. Therefore a harmonious reading of Section 194 and 200 of Act of 1988 makes it clear that the

benefit under Section 200 of M.V. Act has to be extended not only to the owner who allows the vehicle to be driven, but also to the person who drives the vehicle. Having regard to the judgments referred to above and a plain reading of Section 200 makes it clear that once an offence is compounded under Sub-Section (1) of Section 200, no further proceedings shall continue in respect of such offence.

When stringent punishment and strict interpretation of the guidelines are required to be made, the authorities ought not to have invited or entertained an application for compounding the offence, knowing that offences of this nature would fall within the recommendations of the Hon'ble Supreme Court Committee on road safety.

Having regard to the above, this Court is of the view that suspension of license for a period of six months, even after compounding the offence under Section 200 of the Act of 1988, is illegal and the same is liable to be set aside.

Accordingly, the Writ Petition is allowed setting aside the proceedings R.No.A2/RRE/2015, dated 13.05.2016. No costs.

Miscellaneous petitions, pending if any, shall stand closed in the light of this final order.

JUSTICE C. PRAVEEN KUMAR

08.07.2016

Note:

Issue CC in three days.

B/o.

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[\[1\]](#) (2014) 6 SCC 36

[\[2\]](#) (1996) 5 SCC 359