

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT PETITION No. 8522 of 2009

ORDER: (*Per VRS,J*)

The petitioner has come up with the above Writ Petition seeking a Writ of Mandamus to declare the failure on the part of the respondent to take appropriate action against his subordinates for insisting upon forcible payment of compounding fee under threat of detention of vehicles even for time barred traffic offences, as illegal, and for a direction to the respondent to pay compensation of Rs.25,000/- for the wrongful detention of his car for seven hours.

2. Heard Mr. Mohd. Zafarullah, learned counsel for the petitioner, and learned Government Pleader for Home appearing for the respondent.

3. The grievance of the petitioner, as born out by the affidavit in support of his writ petition, is that on 03.04.2009 he was returning home in his car. At about 12.25 noon, his car was intercepted by the traffic police. Thereafter, the police issued a computer generated receipt and demanded Rs.925/- as compounding fee for alleged

violations committed by him way back in 2007-2008.

4. It appears that the petitioner resisted, leading to the car being detained for about seven hours. Even the complaint lodged by him with the Assistant Commissioner of Police did not yield any result. Therefore, the petitioner has come up with the above writ petition, purportedly as a public interest litigation, though his own private interest is also intertwined with the professed public interest.

5. The Additional Commissioner of Police has filed a counter affidavit contending *inter alia* that the car driven by the petitioner was detained by the Sub Inspector of Police (Traffic) at about 12.25 noon on 03.04.2009; that the petitioner was not in possession of a driving licence and R.C. book; that upon verification of the hand held computer, it was found that the car was registered in the name of one Smt. A. R. Sukanya; that there were four e-challan cases already pending in respect of the vehicle, relating to signal jumping, cell phone driving, not wearing seat belt, and having an irregular number plate.

6. Therefore, it is stated by the Additional Commissioner of Police in his counter affidavit that the

total compounding fee of Rs.925/-, including service charges of Rs.125/-, was collected at that time. The respondent has admitted the fact that the car was detained for some time, in exercise of the power conferred by Section 207 of the Motor Vehicles Act, 1988.

7. The main contention of the learned counsel for the petitioner is that the offences, for which the compounding fee was collected under threat of detention of the car, were allegedly committed on 19.05.2007, 25.12.2007, 31.08.2008 and 05.09.2008. Since the offences complained of were punishable either with fine or with fine and simple imprisonment for a period of less than six months, the period of limitation prescribed under Section 468 of the Code of Criminal Procedure would apply. But, the compounding fee was collected on 03.04.2009, which was far beyond the period of limitation. Therefore, the primary contention of the learned counsel for the petitioner is that what could not be done even before a Criminal Court of competent jurisdiction, has been unlawfully done by the Sub Inspector of Police (Traffic).

8. But unfortunately, we are unable to agree with the above submission for two reasons. The first is that the petitioner has actually paid the fine amount and

compounded the offences. Once an offence is compounded, the right to challenge the charging under the relevant provisions of the Act, is lost by the petitioner. If the petitioner had chosen to contest the offences charged against him, he could have perhaps taken the plea of limitation. But, having compounded the offences, it may not be open to him to question the charging on the plea of limitation.

9. Moreover, the limitation prescribed under Section 468 of Cr.P.C., applies, only to the stage of charging. The date of commencement of the period of limitation, as rightly contended by the learned counsel for the petitioner, is the date of commission of the offence. There is no difficulty in accepting this. But, the moment a charge is framed, the date relevant for computing the period of limitation is the date on which a person is charged with the offence. In the case on hand, the charging had taken place, on the dates of the offences. In paragraph 2 of the counter affidavit, it is stated by the Additional Commissioner of Police that e-challan notices were sent 'under certificate of posting' to the address furnished by the vehicle owner to the Regional Transport Authorities. Therefore, the charging had actually taken place within the period of limitation. Hence, the primary contention, on

which the petitioner has come to Court, cannot be accepted.

10. The next contention of the learned counsel for the petitioner is that the respondent had no legal right to detain the vehicle. But, Section 207(i) is a complete answer to the same. Section 207(i) can be invoked for violation of Section 3(i). Section 3 relates to the driving of a motor vehicle in any public place without possessing a valid driving licence. In the counter affidavit, it is stated by the respondent that the petitioner was not in possession of a driving licence and R.C. book at the time when his car was intercepted on 03.04.2009.

11. But, the above statement of the respondent is stoutly denied by the learned counsel for the petitioner. According to the learned counsel for the petitioner, the petitioner was not charged with any violation of Section 3(i). He was charged with other offences and asked to pay Rs.925/-. The e-challans disclose that the petitioner was not charged with the violation of Section 3(i). Therefore, the contention is that the allegation that the petitioner was not in possession of a valid driving licence was a rank falsehood.

12. But unfortunately for the petitioner, the question as

to whether he was in possession of a valid driving licence on the fateful day, has now become a disputed question of fact. In paragraph 2 of the reply filed to the counter affidavit of the respondent, the petitioner has contended that he was never booked for any violation other than that indicated in Ex.P.1. It is relevant to extract a portion of the petitioner's reply affidavit that deals with the allegation of non-possession of driving licence, as follows:

“Ex.P.1 shows that it was detained alleging past traffic violations only; it never showed that I had no RC or DL. I was never booked for it, if true. If I had no RC/DL, when checked, means there were absolutely no other violations, such as insurance, pollution, seat belt, lights, indicators, number plate, etc. If I had all these, it is improbable that I had no RC/DL. I complained to SHO, P.S. Panjagutta, ACP, DCP, and Commissioner of Police (Ex.P.2) soon after car detention that the SI verified my original RC/DL, demanded money alleging time barred violations and detained my car on refusal to pay. I swear I showed RC/DL when checked.”

13. In other words, we have, on the one hand, the sworn statement of the respondent that the petitioner was not in possession of RC book and driving licence. On the other hand, we have the sworn statement of the petitioner to the effect that he was in possession of RC book and

driving licence.

14. Therefore, it has become a disputed question of fact, which unfortunately this Court exercising jurisdiction under Article 226 of the Constitution of India cannot go into.

15. One more thing that stares at the case of the present writ petitioner is that there are two limbs to the prayer made by the petitioner. The first takes the colour of a public interest prayer, seeking a declaration that the inaction on the part of the respondent in taking action against his subordinate officers is illegal. But, the learned Government Pleader produced a copy of G.O.Ms.No.54, Transport Roads and Buildings (TR.I) Department, dated 28.03.2006, which authorizes the officers concerned to levy compounding fee. This order itself is a sequel to a set of directions issued by this Court in a taken up Writ Petition No.10360 of 2004. Therefore, a prayer under the garb of a public interest litigation of the nature that the petitioner has made in the first part of his writ petition, cannot be granted.

16. If that is so, the second part of the prayer alone remains to be considered. The second part relates to compensation for unlawful detention of the vehicle. But, in

so far as that portion is concerned, the issue has now become a disputed question of fact. Therefore, no relief can be granted to the petitioner, without adjudication after taking evidence of such a disputed question of fact. Hence, the Writ Petition is dismissed.

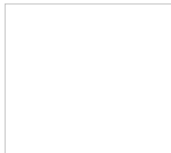
Consequently, miscellaneous petitions, if any, pending in the writ petition shall stand dismissed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J

**A. SHANKAR
NARAYANA, J.**

22nd June, 2016

cbs



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