

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2017

CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

W.P.No.1163 of 2017

M.Arun Kumar

... Petitioner

Vs.

1.The Regional Transport Officer
Kumar Nagar, Tirupur District.

2.The Inspector of Police
Avinashi Police Station,
Avinashi, Tirupur District.

... Respondent

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the first respondent herein to return the petitioner's Driving Licence bearing DL. No. TN41-19940003368 forthwith.

For Petitioner : Mr.A.Ganesan

For Respondent : Mr.Akhil Akbar Ali
Government Advocate

O R D E R

1.Issue Notice. Mr.Akhil Akbar Ali, learned Government Advocate, accepts notice on behalf of the respondents. With the consent of learned counsels for parties, the writ petition is taken up for final hearing and disposal.

2.The only relief that the petitioner seeks via this writ petition is for issuance of a direction to the first respondent to return his Driving Licence bearing DL.No.TN41-19940003368

3.This writ petition has been filed in the background of the following brief facts and circumstances:

3.1.The petitioner, who was working as a Driver, at the relevant time with the Tamil Nadu State Transport, Kovai Division, Tirupur Region met with an accident near Karuvalur Region, on 28.12.2016, while driving the vehicle assigned to him. In the accident, an old woman sustained fatal injuries,

which led to her death on the spot. Consequently, a case was registered under Sections 279 and 304 A of the IPC on that day itself i.e., 28.12.2016 at P.S. Avinashi.

3.2.To be noted, the case registered against the petitioner is reflected in Crime No.1044/2016.

4.It is the stand of the petitioner that he was arrested, and thereafter, released on bail on that very day i.e., 28.12.2016.

5.Furthermore, the petitioner avers that the subject vehicle was seized by the second respondent on the very same day and produced before the first respondent for inspection.

6.It is also averred by the petitioner that the first respondent seized his Driving Licence, which is, claimed to be valid up till 25th June, 2019.

7.It appears that the petitioner filed a representation with the first respondent, which is dated 02.01.2017, for return of his Driving Licence. The petitioner, appears to be aggrieved, as there has been no movement with regard to his representation.

8.The petitioner submits that the first respondent has no power to retain or impound the Driving Licence at this stage, when, the criminal case instituted against him is pending adjudication before the concerned Court.

9.Mr.Akhil Akbar Ali, learned Government Advocate who appears for the respondents on the other hand says that the first respondent can revoke the licence, albeit, after exercising powers conferred under Section 19 of the Motor Vehicles Act, 1988 (in short, the 1988 Act).

10.I had occasion to deal with a similar issue in W.P.No.43182 of 2016. The said writ petition was disposed of by me, vide, order dated 12.12.2016. For the sake of convenience, the observations made therein are set out hereafter:

"3.The facts which are required to be noticed for adjudication of the present writ petition are briefly set out hereafter:

3.1.The petitioner avers that he is employed as a driver with the Metropolitan Transport Corporation. It is further submitted by the petitioner that on 25.10.2016, he was driving a vehicle bearing Reg. No.TN 01/AN-1644. It is also the case of the petitioner that he was driving on Route No.70-V. Evidently on that date, the

said vehicle, which admittedly, the petitioner was driving collided with a motorcycle.

3.2.The driver of the motorcycle died in the accident. Consequently, a criminal case under Sections 279, 304 (A) of the IPC was registered against the petitioner, on 25.10.2016.

3.3.The investigation launched against the petitioner form part of Crime No.922 of 2016.

4.The petitioner, further avers, that during the course of the investigation carried out by respondent no.1, his driving licence was taken into custody and handed over to the second respondent for appropriate action.

5.It is, in these circumstances, it appears, that the petitioner on 02.11.2016 represented to the second respondent, seeking return of his driving licence.

6.Based on the aforesaid facts, the petitioner's counsel argues that the second respondent has no authority to seize the petitioner's driving licence prior to a finding of conviction being returned, by the concerned criminal court. In support of his submissions, learned counsel for the petitioner relies upon the following judgments:

i. P.Sethuram vs. The Licensing Authority, The Regional Transport Officer, Dindigul (Madurai Bench), 2010 Writ L.R. 100;

ii.G.Jayaprakash vs. The Secretary to Government & Others, 2010 Writ L.R. 104;

iii.R.Ravi vs. The Regional Transport Officer, Transport Department, Chennai, 2015 (2) CTC 626;

iv.Order in W.P.No.23179 of 2016 (between M.Rathinakumar and The Inspector of Police, Traffic

Investigating Wing and Another)
decided on 12.07.2016.

5. On the other hand, learned counsel for the respondents says that the second respondent has the power to revoke the licence pursuant to powers conferred in that behalf under Section 19 of the Motor Vehicles Act, 1988 (in short, the 1988 Act).

6. I have heard the learned counsel for the parties. According to me, while there is no doubt that the second respondent would have the power to revoke the licence or even disqualify the licence holder from holding a driving licence, that power can be exercised only if the provisions of the said section are scrupulously followed.

6.1. The second respondent, inter alia, is required to issue in the first instance a show cause notice. The show cause notice, in turn, should necessarily advert to the clause or clauses of sub-section (1) of Section 19 which are proposed to be triggered against the noticee. The noticee is required to be given an opportunity to present his case, and, only thereafter, can any punitive orders be passed against the noticee, i.e. holder of the driving licence.

6.2. The mere pendency of a criminal case, which may, in given circumstances, lead an acquittal, is not a good enough reason to seize the driving licence pending trial in the criminal case. Therefore, the power that the second respondent seeks to exercise under Section 19 of the Motor Vehicles Act, 1988, has to be exercised in consonance with the provisions of the said section and other appurtenant powers conferred under the 1988 Act and Rules framed thereunder.

7. Accordingly, the writ petition is disposed of with the direction to the second respondent to dispose of the representation of the petitioner dated 02.11.2016. While doing so, the second respondent will bear in mind the provisions of the 1988 Act and the judgments of this Court to which reference has been made hereinabove.

8. Needless to say, the second respondent will act with due expedition and, thus, conclude the aforesaid exercise not later than four (4) weeks from the date of receipt of a copy of the order."

11. Accordingly, this writ petition is also disposed of in terms of the directions contained in the order dated 12.12.2016, passed in W.P.No.43182 of 2016.

11.1. The first respondent will, thus, dispose of the representation of the petitioner dated 02.01.2017. While doing so, the first respondent will bear in mind, the provisions of the 1988 Act and the judgments of this Court to which, reference has been made herein above.

12. The aforesaid exercise will be carried by the first respondent with due expedition, and not later than six (6) weeks from today. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

pri

To

1. The Regional Transport Officer
Kumar Nagar, Tirupur District.

2. The Inspector of Police
Avinashi Police Station,
Avinashi, Tirupur District.

+1cc to Mr.A.Ganesan, Advocate, S.R.No.3420

+1cc to the Government Pleader, S.R.No.4358

W.P.No.1163 of 2017

NM1 (CO)
CA(01/02/2017)