



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **11.11.2019**

CORAM:

THE HONOURABLE MR.JUSTICE **M.GOVINDARAJ**

W.P. (MD)No.16539 of 2019

and

W.M.P. (MD)No.13186 of 2019

M.Mohamed Shaji

: Petitioner

Vs.

1.The Regional Transport Officer,
Office of Regional Transport Office,
Nagercoil at Thovalai,
Viswasapuram,
Kanyakumari District.

2.The Inspector of Police,
Boothapandi Police Station,
Kanyakumari District.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the first respondent to return the petitioner's original driving license bearing Reg.No.TN-7419910001756.

For Petitioner
For Respondents

: Mr.N.Sivakumar
: Mr.M.Rajarajan,
Government Advocate

ORDER

The petitioner is employed as a driver under the State Transport Corporation. While he was driving a bus bearing Registration No.TN 74 N 1400, between Keeriparai and Nagercoil, a passenger fell down from the bus and suffered death. Against the petitioner, an FIR was filed in Crime No.207 of 2019, dated 08.07.2019. The second respondent police seized the licence and handed over the same to the first respondent. Aggrieved over the seizure of the licence, the petitioner is before this Court.

2. Heard both sides.

3. It is well settled that when an offence takes place using a motor vehicle, the power is under Section 19 of the Motor Vehicles Act, 1988, to issue notice and suspend or revoke the licence. But, during the interregnum period, under Section 206, the police authorities can seize the licence and a temporary acknowledgement



will be issued by the police authorities.

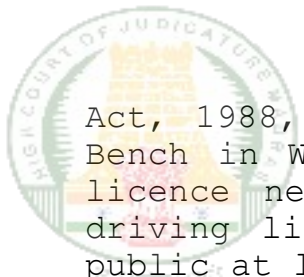
4. Sub-Sections (2) and (3) of Section 206 of the Motor Vehicles Act, 1988, read as under:

"206.(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 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."

5. In view of the above, it is very clear that the licence can be seized by a police officer or other person authorised only when there is a chance of accused escaping or absconding or otherwise avoiding service of summons. Normally, in the cases of employees of State Transport Corporation, the chance of escaping or absconding or avoiding service of summons is very rare. However, the second respondent shall issue a temporary acknowledgement to the petitioner and forward the licence seized by him before the Magistrate Court concerned. During the first appearance of the petitioner before the Magistrate Court, the Magistrate Court will return the licence to him in exchange of the temporary acknowledgement given under Sub-Section (3). Till such time, the second respondent shall authorise the holder of the licence to drive, until the licence is returned to him or under the date as may be specified therein.

6. Thus, the above provision gives an inference that until the guilt is proved, the person accused of the cognizable offence shall not be deprived of driving vehicle. However, in exceptional circumstances, where the accident is so gruesome and the conduct of the driver is so reckless, ex facie rash and negligent, which necessitates some deterrent action, it can be seized and forwarded to the concerned Magistrate Court for appropriate action. Simultaneously, action under Section 19(1) of the Motor Vehicles



Act, 1988, can also be initiated. As held by the Hon'ble Division Bench in W.A.(MD)No.205 of 2008, dated 28.03.2008, in such cases, licence need to be retained. Otherwise, the persons unworthy of driving licence will cause serious consequences to the safety of public at large. Paragraph No.10 of the judgment reads as under:

"The power to revoke the licence is granted to the authority with a view to prevent a person unworthy of driving a vehicle from driving temporarily or even permanently. If the interpretation suggested by the learned counsel for the appellant is accepted, even a person, who drives a vehicle negligently and recklessly and causes death, will continue to drive the vehicle in future with impunity with the existing licence. Such an interpretation would give rise to startling consequences and defeat the very purpose of incorporating Section 19 of the Motor Vehicles Act. Therefore, the interpretation suggested by the learned counsel for the appellant, is not acceptable."

7. In the present case, the petitioner is a driver in the Transport Corporation for the considerable period of time and has no bad antecedents. Therefore, considering the facts and circumstances of the case, a direction is given to the second respondent to issue temporary acknowledgement on the surrender or seizure of the licence made by the petitioner specifying the period upto which he can drive the vehicle or until the return of the original licence, so that the petitioner can save his employment by driving the bus.

8. In the meanwhile, if any show cause notice is issued by the first respondent with regard to suspending or revoking the licence under Section 19(1) of the Motor Vehicles Act, 1988, it is open to the petitioner to submit his reply. In the event of the reply being filed, the first respondent is directed to pass orders on the same on merits and in accordance with law, within a period of two weeks therefrom.

9. The Writ Petition is disposed of with the above directions and observation. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

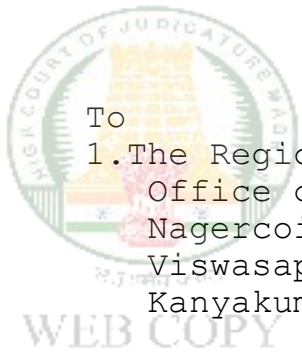
Assistant Registrar (CO)

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Sub Assistant Registrar(CS)

SML

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



To

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Viswasapuram,
Kanyakumari District.

2.The Inspector of Police,
Boothapandi Police Station,
Kanyakumari District.

+1 CC to M/s.N. SIVAKUMAR, Advocate (SR-97491[F] dated 12/11/2019)

+1 CC to M/s.SPL GP (SR-97744[F] dated 12/11/2019)

W.P. (MD)No.16539 of 2019

Dated: 11.11.2019

KK/SAR/13.11.2019/4P-5C/