



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.02.2020

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P.(MD)No.589 of 2020

and

WMP(MD)No.433 of 2020

K.Maharaja

... Petitioner

vs.

1.The Regional Transport officer,
The Regional Transport Office,
Madurai South, Madurai.

2.The Inspector of Police,
TIW - III Unit Police Station,
Madurai City.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus calling for the records pertaining to the impugned order passed by the first respondent in செ.மு.ஆ.எஸ். 61791/C4/19 dated 20.12.2019 and quash the same and consequently direct the 1st respondent to return the petitioner's driving license and to drop the action against him.

For Petitioner :Mr.Rahul

for Mr.G.M.Xavier

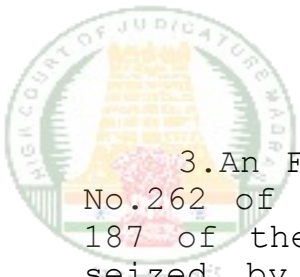
For Respondents :Mrs.J.Padmavathi Devi

Special Government Pleader

ORDER

Challenging the impugned order of the first respondent dated 20.12.2019, suspending the driving license of the petitioner, this writ petition is filed.

2.The petitioner was employed as a driver in the Tamil Nadu State Transport Corporation (Madurai) Ltd., On 16.12.2019, he was assigned with the duty of driving the bus bearing Registration No.TN-58-N-2340 in Arappalayam to Thirumangalam route. While he was proceeding towards Thirumangalam, an auto driver who went in front of the said bus, hit against a two wheeler and went away from the spot. On seeing this, the petitioner tried to catch the driver, which ended in vain. Thereafter, the petitioner went to the 2nd respondent police station and informed about the accident.



3. An FIR came to be registered against the petitioner in Crime No.262 of 2019 for the offence under Sections 279 and 337 IPC and 187 of the Motor Vehicles Act, 1988 and his driving license was seized by the second respondent and handed over to the first respondent. Thereafter, the first respondent passed the impugned order dated 20.12.2019 thereby suspended the petitioner's driving licence for the period of three months ie., from 23.12.2019 to 23.03.2020 under Section 19(1) of the Motor Vehicles Act. Challenging the same, the petitioner is before this Court.

4. The first respondent filed counter affidavit, wherein it has been stated that the petitioner has caused accident on 16.12.2019 and caused grievous injury to a person viz., Ravichandran, who succumbed to injury on 18.12.2019. Therefore, an altered FIR was registered against the petitioner under Section 304 (A) IPC from 337 IPC. On receipt of the said complaint, the first respondent issued a show cause notice dated 20.12.2019 to the petitioner, for which, the petitioner has not offered any explanation. As no explanation has been given for the show cause notice issued, the impugned order has been passed.

5. The learned counsel for the petitioner submits that the petitioner was issued with the show cause notice dated 20.12.2019, for which, he has given his reply on the same day itself and without considering the same, the first respondent has passed the impugned order in a printed format, without conducting any enquiry and without examining any witnesses in this regard, which is in violation of principles of natural justice. Further, the learned counsel submitted that unless the petitioner is found to be guilty, the first respondent has no jurisdiction to take action against the petitioner under Section 19(1) of the Motor Vehicles Act.

6. Per contra, the learned Special Government Pleader for the respondents would submit that before passing the impugned order, the first respondent has issued show cause notice dated 20.12.2019 for which, the petitioner has not given any explanation, but he made a representation seeking return of his license even before the issuance of show cause notice ie., on 20.12.2019. It is also pointed out that the petitioner never raised a plea that he had given explanation for the show cause notice dated 20.12.2019. In the absence of any explanation for the show cause notice issued, the petitioner, now cannot challenge the same.

7. The learned Special Government Pleader, relying on the judgment of the Division Bench of this Court in W.A(MD)No.244 of 2015, submitted that against the impugned order passed, the petitioner is having appellate remedy under Section 19(1)(3) of the Motor Vehicles Act and therefore, this writ petition is not maintainable.



8.Of course it is true that the case against the petitioner is in FIR stage and unless he is found to be guilty, the first respondent cannot take any action against him. Further, as stated by the petitioner, the impugned order is in the printed format.

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9.Be that as it may, in the case on hand, before issuance of the impugned order, the petitioner was issued with the show cause, calling upon the petitioner to submit his explanation as to why his driving licence should not be suspended, for which, he has not given any explanation. But, it is the case of the petitioner that he had offered his explanation on 20.12.2019.

10.The learned Special Government Pleader appearing for the respondents submitted that against the impugned order of the first respondent, the petitioner is having an alternative remedy to file an appeal under Section 19(3) of the Motor Vehicles Act and Rule 15 and 49(2) of the Tamil Nadu Motor Vehicles Rules, 1989, before the Joint Transport Commissioner, Madurai.

11.As stated above, already an opportunity was given to the petitioner before issuing the show cause notice by the first respondent. As no explanation was given to the said notice, the impugned order has been passed. Therefore, this Court finds no merit in this writ petition. However, the petitioner can very well approach the authority concerned as per the said Act and Rules. Accordingly, the petitioner is directed to file an appeal before the before the authority concerned within a period of two weeks from the date of receipt of a copy of this order. On such appeal being filed within the said period, the authority concerned shall entertain the same, without insisting the issue of limitation and pass orders on merits within a period of four weeks thereafter, after affording an opportunity of hearing to the petitioner.

12.The writ petition is disposed of with the above directions. No costs. Consequently, WMP(MD)No.433 of 2020 is closed.

Sd/-

Assistant Registrar (WRIT)

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Sub Assistant Registrar(CS)

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1.The Regional Transport officer,
The Regional Transport Office,
Madurai South, Madurai.



2.The Inspector of Police,
TIW - III Unit Police Station,
Madurai City.

+1 CC to M/s.G.M.XAVIER, Advocate (SR-8712[F] dated 27/02/2020)

+1 CC to M/s.SPL.GP (SR-9102[F] dated 28/02/2020)

+1 CC to M/s.J.PUDHUMAVATHI DEVI, Advocate (SR-9311[F] dated
28/02/2020)

W.P(MD)No.589 of 2020
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TK/SAR./09.03.2020/4P/6C