

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 12th March, 2020

+ CRL.REV.P. 494/2017

SUNIL KUMAR MISHRA

..... Petitioner

versus

STATE

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Pramod Kr. Dubey, Mr. Kushank Sindhu and Mr. Anurag Andley, Advocates (DHCLSC)

For the Respondent: Mr. Hirein Sharma, Addl. PP for the State with SI Narender Kumar

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns judgment dated 27.02.2017 whereby the appeal of the petitioner impugning order on conviction dated 28.10.2015 has been dismissed, however the order on sentence dated 08.11.2015 has been modified.

2. Petitioner was convicted by the Trial Court of the offences punishable under Sections 279/304-A of the Indian Penal Code (IPC for short) and sentenced to undergo rigorous imprisonment for a period of six months for the offence under Section 279 IPC and

rigorous imprisonment for the period of 18 months under Section 304A IPC.

3. The Appellate Court, in the appeal filed by the petitioner, considering mitigating circumstances and also the family condition of the petitioner, while upholding the order on conviction, modified the order on sentence and sentenced the petitioner to pay a fine of Rs. 1000/- for the offence under Section 279 IPC and in default of payment of fine to undergo simple imprisonment for a period of 8 days and sentenced the petitioner to undergo rigorous imprisonment for a period of 12 months for the offence under Section 304A IPC, instead of 18 months.

4. The Appellate Court additionally directed that the driving licence of the petitioner shall stand cancelled and debarred him from obtaining any driving licence throughout his life and directed that no fresh driving licence shall be issued to him.

5. Learned counsel for the petitioner submits that the petitioner has already undergone the entire sentence; however, he is impugning the order of the Appellate Court, in so far as it directs the cancellation of the driving licence of the petitioner and debars him from obtaining any driving licence throughout his life.

6. Learned counsel for the petitioner submits that petitioner was a driver and is the sole bread earner of his family having dependent children and wife. It is submitted that the petitioner survives and earns

his livelihood by driving only.

7. Learned counsel submits that the petitioner has a good case on merits in so far as the offence is considered, however as he has already undergone the entire sentence, he is restricting his prayer to impugning the direction with regard to cancellation of the license and the debarment from obtaining a fresh licence.

8. Learned counsel for the petitioner further submits that the Appellate Court committed a grave error in as much as no direction for cancellation of license was issued by the Trial Court and no such direction could be issued by the Appellate Court in the appeal filed by the petitioner and the direction for cancellation of license is an additional punishment and amounts to enhancement of sentence and is contrary to the powers of the Appellate Court under Section 386 Criminal Procedure Code.

9. Learned counsel further submits that the cancellation of license is beyond the powers conferred on the court by Section 20 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act). He submits that power has been vested only in the Licensing Authority under Section 19 of the Act to cancel a license or disqualify a person from obtaining a license and the power conferred on the Court under Section 20 of Act is to disqualify for a limited period.

10. Learned counsel for the petitioner submits that the case of the petitioner does not fall in either of the two categories. He submits that

no action has been taken by the Licensing Authority under Section 19 for revoking his licence and under Section 20 of the Act, power could have been exercised by the Court only if the petitioner had already been sentenced under Section 184 of the Act and committed an offence for the second time.

11. Learned counsel submits that since admittedly it is the first alleged offence of the petitioner under Section 184 of the Act, the Court could not have exercised powers under Section 20 of the Act to disqualify him.

12. Learned counsel for the petitioner relies on the judgments in *K. Vidyanand Vs. Addl. Licensing Authority, Hyderabad Central Zone, Hyderabad and Ors.* 2008 SCC Online AP 386; *S. Nandkumar Vs. Licensing Officer, Tiruppur South & Anr.* 2010 SCC Online Mad 2069 and *A. Sekar Vs. The Regional Transport Officer, Tiruppur South* 2010 SCC Online Mad 4759.

13. Section 19 of the Act empowers the licensing authority to disqualify a person from holding a driving licence or revoke the license if he is a habitual criminal or habitual drunkard; or is a habitual addict to any narcotic drug or psychotropic substance within the meaning of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or is using or has used a motor vehicle in the commission of a cognizable offence; or has by his previous conduct as driver of a motor vehicle shown that his driving is likely to be

attended with danger to the public; or has obtained any driving licence or a licence to drive a particular class or description of motor vehicle by fraud or misrepresentation; or has committed any such act which is likely to cause nuisance or danger to the public, as may be prescribed by the Central Government, having regard to the objects of this Act; or has failed to submit to, or has not passed, the tests referred to in the proviso to sub-section (3) of section 22; or being a person under the age of eighteen years who has been granted a learner's licence or a driving licence with the consent in writing of the person having the care of the holder of the licence and has ceased to be in such care.

14. Section 20 of the Act reads as under:

“20. Power of Court to disqualify.—(1) Where a person is convicted of an offence under this Act or of an offence in the commission of which a motor vehicle was used, the Court by which such person is convicted may, subject to the provisions of this Act, in addition to imposing any other punishment authorised by law, declare the persons so convicted to be disqualified, for such period as the Court may specify, from holding any driving licence to drive all classes or description of vehicles, or any particular class or description of such vehicles, as are specified in such licence:

Provided that in respect of an offence punishable under section 183 no such order shall be made for the first or second offence.

(2) Where a person is convicted of an offence under clause (c) of sub-section (1) of section 132, section 134 or section 185, the Court convicting any person of any such offence shall order the disqualification under sub-

section (1), and if the offence is relatable to clause (c) of sub-section (1) of section 132 or section 134, such disqualification shall be for a period of not less than one month, and if the offence is relatable to section 185, such disqualification shall be for a period of not less than six months.

(3) A Court shall, unless for special reasons to be recorded in writing it thinks fit to order otherwise, order the disqualification of a person—

- (a) who having been convicted of an offence punishable under section 184 is again convicted of an offence punishable under that section,*
- (b) who is convicted of an offence punishable under section 189, or*
- (c) who is convicted of an offence punishable under section 192:*

Provided that the period of disqualification shall not exceed, in the case referred to in clause (a), five years, or, in the case referred to in clause (b), two years or, in the case referred to in clause (c), one year.

(4) A Court ordering the disqualification of a person convicted of an offence punishable under section 184 may direct that such person shall, whether he has previously passed the test of competence to drive as referred to in sub-section (3) of section 9 or not, remain disqualified until he has subsequent to the making of the order of disqualification passed that test to the satisfaction of the licensing authority.

(5) The Court to which an appeal would ordinarily lie from any conviction of an offence of the nature specified in sub-section (1) may set aside or vary any order of

disqualification made under that sub-section notwithstanding that no appeal would lie against the conviction as a result of which such order of disqualification was made.”

15. Section 20 of the Act *inter alia* empowers the Court, by which a person is convicted, if he is convicted of an offence under this Act or of an offence in the commission of which a motor vehicle was used, in addition to imposing any other punishment authorised by law, to declare the person so convicted to be disqualified, for such period as the Court may specify, from holding any driving licence to drive all classes or description of vehicles, or any particular class or description of such vehicles, as are specified in such licence. The Proviso stipulates that in respect of an offence punishable under section 183 of the Act no such order shall be made for the first or second offence.

16. Section 20 (3) of the Act empowers the court, unless for special reasons to be recorded in writing to order otherwise, order the disqualification of a person *inter alia* (a) who having been convicted of an offence punishable under section 184 is again convicted of an offence punishable under that section and that the period of disqualification shall not exceed five years.

17. Section 21 of the Act reads as under:

*“21. Suspension of driving licence in certain cases.—
(1) Where, in relation to a person who had been previously convicted of an offence punishable under section 184, a case is registered by a police officer on the*

allegation that such person has, by such dangerous driving as is referred to in the said section 184, of any class or description of motor vehicle caused the death of, or grievous hurt to, one or more persons, the driving licence held by such person shall in relation to such class or description of motor vehicle become suspended—

(a) for a period of six months from the date on which the case is registered, or

(b) if such person is discharged or acquitted before the expiry of the period aforesaid, until such discharge or acquittal, as the case may be.

(2) Where by virtue of the provisions of sub-section (1), the driving licence held by a person becomes suspended, the police officer, by whom the case referred to in sub-section (1) is registered, shall bring such suspension to the notice of the Court competent to take cognizance of such offence, and thereupon, such Court shall take possession of the driving licence, endorse the suspension thereon and intimate the fact of such endorsement to the licensing authority by which the licence was granted or last renewed.

(3) Where the person referred to in sub-section (1) is acquitted or discharged, the Court shall cancel the endorsement on such driving licence with regard to the suspension thereof.

(4) If a driving licence in relation to a particular class or description of motor vehicles is suspended under sub-section (1), the person holding such licence shall be debarred from holding or obtaining any licence to drive such particular class or description of motor vehicles so long as the suspension of the driving licence remains in force.”

18. Section 21 of the Act *inter alia* provides for Suspension of driving licence in case, where, in relation to a person who had been previously convicted of an offence punishable under section 184, a case is registered by a police officer on the allegation that such person has, by such dangerous driving as is referred to in the said section 184, of any class or description of motor vehicle caused the death of, or grievous hurt to, one or more persons, the driving licence held by such person shall in relation to such class or description of motor vehicle become suspended for a period of six months from the date on which the case is registered, or if such person is discharged or acquitted before the expiry of the period aforesaid, until such discharge or acquittal, as the case may be.

19. Section 22 of the Act reads as under:

“22. Suspension or cancellation of driving licence on conviction.—(1) Without prejudice to the provisions of sub-section (3) of section 20 where a person, referred to in sub-section (1) of section 21 is convicted of an offence of causing, by such dangerous driving as is referred to in section 184 of any class or description of motor vehicle the death of, or grievous hurt to, one or more persons, the Court by which such person is convicted may cancel, or suspend for such period as it may think fit, the driving licence held by such person in so far as it relates to that class or description of motor vehicle.

(2) Without prejudice to the provisions of sub-section (2) of section 20, if a person, having been previously convicted of an offence punishable under section 185 is again convicted of an offence punishable under that section, the Court, making such subsequent conviction,

shall, by order, cancel the driving licence held by such person.

(3) If a driving licence is cancelled or suspended under this section, the Court shall take the driving licence in its custody, endorse the cancellation or, as the case may be, suspension, thereon and send the driving licence so endorsed to the authority by which the licence was issued or last renewed and such authority shall, on receipt of the licence, keep the licence in its safe custody, and in the case of a suspended licence, return the licence to the holder thereof after the expiry of the period of suspension on an application made by him for such return:

Provided that no such licence shall be returned unless the holder thereof has, after the expiry of the period of suspension, undergone and passed, to the satisfaction of the licensing authority by which the licence was issued or last renewed, a fresh test of competence to drive referred to in sub-section (3) of section 9 and produced a medical certificate in the same form and in the same manner as is referred to in sub-section (3) of section 8.

(4) If a licence to drive a particular class or description of motor vehicles is cancelled or suspended under this section, the person holding such a licence shall be debarred from holding, or obtaining, any licence to drive such particular class or description of motor vehicles so long as the cancellation or suspension of the driving licence remains in force.”

20. Section 22 of the Act *inter alia* provides for Suspension or cancellation of driving licence on conviction in respect of persons referred to in sub section (1) of Section 21 of the Act. Persons referred

to in sub section (1) of Section 21 are those who had been previously convicted of an offence punishable under section 184 of the act.

21. Section 22 of the Act *inter alia* stipulates (i) that without prejudice to the provisions of sub-section (3) of section 20 of the Act where a person, referred to in sub-section (1) of section 21 of the Act is convicted of an offence of causing, by such dangerous driving as is referred to in section 184 of the Act, of any class or description of motor vehicle the death of, or grievous hurt to, one or more persons, the Court by which such person is convicted may cancel, or suspend for such period as it may think fit, the driving licence held by such person in so far as it relates to that class or description of motor vehicle; (ii) that without prejudice to the provisions of sub-section (2) of section 20 of the Act, if a person, having been previously convicted of an offence punishable under section 185 of the Act is again convicted of an offence punishable under that section, the Court, making such subsequent conviction, shall, by order, cancel the driving licence held by such person.

22. In the facts of the present case, since there is no material on record to show that petitioner was earlier convicted of an offence under section 184 of the Act, clearly, sections 21 and 22 of the Act are not applicable.

23. Both the courts have held that the petitioner was driving the offending vehicle i.e. truck trailer in rash and negligent manner and

hit against the deceased from the back, in such a manner that it caused the death of the deceased, who was declared brought dead.

24. Petitioner has been convicted of an offence under section 304A of IPC i.e. causing death by rash and negligent act. Death has been caused by use of a motor-vehicle. Clearly Section 20 (1) of the Act would be attracted and the Court, in addition to imposing any other punishment authorised by law would be empowered to declare the petitioner to be disqualified, for such period as the Court may specify, from holding any driving licence to drive all classes or description of vehicles, or any particular class or description of such vehicles, as are specified in such licence.

25. The contention of learned counsel for the petitioner, that the imposition of punishment of cancellation of licence is contrary to section 386 Cr.P.C, is also not sustainable. The Appellate Court, in an appeal from a conviction, under section 386 (b) Cr.P.C, can alter the nature and extent of the sentence but not so as to enhance the same.

26. The Trial Court in the present case had sentenced the petitioner to rigorous imprisonment of 6 months for the offence under section 279 IPC and rigorous imprisonment of 18 months for the offence under section 304A IPC. The Appellate Court converted the punishment of rigorous imprisonment of 6 months for the offence under section 279 IPC to fine in the sum of Rs. 1000 and converted the punishment of rigorous imprisonment of 18 months for the

offence under section 304A IPC to rigorous imprisonment of 12 months. While reducing the punishment for rigorous imprisonment for both the offences, the Appellate Court directed that the driving license of the petitioner shall stand cancelled and debarred him from obtaining any driving license throughout his life.

27. The Appellate Court has not enhanced the sentence but has altered the nature of the sentence whereby the Appellate Court has reduced the component of rigorous imprisonment and altered it to cancellation of the driving licence.

28. The judgments referred to by learned counsel for the Petitioner are not applicable to the facts of the present case. In *K. Vidyanand Vs. Addl. Licensing Authority, Hyderabad Central Zone, Hyderabad and Ors. (supra)*; *S. Nandkumar Vs. Licensing Officer, Tiruppur South & Anr. (supra)* and *A. Sekar Vs. The Regional Transport Officer, Tiruppur South (supra)* the courts were considering power of the Licensing authority to cancel a license under section 19 and 21 of the Act were in consideration. The power of the Court to suspend and/or cancel the licence under section 20 and 22 of the Act on a conviction was not under consideration.

29. The petitioner is a driver by profession and cancellation of the driving license of the petitioner permanently and debarring him from obtaining a driving licence for life amounts to a punishment that he cannot carry out the vocation of driving throughout his life.

30. The punishment of cancellation of the driving license permanently and debarring him from obtaining any driving license throughout his life literally amounts to his civil death because he would not be in a position to carry out his profession for life.

31. Section 22 of the Act stipulates that in relation to a person, who has earlier been convicted of an offence punishable under section 184 of the Act (i.e. rash and negligent act) and thereafter he is convicted of causing, by such dangerous driving of any class or description of motor vehicle, the death of, or grievous hurt to, one or more persons, the Court by which such person is convicted may cancel, or suspend for such period as it may think fit, the driving licence held by such person in so far as it relates to that class or description of motor vehicle.

32. In the present case, as noticed above, the concurrent finding of both the courts below is that petitioner caused the death by driving the offending vehicle i.e. truck trailer, in a rash and negligent manner and hit against the deceased from the back, in such a manner that it caused the death of the deceased on the spot. Clearly, it cannot be said that the action of the Appellate Court in directing cancellation of the license driving license is unwarranted. However, in the facts of the case and particularly keeping in view the provisions of section 22 of the Act, I am of the opinion that cancellation of the license driving license of the petitioner for all classes or description of vehicles is excessive.

33. Keeping in view the facts and circumstances of the case, interest of justice would be served, in case, the sentence awarded by the Appellate Court of cancellation of the driving license of the petitioner and debarring him from obtaining any driving license throughout his life, is modified to the extent that the driving license of the petitioner is cancelled for the class and description of medium and heavy goods and medium and heavy passenger vehicle and he is debarred from obtaining a driving licence for medium and heavy goods and medium and heavy passenger vehicle. For obtaining a driving licence of other description of vehicles he shall have to undergo a fresh test of competence to drive.

34. Petition is allowed in the above terms.

35. Order *Dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

MARCH 12, 2020

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