

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION 209 OF 2021

1. Hussain Ali s/o. Mohd. Ali,
aged about 46 yrs, Occ. Driver,
r/o. Mohpa, Tah. Kalmeshwar,
Dist. Nagpur
2. Mahendrasingh Sitaprasad Thakur,
aged about 42 yrs, occ. Driver,
r/o. Plot no. 28, Ramai Nagar,
Nari Road, Near Boudha Vihar,
Nagpur.

....**PETITIONERS**

VERSUS

Licensing Authority and
Deputy Regional Transport Officer,
Washim, Dist. Washim.

....**RESPONDENT**

Mr. P.V. Navlani, counsel for petitioners.
Mr. M.K. Pathan, APP for respondent.

CORAM : ROHIT B. DEO, J.
DATE : 31.03.2021

ORAL JUDGMENT :

Heard.

2. With consent, the petition is taken up for final hearing.

3. The challenge is to separate orders dated 27.1.2021, rendered by respondent – Licensing Authority purporting to revoke the driving licences of the petitioners. The licence / permit is revoked purportedly in exercise of power under section 19(1) (c) of the Motor Vehicle Act, 1988 (“Act”) on the premise that petitioner 1 - Mr. Hussain Ali Mohd. Ali permitted one Mr. Samir Devkar to enter the bus which he was driving. The Licensing Authority observes that petitioner 1 – Mr. Hussain Ali did not produce any record to suggest that Mr. Samir Devkar was engaged as bus conductor by the bus owner, and therefore, petitioner 1 – Mr. Hussain Ali committed irregularity in permitting Mr. Samir Devkar to act as the bus conductor. The further observation is that one lady was issued physical ticket although online booking is the norm. In so far as petitioner 2 – Mr. Mahendrasingh Sitaprasad Thakur who also drove the same bus, is concerned, the observation is that he did not produce on record any material to show that he was engaged by the bus owner to drive the bus.

4. The backdrop of the action initiated by the Licensing Authority is an incident which led to registration of Crime 5/2021 under sections 376(2)(n) and 506 of Indian Penal Code. The lady

to whom a reference is made in the two separate orders of cancellation of driving licence is the lady who alleged that she was raped by Mr. Bharat alias Samir Devkar in the moving bus.

5. While extending pre-arrest protection to the accused, this Court noted that in the statement recorded under section 164 of the Criminal Procedure Code (“Code”), the lady stated that she did not have any grievance and lodged the complaint out of anger. A perusal of the show-cause notices and the orders impugned reveal that the registration of the crime is the very basis of action under section 19(1)(c) of the Act, which reads thus:

19. Power of licensing authority to disqualify from holding a driving licence or revoke such licence – (1) If a licensing authority is satisfied, after giving the holder of a driving licence an opportunity of being heard, that he –
(a)....
(b)....
(c) is using or has used a motor vehicle in the commission of a cognizable offence; or
(d).... to (h)...

In view of the admission of the complainant, there is no material to assume that the petitioners permitted the vehicle to be used for commission of any cognizable offence.

6. The orders impugned are quashed.

7. Rule is made absolute in terms of prayer clause (ii),
which reads thus:

(ii) upon perusal quash and set aside the impugned orders dated 27.1.2021 passed by respondent Licensing Authority & Deputy Regional Transport Officer, Washim in Case No. 21/Case/Dy.RTO/Washim 2021 O.No.129 and Case No. 22/Case/Dy.RTO/Washim/2021/O.No.130(Annexure-VI).

Judge

Belkhede