

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

CRIMINAL WRIT PETITION NO. 318/2019

Nitin Shalikram Motghare,
aged about 35 years,
Occupation : Business,
Resident of MHADA Colony,
Hingna Road, Nagpur.

.... **PETITIONER**

// VERSUS //

- 1) State of Maharashtra
through Ministry of Transport,
Mantralaya, Mumbai ;
- 2) Transport Commissioner,
Maharashtra State having its
Office at 3rd Floor, Administrative
Building, Government Colony,
Near Ambedkar Garden,
Bandra (East), Mumbai-51 ;
- 3) The Deputy Commissioner of Police (Traffic),
Civil Lines, Nagpur ;
- 4) Assistant Police Inspector (Traffic),
Sonegaon, Nagpur.

.... **RESPONDENTS**

Shri U. A. Gosavi, Advocate for the petitioner
Shri S. M. Ghodeswar, APP for the respondents

**CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.**

DATED : 04/02/2021

ORAL JUDGMENT : (Per : SUNIL B. SHUKRE, J.)

1. Heard. **Rule.** Rule made returnable forthwith.
2. Heard finally by consent of the learned counsel appearing for the parties.
3. The petitioner is a owner-cum-driver of the motor vehicle i.e. autorickshaw bearing registration No. MH-31-FB-1403. The petitioner was plying his autorickshaw on a road passing through Alankar Talkies Square on 26-3-2019, when his vehicle was stopped by traffic police and was booked for committing offence under Sections 66 and 192 of the Motor Vehicles Act, 1988 ('M.V. Act' for short) on the allegation that at that time, the petitioner was found to be carrying in his autorickshaw "unauthorized passengers". The vehicle of the petitioner was seized and his registration certificate was also seized by the traffic police. However, the seized vehicle was released to the petitioner on 27-3-2019 but his R.C. book was not. Memorandum was accordingly issued to the petitioner on the same day of 26-3-2019 but on this memorandum there also appears an endorsement of the date of 27-3-2019 regarding release of the vehicle to the petitioner.
4. Learned counsel for the petitioner submits that according to the memorandum, no offence punishable under any provision made

under M.V. Act has been committed by the petitioner and, therefore, whole action of the traffic police is illegal. He submits that if the expression “unauthorized passenger” is to be construed as carrying of passenger in violation of the transport permit, it was mandatory on the part of the traffic police to mention the number of the passengers found to be carrying in the autorickshaw at relevant time but this fact is missing from memorandum of registration of offence and, therefore, according to him, entire action of traffic police is illegal.

5. Learned Additional Public Prosecutor has submitted that the action taken by traffic police is legal and in accordance with the provisions of Sections 206 and 207 of the M.V. Act.

6. Bare perusal of Sections 206 and 207 would show that in none of these Sections, there is any mention of the offence relating to offence under Section 66 and 192 of the M.V. Act. Section 66 is regarding the necessity of permits and Section 192 is about using vehicles without registration. It is not the case of the respondents that at the relevant time, the vehicle was being used without any registration certificate. On the contrary, registration certificate was indeed in possession of the petitioner and it was seized by the police. So Section 192 is not attracted even remotely. As regards Section 66, we must state that if any offence under this section is to be alleged

against the vehicle owner or the driver, as the case may be, it would be necessary to mention number of passengers carried at the relevant time by the concerned vehicle in the memorandum of registration of offence, as such mention is necessary to prove as to whether or not the passengers being carried by the motor vehicle exceed the permissible number of passengers as mentioned in the permit. As this has not been stated in the memorandum of registration of offence, even Section 66 is not attracted in the present case. As none of these offences are attracted, there would be no question of seizure of the vehicle or seizure of R.C. or both. Therefore, entire action taken in the present case has to be termed as illegal and without any authority of law. In the circumstances, we are inclined to allow the petition.

7. The petition is allowed.

8. Memorandum of registration of offence dated 26-3-2019 is hereby quashed and set aside.

9. The respondents are directed to return the registration certificate to the petitioner forthwith.

(AVINASH G. GHAROTE, J)

(SUNIL B. SHUKRE J.)