

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:01.02.2021

Coram

The HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.No.1847 of 2021

S.Ashokan

..... Petitioner

vs.

1.The Regional Transport Officer,
Regional Transport Office,
Dharmapuri District - 636 705.

2.The Inspector of Police,
A. Pallipatty Police Station,
Dharmapuri District

..... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Mandamus to direct the first respondent herein to return the petitioner's Driving License DL.No.TN 29 T 2002 0000372 which is valid upto 28.04.2025 forthwith.

For Petitioner

... Mr.A.Ganesan

For Respondents

... Mr.M.Elumalai

Additional Government Pleader

ORDER

This petition has been filed by the petitioner, seeking for a direction, to direct the 2nd respondent herein to return the Driving License DL.No.TN 29 T 2002 0000372 to the petitioner.

2.The case of the petitioner is that he is working as a driver in the Metropolitan Transport Corporation of Chennai. On 15.11.2020, the accident had occurred while he was on duty and driving the bus bearing No.TN-01/N-7425, in which, a motor cycle rider died. The 1st respondent police registered a case in Crime No.850 of 2020 as against the petitioner under Section 279 & 304-A IPC and the same is pending investigation. During the course of investigation, the 2nd respondent police have collected the original driving licence of the petitioner and submitted it to the 1st respondent with a recommendation to cancel the driving licence issued to the petitioner.

3.Mr.A.Ganesan, the learned counsel appearing for the petitioner would submit that a case in Crime No.850 of 2020 is pending at the stage of investigation, therefore, only after the trial, it could be revealed whether any lapse is there on the part of the petitioner in the case or not. He would further submit that at present, the case is in F.I.R. stage and it is not appropriate on the part of the 2nd respondent to make a recommendation to the 1st respondent to cancel the driving licence issued to the petitioner. Mr.A.Ganesan, the learned counsel also relied upon the decision of this Court in Writ Appeal (MD) No.374 of 2009, wherein, this Court has held as follows:

"11.The respondent in the impugned order preconcluded the issue that the appellant is guilty of rash and negligent driving even before the Criminal Court or the Motor Accident Claims Tribunal went into the issue. Even to invoke Section 19(1)(c), it is necessary to show that the Motor Vehicle involved in the commission of a cognizable offence. Without making a specific averment regarding the same, the order suspending the driving licence cannot be taken to be passed after due application of mind.

12.In view of the above, the Writ Appeal is allowed, the order of the learned Judge is set aside and the writ petition is allowed. The respondent is directed to return the driving licence of the appellant, within a week of receipt of a copy of this order. However, it shall not preclude the respondent from initiating any action, if any of the contingencies specified in Clauses (a) to (h) of Section 19(1) of the Act, arise later or if any of the Rules as prescribed by the Central Government in pursuance of Section 19(1)(f) are violated. No costs. Consequently, connected miscellaneous petition is closed."

4.In response, Mr.M.Elumalai, the learned Additional Government Pleader would submit that though the Division Bench has passed the earlier order relying upon the provision under Section 19(1) of the Motor Vehicles Act, 1988, the provision under Section 206(2) of the said Act was not disclosed in the said order. He would further refer to the provisions under Section 206(2) of 'The Motor vehicles Act, 1988 which reads as follows:

206. Power of police officer to impound document -

(1).....

(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 a 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 222 licence to him in exchange for the temporary acknowledgement given under sub-section (3).

(3)

5. In view of the decision taken by this Court in similar writ petitions directing the respondents to return the driving license, pending investigation, this Writ Petition is disposed of in terms of provision under Section 206 of the Motor Vehicles Act and with a direction to the 1st respondent to return the driving licence to the 2nd respondent police, who in turn, shall submit the same before the concerned Judicial Magistrate and the petitioner is at liberty to approach the concerned Judicial Magistrate for return of the driving license by filing appropriate application and on such application being made, the learned Judicial Magistrate shall decide for return of driving licence in accordance with section 206 of the Motor Vehicles Act, within a period of two weeks thereafter. No costs.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Regional Transport Officer,
Regional Transport Office,
Dharmapuri District - 636 705.

2. The Inspector of Police,
A. Pallipatty Police Station,
Dharmapuri District

+1cc to Mr.A.Ganesan, Advocate SR.NO.5589
+1cc to The Government Pleader SR.NO.5359

AKM/25.02.21/3P- 5C/

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