

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 27.04.2021
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P. No. 10473 of 2021

T.Bagavathiraj

...Petitioner

Vs.

1. Inspector of Police
Udumalpet Police Station
Tirupur District.
2. The Licensing Authority cum
Motor Vehicle Inspector
Udumalpet
Tirupur District.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the Second Respondent herein to return the original driving license (DL No. TN41 2004 0001828) to the Petitioner forthwith.

For Petitioner : Mr. K.Hariharan

For Respondents : Mr. J.Ramesh (For R1 & R2)
Additional Government Pleader

O R D E R

Mr. J.Ramesh, Learned Additional Government Pleader takes notice for the Respondents. By consent of both Parties, this Writ Petition is taken up for final disposal, at the admission stage itself.

2.This Writ Petition has been filed seeking a direction the Second Respondent to return the original driving license (DL No. TN41 2004 0001828) to the Petitioner forthwith.

3.The case of the petitioner is that he is working as a Lorry Driver. On 07.04.2021, an accident had occurred, while he was driving the Lorry bearing Regn.No.TN40 C 4612, due to which a person travelled in a car died. The First Respondent police registered a case in Crime No.171 of 2021 as against the Petitioner for the offences under Sections 279, 337 & 304-A IPC and the same is pending investigation. During the course of

investigation, the First Respondent police collected the original driving licence of the Petitioner and submitted it to the Second Respondent with a recommendation to cancel it. Hence, this writ petition.

4.Mr.K.Hariharan, learned counsel appearing for the Petitioner submitted that a case in Crime No.171 of 2021 registered against the petitioner is pending at the stage of investigation and only after trial, it could be revealed whether the petitioner had committed any offence or not and hence, it is not appropriate on the part of the First respondent to make a recommendation to the Second respondent to cancel the driving licence issued to the petitioner at this stage. The learned counsel also placed reliance on the decision passed in W.A.(MD) No.374 of 2009, wherein, it was 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 issued 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."

The learned counsel also submitted that in an identical case in WP.No.19333 of 2020, this Court by order dated 05.01.2021, directed the Licencing Authority to return the original licence to the Investigation Officer, who inturn was directed to submit the same to the concerned Judicial Magistrate and further, the petitioner was granted liberty to file necessary application for return of the driving licence. Thus, the learned counsel prayed for similar benefit to this petitioner as well.

5.Mr. J.Ramesh, Learned Additional Government Pleader appearing for the Respondents would submit that the case was registered only on 07.04.2021 and hence, the same is pending investigation. Referring to Section 206(2) of the Motor vehicles Act, 1988, the learned counsel submitted that the action of the respondents with respect to seizure and submission

of the driving licence with a recommendation to cancel it, is in accordance with law. For better appreciation, the said provision is extracted hereunder:

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

(3)"

6. Considering the facts and circumstances of the case and having regard to the submissions made by the learned counsel on either side and also following the earlier order of this Court (cited supra) and in terms of Section 206(2) of the Motor Vehicles Act, this Writ Petition is disposed of, with a direction to the Second respondent to return the driving licence to the First respondent police, who in turn, shall submit the same before the concerned Judicial Magistrate. Thereafter, the petitioner is at liberty to approach the concerned Judicial Magistrate for return of the driving licence by filing appropriate application. On such approach, the Judicial Magistrate concerned shall decide the said application in accordance with section 206 of the Motor Vehicles Act, within a period of two weeks from the date of filing of the application. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Maya

To

1. Inspector of Police
Udumalpet Police Station
Tirupur District.
 2. The Licensing Authority cum
Motor Vehicle Inspector
Udumalpet
Tirupur District.
 3. The Judicial Magistrate, Tiruppur.
- +1 cc to Government Pleader Sr.No. 25974

W.P. No. 10473 of 2021

NRL(CO)

A.SK(08.07.2021)