

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2021

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.No.19333 of 2020

A.Lazer

...Petitioner

Vs.

1.The Inspector of Police
T-12, Traffic Investigating Wing
Poonamallee, Chennai-56

2.The Licensing Authority cum-
Regional Transport Officer
Poonamallee
Chennai-67

...Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus, to direct the 2nd respondent herein to return the original driving licence (DL No.TN22 1994 0003503) to the petitioner forthwith.

For Petitioner : Mr.K.Hariharan

For Respondents : Mr.Elumalai
Additional Government Pleader

O R D E R

(The case has been heard through video conference)

This petition has been filed by the petitioner, seeking for a direction, to direct the 2nd respondent herein to return the original driving licence (DL No.TN22 1994 0003503) 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 his duty and driving the bus bearing No.TN-01/N-7425, due to which, a motor cycle rider died, thereby, 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 1st respondent police have also collected the original

driving licence of the petitioner and submitted it to the 2nd respondent with a recommendation to cancel the driving licence issued to the petitioner.

3.Mr.Hariharan, the learned counsel appearing for the petitioner would submit that while a case in Crime No.850 of 2020 is pending at the stage of investigation, however, 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 the case is at present in the stage of F.I.R. and it is not appropriate on the part of the 1st respondent to make a recommendation to the 2nd respondent to cancel the driving licence issued to the petitioner. Mr.Hariharan, 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 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."

4.In response, Mr.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 Act and the provision under Section 202 of the Act was not disclosed in the said order. He would further refer the provision under Section 206(a) and (b) which reads as follows:

206:Compounding of offences - The Transport Authority shall in determining the sum of money to be recovered in lieu of cancellation or suspension of different classes of permits, have regard to the following namely:-

(a) nature, gravity and frequency of the offence committed;

(b) the quantum of punishment that would otherwise have been imposed.

5. In view of the said provision under Section 206(a & b) of Tamil Nadu Motor Vehicles Rules, this Court is inclined to give a direction to the 2nd respondent to return the original licence to the 1st respondent within a period of one week from the date of receipt of a copy of this order and the 1st respondent in turn is hereby directed to submit the same to the concerned Judicial Magistrate, within a period of one week therefrom. When the licence being produced before the concerned Judicial Magistrate, the petitioner is at liberty to file a necessary application before the concerned Judicial Magistrate for return of the original driving licence and obtain the same.

6. With the above direction, this Writ Petition stands disposed of. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police
T-12, Traffic Investigating Wing
Poonamallee, Chennai-56

2. The Licensing Authority cum-
Regional Transport Officer
Poonamallee
Chennai-67

+1cc to Mr.K.Hariharan, Advocate SR.452

+1cc to the Government Pleader SR.902

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LN(CO)
CB(11/01/2021)