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W.P.No.25060 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED :25.08.2023**

**CORAM**

**THE HONOURABLE MR. JUSTICE S.SOUNTHAR**

**W.P No.25060 of 2023**  
**and W.M.P.No.24489 of 2023**

A.Dhanapal

...Petitioner

Vs.

1.The Regional Transport Officer,  
The Regional Transport Office,  
Thirupur South,  
Thirupur District.

2.The Inspector of Police,  
Palladam Police Station,  
Thirupur District.

...Respondents

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 1<sup>st</sup> respondent to return the petitioner's original driving license within a time limit that may be fixed by this Court.

For Petitioner : Mr.P.Chandrasekaran

For Respondent 1 : Mr.N.Naveen Kumar  
Government Advocate

For Respondent 2 : Mr.R.Murthi  
Government Advocate (Crl.Side)



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## **ORDER**

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The petitioner herein seeks a direction to the 1<sup>st</sup> respondent to return his original driving license within the time fixed by this Court.

2. According to the petitioner, he is a driver employed in Tamil Nadu State Transport Corporation (Madurai) Limited. On 03.07.2023, when he was driving a vehicle belongs to his employer, an accident had taken place near Palladam in Karur to Coimbatore Trip. A two wheeler rider came in a left side of the bus and hit against the bus without following any traffic rules and as a consequence, he received head injury and died in the hospital. The 2<sup>nd</sup> respondent Police registered a case against the petitioner in Crime No.736 of 2023 under Sections 279 and 304(A) of IPC. The 2<sup>nd</sup> respondent also seized the original driving license of the petitioner and forwarded the same to the 1<sup>st</sup> respondent for taking appropriate action. Thereafter, the 1<sup>st</sup> respondent appeared to have issued a Show Cause Notice to the petitioner on 25.07.2023, directing him to explain why action shall not be taken against him under Section 19(1) of the Motor Vehicles Act, 1988 r/w Rule 21 of Central Motor Vehicles Rules, 1989. The petitioner also appeared to have submitted his



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explanation on 02.08.2023, till date no orders have been passed by the 1<sup>st</sup> respondent.

3.The learned counsel for the petitioner submits that the 1<sup>st</sup> respondent is not justified in keeping the original driving license of the petitioner, when investigation against the petitioner is pending. It is also submitted by the learned counsel that till date no charge sheet has been filed against the petitioner and the act of the 1<sup>st</sup> respondent prevents the petitioner from reporting to the duty as he is without original driving license. It is also submitted by the learned counsel that the act of 1<sup>st</sup> respondent deprived the livelihood of the petitioner.

4.Mr.N.Naveen Kumar, learned Government Advocate takes notice for the 1<sup>st</sup> respondent. Mr.R.Murthi, learned Government Advocate (Crl.Side) takes notice for the 2<sup>nd</sup> respondent.

5.Mr.N.Naveen Kumar, learned Government Advocate who is taking notice for the 1<sup>st</sup> respondent submits that Show Cause Notice has been issued to the petitioner and no orders have been passed so far.



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6. Admittedly, a Criminal Case is filed against the petitioner and investigation is pending. In such circumstances, it is not for the 1<sup>st</sup> respondent to decide whether the accident had occurred due to the negligence of the petitioner or not. The said question has to be decided by the Criminal Court or by the Motor Vehicle Tribunal. In such circumstances, the 1<sup>st</sup> respondent is not justified in keeping the original driving license of the petitioner that too without passing any orders under Section 19(1) of the Motor Vehicles Act, 1988 r/w Rule 21 of Central Motor Vehicles Rules, 1989.

7. The issue involved in this matter is squarely covered by the decision of the Hon'ble Division Bench of this Court in ***P. Sethuram Vs. The Licensing Authority, The Regional Transport Officer, The Regional Transport Office, Dindigul, reported in 2010 Writ L.R.100***, wherein it was held that the licensing authority is not entitled to pre-conclude the issue and come to a conclusion that the petitioner is guilty of rash and negligent driving even before the Criminal Court or Motor Accident Tribunal gives a formal finding to that effect. The relevant portion of the decision of the Hon'ble Division Bench reads thus:



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*“8. A bare reading of Section 19(1) shows that the*

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*Licensing Authority has the power to revoke any licence or disqualify a person for a specified period from holding or obtaining a driving licence, if any of the contingencies prescribed in Clauses (a) to (h) of sub-section (1) of Section 19 arises. Moreover, the power under Section 19(1) can be invoked only after giving an opportunity of being heard to the holder of the licence and for reasons to be recorded in writing.*

*9. But in the case on hand, the licence of the appellant was impounded or retained by the police immediately after the accident. Thereafter, the respondent issued the show cause notice under Section 19 (1) of the Act, after getting a report from the police. Therefore, the impounding of the licence has actually preceded the issue of show cause notice.*

*10. Apart from the above, there is no allegation, either in the notice or in the order impugned in the writ petition, that the appellant is a habitual criminal or habitual drunkard, so as to attract Clause (a) of Section 19(1) of the Act. Similarly, neither the show cause notice nor the order impugned in the writ petition, imputes the appellant with any of the ingredients necessary under Clause (b) to (h) of Sub*



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*Section (1) of Section 19 of the Act. Except stating that as per the report of the Inspector of Police, the appellant was guilty of rash and negligent driving, the impugned order does not indicate the category in Clause (a) to (h) of Section 19(1), under which the case of the appellant would fall.*

*11. The respondent has, 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 is used 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.”*

8. Therefore, the 1<sup>st</sup> respondent is not justified in keeping the original driving license of the petitioner without passing any order under Section 19(1) of the Motor Vehicles Act, 1988 r/w Rule 21 of Central Motor Vehicles Rules, 1989. Therefore, this Court is inclined to issue a direction to the 1<sup>st</sup> respondent to return the original driving license to the petitioner.



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9.It is made clear that allowing of this Court will not preclude the 1<sup>st</sup> respondent from taking action against the petitioner under Section 19(1) of the Motor Vehicles Act, 1988 r/w Rule 21 of Central Motor Vehicles Rules, 1989, if those provisions are otherwise attracted.

10.With this direction, the writ petition stands disposed of. No costs.  
Consequently, connected miscellaneous petition is closed.

**25.08.2023**

Index : Yes/No  
Internet : Yes/No  
Speaking Order/Non-Speaking Order  
Neutral Citation Case : Yes/No  
nti/shl

To  
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The Regional Transport Office,  
Thirupur South,  
Thirupur District.

2.The Inspector of Police,  
Palladam Police Station,  
Thirupur District.



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**S.SOUNTHAR, J.**

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