



W.P.(MD).No.11867 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 11.05.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.11867 of 2023

R.Rajasekar

... Petitioner

Vs.

1.The Inspector of Police,
TIW-1 (Traffic Investigating Wing),
Madurai City,
Madurai.

2.The Licensing Authority – cum – Regional Transport Officer,
Madurai Central,
Madurai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the 2nd respondent to return the original driving license of the petitioner (license No.TN 58 20040006936) within a time limit that may be fixed by this Court.

For Petitioner : M/s.M.Benazir Begum

For Respondents : Mr.C.Satheesh,
Government Advocate.



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ORDER

By consent of both parties, this writ petition is taken up for final disposal at the stage of admission itself.

2. The petitioner, who was employed as Driver in the Tamil Nadu State Transport Corporation (Madurai) Limited, has filed this petition seeking direction to the 2nd respondent to return the original driving license of the petitioner (license No.TN 58 20040006936).

3.The first respondent seized the petitioner's original driving license and handed over the same to the 2nd respondent. The crux of the case is that on 22.03.2023 at about 9.30 a.m., two persons without wearing helmet had rashly driven the pulsar two-wheeler bearing Registration No.TN 58 X 3854 and hit another two wheeler Hero Honda bearing Registration No.TN 63 AD 4482 and caused injuries to the driver of the Hero Honda, thereby lost their balance and fell into the bus and died on the spot. A criminal case came to be registered in Crime No.35 of 2023 dated 22.03.2023 against the petitioner for offences under Sections 279 and 304(A) IPC. The second respondent issued a show cause notice dated Nil.04.2023 (signed on 13.04.2023) to the petitioner to explain as



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to why the license of the petitioner shall not be suspended. Based on the show cause notice, the petitioner also submitted his explanation to the second respondent denying the allegation.

4. The grievance of the petitioner is that the second respondent has withheld the driving license of the petitioner and retained the same without passing any final order under Section 19(1) of the Motor Vehicles Act. Aggrieved by the same, the present Writ Petition is filed.

5. Heard M/s.M.Benazir Begum, learned counsel appearing for the petitioner and Mr.C.Satheesh, learned Government Advocate, appearing for the respondents and perused the records.

6. The issue, which arises for consideration in the present matter, has already been decided by a Division Bench of this Court in *P.Sethuram v. The Licensing Authority, The Regional Transport Officer, Dindigul* reported in 2010 WLR 100, wherein in paragraph Nos.9 to 11, it has been held as follows;

"9.But in the case on hand, the license of the appellant was impounded or retained by the police immediately after the accident. Thereafter, the respondent issued the show cause



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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 Clauses (b) to (h) of Sub 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 Clauses (a) to (h) of Section 19(1), under which the case of the appellant would fall.

11. The respondent has, in the impugned order, pre-concluded 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."



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7. In view of the above, the second respondent is directed to return the driving license of the petitioner immediately on production of a copy of this order and the second respondent is at liberty to proceed against the petitioner for violation of the Motor Vehicle Act in accordance with law. Accordingly, the Writ Petition is allowed. No costs.

11.05.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr

Note: Issue Order Copy on 12.05.2023.

To

- 1.The Inspector of Police,
TIW-1 (Traffic Investigating Wing),
Madurai City,
Madurai.
- 2.The Licensing Authority – cum – Regional Transport Officer,
Madurai Central,
Madurai District.



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S.SRIMATHY, J.

Nsr

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