

(2015) 04 MAD CK 0350

In the Madras High Court

Case No : W.A. (MD) No. 244 of 2015 and M.P. (MD) No. 1 of 2015

K. Selvaraj

APPELLANT

Vs

Regional Transport Officer, Trichirappalli and Others

RESPONDENT

Date of Decision : 06-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1988 — Section 19, 19(1), 19(1)(c), 19(3), 20(1)
Penal Code, 1860 (IPC) — Section 304-A

Citation : (2015) 4 ACC 41 : AIR 2015 Mad 149

Hon'ble Judges : S. Manikumar, J;G. Chockalingam, J

Bench : Division Bench

Advocate : T. Lajapathi Roy, for the Appellant; M. Govindan, Special Government Pleader, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S. Manikumar, J—Before the writ Court, proceedings in Na. Ka. No. 48553/E2/2014, dated 22.08.2014, of the Regional Transport Officer, Trichirappalli West, Trichirappalli, directing the petitioner to show cause as to why his driving license should not be cancelled for causing an accident on 23.07.2014, which resulted in death, has been challenged. Explanation has been submitted by the petitioner on 03.09.2014. But, no orders have been passed. The petitioner has challenged the above proceedings dated 22.08.2014 and sought for a Certiorarified Mandamus to set aside the show cause notice and consequently, prayed for a direction to the respondents therein to return the petitioner's original driving license within a time limit. However, by observing that power under Article 226 of the Constitution of India cannot be invoked when a show cause notice is challenged, this Court in W.P. 15489 of 2014 dismissed the writ petition by order dated 23.02.2015 and further directed the Regional Transport Officer, Trichirappalli West, Trichirappalli the first respondent therein, to pass orders on the show cause notice, on merits and in accordance with law, within a period of 2 weeks from the date of receipt of a copy of the order.

2. Though Mr. T. Lajapathi Roy, learned counsel for the appellant assailed the correctness of the abovesaid order, placing reliance on the Division Bench judgment of this Court in P. Sethuram Vs. The Licensing Authority, The Regional Transport Officer, (2010) WritLR 100 and sought for return of the appellant's driving license, this Court is not inclined to accept the said contention in view of the following decisions.

3. Hon"ble Mr. Justice S. Nagamuthu, passed an order dated 14.02.2008, in W.P. (MD) No. 1266 of 2008, rejecting the contentions and at para 4, it has been held as follows:

"4. A perusal of the order would go to show that a show cause notice was issued on 07.12.2007, for which the petitioner has submitted his explanation on 27.12.2007. He has not asked for copy of any document. There is also no dispute that the vehicle driven by him met with an accident. Under Section 19(1) sub-clause (c) of the Motor Vehicles Act, if the motor vehicle driven by a driver has been involved in the commission of cognizable offence, certainly, the authorities have got power to disqualify the person, after recording the reasons. Thus, I do not find any merit in the argument that the order is not a speaking order and that the principles of natural justice have not been followed. In any event, the impugned orders appealable to the authority as prescribed under Section 19(3) of the said Act. When the petitioner has an alternative efficacious remedy, the writ petition cannot be maintained before this Court under Article 226 of the Constitution of India."

4. When the matter was challenged by way of an appeal in W.A. (MD) No. 205 of 2008, it was inter alia contended that even though an offence under Section 304-A, I.P.C. is cognizable, the language of the section indicates that the offence is committed when there is a rash and negligent driving and a person, who is alleged to have committed an offence under Section 304-A by rash and negligent driving, cannot be said to have "used the motor vehicle in the commission of a cognizable offence".

5. According to the appellant therein, the provisions contained in Section 19(1) (c) would be applicable only, where, the person concerned deliberately used the motor vehicle in the commission of offence and not where the cause of rash and negligent driving of motor vehicle, under Section 304-A is committed. Rejecting the contention, a Hon"ble Division Bench, in W.A. (MD). No. 205/2008, dated 28.03.2008 cited supra, at paragraph 10, has held as follows:

"The power to revoke the licence is granted to the authority with a view to prevent a person unworthy of driving a vehicle fro in driving temporarily or even permanently. If the interpretation suggested by the learned counsel for the appellant is accepted, even a person, who drives a vehicle negligently and recklessly and causes death, will continue to drive the vehicle in future with impunity with the existing licence. Such interpretation would give rise to startling consequences and defeat the very purpose of incorporating Section 19 of the

Motor Vehicles Act. Therefore, the interpretation suggested by the learned counsel for the appellant, is not acceptable."

6. Subsequent to the decision of the Hon"ble Division Bench in P. Sethuram Vs. The Licensing Authority, The Regional Transport Officer, (2010) WritLR 100 , this Court with reference to the provisions in the Motor Vehicles Act in W.P. (MD) No. 8067 of 2011 held that the Motor Vehicle Authorities have the power to retain the licence, till the adjudication for suspension or revocation, is finally decided.

7. The said decision has been challenged by the writ petitioner therein and a Hon"ble Division Bench of this Court in W.A. (MP). No. 856 of 2011, dated 08.09.2011, has, dismissed the appeal of the driver as follows:

"This Writ Appeal is directed against the order of the learned single Judge dated 20.07.2011 made in W.P. (MD). No. 8067 of 2011, by which the learned single Judge, after considering the entire issue elaborately, has dismissed the said Writ Petition, which was filed by the appellant herein challenging the order of the respondent herein and for a direction to the respondent to return the driving license, which was denied on the ground that a complaint has been lodged against the appellant.

2. Inasmuch as the said complaint is still pending as-on-date and the power of suspension of license is available to the respondent, which is not in dispute, we do not see any reason to interfere with the order of the learned single Judge.

3. In the result, the Writ Appeal fails and the same stands dismissed. However, it is always open to the appellant to have the relief claimed, either after the criminal case has ended in his favour or after the investigation is over and final report is filed to the effect that no case is made out for the purpose of the Court to take cognizance."

8. Though Section 20(1) of the Motor Vehicles Act is mentioned in the impugned show cause notice dated 22.08.2014, Mr. M. Govindan, learned Special Government Pleader pointed out that it must only be an erroneous quoting of the provisions and for that reason show cause notice need not be set aside. We are in agreement with the said contention. In the light of the above stated decisions, this Court is of the view that the order made in W.P. (MD). No. 15489 of 2014 cannot be found fault with. The writ appeal is dismissed. The first respondent is directed to adhere to the directions made in W.P. (MD). No. 15489 of 2014, by order dated 23.02.2015 and pass orders on the show cause notice as expeditiously as possible, without inviting further litigation. Consequently, connected miscellaneous petition is also dismissed. No costs.