

(1998) 10 P&H CK 0073
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 14127 of 1998

Navinder Jeet

APPELLANT

Vs

Chandigarh Administration and Others

RESPONDENT

Date of Decision : 12-10-1998

Acts Referred:

Motor Vehicles Act, 1988 — Section 129

Citation : AIR 1999 P&H 112 : (1999) 1 ILR (P&H) 277 : (1999) 121 PLR 234 : (1998) 4 RCR(Civil) 678

Hon'ble Judges : V.S. Aggarwal, J;R.S. Mongia, J

Bench : Division Bench

Advocate : Party in person, for the Appellant;

Final Decision : Dismissed

Judgement

V.S. Aggarwal, J.—Petitioner Navinder Jeet is a practising Advocate at Chandigarh, In public interest she invokes the extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India. She seeks quashing of challan dated 27-8-1998 and also a direction to the respondents to refrain from issuing further challans for not wearing helmet. Petitioner further seeks a direction to the respondents to return the money paid by the citizens for challan after 31-7-1998 with respect to not wearing the helmet viz-a-viz the pillion rider.

2. The facts which prompts the petitioner to approach this Court are that in Civil Writ Petition No. 7639 of 1995 decided on 9-7-1998 besides other directions this Court had directed that all persons while driving two wheelers or sitting on the pillion seat of two wheeler shall wear helmet. Exemption was only granted to the Sikhs (wearing turban while driving). A SLP was filed against the judgment dated 9-7-1998 The Supreme Court slaved the operation of the judgment. The grievance of the petitioner is that despite the stay order granted by the Supreme Court the authorities are challenging the pillion riders sitting on two wheeler who are not wearing helmet. The act of the Chandigarh Traffic Police was

stated to be illegal and in violation of the stay granted by the Supreme Court. It is in this backdrop that the petitioner prays that the respondents should be restrained from submitting challans as against the pillion riders who are not wearing helmet,

3. We have heard the petitioner who appeared in person.

4. On perusal of facts, we are of the considered opinion that the petition is totally devoid of any merit. The fact is not being disputed that this Court had directed the persons while driving two wheeler or sitting on the pillion seat of the two wheeler to wear helmet and that operation of the said order has been stayed by the Supreme Court. Irrespective of that, our attention has been drawn to Section 129 of the Motor Vehicles Act, 1988 which reads as under:--

"129. Wearing of protective headgear:--

Every person driving or riding (otherwise) than in a side car, on a motor cycle of any class or description) shall, while in a public place, wear (protective headgear conforming to the standards of Bureau of Indian Standards):

Provided that the provisions of this section shall not apply to a person who is a Sikh, if he is, while driving or riding on the motor cycle, in a public place, wearing a turban;

Provided further that the State Government may, by such rules, provide for such exceptions as it may think fit.

Explanation: ""Protective headgear" means a helmet which-

(a) by virtue of its shape, material and construction, could reasonably be expected to afford to the person driving or riding on a motor cycle a degree of protection from injury in the event of an accident: and

(b) is securely fastened to the head of the wearer by means of straps or other fastenings provided on the headgear."

5. It is apparent from the perusal of Section 129 of the Motor Vehicles Act, 1988 reproduced above that every person even when he is riding on a motor cycle has to wear the "protective headgear". Even if the operation of the judgment passed by this Court has been stayed by the Supreme Court, that will not put an end to the rigour of Section 129 of the Motor Vehicles Act, 1988. That being so, indeed, the respondents can challan the persons in accordance with the provisions of Section 129 of the Motor Vehicles Act, 1988. The interim order of the Supreme Court, therefore, does not come to the rescue of the petitioner in this regard.

6. That being the legal position, the question of refunding the amount paid by any person who has since been challaned does not arise,

7. At this stage, our attention has been drawn towards the challan against the pillion rider (Annexure P-2). Needless to state at the risk of repetition that the order of the Supreme Court does not come in the way of submitting challan

against the pillion rider without safety helmet and. secondly, in any case, available pleas can be taken by such a person before the Court before whom the challan is pending.

8. As a corollary to the reasons given above, it flows that the petition is totally devoid of any merit, it fails and is dismissed in limine.