Kaushik De and Another Vs State of West Bengal and Others

Court: Calcutta High Court

Date of Decision: June 12, 2012

Acts Referred: Constitution of India, 1950 â€" Article 226
Motor Vehicles Act, 1988 â€" Section 130, 137(b), 138, 177, 200
Penal Code, 1860 (IPC) â€" Section 26

Citation: (2013) 1 CALLT 465

Hon'ble Judges: Jayanta Kumar Biswas, J

Bench: Single Bench

Advocate: Soumya Majumder, Mr. Biswaroop Bhattacharya and Ms. Reshmi Ghosh, for the Appellant; Pantu Deb Roy and Mr. Siddhartha Rej for the State, for the Respondent

Final Decision: Dismissed

Judgement

Jayanta Kumar Biswas, J.
The petitioners in this WP under Article 226 dated March 29, 2012 are seeking the following principal reliefs:

(a) A Writ in the nature of Mandamus directing the respondent authorities particularly the respondent No. 5 to forthwith return the driving licence

purportedly seized by the respondent No. 5 on 24th March, 2012 to the petitioner No. 2.

(b) A Writ in the nature of Certiorari commanding the respondents to forthwith and/or immediately certify and/or transmit to this Hon"ble Court the

entire records and/or proceedings forming subject matter of the instant case so that conscionable justice may therein be administered by setting

aside and/or quashing the compound slip and/or purported seizure list issued by the respondent No. 5.

The fifth respondent is: ""Debashish Mukherjee, Inspector of Police, O/C. Kona Traffic, Howrah."" and the compound slip-cum-seizure list referred

to in prayer (b) is dated March 24, 2012 and a copy thereof is at p.28 of the WP. It was issued by the fifth respondent.

2. In the compound slip-cum-seizure list it was written that the fifth respondent issued it in exercise of power conferred on him by sub-section (1)

of section 200 of the Motor Vehicles Act, 1988; and that the second petitioner had committed offence u/s 177 of the Motor Vehicles Act, 1988,

because in contravention of the provisions of Rule 138(3) of the Central Motor Vehicles Rules, 1989 he was driving the seized vehicle without

wearing the seat belt provided in the vehicle.

3. The fifth respondent offered to compound the offence in exchange for Rs. 100 fine payable within fifteen days. He mentioned that the second

petitioner"s failure to compound the offence would lead to institution of a prosecution before the appropriate Court of law. The fifth respondent at

once impounded the second petitioner"s driving licence in exercise of power u/s 206(2) of the Act and issued a temporary acknowledgement u/s

206(3). It was mentioned that if the second petitioner wanted to contest the prosecution, then he should appear before the Chief Judicial

Magistrate, Howrah.

4. Mr. Majumder appearing for the petitioners has argued that since the second petitioner"s driving licence was impounded by the police officer

illegally and as a result he (the second petitioner) is unable to drive the vehicle owned by the first petitioner in whose presence the licence was

impounded, the first petitioner is entitled to approach the Writ Court questioning the validity of the compound slip-cum-seizure list.

5. Referring to the provisions of sections 130, 137(b), 200, 206(2) and 208 of the Motor Vehicles Act, 1988. Rules 139 and 164 of the Central

Motor Vehicles Rules, 1989 and the decision of this Court in Dipankar Dutta Vs. State of West Bengal, , he has argued that the police officer

could not compel the unwilling second petitioner to compound any offence or impound the second petitioner"s driving licence without recording his

opinion that unless the licence was seized the second petitioner, charged with offence u/s 177 of the Act, might abscond or otherwise avoid the

service of a summons.

6. I am unable to see how the provisions of sections 138 and 208 of the Motor Vehicles Act, 1988 are relevant. The police officer issuing the

compound slip-cum-seizure list charged the second petitioner with the commission of an offence u/s 177 of the Act. The allegation was that the

second petitioner was driving the vehicle without fastening the seat belt provided in the vehicle, and that the omission amounted to contravention of

the provisions of Rule 138(3) of the Central Motor Vehicles Rules, 1989. The provisions of section 200 empowered the police officer to

compound the offence.

7. In view of the provisions section 200 of the Motor Vehicles Act, 1988 the police officer offering to compound the offence did not commit any

wrong, because he was under an obligation to offer to compound and could not institute the prosecution straight; for the second petitioner charged

with an offence u/s 177 of the Act was entitled to have an opportunity to compound it even before institution of the prosecution. Hence I do not

find any substance in the allegation that the second petitioner was compelled to compound an offence.

8. The principal contention that seems to be the fundament of the petitioners'' case is that the police officer seized the second petitioner''s driving

licence in contravention of the provisions of sub-section (2) of section 206. The basis of the contention is that the police officer was under an

obligation to form an opinion and record it in the slip that unless the licence was seized, the second petitioner might abscond or otherwise avoid the

service of a summons. In support of this strong reliance has been placed on the Single Bench decision of this Court.

9. In that case the allegation was that the police officer seized the driving licence without giving any proper seizure list on which the signature of the

petitioner therein was obtained to show that he had admitted his guilt.

Paragraph 2 of the report is quoted below:--

2. The concerned police officer Mr. Rakesh Kundu is personally present in Court. He submits through his learned counsel that steps were taken by

him against the petitioner wrongly since he did not understand the intricacies of law, and also that he has acted at the instance of his superiors and

not otherwise. It is further submitted on his behalf that due to his ignorance about the relevant provisions of law, he has wrongly seized the driving

licence without issuing proper seizure list and tenders his unqualified apology before this Court.

Paragraphs 3, 4 and 5 of the report are quoted below:--

3. Ms. Roy, learned Counsel submits that her client shall return the driving licence to the petitioner and no further steps shall be taken in the matter.

4. Considering the submissions made on behalf of the concerned police officer, the apology tendered by Mr. Kundu, the concerned police officer

is accepted by the Court.

5. Since the authorities want to drop the case, as submitted by Ms. Roy, Advocate, appearing for the authorities, the Court directs the authorities

to drop the matter and to return the licence to the petitioner. The petitioner is also directed to take back the licence from Ms. Roy have and now.

10. In this WP counsel for the petitioners has heavily relied on para. 6 of the report, which is quoted below:

6. I make it clear that if at any point of time a driving licence is to be seized on the apprehension that the alleged offender may abscond or may

avoid service of summons on him, the authority seizing the licence shall be at liberty to do so but only upon recording proper reason therefor and

not otherwise and thereafter he can take necessary follow-up action in terms of section 206 of the Act and Rule 10(2) of the West Bengal Motor

Vehicles Rules, 1989.

11. It is evident that the case was decided on the basis of the submissions of the police officer that he had seized the driving licence wrongfully, and

that a decision was taken to drop the case against the petitioner in that case. It is not the case that a compound slip-cum-seizure list was quashed

on the grounds that seizure of the driving licence without recording any opinion formed by the police officer that unless the licence was seized, the

petitioner in that case might abscond or otherwise avoid the service of a summons, amounted to a contravention of the provisions of sub-section

(2) of section 206 of the Motor Vehicles Act, 1988.

12. Therefore, in my opinion, it cannot be said that the binding ratio of the decision is that a police officer impounding a driving licence u/s 206(2)

of the Motor Vehicles Act, 1988 is under an obligation to form an opinion and record it in the seizure list that unless the driving licence is seized,

the person charged with the offence may abscond or otherwise avoid the service of a summons.

Sub-section (2) of section 206 of the Motor Vehicles Act, 1988 is quoted below:--

(2). Any police officer or other person authorized in this behalf by the State Government may, if he has reason to believe that the driver of a motor

vehicle who is charged with any offence under this Act may abscond or otherwise avoid the service of a summons, seize any licence held by such

driver and forward it to the Court taking cognizance of the offence and the said Court shall, on the first appearance of such driver before it. return

the licence to him in exchange for the temporary acknowledgement given under sub-section (3).

13. In my opinion, the very fact that the second petitioner''s driving licence was seized by the police officer in exercise of power under sub-section

(2) of section 206 of the Act is sufficient to say that the police officer had reason to believe that unless the driving licence of the second petitioner,

charged with an offence u/s 177 of the Act. was seized, he might abscond or otherwise avoid the service of summons. Nothing in the section

created an obligation of the police officer to form an opinion and record it in the seizure list.

14. According to the definition of the expression ""reason to believe"" in section 26 of the Indian Penal Code, a person is said to have ""reason to

believe"" a thing, if he has sufficient cause to believe that thing but not otherwise.

15. A police officer empowered by section 206(2) of the Motor Vehicles Act, 1988 to seize the driving licence of a person charged with an

offence under the Act, if he has reason to believe that unless the licence is seized, the holder thereof may abscond or otherwise avoid the service of

a summons, can hardly have any cause requiring him to exercise the power, except the licence holder''s an on-the-spot conduct for his reason to

believe the thing.

16. It means that power u/s 206(2) of the Motor Vehicles Act, 1988 is exercised on the basis of an on-the-spot state of mind of the police officer

created by an on-the-spot conduct of the person charged with the offence. Hence if the officer is required to record the reasons for his believing

the thing, then, actually, he will be required to record the commissions and omissions constituting the on-the-spot conduct of the person charged

with the offence.

17. An opinion or a fact, is recorded in writing for a discernible future purpose. In case of seizure of a driving licence u/s 206(2) it can be either to

show that the police officer acted in good faith or to provide the person charged with the offence an opportunity to say that the cause was not the

cause or sufficient cause for exercising the power. Both by their very nature are outside the purview of Article 226 judicial review power; for a

thing done by a police officer in uniform is believed to be done in good faith, and the bad faith and cause related allegations questioning the

subjective opinion will require a proof by oral testimony.

18. I am, therefore, unable to accept the argument that the driving licence was seized in contravention of the provisions of sub-section (2) of

section 206 of the Act.

19. The second petitioner intending to contest the prosecution (this has been repeatedly said by counsel) could get back his driving licence on the

first appearance before the Chief Judicial Magistrate, Howrah. The provisions of sub-section (2) of section 206 clearly provide that a driving

licence seized thereunder is to be returned by the Court concerned to the driver on his appearance before it. The second petitioner was only to

return the compound slip-cum-seizure list that was issued by the police officer at once under sub-section (3) of section 206 of the Act.

20. Hence I am unable to see why power under Article 226 is to be exercised for ordering return of the seized driving licence. It is to be done by

the Criminal Court. It is beyond comprehension how the first petitioner claiming to be a witness to the incident can contest the prosecution that was

to be instituted against the second petitioner on his rejection of the offer to compound the offence made by the police officer.

21. I am, therefore, of the view that there is no reason to quash the compound slip-cum-seizure list. It could be quashed only if it was issued

without jurisdiction or the allegations contained therein did not make out a case of commission of any offence. The police officer issuing it was

empowered to issue it; and allegations made in the slip clearly make out a case of commission of an offence by the second petitioner u/s 177 of the

Act. It is for the prosecution to prove the allegations before the Criminal Court. For these reasons, the WP is dismissed. Nothing herein shall

prevent the second petitioner from appearing before the Criminal Court, getting back his driving licence therefrom, and contesting the prosecution,

if any, instituted against him. No costs. Certified xerox.