

IN THE HIGH COURT OF DELHI AT NEW DELHI

21.09.2007

Present: Mr. A.K. Nijhawana, adv. for the applicant in CM 9754/2007

Mr. Rajiv Awasthy, amicus curiae.

Ms. Renuka Arora, adv. for DMRC.

Ms. Zubeda Begum with Ms. Iram Majid, advs. for GNCTD.

Mr. Vibhu Bakharu, Mr. Sumesh Dhawan, Mr. Vikas Chandel, adv. for petitioner in R.P.188/2007.

Ms. Meera Bhatia, Ms. Pooja Aganpal, advs. for R-1,2 and 4.

Mr. Vijay Sandhi, Mr. Sanjeev Kumar, advs. for the applicant in CM 13271-72/2007

C.M. 9754/2007, 13271-72/2007 and R.P. 188/2007 in W.P.(C) 16565/2006

This Review Petition is directed against an order passed by a Division Bench of this Court in WP(C) No. 16565/2006 whereby a series of directions were issued one out of which related to the use of black films on the front and the rear windscreens and the glasses used on the side windows of motor vehicles.

The Court, it appears, was of the opinion that use of black films on the windscreens and the glasses used for side windows were a major reason for the incidence of crime in moving vehicles in Delhi. The Court, therefore, forbade the use of black films of any transparency on the cars. The direction issued by the Court was in the following words: "all other cars/vehicles are hereby prohibited from using the black films of any transparency on their cars".

In CM No. 9754/2007, the petitioner is a dealer in films used by car owners while petitioner in CM No. 13271/2007 is a manufacturer of the said films. Learned counsel appearing for them argued that the direction forbidding use of black films of any transparency on the car was contrary to the provisions of Rule 100 of The Central Motor Vehicles Rules, 1989. They further submitted that the directions issued by this Court purports to draw support from an order passed by the Supreme Court in Chandigarh Administration and Ors. versus Namit Kumar and Ors., AIR 2005 SC 1386 but the said order does not, in fact, sanction any such prohibition. The Supreme Court had, argued the learned counsel, made it clear that the prohibition against use of black films contained in an order passed by the High Court of Punjab and Haryana would remain effective only to the extent the said prohibition is compatible with the mandate of sub-rule 2 of Rule 100. Any security requirement of the law and order enforcing agencies would, however, remain unaffected by the said Rule. There is in our opinion considerable merit in the submission made by the learned counsel for the petitioners. Rule 100 of The Central Motor Vehicles Rules, 1989 deals with the use of safety glass on the windscreens and windows of every motor vehicle other than agricultural tractors. Sub Rule 2 of Rule 100

with which we are concerned in the present case makes it clear that the glass of front and rear windscreen of every motor vehicle shall be such and shall be maintained in such a condition that the visual transmission of light is not less than 70%. The said provision may be gainfully extracted at this stage. The glass of the windscreen and rear window of every motor vehicle shall be such and shall be maintained in such a condition that the visual transmission of light is not less than 70%. The glasses used for side windows are such and shall be maintained in such condition that the visual transmission of light is not less than 50% and shall conform to Indian Standards IS:2553 (Part 2) The above sets a minimum standard to be followed by the manufacturers of the vehicles as also by the owners after the vehicles are put on road for use. The requirement, precisely speaking, is that the glass of the windscreen must not have a visual transmission of light less than 70% on the front and the rear windscreen and 50% on the side windows. The rule does not forbid manufacture or use of glass with a higher visual transmission than the minimum prescribed, nor does the rule forbid use of films on the windscreens and side windows, so long as the same do not reduce the visual transmission below the minimum prescribed by the rule. The direction issued by this Court forbidding the use of black films of 'any transparency?', therefore, appears to us to be in conflict with the statutory provision made by Rule 100(2) of The Central Motor Vehicles Rules, 1989 (supra). The attention of the Court does not appear to have been drawn to the provisions of the said rule for otherwise there was no occasion for the Court to issue a direction contrary to the same in a public interest petition.

This, in our opinion, constitutes an error apparent on the face of the record. It is true that use of black films may be creating some avoidable problems in terms of increase in the crime rate but the remedy for any such difficulty would lie in a suitable amendment of the Rule by the rule making authority. Suffice it to say that in a matter covered by a statutory provision, a Court dealing with public interest petition may not be justified in interfering with the statutory provision so long as the validity of the provision itself is not under challenge. That was, however, not the position in the present petition nor has the Court found fault with the standards prescribed by the Rules. In support of the directions issued by this Court, reliance was placed upon the decision of the Supreme Court in *Namit Kumar's* case (supra). The said decision was, it appears, construed to mean that a direction for total prohibition against the use of films would be justified even in the teeth of Rule 100(2) of The Central Motor Vehicles Rules, 1989. The relevant passage from the decision in *Namit Kumar's* case reads as under :-

“One other direction which has been assailed relates to the use of black films on the glasses. It is submitted that Central Motor Vehicles Rules, 1989 (in short “Central Rules”) provide for the measure to be taken in such cases. We find that sub-rule (2) of Rule 100 of the said Rules deals with the issue. We, therefore, modify the direction of the High Court to the extent that while carrying out the directions, the mandate of sub-rule (2) of Rule 100 shall be kept in view. This shall be in addition to any security requirement as may be laid down by the law and order enforcing agencies.”

The above does not, in our view, lend any support to the prohibition against use of black films of any transparency whatsoever. On the contrary, it dilutes the direction issued by

the High Court of Punjab and Haryana by permitting use of films to the extent the same do not offend the provisions of Rule 100(2) of The Central Motor Vehicle Rules, 1989.

In that view, therefore, the direction may even otherwise be said to be contrary to the observations made by the Supreme Court. In as much as the ratio of the decision in *Namit Kumar's* case has not been properly applied, the order passed by this Court suffers from an error apparent on the face of the record. There is another aspect from which the entire controversy can be viewed. The direction issued by this Court is against the use of black films. This may imply that the film should be such as does not permit any visual transmission thereby making the inside of a car invisible to a viewer from outside. Forbidding use of such films would not be illegal if such films violate the provisions of Rule 100(2) (*supra*). What is important is that the term used by the Court is “black films” without elaborating as to what would constitute a “black film”. That would be an additional reason for this Court to clarify the position in the present review to the effect that the use of films would not by itself be illegal provided the visual transmission is not less than 50% in the case of side windows and less than 70% in the case of front and rear windscreens.

Learned counsel for the respondent Motor Vehicle Department argued that once the use of films on the windscreens is restored, any action based on violation of Rule 100 would require the determination of the visual transmission of the film which would not be possible since the traffic officers are not equipped with the necessary instruments to check such transmissions. There can be no quarrel with that proposition. The traffic officers may not be in a position to determine whether the requirement of Rule 100(2) is being violated by a naked eye examination of the films on the windscreens. They may have to take help of the necessary instruments to determine whether the films used comply with the requirement of visual transmission as prescribed under Rule 100(2). The Traffic Department would, therefore, do well to equip the officers with the necessary gadgets to determine the visual transmission in cases where the owner of the vehicle has used any films on the windscreens or the side windows. We are told that such gadgets are freely available in the market.

In the result, the review petitions as also the applications for clarifications succeed and are hereby allowed. The direction issued by this Court forbidding use of black films of any transparency on the car is modified to the extent that the traffic police shall strictly enforce the provisions of Rule 100(2) of the Central Motor Vehicle Rules, 1989 and take action in accordance with law against anyone using a film contrary to the requirement of the said Rule. No costs.

T.S. THAKUR, J.

H.R. MALHOTRA, J.