

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

APPELLATE SIDE JURISDICTION

CRIMINAL APPLICATION NO. 1847 OF 2004

Abdul Saleem Mohammed
Alam Siddique (Khoriwale).
Age : 43 Yrs., Occ. Contractor,
R/o : Alampura, Latur.

.... APPLICANT

VERSUS

1. The State of Maharashtra
2. Sanjay Narayan Deshmukh
Age : 32 Yrs., Occ. Service
(Tahsildar), C/o Tahsil office,
Latur.

.... RESPONDENTS

Mr. Ajinkya Kale h/f Mr. S.B.Talekar, Advocate for Applicant.

Mr. A.R.Borulkar, A.P.P. for R.No.1 – State.

Mr. Sandesh Hange h/f Mr. R.N.Dhorde,
Senior Counsel for R.No. 2.

CORAM : INDIRA K. JAIN, J.
DATED : 30th October, 2015

JUDGMENT :

Being aggrieved by the Judgment and Order dated 26/07/2004 passed by the learned Ad-hoc Additional Sessions Judge, Latur in Criminal Revision No. 29/2004 original complainant in R.C.C. No. 779/2003 filed before the Judicial Magistrate First Class, Latur has preferred this Criminal Application.

2. Facts as are necessary for deciding the application may be stated as follows :

i) Complainant Abdul Saleem was dealing in business of extraction and sale of Murum under a lease granted by the Government. On 29/05/2003, his driver was carrying Murum in the truck. Tahsildar, Latur seized the truck loaded with Murum. Complainant filed private complaint alleging therein illegal seizure of his truck and thereby commission of offences u/ss 166, 217, 415, 418, 463, 464 and 323 of the Indian Penal Code by Tahsildar.

ii) The learned Magistrate recorded verification of complainant and vide Order dated 28/01/2004, issued process against the accused for the offences punishable u/ss 166 and 217 of

the Indian Penal Code.

iii) The order of issuance of process was the subject matter of Criminal Revision No. 29/2004 before the Sessions Court, Latur. On hearing the parties and considering the relevant provisions of law as well as material on record, revisional Court came to the conclusion that sanction u/s 197 of the Code of Criminal Procedure was mandatory and for want of sanction, prosecution could not be launched against the accused. The learned Ad-hoc Additional Sessions Judge also noticed on merits that order of issuance of process was un-sustainable in the eye of law and consequently quashed and set aside the order dated 28/01/2004 passed by the learned Magistrate issuing process against the accused in R.C.C. No. 779/2003. The original complainant being aggrieved by the said order, has preferred this application.

3. It is not in dispute that, at the relevant time, complainant was dealing in business of extraction and sale of Murum and on 29/05/2003 when complainant's driver Dnyaneshwar Jogdand was found carrying Murum in truck from Akarwai to Latur, said truck was seized by Tahsildar, Latur.

4. The prime question to be addressed by the complainant was whether accused was a public servant and could be prosecuted without prior sanction u/s 197 of the Code of Criminal Procedure.

5. According to the complainant in view of Notification dated 01/08/1989 issued by Industries, Energy and Labour department powers in respect of seizure of equipment, vehicle, machinery from the area where mineral has been raised without lawful authority vests with the District Magistrate and not with the Tahsildar. It is further contended that as per the said Notification, powers were delegated to District Magistrate and further delegation of powers to Tahsildar was not permissible in law and in this background, seizure of truck by Tahsildar was without any lawful authority.

6. Per contra, learned counsel for respondent No. 2 vehemently contended that the offences alleged were not under the Mines and Minerals [Regulation and Development] Act, 1957, but in complaint, allegations were in respect of the offences under the Indian Penal Code and for want of sanction, prosecution itself was premature and invalid. It was further submitted that in view of the Notification issued in 1967 under the Maharashtra Land Revenue Code, 1966, Collector was empowered to delegate the powers to

Tahsildar and act of seizure of truck by Tahsildar was legal and proper as licence of the complainant was suspended prior to seizure.

7. Another contention raised on behalf of respondent is that complainant suppressed the material facts. Truck was seized on 29/05/2003. The licence of complainant was suspended much before the seizure of truck and he was issued with the show cause notice on 13/05/2003, which he formally accepted on 30/05/2003.

8. In reply-cum-affidavit respondent submitted that complaint was lodged against the applicant in the concerned police station and just to counter blast, he filed private complaint with a view to pressurize the respondent No. 2.

9. On going through the provisions of Sections 166 and 217 of the Indian Penal Code, for which the process was issued against the accused and considering the powers vested in the Collector to authorize Tahsildar to seize any vehicle found transporting any Mineral from any land without any lawful authority, this Court finds that respondent No. 2 was discharging his official duty at the time of seizure of truck in question and no illegality was committed by the revisional Court setting aside the order of issuance

of process. Present application is thus devoid of substance and merits. Hence, the following order.

10. Criminal Application No. 1847 of 2004 stands dismissed.

[INDIRA K.JAIN,J.]

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