

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL MISC. PETITION NO. 14 OF 2016

M/s Maruti Coal and Cargo Private Limited, 7 Sona Tower, New Deshbandhu Press Shree Agrasen Chowk, Raipur (C.G.), through: Special Power of Attorney Holder, Durgesh Kumar Gandharva, S/o P.R. Gandharva, R/o Bharat Nagar, Gudihari, Raipur, District Raipur (C.G.)

... Petitioner

Versus

State of Chhattisgarh, through District Magistrate, Mungeli, District Mungeli (C.G.)

... Respondent

For Petitioner	:	Mr. Anish Tiwari, Advocate.
For Respondent-State	:	Mr. Bhaskar Payashi, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

19/01/2017

1. The present petition under Section 482 of CrPC has been filed by the Petitioner, seeking for release of the coal which was seized from the Truck, bearing Registration No. CG04/ZD-3044, which was intercepted by the police authorities on the intervening night of 4th & 5th December, 2014. The FIR was lodged as Crime No. 286 of 2014.
2. The present Petitioner initially had moved an application for release of the coal before the Court of Chief Judicial Magistrate, Mungeli, which got rejected on 11.2.2015 in Criminal Case No. 57 of 2015. The said order dated 11.2.2015 was put to challenge by way of a criminal revision before the Court of Additional Sessions Judge, Mungeli, which was registered as Criminal Revision No. 12 of 2015. The Revisional Court rejected the said criminal revision upholding the order dated 11.2.2015 of the Chief Judicial Magistrate, Mungeli, leading to the filing of the present petition under Section 482 of CrPC.

3. Counsel for the Petitioner submits that it is a case where the present Petitioner admittedly was a Transporter and he was issued with a work order for transporting of the coal from the mines at Raigarh to the plant of M/s Sarda Energy & Minerals Limited. He contends that during the course of transportation of coal for M/s Sarda Energy & Minerals Limited, the truck was intercepted on the intervening night of 4th & 5th December, 2014 by the Hirri Police and the truck was found to be laden with coal. Based upon the said seizure made by the Hirri Police, an FIR was lodged as Crime No. 286 of 2014, whereby the offence under Sections 406, 407, 379, 120-B and 411 of IPC has been registered and thereafter Criminal Case No. 57 of 2015 was initiated against the accused persons.

4. Counsel for the Petitioner vehemently argued that it is a case where on account of default on the part of the Petitioner in providing the coal to M/s Sarda Energy & Minerals Limited, they have debited the amount valuing the coal which has been transported, from their security deposit. It is also contended by the Counsel for the Petitioner that for last 2 years nobody else has come up for claiming the coal and hence it should be released on Supurdnama to the present Petitioner. He further contends that since the Petitioner has been able to show the documents in respect of the work order that they had received from M/s Sarda Energy & Minerals Limited and the fact that they were transporting the said coal in pursuance of the work order of M/s Sarda Energy & Minerals Limited, they should have been granted the release of the coal and the rejection of the earlier application therefore is bad in law. Counsel for the Petitioner relies upon the decision of the Supreme Court rendered in the case of *Sunderbhai Ambalal Desai v. State of Gujrat*, 2002 (10) SCC 283.

5. Counsel for the State however opposes the petition on the ground that the Petitioner has not been able to show any cogent proof of they being the owner of the said coal. In addition, according to the State Counsel, only on the

ground that M/s Sarda Energy & Minerals Limited having debited the amount from the security deposit of the Petitioner would not make them the owner of the coal entitling them for the release of the coal on Supurdnama. It is further contended by the State Counsel that it is a case where whatever documents which have been relied upon by the Petitioner, all are the documents which have been created subsequently for the purpose of filing of the present petition. He further submits that the debit note which the Petitioner is relying upon is said to have been issued on 12.1.2015 but the said debit note was not produced before the Court below at the time when the application was moved for the release of the said coal on Supurdnama. According to the State Counsel, it appears that the said documents have been prepared only for the purpose of filing of the present petition, or else it would have been presented before the two Courts below.

6. Having considered the rival contentions put forth on either side and on perusal of the record, what clearly reflects is the fact that the Petitioner had obtained the debit note on 12.1.2015 and the same was not produced before the two Courts below. The ground of M/s Sarda Energy & Minerals Limited having debited the amount from the account of the Petitioner was not taken as a ground before the two Courts below while seeking for release of the coal seized. From the observations made by the Revisional Court it also reflects that the management of SKS Ispat & Power Limited has filed a document showing that the coal loaded with truck was meant for them and not for M/s Sarda Energy & Minerals Limited and it was for the Petitioner to prove it otherwise, which they have not done. Further, from the order-sheet it also reflects that the actual owner of the coal for reason best known, has not come forward seeking release of the coal on Supurdnama. Only because the Petitioner has been made to pay for the loss caused to M/s Sarda Energy & Minerals Limited, would not make them owner of the said coal entitling them for the Supurdnama of that property. If at all, if the Petitioner has been put to

loss because of the debit being made by M/s Sarda Energy & Minerals Limited, the same can be agitated by the Petitioner before the appropriate forum by initiating appropriate remedies. This Court in exercise of power conferred upon it under Section 482 of CrPC would not conduct a roving enquiry or a mini trial to ascertain the actual owner of the said coal for the purpose of releasing the same on Supurdnama. This Court would also not conduct an enquiry so as to determine as to who is actual person to whom the coal has to be released.

7. So far as the judgment relied upon by the Counsel for the Petitioner is concerned, the same has been passed under entirely different factual matrix of the case. In the said judgment, there was no dispute so far as the ownership of the vehicle involved in the said case and the principle laid down for the release of the vehicle was also under entirely different circumstances. Thus, the said judgment is distinguishable on its facts.

8. For the foregoing reasons, this Court does not find any strong case made out for interfering with the two orders of the Courts below. The present Criminal Misc. Petition thus being devoid of merits the same is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge