

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 387 OF 2017

(Sayyad Sadique s/o Sayyad Yasin vs. State of Maharashtra thr. the Collector, Amravati & Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's Orders.

Court's or Judge's orders.

**CORAM : B.P. DHARMADHIKARI &
V.M. DESHPANDE, JJ.
MAY 03, 2017.**

Heard Shri T.H. Bawali, learned counsel for the petitioner and Shri V.A. Thakare, learned Additional Public Prosecutor for the respondents.

2. The grievance of Shri Bawali, learned counsel is, Transport Permit (TP) used for transporting sand was valid and vehicle (truck) did not contain excess sand at all. Thus, finding that 0.34 brass of sand is excess, is arbitrary and unwarranted. He invites our attention to the specific pleadings as contained in paragraph Nos. 11 and 16 of the writ petition to urge that when within next two months measurements were taken, it was found to be even less than 2 brass.

3. During hearing, it is brought to our notice that as per orders of Sub-Divisional Officer in the matter, the petitioner has already deposited $\frac{1}{4}^{\text{th}}$ of the amount demanded from him to show bonafides in the month of July 2016.

4. The penalty demanded is Rs.47,736/- which includes market value of entire 2.34 brass and five times penalty upon it along with royalty on 2.20 brass. The Transport permit filed with the petitioner with Invoice No. 672857 shows the quantity to be transported as two brass.

5. Several disputed questions arise. Today, in somewhat identical challenge in Criminal Writ Petition Nos. 309 of 2017 and 311 of 2017, we have asked Respondent No. 1 – Collector, Bhandara therein to look into the provisions of Sections 48(7) and 48(8) of the Maharashtra Land Revenue Code, 1966, along with the circular, of which copy could not be produced in that matter. The question whether penalty can be demanded on the quantity of sand supported by Transport Permit or only on sand found over and above the permissible limits is placed before the Collector, Bhandara, for consideration in that matter.

6. In this situation, as the petitioner has already deposited the amount in excess of penalty which could be levied for excess quantity of sand as claimed by the respondents, without observing anything on merits of the controversy and keeping all rival contentions open, we direct the respondents to release the vehicle forthwith.

7. We direct the petitioner to appear before Respondent No. 1 on 15.05.2017 and to abide of his further instructions in the matter. Respondent No. 1 shall look into all relevant documents, legal provisions and pass suitable

orders on the need of imposing penalty as also quantum thereof after hearing the petitioner. The order shall be passed within next one month.

8. If the petitioner does not appear for hearing or does not cooperate in the matter, Respondent No. 1 shall be at liberty to proceed against the vehicle released or other vehicles and property of the petitioner.

9. If the final order passed by the Collector is adverse to the petitioner, we grant the petitioner liberty to approach the appropriate authority, including this Court again.

10. With these observations, we partly allow the present petition and dispose it off. No order as to costs.

JUDGE

JUDGE

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