

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 138 of 2018**

Deepak Agrawal S/o Shri Mahabir Agrawal Aged About 25 Years
Occupation Owner Of Vehicle In Question (J. C. B.), R/o
Pathalgaon, P. S. And Tehsil Pathalgaon Revenue And Civil District
Jashpur Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The District Magistrate, Raigarh /
Collector (Mining Branch) Raigarh Revenue And Civil District
Raigarh Chhattisgarh
2. Station House Officer, Kapu, Revenue & Civil District Raigarh
(C.G.)
3. Tehsildar Dharamjaigarh, Revenue & Civil District Raigarh (C.G.)
4. Mining Officer, Mining Department Raigarh, Revenue & Civil
District Raigarh (C.G.)

---- Respondents

For petitioner - Shri Surfaraz Khan, Advocate.
For Respondent/State –Ms. Astha Shukla, PL.

Hon'ble Shri Justice Goutam Bhaduri**Order**

9/03/2018

1. Instant petition is against the order dated 11/01/2018 passed in Criminal Revision No.117/2017 by the 2nd Additional Sessions Judge, Raigarh. By such order, the order passed by the JMFC dated 3/11/2017 Dharamjaigarh whereby the prayer to get the custody of the vehicle JCB Machine was refused was affirmed.
2. As per the prosecution case, as would reflect from the order that the petitioner claims himself to be the owner of the JCB Machine 1845877, engine no.H00051259, Chachis No.H.A.R. 3D.X.S.S. K 01845877 was seized by the Additional Tehsildar, Kapu on 13/10/2017 on the allegation that it was excavating quartz stone and thereafter same was seized and kept in the Police Station, Kapu.
3. Learned counsel for the petitioner submits that seizure so made by

the Additional Tehsildar, Kapu was unauthorized pursuant to the Rule 71 Sub Rule 2 of the Chhattisgarh Minor Mineral Rules, 2015. He submits that after seizure of the vehicle no receipt was given and report was not made to the Magistrate having jurisdiction to try the offence if any. He further submits that matter has been referred to the Collector and till date no proceeding as per the procedure prescribed under Rule 71 of the Chhattisgarh Minor Mineral Rules, 2015 has been initiated and in any case custody of the vehicle cannot be refused as it will not serve purpose even pendency of the criminal case, therefore vehicle may be released in favour of the petitioner.

4. Learned State counsel opposes the same and would submit that order of the court below is well merited which do not call for any interference.

5. Heard learned counsel for the parties.

6. For the sake of brevity the relevant Rule 71 of the Chhattisgarh Minor Mineral Rules, 2015 and Sub Rules are reproduced herein below:-

"71. Penalty for unauthorized extraction and transportation.(1) Whenever any person is found extracting or transporting minerals or on whose behalf such extraction or transportation is being made, otherwise than in accordance with these rules, shall be presumed to be a party to the illegal extraction of minerals and every such person shall be punishable with simple imprisonment for a term which may extend to one year or with fine which may extend to twenty five thousand rupees or with both.

(2) Whenever any person is found extracting or transporting mineral in contravention of the provisions of these rules, the Collector/Joint Director/Deputy Director /Mining Officer/Assistant Mining Officer/Mining Inspector or any officer authorized by him or Zila Panchayat/ Janpad Panchayat/Gram Panchayat may seize the minerals and its products together with all tools, equipments and vehicles used in committing such offence.

(3) The officer seizing such illegally extracted or transported mineral or its product, tools, equipments and vehicles shall give a receipt of the same to

the person from whose possession such things were so seized and shall make report to the Magistrate having jurisdiction to try such offence.

(4) The property so seized under sub-rule (2) may be released by the officer who seized such property on execution of a bond to the satisfaction of the officer by the persons from whose possession such property was seized. It shall be produced at such time and the place when production is asked for by such officer:

Provided that where a report has been made to the Magistrate under sub-rule (3) then the seized property shall be released only under the orders of such Magistrate.

(8) All property seized under sub-rule (2) shall be liable to be confiscated, by an order of the Magistrate trying the offence, if the amount of the fine and other sums imposed are not paid within a period of one month from the date of the order:

Provided that on payment of such sum within one month of the order all property so seized shall be released except that the mineral or its products, so seized mineral or its products under sub-rule (2) shall be confiscated and shall be the property of the State Government.

7. Perusal of the return of the State would show that no whisper has been made with respect to the Rule 71 of the Chhattisgarh Minor Mineral Rules, 2015 (hereinafter referred to as Rules, 2015). The Sub Rule 2 of Rule 71 of the Rules, 2015 prescribes list of officers to whom power of seizure has been given. Sub Rule 3 of Rule 71 of Rules, 2015 purports that officer after seizure shall give receipt of the product or vehicle from whom it was seized and thereafter shall make a report to the Magistrate having jurisdiction to try the offence and when report has been made to the Magistrate under Sub Rule 3 then Magistrate shall have power to release the vehicle. Sub Rule 8 of the Rule 71 of Rules, 2015 says that all property seized under Sub Rule 2 shall be liable to be confiscated by the order of the Magistrate trying the offence in case amount of the fine and the other sum imposed are not paid in any case.

8. Therefore the Rule require that after seizure of the property herein

the vehicle, report should have been made to the jurisdictional Magistrate. Reply of the State is again silent as to whether such compliance was made after seizure of the vehicle or not. The vehicle appears to have been seized on 13/10/2017, therefore ouster of jurisdiction of the criminal court under the Cr.P.C. cannot be easily inferred. It also reveals that after seizure of the vehicle on 13/10/2017 considerable period has lapsed and prima facie non-compliance of Rule.

9. It is matter of common knowledge or experience that as and when the vehicles are seized and kept in the police stations, not only do they occupy substantial space in police stations, but upon being kept in open are also prone to fast natural decay on account of weather conditions. Even a good maintained vehicle loses its road worthiness if it is kept stationary in the police station for more than two weeks. Apart from the above, it is also matter of common knowledge that several valuable and costly parts of the said vehicle are either gets junked or are cannibalized so that the vehicles become unworthy of being driven on road. Therefore, no purpose will be served to keep the vehicle in police custody for a long time as it will turn junk and also occupy the substantial place of police station.

10. Considering the entirety of the facts, impugned order dated 11/01/2018 passed by the Second Additional Sessions Judge, Raigarh and order dated 3/11/2017 passed by the JMFC, Dharamjaigarh cannot be sustained.

11. Under the circumstances, following the principles laid down in **(2010) 6 SCC 768** in between **General Insurance Council and Ors. Vs. State of Andhra Pradesh and Ors.**, **(2002) 10 SCC 283** in between **Sunderbhai Ambalal Desai Vs. State of Gujarat & AIR 1990 SC 1849** in between **State of M.P. Vs. Rameshwar Rathod** and also considering the

fact that petitioner claims to be the owner of the vehicle, I am inclined to release the vehicle in favour of the petitioner. Accordingly, the vehicle shall be released on the following conditions;

(i) Before release of the vehicle the ownership document of the petitioner with respect to the vehicle be verified.

(ii) Before release of vehicle proper panchnama be prepared.

(iii) Photographs of vehicle should be taken and bond should also be produced that the vehicle would be produced if required at the time of trial.

(iv) Proper security i.e. personal bond of Rs.25 lakhs and like sum of surety be obtained before release of vehicle.

12. In view of foregoing discussion, the petition succeeds and is allowed.

Sd/-

(Goutam Bhaduri)

JUDGE