

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

CRIMINAL WRIT PETITION NO.1463 OF 2019

Samir s/o Mahboob Shaikh,
Age : 22 years, Occ : Agri.,
R/o Mungi Bk., Tq. Shevgaon,
Dist.Ahmednagar

..PETITIONER

VERSUS

1] The State of Maharashtra
Through Police Inspector
Police Station,Paithan,
Dist.Aurangabad.

.. RESPONDENT

....

Mr. K.B.Jadhav. Advocate for the petitioner
Mr. P.K.Lakhotia,APP for respondent State.

....

CORAM : MANGESH S. PATIL, J.
DATE : 16.10.2019

ORAL JUDGMENT :-

Heard both the sides. Rule. Rule is made returnable forthwith. The learned APP waives service for the respondent. With the consent of both sides, the matter is heard finally at the stage of admission.

2] Pursuant to F.I.R. No.231/2019 dated 14/7/2019 of Police Station,Paithan for the offences punishable under Sections 379 and 109 of the I.P.C. a tractor and a trolley owned by the petitioner was seized for allegedly

carrying stolen sand. The petitioner submitted an application under Section 457 of the Cr.P.C. before the Magistrate and requested to return the tractor and the trolley. The learned Magistrate after giving an opportunity to the prosecution to be heard, by the order dated 19/7/2019 allowed the application and directed the tractor and the trolley to be returned subject to usual conditions. However, he put a rider by mentioning that the tractor and the trolley should only be returned after the Tahsildar, Paithan completes the proceeding initiated by him under Section 48 of the Maharashtra Land Revenue Code. Aggrieved by such rider, the petitioner preferred revision before the Sessions Court but by the impugned order the Sessions Court has also dismissed the Revision. Hence this Petition.

3] The learned advocate for the petitioner submits that there was no such necessity for the Magistrate to impose the rider. It was not sure when Tahsildar was going to complete the proceeding. Till date only notice to show cause has been issued on 23/7/2019 and since thereafter the matter has not proceeded before the Tahsildar. One does not know how long the Tahsildar would take to decide the matter one way or the other. The petitioner's right to possess and use the tractor and the trolley is being denied. He is ready to abide by rest of the conditions. The tractor and the trolley cannot be allowed to rust by remaining idle. There are no criminal antecedents and the condition/rider imposed by the Magistrate may be set aside.

4] The learned A.P.P. submits that under a statutory right, the Tahsildar has initiated a proceeding under Section 48 of the Maharashtra Land Revenue Code and the matter may take its own course. When the legislature has empowered him to seize the vehicle or the receptacles carrying mines and

minerals, the impugned condition/rider is merely superfluous. Even without there being any such rider or condition, the Tahsildar is independently having power to deal with the tractor and the trolley pursuant to the provisions of Section 48 of the Maharashtra Land Revenue Code. Consequently, there is no substance in the Writ Petition and it may be dismissed.

5] The issue is very limited. The petitioner has been found entitled to the return of the tractor and the trolley subject to usual conditions and there is no challenge to the order passed by the Magistrate by the prosecution. Again there cannot be any debate that though the tractor and the trolley are involved in the crime and even seized during the investigation, simultaneously Section 48 of the Maharashtra Land Revenue Code also empowers an Executive Magistrate to seize such vehicles being used for illegal transportation of mines and minerals. Therefore, independent of the prosecution, Tahsildar under the enabling powers under Section 48 of the Maharashtra Land Revenue Code is entitled to proceed even in respect of the seized tractor and the trolley. Obviously that being a quasi judicial proceeding, it may take its own course and one cannot foresee the time it may take to conclude that proceeding. The fact remains that by virtue of the impugned condition/rider the petitioner has not been able to get the tractor and the trolley back.

6] It is in this respect, the learned advocate for the petitioner has placed before me decision of this Court in Criminal Writ Petition No.1000/2019 dated 11/9/2019 and particularly the observations in paragraph no.7 wherein it has been specifically observed that *prima facie* Tahsildar does not have any lien over the vehicle under the provisions of the Maharashtra Land Revenue

Code.

7] In view of such state of affairs when tractor and the trolley have been seized in connection with crime under Section 379 of the I.P.C. and when Tahsildar is yet to pass a final order of confiscation under Section 48 of the Maharashtra Land Revenue Code, putting such rider/condition would certainly create an obstacle in the power of the Magistrate under Section 457 of the Cr.P.C. The order passed by the Magistrate would be of no consequence if it is to be made subject to such rider. Needless to state that the Tahsildar may take his own time and follow his own course and decide that proceeding. However till the time he does not pass any order for confiscation the order of the Magistrate should remain supreme and cannot be allowed to be controlled by the power of the Tahsildar under Section 48 of the Maharashtra Land Revenue Code.

8] Both the Courts below have not correctly appreciated the facts and circumstances and the consequences of the rider/condition. The order therefore deserves to be quashed and set aside and the application of the petitioner deserves to be allowed by setting aside the impugned condition/rider.

9] The Writ Petition is allowed. The impugned order of the learned Additional Sessions Judge is quashed and set aside. The impugned condition put by the Magistrate in the order dated 19/7/2019 is quashed and set aside. The tractor and the trolley shall be returned to the petitioner as per the order passed by the Magistrate dated 19/7/2019 ignoring that condition. Rule is made absolute. However, it is made clear that the tractor and the trolley being

returned to the petitioner shall be subject to whatever order that would be passed by the Tahsildar under Section 48 of the Maharashtra Land Revenue Code.

[MANGESH S. PATIL, J.]

umg/