

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.5591 OF 2018

Sunil Nivrutt Chatur

...Petitioner

Versus

State of Maharashtra & ors.

...Respondents

Mr.Tushar N. Sonawane for the petitioner.

Mrs.Veera Shinde, APP for the respondent – State.

CORAM : MRS. MRIDULA BHATKAR, J.

DATE : 30th JANUARY 2019

P.C. :

1. Rule. Rule made returnable forthwith.
2. The learned Counsel waive notice of Rule.
3. Heard finally at the stage of admission by consent of the parties.
4. In this matter, the petitioner is requesting to return his truck, which was seized on 15th June, 2018 by Talathi on account of illegal transportation of sand. Apart from the proceedings, the Talathi gave a complaint of theft of sand against the petitioner under the Maharashtra Land Revenue Code. The offence is registered under section 379 of the Indian Penal Code and under section 21(1)(2)(3)

(4) of the Mines and Minerals Act at C.R. No.76 of 2018 with Ozhar Police Station. In the said proceedings, on 25th June, 2018, the petitioner has moved an application under section 457 of the Indian Penal Code before the learned Magistrate for return of the said truck, pending trial. The learned Judicial Magistrate First Class, Pimpalgaon (B) by order dated 5th July, 2018 directed the police to return the truck and also directed the petitioner to furnish bond/supurnama of Rs.15,00,000/-. The Tahsildar has followed the proceedings under section 48(8)(2) of the Maharashtra Land Revenue Code and Mines and Minerals (Development & Regulation) Act, 1957 and has passed the order on 2nd July, 2018 of return of the truck, on a condition to pay fine of Rs.5,50,925/-. Against the order of the learned Magistrate, the respondents have filed Criminal Revision Application No.51 of 2018. The learned Additional Sessions Judge, Niphad by order dated 28th November, 2018 allowed the Revision Application and reversed the order passed by the learned Magistrate.

5. The learned counsel for the petitioner makes grievance that the copy of the say filed by the State and also the order dated 2nd July, 2018 passed by the Tahsildar in respect of return of the truck is not served on the petitioner.

6. The learned Additional Public Prosecutor submits that copy of order dated 2nd July, 2018 passed by the Tahsildar alongwith copy of the stay filed by the State is served yesterday on the petitioner. She submits that the fine amount of Rs.5,50,925/- has to be paid by the complainant / petitioner to the office of the Tahsildar before releasing the truck.

7. Perused the order passed by the Judicial Magistrate so also by the learned Sessions Judge.

8. The Truck (vehicle) seized on 15th June 2018. After seizure of the vehicle if it is claimed then as under Section 457 of Cr.P.C., the Court has to take practical approach to return the said vehicle to the claimant. If vehicle is not in use, and if it is damaged or corrodes, then the order passed by the learned Judicial Magistrate First Class, Pimpalgaon for returning of the said vehicle to the complainant cannot be faulted with. However, conditions for returning the truck are required to be modified. Hence, I pass the following order;

ORDER

- i) The truck bearing registration no. MH 15 FQ 6777 having Chasis No. MAT466429GHK12629 and Engine No. S03082461J84338932 to be returned to the

petitioner on condition of his furnishing P.R. Bond of Rs.15 lakhs which is the market price of the truck.

- ii) The petitioner is directed to give undertaking to the Court that he shall not indulged into any illegal transportation of sand or illegal excavation of sand and if at all he is found to be involved in such illegal transportation of sand or illegal excavation of sand, then the vehicle will be seized and will not be returned back.
- iii) The petitioner is further directed to give undertaking that he shall not dispose of, or part with the truck without permission of this Court.
- iv) Rule made absolute accordingly.
- v) Writ Petition stands disposed of.

[MRIDULA BHATKAR, J.]