

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 963 OF 2020

Pavan Rajgopal Darak,
Age : 28 years, Occu. Agri.,
R/o Devli, Tq. Kannad,
Dist. Aurangabad through
Sagar s/o Appasaheb Kadam,
Age : 24 years, Occu. Agri.,
R/o Bhaigaon, Tq. Vaijapur,
District Aurangabad

PETITIONER

VERSUS

The State of Maharashtra
through Police Inspector,
Police Station, Deogaon Rangari,
Tq. Kannad, Dist. Aurangabad

RESPONDENT

Mr. N.D. Sonavane, Advocate for the petitioner
Mrs. D.S. Jape, A.P.P for the respondent/State

CORAM : MANGESH S. PATIL, J.

DATE : 21.09.2020

ORAL JUDGMENT :

Heard both the sides.

2. Rule. The Rule is made returnable forthwith. With the consent of both the sides, the matter is heard finally at the stage of admission.

3. The petitioner is impugning only condition No.6 imposed by the learned Magistrate while allowing his application under Section 457 of the Code of Criminal Procedure (“Code”, for short) for return of the vehicle seized in connection with FIR No.30/2020 registered with Deogaon Rangari Police Station, Taluka Kannad for the offence punishable under Section 379 read with Section 109 of the Indian Penal Code, whereby the Magistrate has directed to release the vehicle only after he pays the fine amount imposed by the Revenue Authority, purportedly in exercise of the powers vested in the Tahsildar under Section 48 of the Maharashtra Land Revenue Code (for short, “MLRC”).

4. The learned Advocate for the petitioner submits that the condition is not tenable inasmuch as the Magistrate could not have expected the petitioner to succumb to the order passed by the Tahsildar, which was still to be passed. The petitioner may have his own rights to challenge the order passed under Section 48 of the MLRC. Making him pay the fine as a condition precedent for returning the vehicle is onerous and be quashed and set aside.

5. The learned A.P.P. strongly opposes the petition. She submits that there are criminal antecedents. The Tahsildar has already initiated the proceeding and issued a show-cause notice to the petitioner. When under the provisions under Section 48 of the MLRC, the revenue authorities have independent powers for detention of vehicles, there is no illegality committed

by the Magistrate in expecting the petitioner to obey the order passed by the Revenue Authority.

6. I have carefully gone through the impugned order and the papers. At the outset, it is necessary to note that since the State/Prosecution is not seeking to challenge the order passed by the Magistrate under Section 457 of the Code, the question of antecedents is irrelevant.

7. As can be seen from the impugned order, the Magistrate has conceded to the request of the petitioner and directed return of the vehicle subject to several conditions, including making the vehicle roadworthy in all respects. However, in addition, he has imposed the following condition :-

“6] The seized vehicle shall not be released in favour of applicant until the payment of fine amount imposed by concerned revenue authority.”

8. Needless to state that by virtue of Section 48 of the MLRC, the Tahsildar does have independent power to proceed against the offender and the vehicle used for transporting mines and minerals. Certainly, it requires the Revenue Authority to undertake a judicial scrutiny and it is a common ground that pursuant to such a provision, already a show-cause notice has been issued to the petitioner. However, one cannot ignore the fact that the petitioner may have to face that enquiry and may have a right to challenge the orders to be passed against him by preferring appropriate proceedings.

However, imposing a condition impugned in the matter presupposes that the petitioner has committed the illegality and is liable to face the consequences in a proceeding under Section 48 of the MLRC, which is still to be concluded. One cannot prejudge the issue. There cannot be any justification to make the petitioner pay the fine amount which is still to be imposed. Since the condition does not stand the scrutiny of law, it is liable to be quashed and set aside.

9. In the result, the Writ Petition is allowed. Condition No.6 from the impugned order is quashed and set aside. The Rule is accordingly made absolute.

[MANGESH S. PATIL]
JUDGE