

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1259 OF 2020

Dnyaneshwar s/o Devidas Kharat,
Age 32 years, Occupation Business,
R/o Gondi Tq. Ambad Dist.Jalna.

...Petitioner

VERSUS

- 1) The State of Maharashtra,
Through Its Police Inspector,
Tq. Georai Dist. Beed.
- 2) The Tahasildar,
Tahasil Office, Georai.

...Respondent

.....

Advocate for the Petitioner : Mr. A. B. Kharosekar.
APP for Respondents-State: Mr. S. W. Munde.

.....

WITH

CRIMINAL APPLICATION NO.1695 OF 2020

Devrao s/o Dashrath Andhale,
Age 45 years, Occupation Agri. &
Business, R/o Pimpri Zola
Tq. Gangakhed Dist. Parbhani.

...Applicant
(Original Applicant)

VERSUS

The State of Maharashtra,
Through Police Station Officer,
Police Station Gangakhed,
Tq.Gagakhed Dist. Parbhani.

...Respondent
(Original complainant)

.....
Advocate for Applicant : Mr. M. P. Kale.
APP for Respondent-State : Ms. R. P. Gour.
.....

WITH

CRIMINAL APPLICATION NO. 1677 OF 2020

Laxman s/o Sakharam Dhage,
Age 29 years, occupation Agri.,
R/o Bhogaon Tq. Palam
Dist. Parbhani.

...Applicant
(Original Applicant)

VERSUS

The State of Maharashtra,
Through Police Station Officer,
Police Station Palam Tq.Palam
Dist. Parbhani.

...Respondent
(Original complainant)

.....
Advocate for Applicant : Mr. M. P. Kale.
APP for Respondent-State : Mr. S. W. Munde.
.....

CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving The Order :
16-10-2020 & 21-10-2020**

**Date of Pronouncing The Order :
24-11-2020.**

ORDER :

1. Both the applications and the writ petition relate to the return of tractors, trolley and JCB Machine under Section 457 of the Code

of Criminal Procedure, and in all the matters the order passed by learned Judicial Magistrate, First Class, is under challenge, and therefore, they are decided by this common order.

2. In Writ Petition No.1259 of 2020 the petitioner intends to invoke the Constitutional powers of this Court under Article 226 and 227 of the Constitution of India to challenge the order passed by learned Judicial Magistrate, First Class, Georai Dist. Beed, dated 17-08-2020, in Misc. Criminal Application No.308 of 2020. The present petitioner had filed the application for return of the tractor seized in Crime No.270 of 2019, under Section 379 of Indian Penal Code. The police had seized tractor bearing No.MH-21-AN-2858 belonging to the petitioner. It was contended by the prosecution that the said tractor has been used in illegal excavation of sand of about 130 brass valuing Rs.1,82,000/-. The First Information Report has been lodged by Talathi, Georai. Though the application came to be allowed, a condition has been imposed by learned Judicial Magistrate, First Class, Georai to release the tractor on execution of indemnity bond of Rs.10 Lakh and also the penalty that would be imposed by Tahsildar. The condition regarding deposit of fine/penalty has been challenged in the writ petition.

3. In Application No.1677 of 2020 also the Tractor No.MH-22-AD-2434 with Trolley No.MH-22-AM-4906 came to be seized by Police Station Palam Tq. Palam Dist. Gangakhed, and in Application No.1695 of 2020 the JCB Machine having No.MH-22-AM-5048 came to be seized by Police Station Gangakhed Tq. Gangakhed Dist. Parbhani, under Section 379 of Indian Penal Code and Section 48 (7) (8) of the Maharashtra Land Revenue Code read with Section 15 of the Protection of Environment Act. Both the applications have been allowed by Judicial Magistrate, First Class, Palam and Judicial Magistrate, First Class (Court No.1), Gangakhed respectively on 10-09-2020 and 04-09-2020. However, in both the applications a condition has been imposed to both the applicants that those orders are without prejudice to the powers of Executive Magistrate to proceed pursuant to the provisions of Section 48 of the Maharashtra Land Revenue Code and Mines and Minerals Act. It is also mentioned that, until the remedies under the said Act are exhausted, the tractor, trolley and JCB shall not be returned. Therefore, these conditions have been challenged by the applicants in the respective applications by invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure.

4. Heard learned Advocate Mr. A. B. Kharosekar for petitioner in Writ Petition No.1259 of 2020, learned Advocate Mr. M. P. Kale for applicants in Applications No.1677 of 2020 and No.1695 of 2020, and learned Additional Public Prosecutor Mr. S. W. Munde as well as learned Additional Public Prosecutor Ms. R. P. Gour for respondents-State.

5. Learned Advocate appearing for the petitioner and applicants in the matters vehemently submitted that, there is no doubt that the respective petitioner and applicants are the owners of the tractors, trolley and JCB Machine in question. They are entitled to get the custody of the said tractors, trolley and JCB under Section 457 of the Code of Criminal Procedure. Though the applications have been allowed by the respective learned Judicial Magistrate, First Class, yet the condition that has been imposed is very much harsh. Till the provisions under Section 48 of the Maharashtra Land Revenue Code and Mines and Minerals Act are exhausted, they are not able to get the possession of the tractors, trolley and JCB Machine. Possibility of filing of appeal by either side cannot be ruled out and under such circumstances the tractors, trolley and JCB Machine would be idle, and possibility of theft of that tractors, trolley and JCB Machines or

parts thereof cannot be ruled out. Condition to pay penalty can not be imposed in anticipation and further it can not be based on assumption that applicant has committed the said offence. The condition that has been imposed cannot be complied with practically, and therefore, the learned Judicial Magistrate, First Class, ought not to have imposed those condition. Learned Advocate Mr. M. P. Kale relied on the decision by the Division Bench of this Court in *Dhannu s/o Vittahl Phapal v. The State of Maharashtra and others, Writ Petition No.4258 of 2018, decided on 2nd August, 2018*, wherein preliminary objection was raised by the petitioners in respect of applicability of Section 48 (7) (8) of the Maharashtra Land Revenue Code. Though the petition was dismissed, yet as regards imposition of penalty for the vehicles is concerned it was observed that they have a right to go in appeal. Thus, when that right is recognized then the possibility of getting the possession of the vehicles immediately gets postponed. He, further, relied on the decision by the Single Bench of this Court in *Vikky s/o Satish Lalwani v. The State of Maharashtra, Criminal Application No.1417 of 2020, decided on 04-09-2020*, wherein the application came to be allowed and condition directing the applicant to pay penalty to the tune of Rs.5 Lakh was set aside. The learned Advocate Mr. A. B. Kharosekar has also relied on the decision of the Single Bench of this Court in

Criminal Writ Petition No.963 of 2020, Pavan Rajgopal Darak Through Sagar Appasaheb Kadam v. The State of Maharashtra, decided on 21-09-2020, wherein also the condition was imposed that the seized vehicle shall not be released in favour of applicant until the payment of fine amount imposed by the concerned revenue authority. It was on the background that the proceedings under Section 48 of the Maharashtra Land Revenue Code were not concluded. He also pointed out that in his case the said proceedings are not concluded. There is one more decision, decided by the same Single Bench, in *Amol s/o Ramhari Waje v. The State of Maharashtra, Criminal Writ Petition No. 1516 of 2018, decided on 21-09-2019*, wherein the writ petition was allowed, the vehicle was directed to be returned to the petitioner on his furnishing personal recognizance for an amount of Rs.5,25,000/-, and furnishing solvent surety in the like amount. However, in this case the condition has been imposed that the order in writ petition shall be without prejudice to the powers of the Executive Magistrate to proceed pursuant to the provisions of Section 48 of the Maharashtra Land Revenue Code and Mines and Minerals Act and the vehicle shall not be returned until he exhaust the power in that regard. Further learned Advocate Mr. M. P. Kale relied on one more decision by the Division Bench of this Court in *Ambadas Manikrao*

Saudagar v. The State of Maharashtra and others, Writ Petition No.7873 of 2019 and companion matter, decided on 1st July, 2019, wherein in similar circumstances the fact of power to impose penalty by revenue authority was considered, and it was observed that the petitioners have the remedy of appeal, and since the petitions were restricted only to the extent of seizure of the vehicles, those vehicles were directed to be returned to the petitioners on deposit of an amount of Rs.1 Lakh for release of the vehicle. That amount was to be deposited with the revenue authority without the prejudice to the rights and contentions of the either parties.

6. The facts have already been noted. Here the State has not come in appeal or revision or by any other mode to challenge the order of release of the tractors, trolley and JCB Machine itself. The petitioner/ applicants are the persons who have filed the present petition and applications respectively to challenge one of the condition that has been imposed by the learned Magistrate, and therefore, the scope of these proceedings is very much limited. From that angel only it is required to be seen as to whether this Court can exercise its constitutional powers or inherent powers as prayed.

7. As regards writ petition is concerned, the issue is in respect of term 5 (A) that has been imposed by the learned Judicial Magistrate, First Class. It is in respect of the direction that the applicant should deposit the fine/ penalty amount that would be imposed by Tahsildar, and it is stated that, only after the said receipt about deposit of penalty is shown, the tractor would be handed over. If we peruse the order then it appears that the Naib Tahasildar, Georai had given his say at Exhibit 08 stating that the tractor should be released only after the penalty is deposited. However, there is no mention of the date of the order and the amount of penalty that has been imposed. Therefore, only on the basis of the said order passed by the learned Judicial Magistrate, First Class, it is not clear that the proceedings under Section 48 of the Maharashtra Land Revenue Code were complete and the said authority has quantified the amount of penalty by holding that the tractor belonging to the petitioner was involved in illegal excavation of sand. In the entire petition also the petitioner has not stated that he had received any such notice and order by the competent authority under Maharashtra Land Revenue Code regarding imposition of penalty. If that procedure is yet pending, then it would be very much

premature to direct the applicant that he should deposit the amount of penalty and only upon the show of the receipt, he would be entitled to get back the tractor. The view taken by this Court in case of *Pavan Rajgopal Darak Through Sagar Appasaheb Kadam v. The State of Maharashtra (Supra)* would then be applicable, however at the same time the rights and power of the State under Section 48 of the Maharashtra Land Revenue Code are required to be protected. Under such circumstance, it is for this Court to take the same view that was taken by the Division Bench of this Court in case of *Ambadas Manikrao Saudagar (Supra)* that some amount can be directed to be deposited by the petitioner with the revenue authorities and then on that condition the tractor can be released. Taking into consideration the contents of the First Information Report, that the illegal excavation of sand was to the tune of Rs.1,82,000/-, it would be appropriate for this Court to direct the petitioner to deposit amount of Rs.1,00,000/- with the Revenue Authorities in addition to the other terms those have been imposed by the learned Judicial Magistrate, First Class, and by setting aside the term 5 (A) in the said order. This order would then be without prejudice to the rights of the Revenue authorities to proceed under Section 48 of Maharashtra Land Revenue Code.

8. As regards the Criminal Applications are concerned, it is to be noted that JCB Machine which is involved in Criminal Application No.1695 of 2020 was seized by Gangakhed Police Station and it is bearing No.MH-22-AM-5048. It appears that in connection with this JCB Machine, the competent authority has passed order on 08-09-2020 and applicant i.e. owner of the JCB Machine has been directed to pay penalty of Rs.7,50,000/-. When the concerned authority has already passed the order then definitely the present applicant has right to challenge the said order. If he deposits the said amount, then he is entitled to get back his JCB Machine. When already the order is passed, it is for the applicant to exhaust the legal remedies. Though the said order by the Tahsildar appears to be passed after the order was passed by learned Judicial Magistrate, First Class, Gangakhed, yet this Court cannot ignore that order which has now been pronounced. The only thing that can be modified is that the concerned authority need not wait for the appeal period to be over, and in case the applicant deposits the said amount, may be even without prejudice, then the JCB Machine can be released, to that extent only the modification is called for.

9. As regards the Application No.1677 of 2020 is concerned, the

prosecution has not produced any such documentary evidence on record as to whether the proceedings under Section 48 of the Maharashtra Land Revenue Code have been undertaken in this case or not. Though many authorities have been referred above, the gist is that required to be noted that this Court has tried to balance the things. The right of the true owner to get the possession of the vehicle is also recognized and at the same time the right and power of the Revenue Authorities to impose penalty under Maharashtra Land Revenue Code and Mines and Minerals Act in case the vehicle is found to be involved in illegal excavation of sand is also up held. In another decision of Division Bench At Nagpur in *Writ Petition 3073 of 2019, Ashish and Ors. v. State of Maharashtra and Ors., decided on 16-04-2019 (MANU/MH/1340/2019)*, after the petitioner had shown readiness to deposit the amount of penalty which was already imposed, it appears that the vehicles were directed to be released upon the deposit of the penalty, and at the same time it was observed that the payment shall not be considered as acceptance by the petitioner about the commission of offence. Therefore, a similar view is then required to be taken in the interest of justice, by molding the orders of the Division Bench of this Court above referred. Hence, following order.

ORDER**I] IN CRIMINAL WRIT PETITION NO.1259 OF 2020 :**

- 1) The Writ Petition is partly allowed.
- 2) The term 5 (A) imposed by learned Judicial Magistrate, First Class, Georai on 17-08-2020, while deciding Criminal Misc. Application No.308 of 2020, is hereby set aside and modified as follows ;

"5 (A) : Applicant/ present petitioner to deposit amount of Rs.1,00,000/- (one lakh) for the release of Tractor No.MH-21-AN-2858 within a period of 15 (fifteen) days from the date of this order. Such deposit with the Revenue Authorities by the applicant/ present petitioner would be without prejudice to the rights and contentions of either parties, and it shall not be taken as acceptance of commission of crime by the applicant/ present petitioner.

- 3) Rest of the conditions are hereby confirmed.

II] IN CRIMINAL APPLICATION NO.1695 OF 2020 :

- 1) The application is partly allowed.
- 2) The Condition No.8 in the order passed below Exhibit 01 in Criminal Misc. Application No.82 of 2020, by Judicial Magistrate, First Class, Court No.1, Gangakhed Dist. Parbhani, on 04-09-2020 is hereby set aside and

modified as follows ;

"8. In case the applicant deposits the amount of Rs.7,50,000/- (Seven lakh fifty thousand) as per order dated 08-09-2020, passed by Tahsildar, Gangakhed Dist. Parbhani, within a period of 15 (fifteen) days from the date of this order, the seized JCB Machine No.MH-22-AM-5048 be released. Such deposit with the Revenue Authorities by the applicant would be without prejudice to the rights and contentions of either parties, and it shall not be taken as acceptance of commission of crime by the applicant."

3) Rest of the conditions are hereby confirmed.

III] IN CRIMINAL APPLICATION NO.1677 OF 2020 :

1) Application is hereby partly allowed.
2) The Condition No.2 (vii) in the order passed below Exhibit 1 in Criminal Misc. Application No.125 of 2020, by Judicial Magistrate, First Class, Palam, on 10-09-2020 is hereby set aside and modified as follows ;

"2(vii): In case the applicant deposits the amount of Rs.3,00,000/- (Three lakh), within a period of 15 (fifteen) days from the date of this order, the Tractor No.MH-22/AD-2434 and Trolley No.MH-22-AM-4906 be released. Such deposit with the Revenue Authorities by the applicant would be

without prejudice to the rights and contentions of either parties, and it shall not be taken as acceptance of commission of crime by the applicant.”

- 3) Rest of the conditions are hereby confirmed.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-