

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

935 CRIMINAL APPLICATION NO.1880 OF 2020

GAJANAN DHONDIBA SONTAKKE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Kale Mahesh P.
APP for Respondent-State : Mr. A. M. Phule.
...

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 04-12-2020.

ORAL ORDER :

1. Present application relate to the return of Tractor No.MH-24/AW-0283 under Section 457 of the Code of Criminal Procedure and the order passed by learned Judicial Magistrate, First Class, Palam is under challenge.
2. The Tractor No.MH-24/AW-0283 came to be seized by Police Station Palam Tq. Palam Dist. Parbhani, under Section 379 of the IPC and Section 48 (7) (8) of the Maharashtra Land Revenue Code. The application filed by the applicant before learned Judicial Magistrate, First Class, Palam Dist. Parbhani, bearing Criminal M.A. No.97 of 2020 has been allowed on 17-07-2020. However, a condition has been imposed on the applicant as under ;

“(vii) The present order shall be without prejudice to

the powers of executive magistrate to proceed pursuant to the provisions of Section 48 of Maharashtra Land Revenue Code and Mines and Mineral Act, and vehicle shall not be returned until he exhausts the power in that regard.....”

Therefore, this condition has been challenged by the applicant by invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure.

3. Heard learned Advocate Mr. M. P. Kale for applicant and learned Additional Public Prosecutor Mr. A. M. Phule for respondent-State.

4. Learned Advocate appearing for the applicant vehemently submitted that there is no doubt that the applicant is the owner of the tractor in question. He is entitled to get the custody of the said tractor under Section 457 of CrPC. Though the application has been allowed by the 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, applicant is not able to get the possession of the Tractor. Possibility of filing of appeal by

either side cannot be ruled out and under such circumstance the tractor would be idle, and possibility of theft of that Tractor or parts thereof cannot be ruled out. Condition to pay penalty cannot be imposed in anticipation and further it cannot 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 said 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. M. P. Kale 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 this case the said proceeding is 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.

5. 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 tractor itself. The applicant is the person who has filed the present application to challenge one of the condition that has been imposed by the learned Magistrate, and therefore, the scope of this proceeding is very much limited. From that angle only it is required to be seen as to whether this Court can exercise its inherent powers as prayed.

6. As regards the present application is concerned, it is to be

noted that Tractor which was seized by Palam Police Station and it is bearing No.MH-24/AW-0283. It appears that in connection with this tractor, the competent authority has passed order on 20-07-2020 under Section 48 (7) (8) (1) (2) of Maharashtra Land Revenue Code and applicant i.e. owner of the tractor has been directed to pay penalty of Rs.4,50,000/-. 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 tractor. 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, Palam, 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 tractor can be released, to that extent only the modification is called for.

7. 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. Hence, following order.

ORDER

- 1) The application is partly allowed.
- 2) The Condition No.2(vii) in the order passed below Exhibit 01 in Criminal Misc. Application No.97 of 2020, by Judicial Magistrate, First Class, Palam Dist. Parbhani, on 17-07-2020 is hereby set aside and modified as follows ;

"In case the applicant deposits the amount of Rs.1,00,000/- (One lakh), within a period of 15 (fifteen) days from the date of this order, the Tractor No.MH-24/AW-0283 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/-