

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-28244-2020
Date of Decision: 02.12.2020

Maksood

.....Petitioner

Versus

State of Haryana

....Respondent

CORAM: Hon'ble Mr. Justice Harnaresh Singh Gill

Present: Mr. Birinder Singh Khehar, Advocate,
for the petitioner.

Mr. Bhupender Singh, DAG, Haryana.

Harnaresh Singh Gill, J.

Case was taken up for hearing through Video Conferencing.

Challenge in the present petition is to the order dated 03.03.2020 (Annexure P.4) passed by the learned Sub Divisional Judicial Magistrate, Indri, District Karnal, whereby an application moved by the petitioner for releasing his tractor-trolley, bearing registration No.HR-92-4759 on *superdari*, was dismissed.

Learned counsel for the petitioner has contended that the petitioner had been challaned on 17.08.2019 under the State Mining Rules and under Rule 103 read with Rule 104 of the Haryana Minor Mineral Concession Stocking, Transportation of Mineral and Prevention of Illegal Mining Rules, 2012 (for short 'the 2012 Rules') and his vehicle bearing Registration No. HR-92-4759 was seized by the Mining Authorities. It is further

contended that as the Mining Authorities did not initiate any action i.e. filing of a complaint or registration of an FIR within the stipulated period of three months as provided under Rule 106 of the 2012 Rules, the petitioner had moved an application for release of his vehicle before the learned Sub Divisional Judicial Magistrate, Indri. However, vide impugned order, the learned Magistrate has dismissed the said application holding therein that he does not have any territorial jurisdiction to entertain the application.

Learned counsel for the petitioner has contended that in the absence of any confiscation order being passed under Section 21(4A) of the Mines and Minerals (Development and Regulation) Act, 1957 (in short, 'the Act'), the seizure of the petitioner's vehicle is not justified. It is further contended that the vehicle could only have been impounded pursuant to a confiscation order passed by a Court competent to take cognizance of the offence and the vehicle could only be disposed of in accordance with the directions of such Court. Reliance was placed upon Rule 106 of the 2012 Rules to contend that the offence(s) was cognizable only on a written complaint and there is a limitation period of three months. The seizure was made on 17.08.2019 and no such complaint had been filed and the vehicle could not be detained without any proceedings as such under the Act. It is, thus, submitted that the impugned action of the Mining Authorities in firstly seizing the vehicle of the petitioner and then (getting) it impounded in the police station, is not sustainable in the eyes of law. It is further submitted that

the Mining Officer while seizing the vehicle of the petitioner, had totally failed to consider the fact that the petitioner had been carrying sand(earth), which does not fall under the illegal mining and furthermore, it was not being carried out from any river, which would affect ground water level or disturb the water table.

In support of the assertions made, learned counsel for the petitioner has relied upon a Single Bench judgment of this Court in Irfan Vs. State of Haryana and another (CRM-M-19322-2020 decided on 15.10.2020).

Learned State counsel, on the other stand, has submitted that the proceedings culminating into the seizure/impounding of the petitioner's vehicle are well justified and the Magistrate has no powers to release the vehicle in the absence of any proceedings before him. Thus, it is argued that there being no proceedings initiated or pending, there arose no occasion for releasing the vehicle on superdari.

While emphatically arguing it is submitted that it is only the authorities under the Act, which have the jurisdiction in the matter and the jurisdiction of any other Court is barred, reliance is placed upon the judgments of the Hon'ble Supreme Court in State of Madhya Pradesh Vs. Uday Singh, 2019(2) RCR (Criminal) 640 and Mustafa Vs. State of Uttar Pradesh & Ors., 2019 AIR (SC) 3949.

It is further submitted that similar vehicles seized had been released on account of the deposit of fine, royalty and price of minerals and that the petitioner has no intention to

deposit the fine, royalty and price of minerals and instead he has chosen to institute the present proceedings.

It is also submitted that in view of the alternate remedy of an appeal under the provisions of Rule 109, the present petition is not maintainable. The vehicle of the petitioner had been seized/impounded in accordance with the orders dated 19.02.2019 of the Hon'ble National Green Tribunal.

I have heard the learned counsel for the parties and gone through the record.

The petitioner who is stated to be the registered owner of the vehicle, filed an application before the learned Magistrate for release of his vehicle (tractor trolley) averring therein that the petitioner is agriculturist by profession and the vehicle is needed for his day to day needs and that upon release, the said vehicle shall be produced by the petitioner as and when directed to do so.

The said application was contested by the Mining Officer, Department of Mines and Geology, Panipat. It was averred that the vehicle in question had been confiscated in relation to illegal mining/transportation of mines and mineral without having any valid bill and was consequently seized by the authorized person under the relevant provision of the law and that the said vehicle and the mineral were handed over to the Police Station/Chowki Biana for safe custody and security of the vehicle. It was further averred that the said illegal activity of transportation of mines and minerals was being done without a valid mineral concession/short term permit as required under

Section 4 of the Act. Reliance was also placed upon the order dated 23.04.2019 passed by the NGT in CA No.668 of 2018, Surinder Vs. State of Haryana', that 50% of the showroom value of the vehicle was to be deposited.

As noticed above, the learned Sub Divisional Judicial Magistrate, Indri, vide impugned order dated 03.03.2020 dismissed the application filed by the petitioner on the ground of lack of jurisdiction.

Under Section 21 of the Act, any person transporting any mineral from land using a vehicle and contravening the provisions of Section 4 of the Act was liable to be punished with imprisonment for a term which may extend to 5 years. Under sub-section 4A, the vehicle was liable to be confiscated by an order of a Court competent to take cognizance of the offence under sub-section (1) and it is to be disposed of in accordance with the directions of such Court. Section 22 of the Act further provides that a complaint has to be made in writing by the Central Government or the State Government.

Section 23 of the Act further provides that an offence punishable under the Act can be compounded by the person authorized under Section 22 of the Act, who is to make a complaint to the Court with respect to that offence.

Still further, Section 30-B of the Act provides for the constitution of the Special Courts, which is to be a Court consisting of a Judge and a person who shall not be qualified for appointment unless he is or has been a District and Sessions Judge. Section 30C of the Act further provides the powers of the

Special Court and the applicability of the Code of Criminal Procedure, 1973.

Indisputably, no cognizance of the offence has been taken by any Court, as there is neither any complaint filed nor any FIR lodged. In Ifran's case (supra), the Single Bench of this Court negated the contention of the respondents that the jurisdiction of the Court in terms of Rule 106 of the 2012 Rules, was barred, in view of the fact that during such pendency, an FIR had been registered by the Mining Authorities.

Reference to Rule 104 of the Rules is also important in the facts and circumstances, which provides for seizure of the minerals and the vehicles for the first time violation and it provides for impounding of the same for the second time violation and for registration of an FIR for the third time violation which would further entail confiscation. Rule 104 of the 2012 Rules reads thus:-

“104. Consequences of illegal or unauthorized mining.- Any act of illegal or unauthorized mining shall be liable to the following:

- (i) for a first time violation, the said mineral shall be liable to be seized along with the impounding of all such tools, equipment, vehicles or any other things used for such unauthorized operation, which may be released only upon realisation of the payment of price of the mineral and the applicable royalty for the mineral extracted and, in addition, a fine which shall not be less than Ten Thousand rupees;
- (ii) for a second time violation, the said mineral shall be liable to be seized along with the impounding of all such tools, equipment, vehicles or any other things used for such unauthorized operation for a minimum period of seven days, which may released only upon

realisation of the payment of price of the mineral and the applicable royalty for the mineral extracted and, in addition, a fine which shall not be less than fifteen thousand rupees;

(iii) wherever a person is found to be indulging in such offence for the third time or more, the officer concerned shall register an FIR and handover all such tools, equipment, vehicles or any other things used for such unauthorised operation to the Police. Any such offence shall entail (a) confiscation of all such tools, equipment, vehicles or any other thing used for such unauthorised operation for a period of minimum thirty days or more, and (b) pecuniary penalty and punishment for the offence as provided under Section 21 of the Mines & Minerals (Development & Regulation) Act, 1957.”

In the instant case, confiscation order has not been passed as yet and only the vehicle has been impounded by the Mining Authorities and handed over to SHO, Biana, Karnal, with a request that the same may not be released till the further order issued by the Mining Authorities.

A perusal of the above extracted Rule would show that confiscation is only to be done at the third stage. Nothing has been brought to the notice of this Court that the vehicle had been seized earlier. Therefore, the release of the petitioner’s vehicle is to be done by the procedure stipulated under Rule 104 of the 2012 Rules.

It is worth noticing here that the vehicle of the petitioner is lying idle in the Police Station pursuant to the seizure done by the Mining Authorities.

A Division Bench of this Court in **Gurbinder Singh @ Shinder Vs. State of Punjab', 2016 (4) RCR (Criminal) 492** answered the reference in favour of the owners of the vehicles, which were to be released during the pendency of the trial. The view that the vehicle could not be released under NDPS Act on Sapurdari was set aside, while keeping in mind the provisions of Sections 451, 452 and 457 of Cr.P.C. It was also held that there was no such bar, once the provisions of Cr.P.C., are applicable. The Division Bench thus noticed that the independent decision on the confiscation has to be taken and nobody can benefit out of the idle parking of the vehicle unattended in the premises of the police station. Relevant portion of the said judgment reads as under:-

"11. The question that arises for determination is whether [Section 451](#) Cr.P.C. can be applied while considering the plea for interim custody of the vehicle seized under the [NDPS Act](#). [Section 51](#) of the NDPS Act which has a bearing on this issue reads as follows:-

"51. Provisions of the code of Criminal Procedure, 1973 to apply to warrants, arrests, searches and Seizures. The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, in so far they are not inconsistent with the provisions of this Act, to all warrants issued and arrests, searches and seizures made under this Act."

As regards the seizure of any article or thing, the provisions of [Cr.P.C.](#) shall apply if it is not inconsistent with the provisions of [NDPS Act](#).

12. On a thorough perusal of the various provisions under the [NDPS Act](#), we find that there is no specific provision debarring the release of the vehicle seized under the Act. When the provision under [Section 451](#) Cr.P.C. is not inconsistent with any specific provision under [NDPS Act](#), the same will have

to be applied as mandated under [Section 51](#) of the said Act.

13. A vehicle used for committing rape and murder is being released in the garb of [Section 451 Cr.P.C.](#) as interpreted by the Hon'ble Supreme Court in Sunderbhai Ambalal Desai's case (supra). When the vehicles seized in such heinous crimes are released for interim custody, there is no logic in denying interim custody of the vehicle seized under the [NDPS Act](#). Neither the State nor the owner of the vehicle is going to be benefited if the vehicle in the premises of the police station occupies a larger space posing inconvenience to the Police Department. Further, it is an open secret that when a vehicle is parked unattended, the valuable parts of the vehicle are casually taken away or stolen. Finally, when the Court comes to a conclusion that the vehicle was used for committing the crime, the vehicle which was kept in the open would have substantially deteriorated. Likewise, if the Courts take a final decision that the vehicle was not at all used for commission of the crime or the vehicle was used without the knowledge of the owner thereof, the owner will have to collect only the scrap of the vehicle. In other words, nobody is going to be benefited out of idle parking of vehicle totally unattended in the premises of the police station.

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15. A conveyance seized under the [NDPS Act](#) shall be liable to confiscation only when the owner of the conveyance who was given an opportunity by the Court could not prove that the conveyance was used without his knowledge or connivance. The Court will have to decide whether a vehicle seized under the [NDPS Act](#) is liable to confiscation only on conclusion of trial. The trial Court has to take independent decision on the question of confiscation irrespective of the conviction or acquittal or discharge recorded by it. But, at any rate, the trial Court is not supposed to pass any order of confiscation before expiry of one

month from the date of seizure or without affording opportunity to the claimant.

16. On a perusal of the above provisions under the [NDPS Act](#), we find that the trial Court has to take a decision as to whether a vehicle is liable to confiscation only on conclusion of the trial. A vehicle seized under the [NDPS Act](#) cannot be kept idle to the disadvantage of everyone concerned till the order of confiscation is passed on conclusion of trial.”

In view of the statutory provisions noticed above, I am of the considered opinion that the vehicle having seemingly been seized for the first time, the same is required to be released on payment of the price of the mineral; the applicable royalty for the mineral extracted and the fine as provided under the aforesaid provisions.

In view of the above, without going into the validity of the impugned order, the present petition is disposed of with a direction to the Mining Officer, Mines and Geology Department, Panipat to release the vehicle of the petitioner in terms of Rule 104(1) of the Rules, 2012, within a period of 15 days from the date of receipt of certified copy of this order. It is further made clear that the petitioner shall be at liberty to avail of his remedy against the orders passed by the Mining Officer, Mines and Geology Department, if any, in accordance with law.

02.12.2020
parveen kumar/ds

(HARNARESH SINGH GILL)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No