

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 487 OF 2021

Mahadeo Ankush Jamale and others ... Petitioners

Versus

The State of Maharashtra and another ... Respondents

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Mr. S. J. Salunke, Advocate for the petitioners

Mr. S. N. Morampalle, APP for the respondents - State

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CORAM : R. G. AVACHAT, J.

DATED : 15th JUNE, 2021

PER COURT :-

. The present writ petition is filed for quashing of condition Nos. 6, 7 and 8 imposed in the order dated 16.03.2021, passed by the learned Judicial Magistrate, First Class (J.M.F.C.), Wadwani, District Beed.

2. The vehicles belonging to the petitioners have been seized by the police in connection with Crime No.0025/2021, registered with Wadwani Police Station, for the offences punishable under Section 379 read with Section 34 of the Indian Penal Code, Section 21(1), 25 of Mines and Minerals (Development and Regulation) Act, 1957 and Section 48(7) of the Maharashtra Land

Revenue Code (M.L.R.C.), 1966. The petitioners moved Criminal Miscellaneous Application No.28 of 2021 for release of those vehicles. The learned Magistrate allowed the said application, inter-alia on the following three conditions.

“6] Applicant nos. 1 to 4 shall deposit amount of Rs.1,00,000/- (Rs. One Lakh only) each with the office of Executive Magistrate, Wadwani.

7] Deposit of amount of Rs.1,00,000/- by the each applicant would be without any prejudice to the rights of revenue authority to proceed under Section 48 of M.L.R.C.

8] Only on the submission of receipt of payment of penalty amount of Rs.1,00,000/- by each applicant with the office of Executive Magistrate, Wadwani, investigating officer shall release the disputed vehicles in the favour of concerned applicants.”

3. The aforesaid conditions have been imposed by the learned Magistrate in view of the fact that proceedings under Section 48 of the M.L.R.C. have been initiated against the petitioners herein.

4. The learned Advocate for the petitioners would submit that imposing of aforesaid conditions amount to usurping power of the revenue authorities under Section 48 of the M.L.R.C.

5. The learned APP would, on the other hand, submit that the Magistrate has been justified in imposing the aforesaid conditions, since the vehicles were involved in unauthorized excavation of sand.

6. The learned Magistrate, in paragraph Nos. 10 and 11 of the impugned order, has observed thus:-

“10. Even though it is the submission of the Executive Magistrate, Wadwani that, proceeding under Section 48 of M.L.R.C. was came to be initiated against the owners of disputed vehicles and notices also served upon them. But, applicants nowhere submitted that, they received any such notices from the Executive Magistrate, Wadwani. On the other hand, no final penalty amount was decided by the Executive Magistrate and it is needless to say here that, final penalty amount shall be decided after the full fledge of the enquiry and after considering the say of the applicants. Hence, before deciding such final penalty amount it will be not in the interest of the justice to ask the applicants to deposit the penalty amount of Rs.7,51,000/- before they taking the possession of the disputed vehicles. On this point, I would like to rely upon judgment of Hon’ble Bombay High Court Bench at Aurangabad in Dnyaneshwar Devidas Kharat Vs. State of Maharashtra, Criminal Writ Petition No. 1259/2020 dated 24.11.2020. In the said Writ Petition Hon’ble Bombay High Court Bench at Aurangabad held that, when the proceeding under Section 48 of M.L.R.C. is pending and concerned Executive Magistrate has not quantified the amount of penalty in such situation 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 owner of the disputed vehicles will be entitled to get back the disputed vehicles.

11. In the present case in my hand also as I have already mentioned that, there is no any submission on the part of the applicants that they received any such notice from the Executive Magistrate, Wadwani and Executive Magistrate, Wadwani also not decided final penalty amount. So, it will be premature to direct the applicants to pay the penalty amount of Rs.7,51,000/-. But, considering the nature of the offence, it will be appropriate to direct the applicants to deposit Rs.1,00,000/- by each applicant with the revenue authority. But, it is needless to say here that, if in future Executive Magistrate awarded any penalty excessing to the amount of Rs.1,00,000/- then applicants shall pay the remaining penalty amount with the office of Executive Magistrate, Wadwani. Hence, applicants have better right to possess the disputed vehicles during the pending of the trial. So, I answer point no.1 accordingly and to answer the point no.2,”

7. The aforesaid observations, undoubtedly indicate that the learned Magistrate has directed the petitioners to deposit Rs.1,00,000/- (Rupees One Lakh) each, so as to ensure payment of any penalty that may be imposed by the revenue authorities on conclusion of the proceedings under Section 48 of the M.L.R.C. Since independent proceedings have already been initiated against the petitioners herein, the learned Magistrate has no reason to impose the aforesaid conditions.

8. Needless to mention that the revenue authorities are seized with the matter under Section 48 of the M.L.R.C. and would take it to the logical conclusion. It is, therefore, desirable to set aside

the aforesaid conditions imposed by the learned Magistrate in his order dated 16.03.2021.

9. In view of the above, the writ petition is allowed in terms of prayer clause (C).

[R. G. AVACHAT, J.]

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