

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

933 CRIMINAL WRIT PETITION NO.593 OF 2021

Dhawal s/o Ramdas Nehete,
Age; 23 years, Occ; Business,
R/o; Dambhurni, Tq. Yawal,
Dist. Jalgaon

...PETITIONER

VERSUS

The State of Maharashtra,
Through Faizpur Police Station,
Tq Yawal, Dist. Jalgaon.

...RESPONDENT

...
Advocate for Petitioner : Mr.Sant Kishor C.
APP for Respondent-State : Mr. R.D.Sanap
...

CORAM : SURENDRA P.TAVADE , J.

DATE : 21th August, 2021.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. With the consent of the parties and counsels heard finally at the admission stage.

2. The petitioner is the owner of Tata Company Tipper having registration number MH-40-AK-3867. It is alleged that on 21.11.2020 at about 23.45 hours the said Tipper of the petitioner was found with stolen sand. The said Tipper was driven by Raju Ramdas Solanke, who was arrested and prosecuted by police for the

offence punishable under Section 379 of the Indian Penal Code (for short “IPC”) and under Section 48 of the Maharashtra Land Revenue Code, 1966, (for short “MLR Code”). The petitioner has filed an application for release of said Tipper before the Judicial Magistrate First Class, Yawal, District; Jalgaon. The said application was allowed with condition. The **impugned condition** reads as under :

“The applicant to deposit the amount of fine with the Tahsildar, Yawal and on production of receipt of fine, the vehicle be handed over to him.”

The said impugned order was challenged before the learned Sessions Court by filing Criminal Revision Application No. 3 of 2021. The learned Sessions Court has confirmed the said order and rejected the Criminal Revision Application. Hence the present petitioner has filed this petition to challenge the impugned order.

3. Heard Mr. Sant Kishor C., learned counsel for the petitioner and Mr. R.D.Sanap, the learned APP for Respondent-State.

4. Learned counsel for the petitioner submitted that the Revenue Authority has not even decided the amount of penalty, therefore, on that contingency the order passed by the Judicial Magistrate First Class is not legal and proper. He also submitted that there are number of orders passed by this Court, wherein, such

conditions are set aside and the vehicles are returned to its owner on executing bonds. He also submits that the imposition of penalty for excavation of mines and minerals, the Revenue Authority has ample powers to impose fine and the said order can be challenged by way of appeal. Therefore, the said proceedings are independent than the Court proceedings. Therefore, the impugned order is not sustainable in the eye of law.

5. On the other hand, the learned APP for respondent State submits that the Revenue Authority has already imposed fine of Rs. 2,35,257/- on the vehicle of petitioner. Therefore, the conditional order passed by the trial Court is correct and legal. He also submits that the proceedings before the Revenue Authority is though independent, but unless the condition imposed upon the petitioner, he could not deposit amount of fine and can ply his vehicle. He also submitted that there is possibility of repetition of offence. Therefore, the order passed by the trial Court is just and necessary.

6. Perused the order passed by this Court, citation with parties which reads as under :

“The present order shall be without prejudice the powers of Executive Magistrate to proceed pursuant to the

provisions of Section 48 of the Maharashtra Land Revenue Code and the Mines and Minerals Act, and the vehicle shall not be returned until he exhausts his powers in this regard.”

7. In the present case the trial Court has directed the petitioner to deposit the amount of fine and then he was allowed to take back the vehicle. The order passed by this Court cited supra is conditional order. In fact, the proceedings before the Revenue Authority is independent in nature. The order passed by the Revenue Authority under Section 48 of the MLR Code can be challenged by way of appeal also. Therefore, the petitioner cannot be forced to deposit amount of fine, while releasing the truck in question. The similar orders are passed in Criminal Application No. 1417 of 2020, wherein, the Division Bench of this Court has directed the petitioner therein, to deposit amount of Rs. 1,00,000/- with Revenue Authority without prejudice to their rights and conditions.

8. In the present case the petitioner is ready to deposit some amount towards fine, which was determined by the Revenue Authority. Therefore, I am of the opinion that the petitioner can be directed to deposit 50% amount or Rs. 1,20,000/- towards fine before the Revenue Authority, thereafter, the seized Tipper can be returned to him.

9. Learned counsel for the petitioner, on instructions, shown his willingness to deposit amount of fine and he submitted that the petitioner would deposit Rs. 1,25,000/- with Revenue Authority towards fine. Therefore, I am of the opinion that the petition is required to be partly allowed. The Clause-5 of the impugned order passed in Criminal Misc. Application No. 428 of 2020 can be modified. In view of the aforesaid facts, the petition is partly allowed. Hence the following order :

ORDER

- a) The petitioner is directed to deposit an amount of Rs. 1,25,000/- (Rs. One Lakhs and Twenty Five Thousand) towards fine before the Tahsildar, Yawal without any rights and contentions of either of the parties before the Revenue Authority.
- b) No order as to costs.
- c) Rule is made absolute.

**(SURENDRA P.TAVADE)
JUDGE**