

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 887 OF 2021

Pravin S/o Kisan Raut,
Age : 32 Years, Occ. Business,
R/o. Ardha-Masala, Taluka Georai,
District Beed.

..Petitioner

V E R S U S

The State of Maharashtra,
Through it's Assistant Police Inspector,
Talwada Police Station,
Taluka Georai, District Beed.

.. Respondent

...
Mr. A. B. Kharosekar, Advocate for the Petitioner
Mr. R. P. Gour learned Additional Public Prosecutor

...

CORAM : SURENDRA P. TAVADE, J.
DATE : 28.09.2021

J U D G M E N T

Rule. Rule made returnable forthwith, with the consent of the learned counsel for the parties.

2. It is contended that ten wheeler TATA Hyva Truck bearing No. MH-23- AU-4252 is owned by the petitioner. It is alleged that the said Hyva was transporting sand illegally. Hence it was intercepted by the police and it was seized under panchnama. One of the raiding party members Anil Gaikwad lodged FIR against the petitioner. On the basis of the same, crime bearing

No. 29 of 2021 was registered against the petitioner for the offence punishable under Section 379 of the Indian Penal Code. Petitioner filed Cri. Misc. Application No. 137 of 2021 before the learned J.M.F.C Georai, District Beed for return of Hyva truck. The said application was allowed by the learned Magistrate on the condition that petitioner should execute indemnity bond of Rs. 25,00,000/- and after completion of proceeding initiated by the Revenue Authority, hyva truck was ordered to be released on the indemnity bond of Rs. 25,00,000/-. The said order is impugned in this petition. It is contended that the action of Revenue Authority is independent. The petitioner has right to challenge the said order in proper forum. It is contended that the condition of execution of indemnity bond is excessive, therefore, he prayed that the order of execution of indemnity bond be set-aside. It is contended that the applicant was not indulged in illegal transportation of sand.

4. Notices of this petition were issued to the respondents. Learned A.P.P appeared and submits that the order passed by the trial Court is proper. The Revenue Authority has already concluded the enquiry and fine is imposed on the petitioner. He submits that on furnishing indemnity bond of Rs. 25,00,000/- vehicle can be released by police.

5. Heard the learned counsel for the petitioner and learned

A.P.P.

6. Learned counsel for the petitioner has relied on the ratio laid down in **Pravin S/o Eknath Solanke Vs. The State of Maharashtra Criminal Writ Petition No. 35 of 2021** wherein this Court has held that

“A Magistrate shall not treat the powers conferred upon the Revenue Authorities under the MLRC putting any fetters on his powers exerciseable under Section 457 of the Code of Criminal Procedure. Needless to state the Revenue Authorities may invoke the provision and the powers under the MLRC and pass appropriate orders and take suitable steps for its enforcement. The Magistrate while passing the order under Section 457 shall not carry any impression of their being any impediment in exercising his powers. The law may take its own course. However, putting a condition makes the order contingent upon the exercise or otherwise of the powers by the Revenue Authorities. No such condition therefore can be legally put which would prevent operation of an order passed by a Magistrate under Section 457 of the Code of Criminal Procedure.”

7. In present case, the learned Magistrate has ordered that the petitioner to execute indemnity bond of Rs. 25,00,000/- and vehicle be returned to him after completion of penal action initiated by the revenue authority and, therefore, it can be said that the order of learned Magistrate is contingent and it will take effect after completion of the enquiry initiated by the

revenue authority.

8. In view of the observations of this Court cited supra, it can be said that the condition of order is not proper. Therefore, said order is required to be set-aside.

9. Before passing the order, the learned A.P.P. has informed that the revenue authority has passed order and directed the petitioner to deposit the amount of fine. No doubt, the petitioner has right to challenge the said order before appropriate forum but at the same time, petitioner can be directed to deposit at least 50% of the amount of fine so that vehicle can be returned to him. Therefore, in view of the aforesaid discussion, I pass the following order :

O R D E R

- (i) The petition is partly allowed.
- (ii) After depositing 50% of the fine amount determined by the revenue authority, by the petitioner, the Truck bearing No. MH-23-AU-4252 be returned to petitioner on executing bond of Rs. 25,00,000/- (Rupees Twenty Five Lakh).

Accordingly rule is made absolute.

(SURENDRA P. TAVADE)
JUDGE