

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

CRIMINAL WRIT PETITION NO.947 OF 2021

Vikas s/o Uttam Shinde,
Age; 36 years, Occ; Agri,
R/o; Sonvihar, Tq. Shevgaon,
District; Ahmednagar.

...Petitioner

VERSUS

State of Maharashtra

...Respondent.

...
Advocate for Petitioner : Mr. Abhishek Kulkarni
APP for Respondent-State : Mrs. G.L.Deshpande
...

CORAM : SURENDRA P.TAVADE , J.

DATE : 2nd September, 2021.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent of learned counsel for both the parties, heard finally at the admission stage.

2. The petitioner is owner of Tata Tipper bearing No. MH-16-CC-9397. It is alleged that on 24.07.2021 the crime No. 170 of 2021 was registered with Chakalamba Police Station, Tq. Georai, Dist Beed for the offences punishable under Sections 379 and 511 of the Indian Penal Code (for short 'IPC') read with Section 48 of the Maharashtra Land Revenue Code (for short "MLR" Code) against seven unknown

persons and in all seventeen vehicles were seized including the vehicle of the petitioner. It is contended that the petitioner has filed an application for return of the vehicle under Section 457 of the Code of Criminal Procedure (for short 'Cr.P.C.') before the learned Judicial Magistrate First Class (for short "JMFC") Georai, Tq. Georai, District Beed. The said application was heard and decided on 13.08.2021.

3. Trial Court has allowed the application but imposed the condition to execute an indemnity bond of Rs.20,00,000/- for the release of the vehicle. Similarly the trial Court also directed the petitioner to deposit Rs. 1,50,000/- with Tahsildar, Georai towards the penalty amount. Both the conditions are challenged in this petition.

4. It is contended that in all 17 vehicles were seized by police and there is charge under Section 511 of the IPC against the drivers and owners of the seized vehicles. It is contended that no contraband sand was found in the seized vehicles, therefore, there is no question of imposing any penalty. It is also contended that the condition of execution of indemnity bond is very stringent as no offence was committed by the drivers of the vehicles. It is contended that in similar cases this Court has released the vehicles on bond. Therefore, the impugned condition be set aside.

5. On the other hand, learned APP submits that the vehicles were seized from the bed of river. The drivers and owners of the vehicle were trying to excavate the sand from the bed of river and after intervention of police the offence was averted. It is contended that the revenue authority has power to impose penalty for the illegal excavation of sand which is being transported, therefore, the order of the trial Court is correct and proper and there is no need to interfere with.

6. Perused the impugned order. It appears that the trial Court has considered the order passed by the Tahsildar, whereby, fine was imposed on petitioner to the tune of Rs. 2,38,320/-. Out of the said fine amount, the learned Magistrate directed the petitioner to deposit Rs. 1,50,000/-. On this point, learned counsel for the petitioner relied on the ratio laid down by this Court in the case of **Madhav Sahebrao Shinde Vs. the State of Maharashtra,- Criminal Application No. 2341 of 2020 dated 12.01.2021.** wherein, the learned Magistrate allowed the application subject to several conditions which reads as under :

“3) The Investigating Officer through Revenue Authority shall produce the truck before the Deputy Collector on or before 09.11.2020 and on completion of necessary formalities as observed by Hon’ble Bombay High Court in Case of Dhannu Phapal (supra), the vehicle shall be released.

8) The instant order shall be without prejudice to the powers of Collector, Deputy Collector and Executive Magistrate to proceed pursuant to the provision of Section 48 of the Maharashtra Land Revenue Code and truck shall not be returned until he exhausts powers in that regard."

7. This Court has further held that :

"true it is that though the offence has been registered and it would take its own course and would reach its logical course. The revenue authority has power under Section 48 of the MLR Code in which they are entitled to exercise, the last portion of condition No. 8 prevents operation of the order passed by the Magistrate under Section 457 of the Cr.P.C. till the revenue authorities exhaust the remedies and powers under Section 48 of the Maharashtra Land Revenue Code. It clearly undermines the former's jurisdiction and is not sustainable in law."

8. In the present case the trial Court held that the revenue authority has imposed fine of Rs. 2,38,320/-, therefore, the condition of payment of fine amount is not contingent upon the decision of the revenue authority.

9. The learned counsel for the petitioner also relied on the ratio laid down by the **Division Bench of this Court in Writ Petition No. 7873 of 2019 dated 01st July, 2019**, it is held that

"4. Considering that vehicles would be lying idle and it will not be in anybodies interest to keep the vehicles idle, we would allow the release of the vehicles on

following conditions :

(i) The petitioners in each of these petitions shall deposit an amount of Rs. 1,00,000/- for release of vehicles.

5. Upon deposit of this amount, the Authority shall release the vehicles after identifying its legitimate owner, after verifying the documents and on petitioners' submitting the bond, so also after complying with all terms and conditions put forth by the J.M.F.C. while directing release of vehicles.

6. The deposit of Rs. 1,00,000/- each with Revenue Authority by petitioners would be without prejudice to the rights and contentions of either parties."

10. In view of the above observations of the Division Bench of this Court the condition of payment of fine amount cannot be faulted or cannot be held as illegal, but at the same time the condition of indemnity bond appears to be stringent, which is required to be set aside. With this, I proceed to pass following order :

ORDER

1. The petition is partly allowed.
2. The Vehicle bearing No. MH-16-CC-9397 be returned to its owner on a bond of Rs. 15,00,000/- (Rs. Fifteen Lakhs).
3. The petitioner is directed to deposit Rs. 1,50,000/- (Rs. One Lakh and Fifty Thousand) towards fine amount without prejudice to the rights and contentions of either parties before the Revenue

Authority.

4. No order as to costs.
5. Rule is made absolute.

(SURENDRA P.TAVADE)
JUDGE

mahajansb/