IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

916 CRIMINAL APPLICATION NO.1910 OF 2021

Amol s/o Sanjay Valave,
Age; 31 years, Occ; Business,
R/o; Valave Vasti
Villate; Ganga Padali,
Tq. and District Nashik. ...Applicant

VERSUS

The State of Maharashtra
Through the Police Inspector,
Upnagar Police Station, Nandurbar,
District; Nandurbar. ...Respondent

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Advocate for Applicant : Mr.Gadve Patil Kishor M.
APP for Respondent-State : Mrs.G.L.Deshpande

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CORAM : SURENDRA P.TAVADE , J.

DATE : 07th September, 2021.

ORDER :

1. The owner of the truck bearing No. MH-15-FV-8085 has filed this application against the order passed by the Judicial Magistrate First Class, (Court No. -II), Nandurbar, whereby the learned Magistrate rejected the application for the return of truck under Section 457 of of the Code of Criminal Procedure (for short 'Cr.P.C'.) It is contended that the applicant is the owner of the aforesaid truck. The said truck was seized by Upnagar Police Station,

Nandurbar on 15.07.2021. The truck was carrying sand from Gujarat State to Maharashtra State. The applicant had paid the royalty to the Gujarat State but he did not show payment of 0% royalty to the Maharashtra State. It is contended that 0% royalty was not paid on the day on which the truck was seized by the police. It is contended that subsequently 0% royalty has been paid by the applicant. It is contended that after the truck was parked in the premises of Tahsil office, the driver of the truck, took away the truck without permission of the revenue officer, so an offence under Section 379 of the IPC was lodged against him. Initially offence under Section 379 of the IPC r/w Section 48 of the Maharashtra Land Revenue Code was registered against the truck driver. Thereafter without the payment of 0% royalty the driver took away the truck, therefore, another offence under Section 379 of IPC has been registered against him.

2. The application of the applicant was rejected on the ground that the applicant did not pay 0% royalty in time. Application was also rejected on the ground that the Revenue Authority has initiated proceedings for confiscation of the truck. It is contended that the trial Court has not considered the pass issued by the State of Gujarat. It is contended that 0% royalty is already paid, therefore, the learned Magistrate should have released the truck. It is contended the actions of Revenue Authority and police are

independent, therefore, there was no bar for the release of seized truck.

3. On the other hand the learned APP submits that at the time of inspection of truck it was found that 0% royalty was not paid by the applicant. The driver of the vehicle was asked to produce the receipt of 0% royalty, on which, he did not produce the same. Therefore, the truck was taken into the custody and it was parked in the premises of Upnagar, Police Station, Nanduarbar. In the night of 16th July, 2021 the driver of the truck took away the truck without the permission of police, hence separate offence was registered against the driver under Section 379 of IPC. Due to the conduct and behaviour of the driver of the truck the trial Court rightly rejected the application. It is contended that the penalty is not determined by the Revenue Authority, therefore, the truck may not be released.

4. Heard the learned counsel for the applicant and learned App for the respondent-State.

5. Perused the FIR and impugned order. It appears that on 15.7.2021 at 2.00 p.m. the truck in question was stopped by Police on the boarder of Maharashtra and Gujarat States. Police demanded pass from the driver, which was issued by the Government of Gujarat for carrying sand to Maharashtra State, the driver of the truck

produced the same. But the driver failed to produce the payment of 0% royalty, therefore, the truck was taken to the police station. On the said night the driver of the truck without permission took away the truck away of premises of Tahsil Office. Hence separate offence under Section 379 of IPC was registered.

6. Learned counsel for the applicant submits that 0% royalty was paid by the applicant after lodging of the FIR. He also submits that the applicant had valid permission to transport the sand from Gujarat State to Maharashtra State. The only issue was of payment of royalty amount which the applicant had already paid. The Revenue Authority had already initiated proceedings against the applicant for the seizure of the sand. The said proceedings are independent that of the police action. He also conceded that it was mistake of driver that he took away the truck from the premises of Tahsil Office, without permission and subsequently the truck was seized. No purpose would be served by keeping the truck in the premises of Tahsil Office. The seized truck is the only source of income of the applicant, therefore, he prayed for the release of the truck.

7. Admittedly the applicant has paid 0% royalty. The revenue authority has not determined the penalty or fine for carrying sand without paying royalty amount. At the same time, it is to be

mentioned here that the applicant had valid permission to transport the sand from the Gujarat State to Maharashtra State. So it is not usual case of extraction of mine minerals without permission. The Revenue Authority has taken action against the applicant but the truck cannot be detained for unlimited period, therefore, I am of the considered view that the applicant is entitled for the release of truck. With this I pass following order :

ORDER

1. Application is allowed.

2. The seized truck bearing No. MH-15-FV-8085 is hereby returned to the applicant on a bond of Rs. 15,00,000/- (Rs. Fifteen Lakh) with condition not to sale, transfer it to anybody without permission of this Court. It is also directed that the applicant shall produce the seized truck as and when required by the Investigating Officer or the Revenue Authority during the investigation.

3. The applicant is also directed to pay the penalty amount if any, as and when determined by the Revenue Authority.

(SURENDRA P.TAVADE)
JUDGE

mahajansb/