

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-20275 of 2021

DATE OF DECISION : 25.05.2021

Kamlesh Devi and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. S. S. Momi, Advocate,
for the petitioners.

Mr. Tapan Kumar, DAG, Haryana.

(Presence marked through video conference)

ARUN MONGA, J. (ORAL)

Grievance of the petitioners herein is qua two orders dated 11.05.2021 (Annexures P-1 and P-2, respectively) passed by learned Judicial Magistrate Ist Class, Charkhi Dadri, whereby superdari applications seeking release of two confiscated trucks, allegedly involved in transportation of minerals in violation of permissible weight limit under the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as "the Mining Act"), have been dismissed.

2. Learned counsel for the petitioners vehemently argued that applications have been summarily dismissed vide non-speaking cryptic order in violation of the judgment rendered by this Court in "*M/s K.C. Stone Crushing Company v. State of Haryana and another*" decided on 04.02.2021 contained at Annexure P-5.

3. Notice of motion.

4. On service of advance copy of the petition, Mr. Tapan Kumar, DAG, Haryana, joins the proceedings and accepts notice on behalf of State of Haryana.

5. Learned State counsel opposes the petition adopting the same reasons as given in the impugned order. He contends that the order dated 11.05.2021 contained at Annexures P-1 and P-2, vide which the offending vehicles were confiscated, are appealable under Rule 109 of State Mining Rule, 2012, framed under the Mining Act.

6. I have heard rival contentions of learned counsels and without commenting on the merits of the case, I am of the view that the applications of the petitioners were wrongly dismissed on the ground of maintainability. The law in this aspect is no more *res integra*. Same has already been elucidated threadbare in the judgment, *ibid* by my learned brother G. S. Gill, J., who speaking for this Court has observed as under, :

“45 The following directions are thus issued to the respondents :

(i) The respondents are directed that in future all such cases where a vehicle is seized in terms of MMDR Act or Rules framed there under and the penalty imposed is not paid within a reasonable time either the requisite steps as per rules shall be taken for prosecuting the accused or an appropriate application shall be led for confiscation of the vehicle in terms of Rule 101(10). A period of 3 months can well be said to be a fairly reasonable time so as to enable the authorities concerned to take requisite steps in this direction. Once a vehicle is ordered to be confiscated, further steps for auctioning the same may be taken immediately instead of retaining the vehicle in the police station where its condition is bound to deteriorate which would be a loss to the State as well as it will not be able to recover much amount from auction of the vehicle on account of deteriorated condition of the vehicle.

(ii) All those vehicles including the vehicles of the petitioners in both the cases which are present lying seized by respondent authorities for more than three months pursuant to inspection carried out in terms of Rule 101 of Mining Rules 2012 and in respect of which the authorities have neither lodged any FIR nor instituted any complaint in the Court and have not even initiated confiscation proceedings shall be dealt with under of Rule 101(10) immediately. The Director, Department of Mines and Geology, Haryana shall ensure that the needful in this regard is done within two weeks from today

(iii) Upon the respondent authorities either choosing to lodge a FIR/complaint or choosing to move an application under rule 101

(10) of Mining Rules, 2012 for confiscation of vehicle it shall be open to the Court concerned to entertain an application for release of the vehicle on 'superdari' during the pendency of such proceedings if there is likelihood of delay in conclusion of such proceedings. The Court dealing with such application shall decide the same while considering all such pleas as may be raised by the parties. The Court concerned shall, however, endeavour to dispose of such applications at the earliest.

(iv) While considering release of vehicle on 'superdari', the Court may choose to impose any such strict conditions as deemed fit. The Court concerned may even direct the applicant to deposit in Court an amount equal to the penalty imposed by the authorities concerned or part thereof, in addition to any other condition."

7. On a Court query, learned State counsel does not controvert that at this stage only confiscation proceedings have been initiated under Rule 101 of the State Mining Rules, 2012. Any other further action of either choosing to lodge FIR or complaint is still under contemplation depending on how events will unfold after the preliminary enquiry/investigation.

8. In the premise, concededly the case of petitioners would fall under sub para 3 & 4 of para 45 of the judgment, as reproduced above. Accordingly, I am of the opinion that learned Judicial Magistrate Ist Class, Charkhi Dadri, committed a material irregularity in summarily dismissing the applications. The same ought to have entertained and orders were required to be passed on merits, in accordance with law.

9. Resultantly, the instant petition is allowed. Both the impugned orders dated 11.05.2021 contained at Annexures P-1 and P-2 are hereby set-aside with liberty to the petitioner to approach the appropriate Court to seek release of both the vehicles on superdari during the pendency of proceedings before the Mining Officer, Charkhi Dadri (respondent No.3).

10. Needless to say on approaching the competent Court, the application shall be disposed of on merits, in accordance with law, as expeditiously as possible.

MAY 25, 2021
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No