

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 225

Criminal Miscellaneous No.M-45517 of 2021
Date of Decision: *December 09, 2021*

Samsad

..... PETITIONER(S)

VERSUS

State of Haryana & others

..... RESPONDENT(S)

. . .

CORAM: **HON'BLE MR. JUSTICE SANT PARKASH**

. . .

PRESENT: - Mr. Vivek Sharma Vats, Advocate, for the petitioner.

Mr. Zorawar Singh Chauhan, Deputy Advocate General,
Haryana.

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Sant Parkash, J

This is a petition under Section 482 Cr.P.C. for release of vehicle/Tractor-Trolley bearing Registration No.HR71H-8489 seized by the respondents vide Seizure Memo No.Mining/YNR/SPL1, being seized for the first time; on payment of price of mineral, the applicable royalty for the mineral and the fine as provided under statutory provisions i.e. Rule 104(1) of the Haryana Minor Mineral Concession Stocking, Transportation of Mineral and Prevention of Illegal Mining Rules, 2012 (for short, 'Rules 2012') and in view of judgment dated 02.12.2020 passed by this Court in CRM-M-28244 of 2020 titled 'Maksood vs. State of Haryana' (Doc Id #1788403).

The petitioner is registered owner of aforesaid Tractor-Trolley which was seized by respondent No.2 – Mining Officer on 20.03.2020 in the area of village Kotda Kahan Singh, District Yamuna Nagar, vide seizure memo dated 01.10.2021.

Learned counsel for the petitioner has contended that the vehicle has been seized for the first time and petitioner is ready to make payment of price of mineral, the applicable royalty for mineral and the fine as provided under Rule 104(i) of Rules 2012 to get the vehicle released. Learned counsel has contended that respondents have not followed the mandatory procedure as provided under Rule 97(4) to (6) and 101 (6) & (10) of Rules 2012 and till date, the vehicle is lying parked in open in Police Station, Chhachhrauli. The respondents have not given any receipt of the seized vehicle to the petitioner nor did they prefer any complaint before the competent court. The vehicle in question is the only source of livelihood of the petitioner. In case the vehicle is not released, it will be lying parked in the police station for indefinite period and will be converted into scrap.

Learned counsel for the State, on the basis of written statement dated 15.11.2021, submits that the petitioner was required to deposit the environment compensation amount as ordered by the National Green Tribunal, New Delhi, vide order dated 19.02.2020 in order to get his vehicle released. The State Government has constituted two composite Special Enforcement Team (SET) each headed by a Deputy Superintendent of Police with the staff of Mines and Geology Department. The State Government, from January 01, 2020, has implemented e-rawanna system throughout the State and any vehicle transporting mineral in any part of the State, shall have a valid e-rawanna at the time of checking of the vehicle to

prove that the mineral laden in such vehicle has been procured legally. Any vehicle laden with minerals that do not have valid e-rawanna at the time of checking is to be considered as illegal and thus liable to be dealt with as per law. Accordingly, SET during road side checking on 02.10.2021, apprehended one Tractor-Trolley bearing Registration No.HR-71H-8489 transporting mineral without any valid bill/ e-rawanna. Consequently, it was seized in Police Station, Chhachhrauli, District Yamuna Nagar in the offence of transportation of illegally mined mineral. Learned counsel has submitted that seizure of the petitioner's vehicle is well justified. Lastly, it is submitted that petitioner has no intention to deposit the fine, royalty and price of minerals.

I have heard learned counsel for the parties and perused the record.

Under Section 21 of the Act 1957, any person transporting any mineral from land using a vehicle and contravening the provisions of Section 4 of the Act 1957 was liable to be punished with imprisonment or a term which may extend to 5 years. Under Section 4A, the vehicle was liable to be confiscated by an order of a competent court to take cognizance of the offence under sub-section (1) and it is to be disposed off in accordance with the directions of such court. Section 22 of the Act 1957 further provides that a complaint has to be made in writing by the Central Government or the State Government. Section 23 of the Act 1957 further provides that an offence punishable under the Act can be compounded by the person authorized under Section 22 of the Act, who is to make a complaint to Court with respect to that offence. To fortify the aforesaid observations, Sections 21 to 23 of the Act 1957 are reproduced below:-

“21. Penalties.—1[(1) Whoever contravenes the provisions of sub-section (1) or sub-section (1A) of section 4 shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to five lakh rupees per hectare of the area.

(2) Any rule made under any provision of this Act may provide that any contravention thereof shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five lakh rupees, or with both, and in the case of a continuing contravention, with additional fine which may extend to fifty thousand rupees for every day during which such contravention continues after conviction for the first such contravention.

(3) Where any person trespasses into any land in contravention of the provisions of sub-section (1) of section 4, such trespasser may be served with an order of eviction by the State Government or any authority authorised in this behalf by that Government and the State Government or such authorised authority may, if necessary, obtain the help of the police to evict the trespasser from the land.

(4) Whenever any person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral tool, equipment, vehicle or any other thing shall be liable to be seized by an officer or authority specially empowered in this behalf.

(4A) Any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4), shall be liable to be confiscated by an order of the court competent to take cognizance of the offence under sub-section (1) and shall be disposed of in accordance with the directions of such court.

(5) Whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or, where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence under sub-section (1) shall be cognizable.

22. Cognizance of offences.—No court shall take cognizance of any offence punishable under this Act or any rules made

thereunder except upon complaint in writing made by a person authorised in this behalf by the Central Government or the State Government.

23. Offences by companies.—(1) If the person committing an offence under this Act or any rules made thereunder is a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed with the consent or connivance of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals;

(b) “director” in relation to a firm means a partner in the firm.

23A. Compounding of offences.—(1) Any offence punishable under this Act or any rule made thereunder may, either before or after the institution of the prosecution, be compounded by the person authorised under section 22 to make a complaint to the court with respect to that offence, on payment to that person, for credit to the Government, of such sum as that person may specify:

Provided that in the case of an offence punishable with fine only, no such sum shall exceed the maximum amount of fine which may be imposed for that offence.

(2) Where an offence is compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded, and the offender, if in custody, shall be released forthwith.

23B. Power to search.—If any gazetted officer of the Central or a State Government authorised by the Central Government 3[or a State Government, as the case may be, in this behalf by genera! or special order has reason to believe that any mineral has been raised in contravention of the provisions of this Act or rules made thereunder or any document or thing in relation to such mineral is secreted in any place 3[or vehicle], he may search for such mineral, document or thing and the provisions of section 100 of the Code of Criminal Procedure, 1973 (2 of 1974), shall apply to every such search.”

Undisputedly, no cognizance of the offence has been taken by any court as there is neither any complaint filed nor any FIR lodged.

Reference to Rule 104 of Rules 2012 is also important in the facts & circumstances, which provides for seizure of the minerals and the vehicles for the first time violation and it provides for impounding of the same for the second time violation and for registration of an FIR for the third time violation which would further entail confiscation. Rule 104 of the Rules 2012 reads thus:-

“104. Consequences of illegal or unauthorised mining.- Any act of illegal or unauthorised mining shall be liable to the following:

- (i) for a first time violation, the said mineral shall be liable to be seized along with the impounding of all such tools, equipment, vehicles or any other things used for such unauthorised operation, which may be released only upon realisation of the payment of price of the mineral and the applicable royalty for the mineral extracted and, in addition, a fine which shall not be less than Ten Thousand rupees;
- (ii) for a second time violation, the said mineral shall be liable to be seized along with the impounding of all such tools, equipment, vehicles or any other things used for such unauthorised operation for a minimum period of seven days, which may released only upon realisation of the payment of price of the mineral and the applicable royalty for the mineral extracted and, in addition, a fine which shall not be less than fifteen thousand rupees;
- (iii) wherever a person is found to be indulging in such offence for the third time or more, the officer concerned shall register an FIR and handover all such tools, equipment, vehicles or any other things used for such unauthorised operation to the Police. Any such offence shall entail (a)

confiscation of all such tools, equipment, vehicles or any other thing used for such unauthorised operation for a period of minimum thirty days or more, and (b) pecuniary penalty and punishment for the offence as provided under Section 21 of the Mines & Minerals (Development & Regulation) Act, 1957.

In the instant case, confiscation order has not been passed so far and only the vehicle has been seized and that, vehicle of the petitioner is lying stationary in the police station pursuant to seizure done by the Mining authorities.

A Division Bench of this Court in ***Gurbinder Singh @ Shinder Vs. State of Punjab', 2016 (4) RCR (Criminal) 492*** answered the reference in favour of the owners of the vehicles, which were to be released during the pendency of the trial. The view that the vehicle could not be released under NDPS Act on Sapurdari was set aside, while keeping in mind the provisions of Sections 451, 452 and 457 of Cr.P.C. It was also held that there was no such bar, once the provisions of Cr.P.C., are applicable. The Division Bench thus noticed that the independent decision on the confiscation has to be taken and nobody can benefit out of the idle parking of the vehicle unattended in the premises of the police station.

Though, the judgment referred to above, relates to NDPS case but the analogy can be made applicable to the facts of this case. Rule 104 empowers the competent authority to release the vehicle on superdari, that too, when petitioner is ready to fulfil the conditions enumerated therein. This Court is of the considered view that the vehicle having seemingly been seized for the first time, the same is required to be released on payment of the price of the mineral; the applicable royalty for the mineral extracted and the fine as provided under the aforesaid provisions.

In view of the above, the present petition is disposed of with a direction to the respondents to release the vehicle of the petitioner on supardari on his furnishing bonds to the satisfaction of Illaqa Magistrate/Duty Magistrate concerned on usual terms & conditions of superdari as also on fulfilling the pre conditions as contemplated under Rule 104 of Rules 2012.

(Sant Parkash)
Judge

December 09, 2021
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Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No