

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 299 OF 2022

State of Maharashtra, through Tahsildar,
Mohadi, District Bhandara.

... PETITIONER.

VERSUS

1. Chetaneshwar Shankar Damahe,
Aged Major, Occu : Business, R/o
R/o Khamari Buj, Tahsil Mohadi,
District Bhandara.
2. The State of Maharashtra,
Through Police Station Officer,
Police Station, Mohadi, District
Bhandara.

... **RESPONDENTS.**

Shri S.M. Ukey, Addl. PP for the petitioner-State.

CORAM : **VINAY JOSHI, J.**
DATED. : **08.07.2022.**

ORAL JUDGMENT :

RULE. Rule is made returnable forthwith.

2. Despite service, respondent no.1 did not appear. Heard finally by consent of the learned Counsel appearing for the petitioner. Respondent no. 2 is a formal party.

3. The petitioner-State has challenged the impugned orders dated 01.02.2022 passed by the learned Sessions Judge, Bhandara in Criminal Revision No.9 of 2022. By said order, the Revisional Court has confirmed the order of the learned Magistrate dated 27.12.2021 under which the respondent's application in terms of Section 457 of the Code of Criminal Procedure for return of Muddemal property namely vehicle, came to be allowed.

4. The facts in brief are that the vehicle owned by the respondent no.1 came to be seized by the Tahsildar, Mohadi, District Bhandara as found to be illegally carrying sand without

valid transit pass. The seizure was effected by the Tahsildar in terms of Section 48(8)(1) of the Maharashtra Land Revenue Code, 1966 (for short hereinafter referred to as 'the MLR Code'). The respondent no.1 applied to the Magistrate for return of Muddemal i.e. seized vehicle in terms of Section 457 of the Code of Criminal Procedure, which was allowed. The State preferred the revision, which came to be dismissed and therefore, this writ petition by State before this Court.

5. The learned A.P.P. would submit that since the MLR Code has made a specific provisions under Section 48(8)(2), empowering the Collector or any Officer not below the rank of Deputy Collector to entertain an application for releasing of the vehicle, the general provisions under Section 457 of the Code of Criminal Procedure would not apply. In short, the application moved by the respondent no.1-owner is not maintainable nor the Magistrate has jurisdiction to release the vehicle seized by the Tahsildar, under the MLR Code. He would submit that the issue involved is squarely covered by the decision of this Court in Criminal Writ Petition No. 219 of 2022 (*State of Maharashtra,*

through Tahsildar, Mohadi, District Bhandara vs. Pankaj s/o Gangadhar Gawande and another) with other connected matters passed on 18.04.2022. On the said premise, he seeks for reversal of both impugned orders.

6. There is no dispute on the facts that the respondent no.1's vehicle was seized by the Tahsildar, Mohadi under the MLR Code, as it was found illegally carrying sand without valid transit pass. This Court has elaborately dealt the issue in the above referred case and held that the application under Section 457 of the Code of Criminal Procedure, is not maintainable. The relevant observations in paragraph 10, are reproduced herein below :

“10. As the seizure is by the Tahsildar under the provisions of Section 48(8)(1) of the MLR Code and a specific provision has been made in Section 48(8)(2), empowering the Collector or any Officer not below the rank of Deputy Collector as authorized by him, to entertain an application for release of the vehicle, it is only the Collector or the Deputy Collector as authorized by him, who would be empowered to entertain an application for release of the vehicle upon such terms, as are specified in Section 48(8)(2) of the MLR

Code and not otherwise, for the reason that a special provision has been enacted by the State legislature, in respect of illegal transportation of sand and other minerals, by virtue of Section 48 of the MLR Code as amended from time to time in this regard. Thus, when a specific provision is created/enacted for the purpose illegal seizure of sand and other minor minerals and the confiscation, seizure and release of the vehicles transporting such minerals, then only the authority empowered under the Act shall have the jurisdiction to entertain an application for release of the said vehicle and none else.”

7. There is no reason to deviate from the view expressed by this Court. Since the issue involved is covered, as a natural corollary, the impugned orders would not sustain in the eyes of law.

8. In the light of the above settled position, the writ petition is allowed. The impugned orders dated 01.02.2022 passed in Criminal Revision No.9 of 2022 and order dated 27.12.2021 passed by the learned Magistrate in Misc. Criminal Application No.188 of 2021 releasing the respondent no.1's vehicle, are hereby quashed and set aside. The application moved

by the respondent no.1 under Section 457 of the Code of Criminal Procedure, is not maintainable before the Magistrate and accordingly, stands dismissed.

9. The Criminal Writ Petition is disposed of accordingly.

(VINAY JOSHI, J.)

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