

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

CRIMINAL WRIT PETITION NO. 426 OF 2022

1. The State of Maharashtra, through Sub Divisional Officer, Bhandara.
2. State of Maharashtra, through Depot Manager, pauni, Tah. Pauni, Distt. Bhandara.
3. State of Maharashtra, Through D.G.P Bhandara, Tah. & Distt. Bhandara.

... PETITIONERS _

VERSUS

Manohar s/o Lahanuji Panchbhai,
 aged about 61 years, Occ. Owner,
 R/o Yenola, Post Bhandara, Tah.
 Pauni, Distt. Bhandara,
 Mob. No. 8806576727

... RESPONDENT.

Shri S.M. Ukay, A.P.P. for the petitioners.
 Respondent is served.

CORAM : VINAY JOSHI, J.
DATED. : 21.09.2022.

ORAL JUDGMENT :

Despite service of summons, the respondent chooses to remain absent. This Court vide order dated 14.09.2022 has made it

clear that, if on the next date i.e. today, if the respondent remains absent, the Court will go ahead with the matter on its own merits. Despite such specific order, the respondent is absent and thus, having no alternative left, the matter is heard on its own merits.

2. Heard the learned A.P.P appearing for the petitioner.

3. **RULE.** Rule made returnable forthwith.

4. The respondent's motor vehicle i.e. Tipper bearing registration No. MH-36-F-3857 has been seized for illegally carrying sand. The respondent (owner of tipper) has approached to the Magistrate for its release, however the application filed under Section 457 of the Code of Criminal Procedure for release, has been rejected. Being aggrieved, the respondent has invoked revisional jurisdiction of the Sessions Court in which vide order dated 21.03.2022, the Revisional Court has released the vehicle by reversing the order of the Magistrate, which is impugned herein.

5. The learned A.P.P appearing for the petitioners-State would submit that the Revisional Court has committed the serious error in releasing the vehicle since the vehicle was seized under the provisions

of the Maharashtra Land Revenue Code, 1966 (for short 'the MLR Code'), which itself provides a mechanism for release of vehicle. The petitioner has produced a copy of the order dated 17.01.2022 passed by the Sub-Divisional Officer, Bhandara to impress that the vehicle was seized by the Sub-Divisional Officer in terms of power invested with him under Section 48(8)(1) of the MLR Code. It is submitted that Section 48(8)(2) of the MLR Code provides a mechanism for release of vehicle by the Collector or such other Officer not below the rank of the Deputy Collector.

6. Learned A.P.P. invited my attention to the decision of this Court dated 18.04.2022 in Criminal Writ Petition No. 219 of 2022 (*State of Maharashtra, through Tahsildar, Mohadi, District Bhandara vs. Pankaj s/o Gangadhar Gawande and anr.*) with connected matters, wherein this Court has taken a view that when a specific provision under Section 48(8)(2) of the MLR Code has been made for release of vehicles transporting minerals, then only the authority empowered under the MLR Code has the jurisdiction to release the vehicle meaning thereby general provisions of Section 457 of the Code of Criminal Procedure, would not apply.

7. In view of the above decision, the impugned order passed

under the general provisions, would not sustain in the eyes of law.

8. In view of that the petition is allowed. The impugned order dated 21.03.2022 passed in Criminal Revision No. 25 of 2022 by the Sessions Judge, Bhandara is hereby quashed and set aside.

9. The petition stands disposed of accordingly.

(VINAY JOSHI, J.)

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