

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

CRM-M-27884-2022 (O&M)

Reserved On: 14.07.2022

Pronounced On: 20.07.2022

RAKESH KUMAR

...Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present : Mr. Sandeep Sharma, Advocate
for the petitioner.

Mr. Pradeep Prakash Chahar, DAG, Haryana.

SURESHWAR THAKUR, J.

1. Through the instant petition cast under Section 482 of Cr.P.C., the petitioner craves for relief of quashing/setting aside/modifying of the order made, on 13.06.2022, and, as carried in Annexure P-4, and, as became rendered by the learned Additional Chief Judicial Magistrate Narnaul, upon, the petitioner's application, cast under Section 451 of Cr.P.C., wherethroughs, he qua the impounded vehicle bearing registration No. HR-63D-9321, hence claimed relief qua its becoming released to him, on superdari.

2. Since the vehicle (supra), became impounded, therefore, the petitioner herein, the registered owner of the impounded vehicle, claimed its release to him, on superdari, through his casting an application under Section 451 of Cr.P.C., before the learned Magistrate concerned. The learned Magistrate concerned, through the impugned order, though directed, that the vehicle (supra), be released on superdari to the petitioner, but made its release, subject to his depositing 20% of the penalty amount, as, comprised in a sum of Rs.10,75,000/-, and, as became imposed, upon the petitioner

impounded vehicle to the petitioner herein, subject to, a further condition qua his furnishing superdginama in a sum of Rs.10 lacs, and, with one surety in the like amount to her satisfaction. As above stated the petitioner is pained, from the making of the above order, and, has strived to get it annulled, through his casting the instant petition before this Court.

2. The impounding of the vehicle (supra), was a sequel to an FIR bearing No.0041 of 18.01.2022, registered at Police Station City Narnaul, District Mahendragarh. The petition FIR is appended to the instant petition, as Annexure P-2. The allegation, as made against the owner of the registered vehicle (supra), who is the petitioner herein, is that, a routine checking, as, became initiated by the Inspecting Team concerned, in the area of Narnaul bypass near Balaji Dharamkanta, Narnaul, resulting in the vehicle (supra), becoming intercepted, and, on inspection thereof being made, though it was found that, the driver of the vehicle (supra), was carrying with him, a valid E-Rawana/E-Transit pass, but since on weighment of the minor mineral(s) carried therein, it was revealed, that 56.160 metric tonne of the minor mineral became loaded thereons, though, the E-Rawana/E-Transit pass, only permitted him, to carrying thereins, rather 44 metric tonne of minor minerals. Therefore, for breach being caused to the provisions of Sections 21(1), 4(1)(A) of the Mines and Minerals (Development and Regulation) Act, 1957, and, also qua breach being caused to the Rules 102, 104 of the Haryana Minor Mineral Concession, Stocking, Transportation of Minerals and Prevention of Illegal Mining Rules, 2012, as framed under the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as “the Rules”), an inculcation became drawn against the present petitioner.

3. As stated above, the imminent fact which makes its candid

emergences, and, whose setting forth becomes imperative, stands comprised in the factum, that the prosecution does not allege that the loaded minor minerals in the vehicle (supra), was a result of illegal excavation or was a result of illegal mining, but the allegation, as made against the present petitioner, is that though, the E-Rawana/E-Transit pass, which even otherwise is not alleged to be doctored, fabricated or tampered, though permitted the carryings in the vehicle (supra), a load of 44 metric tonne, but in excess thereof, on weighments being made, at the inspection site, it was found, to thereins carry 20% metric tonne hence in excess of the permissible loadings being made thereins. Since as above stated, the prosecution, does not allege that, the minor mineral(s), as carried in the vehicle (supra), was a sequel of illegal extractions from an illegal quarry rather only alleges that the loaded thereons minor mineral(s), was in excess of the E-pass prescriptions appertaining, to the permissible weight being carried thereons. Therefore, the above purported breach, does not fall, within the ambit of sub-Rule 5 of Rule 101 of the Rules, provisions whereof become extracted hereinafter. The reason for forming the above conclusion becomes anchored, upon the factum, that in case the E-Rawana/E-Transit pass, was suspected to be tampered, and/or, was suspected to be forged, and, subsequently was found to be tampered or forged, thereupon, the transported minor mineral(s) in the vehicle concerned, would obviously become amenable, for a further conclusion becoming drawn, that, the above ill sequel became aroused, from illegal excavations thereof rather being made, and/or, illegal minings being done. In sequel rather the mandate of Rule 104 of the Rules, would become attracted hence, rule whereof become extracted hereinafter. However, since on weighment of the minor mineral, at the inspecting site concerned, the

Rule 7 of Rule 101 of the Rules, provisions whereof become extracted hereinafter. Consequently, though *stricto-sensu*, it is not a case of illegal mining or illegal excavation of the minor mineral(s), as became loaded thereons, but may be though the above breaches, may yet make liable the owner of the mine concerned, wherefrom the illegal excavation(s) occurred, given his rather intending to evade payment of royalties to the government, and, thereupon causing loss to the revenue or loss to the exchequer being caused,

Rule 101(5) & 101(7)

“101 (5) *If the authorised officer/ official in-charge of the check-post or any other authorised officer has reasons to believe that the mineral or its products are being transported under a mineral transit pass which is suspected to be tampered or transportation is found without any valid transport permit, the authorised officer/ official(s) in-charge of the check post, shall take action as provided under rule 104 of these rules.”*

“101 (7) *Where the officer-in-charge of the check-post or any other authorised officer has reasons to believe that the weight recorded in the mineral transit pass is not correct, he may direct the person in charge of the carrier to take such carrier to the nearest electronic weigh bridge and take recourse to action prescribed for under-weighment under these rules.”*

Rule 104

104. *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.”

4. But since yet a specific mandate in respect of illegal transportation, of minor mineral(s), in the truck concerned, is contemplated in Rule 102 of the Rules, provisions whereof become extracted hereinafter, hence sub-Rule 7 of the Rule 101 of the Rules cannot here become awakened, but yet when as above stated, the excess load of the minor mineral(s), as, carried in the vehicle, was rather a sequel of it beyond the weight prescribed in the E-Rawana/E-Transit pass, and, though may make the apposite excess to be an illegal transportation thereof. Moreover, though rather in the above event, the authorized inspecting officer becomes empowered under sub-Rule 1 of Rule 102 of the Rules, provisions whereof stands extracted hereinafter, to not only forfeit, the apposite excess weight of the minor mineral(s) concerned, but also becomes empowered to impound the apposite vehicle. However, the owner of the vehicle, is also empowered, to ask for the release of the impounded vehicle, but only on realization from him of the price of the minor mineral(s), and, also upon his depositing the

to fine which is statutorily prescribed to be not less than Rs.10,000/-. However, the statutory prescription, as made in sub-Rule 1 of Rule 102 of the Rules appertains to a first time offender, but since the present petitioner is admittedly, a second time offender, thereupon, the mandate, as carried in sub-Rule 2 of Rule 102 of the Rules, provisions whereof stands extracted hereinafter, rather becomes applicable to him.

“102. Wherever a carrier is found to be transporting any mineral, in whatever form, without a valid mineral transit pass as required under rule 98, and/ or a valid mineral transport permit as required under rule 99, he would be dealt with as under,

(i) Where a carrier is found to be indulging in violation of the rules for the first time, the said mineral would be liable to be forfeited along with the impounding of the vehicle, which may be released only upon realisation of the payment of price of the mineral and the applicable royalty for the mineral being transported and, in addition, a fine which shall not be less than Ten Thousand rupees;

ii) Wherever a carrier is found to be indulging in such violation for the second time, the said mineral would be liable to be forfeited along with the impounding of the vehicle for a minimum period of three days and released only upon realisation of the payment of price of the mineral and the applicable royalty for the mineral being transported and, in addition, a fine which shall not be less than fifteen thousand rupees;

(iii) Wherever a carrier is found to be indulging in such violation for the third time, the said mineral would be liable to be forfeited alongwith the impounding of the vehicle for a period of minimum ten days, and for relase shall entail payment of price of the mineral and the applicable royalty for the mineral being transported and, in addition, a fine which shall be twenty five thousand rupees;

(iv) Wherever a carrier is found to be indulging in such violation for the fourth time or more, the officer concerned shall register

an FIR and handover the carrier along with the mineral to the police. The penalty, fine and punishment for the offence shall be as provided under Section 21 of the Mines & Minerals (Development & Regulation) Act, 1957.”

A reading of the above provisions, unfolds that in respect of the apposite excess weight of the minor mineral, as carried in the apposite vehicle, rather an empowerment being vested in the authority concerned, to cause its forfeiture, and, to also impound, the vehicle, whereons, it was carried, but yet after a minimum period of 3 days, rather the impounded vehicle being amenable for its release to the registered owner, but only upon realization from him, of the payment of the price of the mineral, and, of the applicable royalty qua the mineral. Moreover, the registered owner is liable to also pay a fine not less than Rs.15,000/-.

5. Be that as it may, upon making the above interpretation, to the apposite to the extant case, the relevant rules, hence the impugned order would never become validated, but yet the learned State counsel submits, that the impugned order cannot become invalidated by this Court. In making above submission, he rests it upon decisions, made by the National Green Tribunal, (NGT) respectively on 04.01.2019, 10.01.2019, 05.04.2019, 07.05.2019, 26.07.2019, and, on 19.02.2020, wherein, the NGT has, after receiving the elicited report from the High Powered Committee, hence in paragraph 5 of its order, as, made on February 19, 2020, its drawing a table with prescriptions about the quantum of penalty leviable, hence upon, the owner concerned, who makes an endeavour for seeking the apposite release(s), table whereof becomes extracted hereinafter.

S. No.	Category of Vehicle	Penalty Amount
1	Vehicles/Equipments/Excavators with showroom value more than Rs.25 lacs and less than 5 years old.	Rs. 4 lacs

2	Vehicles/Equipments/Excavators with showroom value more than Rs.25 lacs and more than 5 years old but less than 10 years old.	Rs. 3 lacs
3	For the remaining Vehicles older than 10 years/Equipments/Excavators which are otherwise legally permissible to be operated and not covered by Serial No.1 and 2.	Rs. 2 lacs
Note – I: On repetition of the offence by the same vehicle/equipment, Order dated 05.04.2019 will be applicable. Note – II: The option of release may be available for a period of one month from the date of seizure and thereafter, the vehicles may be confiscated and auctioned.		

6. Even if assumingly, the prescription(s) (supra), as, appertaining to the imposable penalty for the relevant purpose, is/are the one, to be imposed, upon the petitioner, but since in the impugned order, the penalty imposed, upon the petitioner, by the authorities concerned, is in excess of the quantum mentioned, in the above extracted table, thereupon, may be *prima-facie*, the imposition of the quantum of penalty by the authorities concerned, upon the petitioner herein, may also be in gross departure of the prescriptions in respect thereof, as mandated by the NGT.

7. However, even if the imposition of the penalty comprised in a sum of Rs.10,000/- by the authorities concerned, upon the petitioner herein, and, as ensued from purported breaches (supra), being caused, though is not the subject matter of the instant petition, but since 20% thereof, has been ordered to be deposited by the learned Magistrate concerned, as a pre condition, for his securing release, on superdari of the vehicle (supra). Consequently, this Court does deem it fit to ensure, that within the contours of the above extracted Rules, whether the above quantification is valid or is invalid, and, thereafter it would proceed to also determine, whether the insistence, upon the petitioner to deposit 20% thereof, as an imperative *sine qua non*, for release of the vehicle concerned, on superdari, rather is a validly imposed condition(s), upon him.

8. To the considered mind of this Court, it is permissible to delve into, and, adjudicate, the above factum, even irrespective of a conclusive, and, binding (supra), becoming made by the NGT, especially when, as stated above, the verdict (supra), does not encapsulate, a situation appertaining to the trite factum with which this Court is seized, and, which vividly discloses, that neither illegal mining nor illegal excavation of minor minerals, did here occur, whereas, illegal mining(s)/excavation(s) of minor minerals, rather was the factual situation before the NGT, and, conspicuously hence was completely contradistinct qua the factual situation here, rather appertaining to the transportation of *prima-facie* legally excavated minor mineral (supra), but only weight thereof, as carried in the impounded vehicle concerned, rather being in excess of the permissible weight, as spelt out, in the E-Rawana/E-way pass. Nonetheless, since even in respect of the excess weight, no evidence becomes adduced, qua it being a sequel of illegal mining, thereupon too, it cannot also be concluded to be illegally excavated. In consequence the verdicts (supra), are not applicable to the facts at hand.

9. Since as stated above, the petitioner is a second time offender, thereupon, the contemplations carried in sub-Rule 2 of Rule 102 of the Rules, are applicable to him, and, the competent authority was empowered, to only order for the forfeiture of the excess weight of the minor mineral, and, was also empowered to, as a pre condition for its release, direct him to make payment of the price qua the excess weight of the minor mineral, and, also became empowered to realize from the owner, the applicable royalty appertaining, to the excess weight of the minor mineral, as carried in the vehicle besides, became empowered to impose, upon him, a fine which was not less than Rs.15,000/-. If so, the above jurisdiction was exercisable not by

However, since the competent authority concerned, despite the petitioner herein, being only a second time offender, and, not being a fourth time offender, rather whereupon alone, he became amenable for penal inculcation(s) being drawn against him, and, that too through registration of an FIR against him, thereupon *prima-facie* the drawings of incrimination rather against the present petitioner, through the registration of the extant FIR, against him, does *prima-facie* appears to cause palpable breach to the mandate carried in sub-Rule 4 of Rule 102 of the Rules, and, also breaches the applicable to the petitioner herein, the mandate of sub-Rule 2 of Rule 102 of the Rules.

10. Since the above interpretation, may be relevant, in a quashing petition filed, under Section 482 of Cr.P.C., and, *prima-facie* may not be completely relevant, when the learned Magistrate concerned, is seized with the petition FIR, but yet the impugned order insofar as, it has irrevered the above sub-Rule 1 of Rule 102 of the Rules, it is liable to be quashed, and, set aside. Hence, the petition is allowed, and, the impugned order is quashed, and, set aside, but with an order of remand to the learned Magistrate concerned, to ensure that the authorities concerned, within a time bound manner comply with the mandate of sub-Rule 2 of Rule 102 of the Rules, whereafter upon his receiving the apposite order, he/she make a lawful order for release on superdari of the impounded vehicle, to the petitioner.

11. Pending miscellaneous application(s), if any, stand(s), disposed of.

July 20, 2022

'Ithlesh'

**(SURESHWAR THAKUR)
JUDGE**

**Whether speaking/reasoned:-
Whether reportable:**

**Yes/No
Yes/No**