

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 402 OF 2023

Ramesh S/o Govindrao Mali ...Petitioner

Versus

The State of Maharashtra ...Respondent

Mr. P. S. Anerao, Advocate for the Petitioner.

Mr. S. P. Sonpawale, APP for Respondent – State.

CORAM : R.M. JOSHI, J.

DATE : JUNE 28, 2023

PER COURT:

1. Rule. Rule made returnable forthwith. With consent, heard finally at admission stage.

2. This Petition takes exception to the order dated 02.12.2022 passed by J.M.F.C., Nanded in O.M.C.A. No. 1045/2022 and order dated 14.02.2023 passed by learned Additional Sessions Judge, Nanded in Criminal Revision Petition No. 139/2022.

3. The Petitioner claims that the Respondent seized his vehicles on 03rd July, 2022 in connection with Crime No. 395 of 2022 for the offence punishable under Section 379 of IPC and other offence punishable

under IPC as well as Maharashtra Land Revenue Code (for short '**Code**') and Motor Vehicle Act.

4. The Petitioner filed an application under Section 451 read with Section 457 of the Cr.P.C for release of said vehicle. The said application came to be allowed, however, a condition was imposed directing the Petitioner to deposit amount of penalty before the concerned revenue authority. Feeling aggrieved, Revision was filed which also came to be rejected.

5. Learned Counsel for the Petitioner states that the condition imposed to the petitioner of deposit of penalty before the concerned revenue authority for the purpose of release of vehicle is illegal and contrary to law settled by this Court in Criminal Writ Petition No. 963 of 2020 in case of Pravin Rajgopal Darak Vs. The State of Maharashtra.

6. Petitioner is challenging the impugned orders to the extent of imposition of condition no. 6 in the operative part whereby subject to the compliance of payment of fine imposed by the Tehsildar on each vehicle order of release of vehicles is passed. It is

observed by learned JMFC in the said order that the Petitioner has not paid find amount with revenue department and therefore, such condition is required to be imposed.

7. This Court (Coram : Mangesh S. Patil, J) in judgment of Pravin Darak (cited supra) has observed that under Section 48 of the Code Tehsildar has independent power to proceed against offender and the vehicle used for transportation of mines and minerals. However, decision of such revenue authority can be subjected to challenge by the Petitioner, if he is aggrieved by the same, and therefore, imposition of condition of payment of penalty, as determined by the Tehsildar, would presuppose that the Petitioner has committed illegality and is liable for the consequences in the proceedings under Section 48 of the Code, which is still to be concluded.

8. Section 48 of the Code empowers revenue authority to take action against offender as well as the vehicle used for illegal transportation of mines and minerals but the said order is not final as an Appeal is provided against the same. It is, thus, open

for the offender to take exception to the said order by preferring the Appeal. Thus, the order of Tehsildar has not attained finality in order to call upon Petitioner to comply with the same. This Court is in complete agreement with the judgment cited supra on behalf of the Petitioner.

9. The imposition of condition of payment of fine/penalty determined by Tehsildar cannot become condition precedent for release of vehicle. In the result, Petition is allowed. Condition No. 6 imposed by J.M.F.C in the impugned order dated 02.12.2022 is hereby quashed and set aside. Rule made absolute accordingly.

(R.M. JOSHI, J.)

Malani