IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.333/2023

Ashok Narayanrao Deshmukh .Vs. State of Maharashtra

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr C. D. Rohankar, Advocate for petitioner.
Mr. A. R. Chutke, Advocate for respondent.

CORAM : ANIL L. PANSARE, J.
DATE : 14.09.2023

Heard.

Challenge is to the order dated 12.11.2021, passed by learned Additional Sessions Judge, Akola in Criminal Revision No.60/2021. Tractor bearing No. MH-19/C-8601 and trolley bearing No. MH-30/E-2452 belonging to the petitioner have been seized by the investigating officer in crime No.379/19 for the offence under Sections 379, 323, 353 of the Indian Penal Code, 1860.

The petitioner had filed application under Section 457 of the Criminal Procedure Code, 1973 (For short the, “Code”) before the learned Magistrate which came to be rejected vide order dated 30.07.2021. This order was challenged in Revision under Section 397 of the Code. The learned Sessions Judge has dismissed the revision on the ground that the order passed by the learned Magistrate is interlocutory order and thus not amenable to the revisional jurisdiction. In doing so, the learned Sessions Court has observed that though the application has been titled to have been filed under Section 457 of the Code but in essence, the request is under Section 451 of the Code.

The learned A.P.P. submits that the charge-sheet has not been filed as yet. Section 451 of the Code deals with disposal of property pending trial. As against, Section 457 of the Code provides that the property, which has been seized by the police officer and is reported to the Magistrate under the provisions of the Code and when such property is not produced before the Criminal Court, during inquiry or trial, the Magistrate is empowered to release the property. In other words, application under Section 457 of the Code and the order passed thereon cannot be said to be an interlocutory order.

The learned counsel relied upon judgment in the case of ***D'dmas Jewellery India Pvt. Ltd and Ors. Vs. State of Maharashtra and Ors.*** reported in ***MANU/MH/0611 /2008***, wherein in identical facts, the Division Bench of this Court has held that the order passed by the Magistrate, in such a case, cannot be said to be an interlocutory order and, therefore, the order would be amenable to the revisional jurisdiction under Section 397 of the Code.

That being so, the impugned order is not sustainable in the eyes of law. The order will have to be set aside and the matter will have to be remanded back to the Sessions Court for consideration afresh.

At this stage, learned A.P.P. submits that the tractor and trolley have been seized by the investigating officer in Crime No. 379/19 for the offence under Sections 379, 323, 353 of the Indian Penal Code, 1860. He submits that the Tahsildar, vide order dated 08.04.2023, has imposed fine upon the petitioner under Section 48(7)(A) of the Maharashtra Land Revenue Code, 1966 (In short the, "MLR Code") and has referred the matter to the Sub Divisional Officer for consideration under Section 48(8) of the MLR Code for further action. Section 48(7) and (8) of the MLR Code read thus:

"48.(1) to (6) .....

(7) Any person who without lawful authority extracts, removes, collects, replaces, picks up or disposes of any mineral from working or derelict mines, quarries, old dumps, fields, bandhas (whether on the plea of repairing or constructions of bund of the fields or any other plea), nallas, creeks, riverbeds, or such other places wherever situate, the right to which vests in, and has not been assigned by the State Government, shall, without prejudice to any other mode of action that may be taken against him, be liable, on the order in writing of the Collector or any revenue officer not below the rank of Tahsildar authorised by the collector in this behalf, to pay penalty of an amount upto five times the market value of the minerals so extracted, removed, collected, replaced, picked up or disposed of, as the case may be.

(8) (1) Without prejudice to the provision of sub-section (7), the Collector or any revenue officer not below the rank of Tahsildar authorised by the Collector in this behalf, may seize and confiscate any mineral extracted, removed, collected, replaced, picked up or disposed of from any mine, quarry or

other place referred to in sub-section (7), the right to which vests in, and has not been assigned by the State Government, and may also seize and confiscate any machinery and equipment used for unauthorised extraction, removal, collection, replacement, picking up or disposal of minor minerals and any means of transport deployed to transport the same.

(2) Such machinery or equipment or means of transport, used for unauthorised extraction, removal, collection, replacement, picking up or disposal of minor minerals or transportation thereof, which is seized under sub-section (1), shall be produced before the Collector or such other officer not below the rank of Deputy Collector authorised by the Collector in this behalf, within a period of forty-eight hours of such seizure, who may release such seized machinery, equipment or means of transport on payment by the owner thereof of such penalty as may be prescribed and also on furnishing personal bond of an amount not exceeding the market value or the seized machinery, equipment or means of transport, stating therein that such seized machinery, equipment or means of transport shall not be used in future for unauthorised extraction, removal, collection, replacement, picking up or disposal of minor minerals and transportation of the same."

Thus, it is evident that under Sub Section 7, the Tahsildar can impose penalty and under Sub Section 8 of Section 48, the Sub Divisional Officer may seize and confiscate any machinery and equipment used for unauthorized extraction, removal, collection, replacement, picking up or disposal of minor minerals and also release such machinery, equipment or means of transport of payment by owner thereof of such penalty as may be prescribed and also on furnishing personal bond of an amount not exceeding market value of seized machinery and further upon a condition prescribed in such provision.

Learned A.P.P. submits that the liberty be granted to continue with the said proceeding.

To my mind, the provisions under Section 451 and 457 of the Code and the provisions under the MLR Code operate independently and, therefore, there is no bar to the revenue authorities to proceed with the proceeding under the MLR Code, rather, they are bound to do so but strictly in accordance with the provisions of the MLR Code and any other law for the time being in force. The revenue authorities are thus at liberty to proceed with the proceedings under the MLR Code, in accordance with law.

With the above observations, the petition is partly allowed. The order dated 12.11.2021, passed by learned Additional Sessions Judge, Akola in Criminal Revision No.60/2021, is quashed and set aside. The matter is remanded back to the Sessions Court for decision afresh. The parties shall appear before the Sessions Court on 03.10.2023.

(Anil L. Pansare, J.)

Kahale