

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

CRIMINAL APPLICATION (APL) NO.996/2022

Wasudeo Hanuman Thakre,
Aged : 39 Yrs., Occ.: Business,
Through Power of attorney holder
Kaushal Sadhelal Deheriya
Aged : 36 Yrs., Occ.: Business,
R/o. Gautam Nagar, Bhadrawati,
Tq. Bhadrawati, Distt. Chandrapur

.... **APPLICANT**

// **VERSUS** //

State of Maharashtra,
Through Police Station Officer,
Police Station Bhadrawati,
Distt. Chandrapur.

.... **RESPONDENT**

Shri S. V. Sirpurkar, Advocate for the applicant
Shri A. R. Chutke, APP for the State/respondent

CORAM : G. A. SANAP, J.
DATED : 30th MARCH, 2023

ORAL JUDGMENT :

1. Heard.
2. Rule. Rule made returnable forthwith. Heard finally with the consent of learned Advocates for the parties.

3. In this criminal application, filed under Section 482 of the Code of Criminal Procedure, 1973 the challenge is to the judgment and order dated 23.06.2022, passed by the learned Additional Sessions Judge, Warora, whereby the revision filed by the applicant, challenging the order dated 13.05.2022 passed by the learned Judicial Magistrate First Class, Bhadrawati with regard to the imposition of the condition, came to be dismissed.

4. Considering the limited challenge the detail narration of the facts may not be necessary. The vehicle JCB bearing No. MH-34/BR-4776 was seized in Crime No.500 of 2021 registered at Bhadrawati Police Station. The applicant, being the owner of JCB applied for the release of JCB. Learned Magistrate by his order dated 13.05.2022 allowed the application subject to certain conditions. Learned Magistrate ordered the release of the JCB, however, he put a condition that before release of JCB, the applicant must produce the penalty/fine receipt of Rs.7,50,000/- imposed by Tahsildar Bhadrawati.

5. The applicant was aggrieved by this condition and therefore, he filed the revision before the learned Additional Sessions Judge,

Warora. Learned Additional Sessions Judge observed that the condition imposed by the learned Magistrate was just, proper and reasonable.

6. In this application, the main grievance of the applicant is that the Tahsildar, Bhadrawati had not passed any order imposing penalty/fine of Rs.7,50,000/-. It is, therefore, his case that without any order of imposition of penalty/fine by the Tahsildar this unreasonable condition was imposed.

7. In order to verify the correct factual position this Court had directed Tahsildar, Bhadrawati to file his affidavit and clarify the position. In terms of the direction of this Court, the Tahsildar, Bhadrawati has filed his affidavit dated 25.11.2022. In his affidavit, the Tahsildar has categorically stated that the proceeding under Section 48 of the Maharashtra Land Revenue Code, 1966 has been initiated, however, the same could not be completed because the applicant has made the complaint against the then Tahsildar to the anti corruption bureau. It has been categorically stated that Tahsildar is ready to complete the proceeding afresh, if this Court permit to initiate and continue the same.

8. Perusal of this affidavit of the Tahsildar would show that the order directing the applicant to pay or deposit penalty/fine of Rs.7,50,000/- has not been passed. The proceeding was initiated for the said purpose. The proceeding could not be completed by the Tahsildar on account of complaint made by the applicant to the anti corruption bureau. The Tahsildar, as can be seen from his affidavit, is seeking permission of this Court to initiate the proceeding, which he has right and jurisdiction to initiate and take it to the logical conclusion. For the purpose of this petition, the relevant part of the affidavit is statement of the fact with regard to order of a penalty/fine. It is crystal clear that no such order has been passed. It is therefore, necessary to see whether the order passed by the learned Magistrate imposing the condition, on that assumption and confirmation of the said order by the learned Additional Session Judge is sustainable or not. It can be seen that in the reply filed by the investigating officer as well as by the learned APP, the statement was made that the penalty of Rs.7,50,000/- has been imposed by the Tahsildar. It appears that this statement was made without verifying the factual position. The statement, as can be seen from the record, was made without any foundation and ultimately, the learned Magistrate was misled by this statement. In the fact situation, the condition of

production of the penalty/fine receipt of Rs.7,50,000/- was unjust and improper. Therefore, the said condition is required to be quashed and set aside.

9. Accordingly, the writ petition is **allowed**.

10. The condition imposed by the learned Judicial Magistrate First Class, Bhadrawati vide order dated 13.05.2022 with regard to the production of the penalty/fine receipt of Rs.7,50,000/- from the office of Tahsildar, Bhadrawati is quashed and set aside.

11. The applicant, in view of the above, is entitled to get the custody of vehicle bearing No. MH-34/BR- 4776 on compliance of remaining conditions in terms of order dated 13.05.2022.

12. The order dated 23.06.2022 passed by the learned Additional Sessions Judge is, therefore, quashed and set aside.

13. Rule is made absolute in the above terms. The criminal application stands disposed of.

(G. A. SANAP, J.)

Namrata