

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-10671-2023

Reserved on 04.05.2023

Pronounced on 19.07.2023

Murali Lal Sharma

... Petitioner

VS.

State of Haryana & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Saleem Ahmed, Advocate for the petitioner

Mr. Gagandeep S. Chhina, AAG Haryana

Sandeep Moudgil, J.

The petitioner seeks quashing of the order dated 12.01.2023 (Annexure P6) passed by ADJ Nuh to the extent of depositing amount of Rs.67,37,984/- and order dated 10.11.2022 (Annexure P5) passed by JMIC Punhana vide which the application for release of vehicle on superdari was dismissed in case FIR No.375 dated 08.09.2022 under Sections 147/149/323/332/353/186/188/379/307/120-B IPC, registered at Police Station Punhana, Nuh.

The case of the petitioner is that he is Proprietor of M/s Jai Bajrang Bali Mines and Minerals in whose name vehicle was purchased bearing No.N633D01138. On 7.9.2022, search operation was conducted in the hilly area of village Badhed, Luhinga Khurd and Tigaon and 3 Poclain machine/vehicle including the vehicle of the petitioner was illegally seized by the officers of the Department of Mines and Geology Gurugram/Nuh for alleged contravention of Haryana Mineral Concession, Stocking, Transportation of Mineral and Prevention of Illegal Mining Rules, 2012 (hereinafter referred to as State Mining Rules, 2012). The vehicle was impounded by the Police Station

Punhana. The petitioner was asked to appear before the Mining Department Gurugram/Nuh, for compounding of offence after payment of fine. The vehicle was illegally seized and the petitioner wanted to contest the same, therefore, superdari application was moved before the Trial Court under Section 451 read with Section 457 of the Code of Criminal Procedure, 1973. However, the trial Court dismissed the superdari application vide impugned order dated 10.11.2022 (Annexure P5). Thereafter the petitioner filed revision petition which has been partly allowed with a direction to the petitioner-revisionist to deposit the amount so assessed at Rs.67,37,984/- with the mining department, and on doing so, the vehicle shall be released on furnishing superdaginama to the registered owner. Hence, the present petition has been filed by the petitioner seeking setting aside orders of both the courts below.

It has been submitted by the learned counsel for the petitioner that the officers of the Mining Department seized the vehicle of the petitioner on 7.9.2022, with the allegation that he was involved in illegal mining. The same has been seized by the mining department with the help of police, when it was being operated there in the area of Rajasthan State, where mining is legal and as such had forcibly taken the vehicle/machine into the jurisdiction of Haryana State. The Mining Department has not filed any complaint, till date. The petitioner would contest to say that the documents are proper and the case would be tried in the Court of Illaqa Magistrate. The vehicle should have been released, by the trial court, just like the vehicle impounded in Motor Vehicles Act, 1988.

It is submitted that the petitioner is owner of the said machine/vehicle which was given on rent to Parmeshwar Yogi resident of

Bhilwara Rajasthan on 26.08.2022 and had never involved the above machine/vehicle on any illegal activity nor any type of complaint is received against the petitioner on the above said machine/vehicle. A rent agreement was also effected to that effect which is appended with the petition as Annexure P2.

Learned counsel further contended that the no photograph whatsoever was taken at the time of seizure of alleged vehicle to show its involvement in illegal mining. In fact, when the search operation was conducted, the said machine/vehicle of the petitioner was standing on the road side in the jurisdiction of Haryana and then at that point of time, this machine/vehicle was taken into custody of mining department. That apart, when the petitioner came to know about the story, he moved an application before SP, Bhilwara to take action against the Parmeshwar Nath Yogi on 12.09.2022 (Annexure P3).

Further, it is pleaded that the petitioner is poor person and the entire family of the petitioner is depending upon the earning of poclain machine/vehicle and there is no other means for the livelihood to the petitioner and his family members. The machine is lying in junk and getting damaged. He has relied upon the ***Irafan vs. State of Haryana & Anr. (CRM-M-19322-2022)*** decided on 15.10.2020 to contend that the JMIC has powers to release the vehicle on superdari in case where the FIR has been lodged and in the present case FIR has already been lodged. Further, it has been pleaded that this Court has already released number of vehicles in similar set of allegations without putting any condition with regard to deposit the amount to the Mining Department as has been held in ***Imran vs. State of Haryana & Anr. (CRM-M-33370-2021)***.

Learned counsel for the petitioner further asserted that the amount sought to be realised as penalty from the petitioner is extremely on the higher side which the petitioner is unable to pay and that he cannot be forced to compound the matter so as to deprive him an opportunity to contest the allegations as he does have a very good case. Moreover, the act of the respondents in not releasing the poclain machine in question despite a period of more than 9 months having elapsed, is high-handedness on part of the authorities as the same is deteriorating due to its dis-use and vagaries of weather.

Notice of motion in this case was issued on 01.03.2023 on the averment made by learned counsel for the petitioner that the impugned order to the extent of imposing penalty of an amount of Rs.67,37,984/- is totally unsustainable in the eyes of law as the same is too harsh and the petitioner is not in a position to bear the same. Counsel has relied upon the judicial precedent in case of Avi Garg Vs. State of Punjab (CRM-M-38331-2020), CRM-M-38362-2020 decided on 18.1.2021 and Imran Vs. State of Haryana & another (CRM-M-33370-2021) decided on 25.4.2022.

In reply filed on 21.03.2023, the respondents have given a brief factual background of the case and averred that during investigation a rough site plan of the place of incident was prepared, statement of witnesses were also recorded under Section 161. The injured Ct.Dharampal suffered two injuries at the hands of the petitioner whereas a video clip was prepared by police of the place. The relevant portion of the said reply reads as under:-

4. That it is also pertinent to mention here that after registration of the present case, investigation was conducted by the local police and during the course of investigation a rough site plan of place of

incident was prepared and statements of witnesses were recorded U/s 161 Cr.P.C. The injured Ct. Dharampal No. 389/Nuh produced his MLR no. CL/1061/2022 dated 07.09.2022 and he has suffered two injuries at the hands of the accused. During the course of investigation Section 21(4)(iv)A of Mines and Minerals Act and Section 5 of Explosive Act were added in the present case. The video clip prepared by the police officials in which one Pop Land engine no. 84198589 was visible on which juvenile Nun Sad S/o Hakam Village, Baded was found present and information about it was given to his family members. His Tau Azad S/o Abdul Rahim R/o Baded produced him upon which, SI Ranbir, PS, Punhana, being Child Welfare Officer was summoned from Police Station, Punhana. An enquiry was conducted from him under the custody of Child Welfare Officer. During the course of enquiry juvenile Nun Shad stated that he is student of 5th Class and he is doing the job of helper on the pop-land. He was sent on machine by OF is father Hakam S/o Kabir and he went to the mines of village Baded for doing illegal mining at the instance of contractor. He further stated that he is not aware about the name and addresses of his co-accused, who were working on Pop Land. However, his father Hakam was acquainted with the names and addresses of the accused, who were deployed for doing illegal mining in the hills of Baded. His father sent him in the hills of Baded for doing illegal mining. He also contended that they received information about the arrival of police at the hills. therefore, they came down from the hills and started to run away towards Rajasthan and two drivers stationed their pop-lands and third pop-land/poclain was driven by him and he was given signal to stop. but he tried to overrun the police party and also moved the boom towards them and one of the police official was injured and many people assembled at the spot and started pelting stones at the police party and juvenile fled away from the spot. He was produced by this Tau Azad S/o Abdul Rahim in the present case.

He was produced before juvenile court, who sent him to Child Reform House, NIT, Faridabad. The spot was also got inspected from scientific officers on 9-9-2022, who took samples from the holes made by the accused for explosion in the hills.

5. That on 10.09.2022, the spot was inspected by the mining officers for measurement of the explosion. The pop-land/poclain No. 84967981 was found to be owned by Rohtash S/o Giriraj, who was joined investigation and after collecting sufficient evidence against him, he was arrested in the present case. He was also interrogated, upon which he suffered his disclosure statement and admitted that he and his co-accused Gulfam S/o Ayub, R/o Raipur, Hamid S/o Gani, R/o Dathad, PS Pahari were operating the illegal mining after hatching conspiracy with his co-accused. On 08.08.2022 Gulfam S/o Ayub, R/o Raipur, OF WO Hamid S/o Gani, R/o Dathad, PS Pahari have come in Haryana for illegal mining in village Baded and operator Ashiq @ Ashif S/o Shoket R/o Nahirika was deployed as operator. It was also decided that work of illegal mining will not be stopped even if the police or Mining Officer visit the spot and they will send the villagers for stone pelting to save them. On 07.09.2022, a telephone came to him and information was given that his Pop Land has been rounded up by the police and mining department and he has stationed the machine/vehicle in the area of Rajasthan.

6. That on 15.09.2022, HC Harinder handed over the video clip and pen drive having photos of the spot, which was taken into possession through memo of recovery.

7. On 30.09.2022 the petitioner, being owner of the Pop Land machine bearing serial no. N 633D01138, R/o Patel Nagar, Bhilwara was joined investigation and the documents pertaining to giving the pop- land/poclain on rent to Parmeshwar Nath Yogi which were taken into possession through memo of recovery and the said memo was got attested from the attesting witnesses. The accused Parmeshwar Nath Yogi yet to be arrested in the case. On

07.10.2022 sampels were sent to FSL Madhuban. However the result is still awaited.

8. That the accused namely Gulfam S/o Ass Mohd. R/o Raipur, PS Sohna, Harun S/o Yunus R/o Tirwada, PS Bichhor, Jafrudeen S/o Yashir R/o Mubarikpur were granted bail Ld. by the court of Ld. ASJ. Nuh and they were joined investigation on 28.10.2022 who were joined investigation of this case. Accused Hamid S/o Gunni R/o Baded, PS Pahari, Hakam S/o Kabir R/o Baded were granted bail, therefore, they were joined investigation in the present case 19.12.2022 and the bail GO order has been made absolute vide order dated 20.12.2022. The accused Permshawar Nath Yogi S/o Mewa Nath Yogi R/o Azad Mohalla Angucha, District Bhilwara, Faurkh @ Funny S/o Umrao R/o Baded, Udaiver S/o Chandan Singh, R/o Malab, P.S. Tapal, District Aligarh, Ashiq @ Ashif s/o Shoket r/o Nahiraka are yet to be arrested in the present case.”

Section 4 of the Act, prescribes that any kind of prospecting or mining operation has to be conducted under a licence or lease as may be granted under the Act by the authorities concerned. Violations entail penalties and punishments prescribed in Section 21 of the Act. For effective implementation of the Act, the State of Haryana framed rules called as Haryana Minor Mineral Concession, Stocking, Transportation of Minerals and Prevention of Illegal Mining Rules 2012. While the violations pertaining to illegal transportation are dealt with under Chapter 15 of the Rules, the violations in respect of illegal mining are dealt with under Chapter 16. The relevant Rule pertaining to illegal transportation reads as under :

“CHAPTER 15 TRANSPORTATION OF MINERALS (Rule 98 to 102)

102. Consequences of violation. -

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 along with the impounding of the vehicle for a period of minimum ten days, and for release 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.

Sub-section (21-A) of Section 4 of MMDR Act, which deals with confiscation reads as under:-

“Section 4(21A) (4A) Any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4), shall be liable to be confiscated by an order of the Court competent to take cognizance of the offence under sub-section (1) and shall be disposed of in accordance with the directions of such court.”

From the scheme of the Act, it is apparent that while the authorised officers/officials have been made competent to seize the illegally mined or transported mineral alongwith vehicle, such officers/officials are also authorized to compound the offences by imposing penalty upon the offenders at the spot in the shape of the price of the mineral seized, the royalty and fine. The Rules prescribe the minimum amounts to be realised in case of the 1st offender and enhanced fine upon repetition of such offences for the 2nd and 3rd time. The Rules mandate registration of FIR when an offence of illegal mining is repeated for the 3rd time and when an offence of illegal transportation is committed the 4th time.

Rule 101, while providing for seizure of a vehicle and its release upon payment of penalty/fine also lays down as to what is to be done in case the offender does not deposit the fine/compounding fee. Sub-rule 6(v), as extracted from Rule 101, reads as under:

“Rule 101(6)(v) (6) If the person in-charge of the carrier refuses to pay the penal amount under sub-rule (5), the officer in-charge of the check-post or the barrier or the authorised inspecting officer shall -

- (i) xxx*
- (ii) xxx*
- (iii) x x x*

(v) give an option to the owner or in-charge of the carrier to either compound the offence by paying the penalty amount or face criminal legal action of registration of an FIR and further proceedings where a carrier together with the mineral is seized by an authorised officer.”

Sub-Rule 10 of Rule 101 *ibid* further provides that if the amount levied is not paid within a period of one month from the date of order, the vehicle/property in question is liable to be confiscated by an order of Court. The MMDR Act and the Rules, as an effective tool for protecting and preserving environment, need to be meticulously implemented in view of the object to be achieved thereof. However, while ensuring that no offender manages to escape punishment and is dealt with sternly, it also needs to be ensured that the principle of '*Audi Alteram Partem*' is observed under all circumstances. The rules of natural justice cannot be given an absolute bypass. Deprivation of a person of his property without proper procedure could even be infringement of his right of property as guaranteed in Article 300A of the Constitution of India. As such, the rights of the parties are required to be delicately balanced. In case any person is to be deprived of his property, rules of natural justice demand that he should be given an opportunity to be heard so as to enable him to put forth his defence.

In the instant case, the respondent authorities have lodged an FIR and have also initiated confiscation proceedings despite a period of 9 months having elapsed since the seizure of the vehicle in question. Though, the authorities cannot be forced to prosecute any offender in case the authorities do not wish to prosecute such offender, but certainly the authorities are expected to conduct themselves fairly and initiate confiscation proceedings in case the

vehicle is not intended to be returned back. In the present case, it is the prosecution version that at the time of raid at the site, the petitioner was not found present though his vehicle/machine was seized. There are other number of persons who have been named in the reply against whom FIR has also been lodged. But in all these averments, this Court has hardly found the name of the petitioner except that his vehicle was allegedly found at the spot. As against that, the petitioner has appended rent agreement dated 26.08.2022 (Annexure P2) to show that the vehicle in question was actually given on rent to Parmeshwar Yogi of Bhilwara (Rajasthan). He also has appended application/complaint (Annexure P3) against the Parmeshwari Yogi for misusing his vehicle in the alleged mining in Haryana jurisdiction.

This Court is not oblivious of the fact that the petitioner has been very vigilant in regard to his vehicle and has immediately taken action as required under the law regarding misuse of his vehicle. It is not the case of the respondents that the petitioner was arrested at the spot and neither in the disclosure statement of any of the accused persons, the name of the petitioner has erupted from any corner. In these circumstances, deprivation of vehicle of the petitioner on *superdari* and that too on payment of huge amount of money, in this manner, is nothing short of infringement of right of property as guaranteed in Article 300A of the Constitution of India and certainly such action on the parts of the respondent-authorities needs to be deprecated.

A bare reading of Chapter 15 of the Haryana Minor Mineral Concession, Stocking, Transportation of Minerals and Prevention of Illegal Mining Rules 2012 makes it amply clear that the consequences of violations have been provided against the 'carrier' who has been found indulged in the act

of violation. Meaning thereby that the consequential proceedings under the Act/Rules are for the person who has been found carrying out the act of violation under the Rules.

Here, admittedly, the petitioner was not found carrying out any illegal act of mining. Even otherwise, the Rules prescribe the minimum amounts to be realised in case of the 1st offender and enhanced fine upon repetition of such offences for the 2nd and 3rd time. The Rules mandate registration of FIR when an offence of illegal mining is repeated for the 3rd time and when an offence of illegal transportation is committed the 4th time. The respondents have failed to show compliance of above rules providing for 1st offence and so on. In the present case, the respondents have opted to proceed against the accused persons without complying with the provisions contained in Chapter 16 Section 104 of the Rules *ibid*.

This Court is of the considered view that the orders passed by both the Courts below are erroneous and unjust as the same is based on presumption that the petitioner was actually found involved in the illegal mining activity whereas the facts are other way round. As such, the orders passed by both the courts below cannot sustain in view of Article 300A and the principle of natural justice and thus are liable to be set aside.

Accordingly, this petition is allowed and the orders passed by both the courts below are set aside and till the conclusion of trial, the vehicle in question shall be released on superdari, in accordance with law.

19.07.2023

V.Vishal

1. Whether speaking/reasoned?

2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No

Yes/No