

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-41285-2021

Date of decision :03.02.2023

DHARAM PAL

... Petitioner(s)

Versus

DIRECTOR OF MINING & OTHERS

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Ms. Mamta Panwar, Advocate
for the petitioner(s).

Mr. Neeraj Poswal, Asst. A.G., Haryana.

Mr. Rajiv, Mining Officer in person.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C.

is for setting aside the order dated 28.04.2021 (Annexure P-1) passed by the Judicial Magistrate, 1st Class, Kurukshetra and the order dated 06.09.2021 (Annexure P-2) passed by the Additional Sessions Judge, Kurukshetra vide which the application filed by the petitioner for interim custody of the vehicle i.e. truck bearing No.HR-55-S-5277 has been dismissed.

2. The brief facts of the case are that vehicle i.e. truck bearing No.HR-55-S-5277 had been impounded by the Mining Department, Kurukshetra under Rule 104 of the Haryana Minor Mineral Concession, Stocking Transportation of Mineral and Prevention of Illegal Mining Rules, 2012 and the same is stated to be parked at the premises of Police Station, Ladwa, Kurukshetra. The petitioner is stated to be the registered owner of the said truck.

3. The said truck came to be impounded by the Mining Department, Kurukshetra vide letter dated 03.01.2021. An application was moved by the petitioner for releasing the said vehicle after imposing penalty for excess weight. An appeal dated 19.01.2021 was also preferred by the petitioner before the Director, Mining and Geology Department, Panchkula. However, no action had been taken by the Appellate Authority. Since the vehicle was lying in the custody at Police Station Ladwa, Kurukshetra, an application was moved for interim custody before the Court of Judicial Magistrate, 1st Class, Kurukshetra.

4. The application was opposed by respondent No.1-Mining Department, Kurukshetra stating that the vehicle was transporting illegally mined sand on 03.01.2021. Therefore, the application ought to be rejected. The Court of the Judicial Magistrate, 1st Class, Kurukshetra came to the conclusion that since the Mining Department, Panchkula had already issued a notice to the applicant to deposit fine according to rules and regulations which the petitioner had not paid and instead had filed an appeal before the Director, Mining and Geology Department, Panchkula to release the vehicle in question which was pending, there was no reasonable ground to grant interim possession of the vehicle to the applicant. Therefore, the application was dismissed vide order dated 28.04.2021 (Annexure P-1).

5. Against the said order, a revision petition was preferred and the same came to be dismissed holding the powers of the Court could not be invoked as no formal FIR or police proceedings had been initiated against the petitioner either by the Director Mining and

Geology Department, Panchkula or by the local police. The copy of the said order dated 06.09.2021 is annexed as Annexure P-2 to the petition.

The aforementioned orders are under challenge in the present petition.

6. The contention of the petitioner is that vide order dated 10.05.2021, the Director General of Mines and Geology Department, Panchkula has held that since the offence had been committed for the first time, the vehicle bearing registration No.HR-55-S-5277 was to be released after payment of penalty as per the State Mining Rules, 2012. She also contends that an FIR No.411 dated 22.09.2021 (Annexure R-4) registered under Sections 379 IPC and 21(4) of Mines and Mineral Regulation of Development Act, 1957 at Police Station Ladwa, Kurukshetra stands registered against the petitioner. Thus, both the impugned orders are liable to be set aside and a fresh order be passed by the Magistrate keeping in view the fact that both issues of the appeal having been decided and the FIR having been registered now stand fulfilled.

7. A written statement dated 03.08.2022 has been filed on behalf of respondent Nos.1 to 3 by the learned counsel for the State. The same is taken on record. He contends that this is the second time that the vehicle in question has been challenged. Therefore, the vehicle ought to not to be released to the petitioner being a second time violation. He, however, does not dispute the fact that the Magistrate had dismissed the application for *superdari* as the appeal was to be decided and the Additional Sessions Judge, Kurukshetra had dismissed the revision

petition stating that an FIR had not been registered. He admits that both these conditions stand fulfilled.

8. I have heard the learned counsel for the parties.

9. Admittedly, the vehicle has been in possession since 03.01.2021. The application for *superdari* had been declined on account of the fact that an appeal had been pending before the Director General of Mines and Geology Department, Panchkula. The said appeal came to be decided on 10.05.2021 as per the which the case of the petitioner was to be considered for a first-time violation. Similarly, the Additional Sessions Judge, Kurukshetra had declined the appeal on account of the fact an FIR had not been registered. Now an FIR No.411 dated 22.09.2021 (Annexure R-4) stands registered. Thus, both these conditions have been met now.

10. In view of the aforementioned discussions, the order dated 28.04.2021 (Annexure P-1) passed by the Judicial Magistrate, 1st Class, Kurukshetra and the order dated 06.09.2021 (Annexure P-2) passed by the Additional Sessions Judge, Kurukshetra are hereby quashed.

11. The petitioner is at liberty to move an appropriate application for *superdari* before the Court of Judicial Magistrate, 1st Class, Kurukshetra and on moving the same, the Magistrate shall adjudicate upon the same within a period of 04 weeks from the date of the said application.

12. Disposed of.

(JASJIT SINGH BEDI)
JUDGE

03.02.2023

JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No