



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

CRIMINAL WRIT PETITION NO. 78 OF 2024

PETITIONER:

Shri Sarfaraz Amin Gondil,
Sole proprietor of M/s Sarfaraz
Stone Crusher, A/a 36 years,
Occ - Business, R/o 588, Sales
Tax Colony, Fulchur Tola,
Gondia, Maharashtra.

V E R S U S

RESPONDENTS:

1. The Assistant Collector & the
Sub Divisional Officer, Deori,
2. The Gram Panchayat Bhajiyapar
Aamgaon, Gondia through its
Sarpanch.
3. The Collector, Gondia, Gondia
District, Maharashtra.
4. The State of Maharashtra through
its Department of Revenue and
Forests, Mantralaya, Madam
Cama Road, Mumbai - 32.

Shri H. S. Chitaley, Advocate for petitioner.

Shri C. A. Lokhande, Additional Public Prosecutor for respondent Nos.1,
3 and 4.

Shir I. N. Choudhari, Advocate for respondent No.2.

CORAM: M. W. CHANDWANI, J.

DATE : 26/03/2024.

ORAL JUDGMENT :

1. **Rule.** Rule made returnable forthwith. Heard finally
with the consent of learned counsel appearing for the parties.

2. By the present petition, the petitioner has challenged
the order dated 10/01/2024 passed by the respondent No.1 under

Section 133 of the Code of Criminal Procedure, 1973 (Cr. P. C.) in Criminal Case No.1/2024.

3. It is not necessary to go into the factual matrix of the appeal, suffice to say that the petitioner deals in the business of stone crushing and mining and trading of stones/sand/dowels and also runs Hot Mix (Asphalt) Plant and Stone Crusher Plant. The complaints have been made by respondent No.2. Pursuant to the said complaints, respondent No.1 started proceedings under Section 133 of Cr. P. C. against the petitioner and by the impugned order dated 10/01/2024, the petitioner was asked to stop running the Stone Crusher Plant, Dowel Plant and blasting in mine. Feeling aggrieved by the said order, present petition came to be filed.

4. During the course of hearing, various discrepancies were noted in the proceedings initiated by respondent No.1, therefore, the original record and proceedings were called.

5. Heard learned counsel for the petitioner, learned APP for the State and learned counsel for respondent No.2 - Gram Panchayat. Perused the record.

6. It appears that initially, show cause notice was issued to the petitioner in the year 2023 without any reference of the case number to which petitioner filed reply along with necessary

documents. Again on 09/01/2024, the petitioner was asked to remain present before the respondent No.1. On the next date, the impugned order came to be passed on 10/01/2024 showing Criminal Case No.1/2024 without reference to earlier case.

7. Be that as it may, it may be a typing mistake as suggested by learned Additional Public Prosecutor, however, it is also noticed that there is reference of inspection report, which was submitted to respondent No.2 before passing the impugned order.

8. Learned counsel for the petitioner took me to the covering letter by which the inspection report was submitted by the Tahsildar, Aamgaon which is dated 08/01/2024. Surprisingly, the letter dated 08/01/2024 makes reference of inspection report dated 09/01/2024. Rather, perusal of the inspection report goes to show that it is dated 09/01/2024. Based on the inspection report, the impugned order was passed on 10/01/2024. All these discrepancies suggest that the enquiry under Section 133 has not been conducted properly and in a fair manner. That apart, Section 138 of the Code of Criminal Procedure contemplates that pursuant to show cause notice, if the person, against whom order is to be made appears and shows the cause why the order should not be passed, the authority shall record the evidence in the matter as in

summons cases. It is not in dispute that pursuant to show cause notice in earlier proceedings mentioned as 2023-2024, petitioner filed reply and showed causes why the order should not be passed. But, still no evidence has been recorded in the matter. This shows that mandatory provision has not been followed.

9. In view of the discrepancies mentioned above and non-compliance of mandatory provisions, the impugned order does not sustain in the eyes of law. Therefore, it needs to be quashed and set aside.

10. The matter is remanded back to respondent No.1 to decide the case afresh after following provisions contained in Chapter X-B of the Code of Criminal Procedure and after giving opportunity to the parties to the proceedings.

11. Rule is made absolute in the above terms.

[M. W. CHANDWANI, J.]