



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

CRIMINAL APPLICATION (APL) NO.1706 OF 2023

Rajendra Madhukarao Upadhye
Aged about 45 years,
Occu – Agriculture
R/o Near Laxmi Mata Mandir,
Gadgenbaba Ward, Hinganghat,
Dist. Wardha. **APPLICANT**

...VERSUS...

The State of Maharashtra
Through P.S.O. PS Hinganghat,
Wardha. **NON-APPLICANT**

Mr. M. N. Ali, Advocate for Applicant.
Mr. A. M. Kadukar, APP for Non-Applicant/State.

CORAM: **M. W. CHANDWANI, JJ.**
DATE: **24th JANUARY, 2024.**

ORAL JUDGMENT:

Heard.

2. Rule. Rule made returnable forthwith. With the consent of both the sides, the application is heard finally at the admission stage.

3. The applicant has filed this application for release of Tractor bearing registration No.MH-32 P-3236 seized by the Police

Station Hinganghat in the Crime No.560/2023, for an offence punishable under Section 379 read with Section 34 of the Indian Penal Code and section 3(1), 50, 139, 177, 181 of the Motor Vehicles Act for the alleged stealing and transporting sand from a riverbed without permit. The application under Section 457 of the Criminal Procedure Code, 1973 (for short Code) was filed before the learned Judicial Magistrate First Class, Hinganghat in O.M. Criminal Application No.226/2023. The learned Magistrate vide order dated 04.08.2023 allowed the said application and directed to return of the vehicle to the applicant, subject to certain conditions mentioned in clause (1) (ii) of the said order. The said conditions read thus:

(i)

(ii) *In case the applicant deposits the amount as per order dt. 28-06-2023 passed by Tahasildar Hinganghat and as per direction issued by Notification of Government of Maharashtra, Revenue and Forest Department, dt. 12-01-2018 (महसुल व वन विभाग क्रमांक गौखनि-१०/०२१५/प्र.क्र.९२/ख, दि.१२.०१.२०१८) to Revenue Authority within period of one month from the date of this order, the seized*

Tractor and Trolley be released on interim custody in favour of the applicant. It is further clarified that such a aforesaid deposit of penalty with Revenue authority by the applicant would be without prejudice to the rights and contentions of either parties, and it shall not be taken as acceptance of commission of crime by the applicant.

4. Being aggrieved by the said rider mentioned above *inter alia* directing the applicant to deposit the fine amount imposed by the learned Tahsildar.

5. The learned counsel for the applicant submits that power of Magistrate exercisable under Section 457 of the Code are well-defined and that the Magistrate should not have directed the applicant to deposit the fine amount imposed by the Tahsildar. The revenue authorities may recover the fine amount from the applicant as arrears of land revenue under the Maharashtra Land Revenue Code, 1966 (MLRC).

6. Per contra, the learned APP for the State objected the application on the ground that the Revenue Authority has power

under Section 48 of the MLRC to impose the penalty and on the payment of such penalty released the vehicle. According to him, the applicant indirectly challenging the order of penalty. Hence, for rejection of the application.

7. The issue raised in this application is whether the Magistrate while exercising power under section 457 of the Code could impose the impugned condition. The powers of Magistrate under section 457 of the Code are independent powers. The Magistrate shall not treat the power conferred upon the Revenue Authority under the MLRC putting any fetters on his power exercisable under Section 457 of the Code. Once the Magistrate decides to exercise the power of 457 of the Code, it is not open for him to put the condition of payment of fine imposed by the Tahsildar under the provisions of Mines and Minerals (Development and Regulation) Act, 1957 as a condition precedent while passing the order under Section 457 of the Code. The Revenue Authority may invoke the provisions and the powers under the MLRC and pass appropriate orders and take suitable steps for its enforcement. It is always open for the Revenue Authority to recover the penalty as arrears of land revenue after following due procedure under the MLRC.

8. In view of above, the writ petition is allowed.

Impugned condition in operative part of the order of the learned Magistrate is set aside. The application is allowed, accordingly.

9. Rule is made absolute in the aforesaid terms.

JUDGE

NSN