



Judgment

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

CRIMINAL WRIT PETITION NO.107 OF 2023

Sub Area Manager,
Gowari Sub Area, WCL,
Occ.-Service, r/o Dhoptala Colony,
Q.No.D-2, GM Complex, tahsil-Rajura,
district Chandrapur. **Petitioner.**

:: VERSUS ::

1. State of Maharashtra,
through Police Station Officer,
Police Station-Rajura,
district Chandrapur.

2. Abhinav Kumar Motilal Tiwari,
age-major, occupation-private,
r/o Lokmanya Tilak Ward,
Ballarpur, tahsil Ballarpur,
district Chandrapur. **Respondent.**

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Shri Y.P.Bage, Counsel for the Petitioner.
Shri C.A.Lokhande, Additional Public Prosecutor for
Respondent No.1/State.
Shri A.S.Ambatkar, Counsel for Respondent No.2.
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CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 06/01/2025
PRONOUNCED ON : 13/01/2025

JUDGMENT

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1. Heard learned counsel Shri Y.P.Bage for the petitioner; learned Additional Public Prosecutor Shri C.A.Lokhande for respondent No.1/State, and learned counsel Shri A.S.Ambatkar for respondent No.2.

2. **RULE.**

3. By this petition, the petitioner seeks an appropriate writ or direction to quash and set aside order dated 27.9.2022 passed by learned Sessions Judge, Chandrapur in Criminal Revision No.19/2022 by which order dated 4.4.2022 passed by learned Judicial Magistrate First Class, Rajura in OMCA No.46/2022 handing over custody of seized coal to respondent No.2 on Supratnama was maintained.

4. Facts of the case are as follows:

On 4.2.2022, one Niranjana Patil, working as Security Guard in WCL at Gowari Check Post No.1, received a phone call from another Security Guard informing that one truck

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bearing registration No.MH-40-Y-4314 was found transporting coal without making an entry at the Check Post. On interception of the said truck, truck driver left the truck on the spot and ran away. It was revealed that the truck driver was taking away coal stolen from the WCL approximately 20 tons and, therefore, the said truck was brought to the Rajura Police Station and a report was lodged.

5. After registration of the crime, respondent No.2 preferred an application for grant of the seized coal on Supratnama before learned JMFC, Rajura on 22.3.2022 thereby claimed ownership of the seized coal weighing 20 tons and contended that due to the seizure of the coal, he has sustained loss. He has also placed on record some receipts. After considering relevant papers, learned Magistrate allowed the application by granting the seized coal to respondent No.2.

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6. Being aggrieved and dissatisfied with the said order, the petitioner preferred a revision before learned Sessions Judge, Chandrapur on ground that during investigation, it revealed that truck driver has stolen the coal from the WCL and was transporting the same by hiding original registration number of the truck and affixing a forged number plate on the said truck. As per contention of the petitioner, original registration number of the truck is MH-29-T-0379. Whereas, forged number plate affixed was MH-40-Y-4314. It was further alleged that some bogus receipts were prepared on the basis of which relief of releasing of the coal was obtained. It was further the contention that, every truck passes through the Mine Area has to pass through Entry Gate and Check Post whereat every truck has to show Delivery Order or Gate-Pass so as to enter or exit the premises. The truck driver was not having Gate-Pass. He had not produced any Delivery Order so as to show that the truck was legally carrying the coal out of the Mining Area.

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These facts were not considered either by learned Magistrate or Sessions Judge.

Hence, this petition.

7. The petition is strongly opposed by learned counsel for respondent No.2 on ground that the said coal was purchased by him from supplier of coal i.e. “Piyush Jain” who runs “Purav Coal Carriers”. The bills issued by “Piyush Jain” also show that the said coal was sold to respondent No.2 which was transported at the relevant time and the truck was intercepted when it was proceeding. The trial court and appellate court have rightly considered that no material is produced to show that the coal belongs to the WCL and, therefore, no interference is called for.

8. Learned Additional Public Prosecutor for the State supported the contentions of the petitioner and submitted that the truck was found transporting the coal illegally by affixing the forged number plate.

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9. Having heard both sides and perused the record available, it reveals that the crime is registered at Rajura Police Station on the basis of report lodged by Niranjana Patil alleging that one Kumar Ramaswamy Roda, Praveen Sonone, and Pratap Sanap serving as Security Guards were deputed at Gowari Check Post No.1 for inspection of vehicles. At about 11:20 pm, he received a phone call of Ramaswamy Roda that when he was inspecting vehicles, one truck was found proceeding without making any entry on the Check Post and eloping from the spot and, therefore, he intercepted the said truck at a distance of 100 meters. On intercepting the truck, the truck driver ran away from the spot. After receipt of the information, he immediately rushed to the Govari Check Post and found the truck bearing registration No.MH-40-Y-4314 transporting 20 tons of coal in the said truck. He brought the said truck to the police station. On the basis of the said report, the police registered the crime. On registration of the crime, spot panchanama

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was drawn. The said spot was at Govari Colony Check Post No.1.

10. It further revealed during the investigation that original registration number of the said truck was MH-29-T-0379 which was hid by affixing a forged number plate bearing No.MH-40-Y-4314. The agreement and registered documents of purchase of the vehicle show that the truck bears registration number as MH-29-T-0379.

11. The duty chart was also collected by the Investigating Officer which shows that Security Guards namely Kumar Ramaswamy Roda, Praveen Sonone, and Pratap Sanap were on duty at the relevant time. The statements of these persons were also recorded, which also substantiate the said contention.

12. Respondent No.2 came with a case that the coal was purchased by him from one “Piyush Jain”. During further investigation, statement of said “Piyush Jain” was recorded

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and he stated that on 3.2.2022 respondent No.2 had purchased 21.550 tons coal from him. The investigation as to GST Registration was also carried out and it revealed that “Piyush Jain” was registered at CGST. However, respondent No.2 was not registered at CGST. As per the investigation, said “Piyush Jain” has purchased the said coal from “Shubham Enterprises” on 5.8.2022 vide Invoice No.361 and from “Priya Enterprises” vide Invoice No.76 on 29.7.2021.

13. Thus, the communication placed on record shows that vide No.361, the coal was purchased by “Piyush Jain” after the incident. Whereas, vide Invoice No.76, the coal was purchased much prior to the incident. At the relevant time, “Piyush Jain” had purchased the said coal either from “Shubham Enterprises” or “Priya Enterprises”. But, no document was filed on record.

14. The weighing receipts which are placed record show quantity purchased by respondent No.2 from “Piyush Jain”

was 21.550 tons worth of Rs.87,816/-. Whereas, as per the spot panchanama, the seized coal was 20 tons worth of Rs.30,000/-.

15. Thus, considering the fact that there is no material on record to show that on 3.2.2022 or prior to that from any agency said “Piyush Jain” has obtained any coal and it was sold out to respondent No.2. The receipts collected show that he has purchased the coal from one “Shubahm Enterprises” after the incident i.e. on 5.8.2022 and from “Priya Enterprises” much prior to the incident. The statement of said “Piyush Jain” shows that he used to purchase the coal from the WCL or from any other dealers. As far as purchase of coal from the WCL is concerned, no document is placed on record in the nature of any bills/delivery/challan. There is no document on record also to show that prior to 3.2.2022 he has purchased the said coal either from the “WCL” or “Shubham Enterprises” or

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“Priya Enterprises”. As per his statement, the said coal was loaded in truck bearing MH-29-T-0379. However, at the relevant time, number appearing of the truck was MH-40-Y-4314.

16. There should be nexus between the receipts produced and the goods recovered. Section 451 of the Code of Criminal Procedure clearly empowers the court to pass appropriate orders with regard to such property such as for the proper custody pending conclusion of the inquiry or trial, to order it to be sold or otherwise disposed of, after recording such evidence as it think necessary. Powers under the said Section should be exercised expeditiously and judiciously.

17. The Hon’ble Apex Court laid down principles in respect of property pending trial. In the case of **Sunderbhai Ambalal Desai vs. State of Gujarat**¹, the Hon’ble Apex Court held that Section 451 of the Code clearly empowers the

¹ 2003 ALL MR (Cri) 363

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court to pass appropriate orders with regard to such property, such as (1) for the proper custody pending conclusion of the inquiry or trial; (2) to order it to be sold or otherwise disposed of, after recording such evidence as it think necessary; and (3) if the property is subject to speedy and natural decay, to dispose of the same.

For this purposes, if material on record indicates that such articles belong to complainant at whose house theft, robbery or dacoity has taken place, seized articles be handed over to the complainant after preparing detailed proper panchanama of such articles and taking photographs of such articles and a bond that such articles would be produced if required at the time of trial and after taking proper security.

For this purpose, the Court may follow the procedure of recording such evidence, as it thinks necessary, as provided under Section 451 of the Code of Criminal

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Procedure. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed. The Court should see that photographs or such articles are attested or countersigned by the complainant, accused as well as by the person to whom the custody is handed over. Still however, it would be the function of the Court under the said Section to impose any other appropriate condition.

18. In the present case, custody of the coal is claimed by respondent No.2 as well as by the petitioner. On going through facts of the case, it would be the matter of evidence whether seized coal belongs to the petitioner or respondent No.2. On the basis of the evidence, it can be established that who is the owner of the said article. Moreover, the said article is not subject for speedy or natural decay. As there is a dispute as to the ownership of the said coal, while considering application under Section 451 of the Code, the court has to follow procedure by recording the evidence or it

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would be the subject of final disposal of the case after establishing on the basis of the evidence that who is the owner of the said coal.

19. Section 452 of the Code takes care of situation which deals with orders for disposal of the property at conclusion of trial. Therefore, When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody.

20. Thus, for ascertaining, who is owner of the article seized, the Court may follow the procedure of recording such evidence, as it thinks necessary, as provided under Section 451 of the Code. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed. The court should see that photographs or such

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articles are attested or countersigned by the complainant, accused as well as by the person to whom the custody is handed over. It would be function of the court under Section 451 of the Code to impose any other appropriate condition.

21. Here, in the present case, neither learned Magistrate nor learned Sessions Judge considered the procedure suggested by the Hon'ble Apex Court in the case of **Sunderbhai Ambalal Desai vs. State of Gujarat** *supra* and considering the petitioner failed to contest the application, it would be appropriate to remand the matter back to learned Magistrate, Rajura who shall follow the procedure given by giving an opportunity to the petitioner as well as to respondent 2 to adduce evidence to claim the right over the property and on establishing the ownership over the said property, pass appropriate orders by imposing the appropriate conditions.

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22. In the light of above observations, I proceed to pass following order:

ORDER

(1) The Criminal Writ Petition is **allowed**.

(2) The order dated 4.4.2022 passed below Exhibit-1 by learned Judicial Magistrate First Class, Rajura in OMCA No.46/2022 and order 27.9.2022 passed by learned Sessions Judge, Chandrapur in Criminal Revision Application No.19/2022 are hereby quashed and set aside.

(3) The application filed by respondent No.2 for claiming the custody of coal is remanded back to learned Magistrate, Rajura for reconsideration. Learned Magistrate shall reconsider the application in the light of guidelines issued by the Hon'ble Apex Court in the case of **Sunderbhai Ambalal Desai vs. State of Gujarat (2003 ALL MR (Cri) 363)**.

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(4) Learned Magistrate shall dispose of the said application expeditiously.

With these directions, the Writ Petition stands disposed of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!