



Judgment

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

**CRIMINAL APPLICATION (APL) NO.291 OF 2024
AND
CRIMINAL APPLICATION (APL) NO.292 OF 2024**

CRIMINAL APPLICATION (APL) NO.291 OF 2024

Narendra Madhukarrao Upadhye,
aged about 43 years, occupation-agriculture,
r/o Sant Gadgebaba Ward, Hinganghat,
district Wardha. **Applicant.**

:: V E R S U S ::

The State of Maharashtra,
through PSO PS Hinganghat, Wardha. **Non-applicant.**

CRIMINAL APPLICATION (APL) NO.292 OF 2024

Raju Vasantrao Khandare,
aged about 37 years, occupation-driver,
r/o Tilak Ward, Hinganghat,
district Wardha.

:: V E R S U S ::

The State of Maharashtra,
through PSO PS Hinganghat, Wardha. **Non-applicant.**

**Shri M.N.Ali, Counsel for Applicants.
Shri M.J.Khan, Addl.PP. for the Non-applicant/State.**

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CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 27/06/2025

PRONOUNCED ON : 17/07/2025

COMMON JUDGMENT

1. Both these applications are filed by the applicants for quashing and setting aside orders dated 5.9.2023 and 28.7.2023 passed by learned JMFC Hinganghat, Wardha in OMC Nos.297/2023 and 231/2023 directing them to deposit amounts Rs.60,000/- and Rs.1,23,100/- imposed by the Tahsildar, Hinganghat.

2. Brief facts necessary for disposal of applications are as under:

Applicant - Narendra Madhukarrao Upadhye, is owner of Mahindra Tractor bearing registration No.MH-32-AS/3606 along with a tractor trolley. Whereas, applicant - Raju Vasantrao Khandare, is owner of

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Mahindra Tractor bearing registration No.MH-32/P/3209 along with a tractor trolley bearing registration No.MH-32/P/3791. Both these vehicles came to be seized in connection with Crime No.586/2023 under Sections 109, 379, and 511 read with 34 of the IPC.

3. The crime was registered on allegations that both these vehicles were involved in transporting sand illegally. After seizure of both vehicles, applicants preferred applications under Section 457 of the CrPC before JMFC at Hinganghat for releasing the same on supratanamas.

While releasing the vehicle, in OMC No.297/2023, learned JMFC directed that the applicant shall deposit amount Rs.60,000/- imposed by the Tahsildar.

Wheres, while releasing another vehicle, in OMC No.231/2023, learned JMFC directed that the applicant shall deposit Rs.1,23,1000/- imposed by the Tahsildar.

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4. Heard learned counsel Shri M.N.Ali for the applicants and learned Additional Public Prosecutor Shri M.J.Khan for the State.

5. Learned counsel for the applicants submitted that the present applications are filed with a contention that imposition of such condition on the applicants to deposit the amounts, imposed by the Tahsildar, is harsh and illegal one. If an applicant is liable to pay any penalty, it is already open for Revenue Authority to recover the penalty as arrears of land revenue after following due procedure. The order passed by learned JMFC and confirmed by learned Sessions Judge is wrong and illegal and the same liable to be rejected. He prays that the applications be allowed.

6. In support of his contentions, learned counsel for the applicants placed reliance on following decisions:

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1. Writ Petition No.3073/2019 (Ashish s/o Haridas Ukalkar and anr vs. State of Mah, thr.its Secretary, Revenue and Forest Department, Mantralaya, Mumbai-33 and ors) decided by the Division Bench of this Court on 16.4.2019;

2. Writ Petition No.7873/2019 (Ambadas Manikarao Saudagar vs. The State of Maharashtra and ors) decided by the Division Bench of this Court at Aurangabad Bench on 1.7.2019, and

3. Criminal Writ Petition No.1259/2020 (Dnyaneshwar s/o Devidas Kharat vs. The State of Mah., thr.its Police Inspector, taluka Georai, district Beed) decided by the Division Bench of this Court at Aurangabad Bench on 24.11.2020.

7. *Per contra*, learned Additional Public Prosecutor for the State strongly opposed these applications on the ground that both vehicles are found in transporting the sand illegally and the same vehicles are seized and, therefore, the applications deserve to be rejected.

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8. The issue involved in these applications is, imposition of amounts by learned JMFC while releasing both vehicles. It is in respect of directions imposed by the Tahsildar that the applicants should deposit amounts Rs.60,000/- and Rs.1,23,100/- and only after depositing of the said amounts, both vehicles are to be released.

9. Perusal of orders impugned in these applications shows that the Tahsildar has imposed penalty, applying the provisions of Section 48 of the Maharashtra Land Revenue Code, as both the vehicles are found to be transporting sand illegally. Admittedly, confiscation proceeding is not initiated. The said Authority has imposed amounts as penalty by holding that both vehicles were involved in illegal excavation of sand. Admittedly, the applications nowhere state that the applicants have received any notice or order passed by the Competent

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Authority under the Maharashtra Land Revenue Code regarding imposition of penalty. If that procedure is pending, it would be premature to direct the applicants to deposit the amounts of penalty and only upon deposit the penalty, they are entitled to receive the vehicles.

10. This court at Aurangabad Bench in **Pavan Rajgopal Darak Through Sagar Appasaheb Kadam vs. The State of Maharashtra, in Criminal Writ Petition No.963/2020 decided on 21.9.2020** observed that the rights and power of the State under Section 48 of the Maharashtra Land Revenue Code are required to be protected.

Under such circumstances, view taken by the Division Bench of this Court at Aurangabad Bench in **Ambadas Manikarao Saudagar *supra*** requires to be taken into consideration that some amount can be directed to be

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deposited with the Revenue Authority and then the tractor can be released.

11. In the present case, taking into consideration the allegation, both the vehicles are found in excavation of the sand and considering this aspect, the directions were given to deposit the amounts. This order would then be without prejudice to the rights of the Revenue Authorities to proceed under the Maharashtra Land Revenue Code. Admittedly, the prosecution has not produced any such material on record to show the proceeding under 48 of the Maharashtra Land Revenue Code has been undertaken in this case or not. The right of the true owner to get the possession of the vehicle is also recognized and at the same time the right and power of the Revenue Authorities to impose penalty under Maharashtra Land Revenue Code and Mines and Minerals

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Act in case the vehicle is found to be involved in illegal excavation of sand is also upheld.

12. In another case, the Division Bench of this Court at Nagpur **Ashish s/o Haridas Ukalkar and anr** *supra*, after the petitioner had shown readiness to deposit the amount of penalty which was already imposed, it appears that the vehicles were directed to be released upon the deposit of the penalty and at the same time, it was observed that the payment shall not be considered as acceptance by the petitioner about the commission of offence.

13. In this view of the matter, the similar view is required to be taken in the interests of justice and in view of the above observations, though the prayer of the applicants is rejected, orders dated 5.9.2023 and 28.7.2023 passed by learned JMFC Hinganghat, Wardha

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in OMC Nos.297/2023 and 231/2023 are modified as follows:

ORDER

(1) The Criminal Applications are **Rejected**.

(2) On depositing amounts Rs.60,000/- and Rs.1,23,100/- respectively by the applicants, vehicles Mahindra Tractors bearing registration Nos.MH-32-AS/3606 along with a tractor trolley and No.MH-32/P/3209 along with a tractor trolley bearing registration No.MH-32/P/3791, shall be released. Such deposits with the Revenue Authorities by the applicants 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 applicants.

Both the applications stand **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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