

THE HIGH COURT OF MADHYA PRADESH**W.P.No.6560/2015***(State of M.P. and another Vs. Ravi Mohan Trivedi)*

Gwalior, Dated:-29.9.2021

Shri M.P.S. Raghuvanshi, learned Additional Advocate General for petitioner/State.

Shri Prashant Sharma, learned counsel for respondent.

1. The present petition invoking the supervisory jurisdiction of this Court is filed under Article 226 of the Constitution assailing the order dated 4.3.2015 passed by Special Judge Bhind in Criminal Revision No.107/2014, whereby the revisional Court has upheld the interlocutory order passed for granting interim custody of sand during pendency of the trial in question.

2. Indisputably, the petitioner was holder of license to store sand at the relevant point of time. Fact reveal that on 13.7.2013 the Mining Department of District Bhind on inspection found the storage of sand to be done on various survey numbers apart from the survey number in regard to which license for storage was granted. This lead to issuance of show cause notice dated 16.7.2013 Annexure P/4. The petitioner preferred a reply Annexure P/5 to the show cause notice denying the alleged violation of law.

2.1 The wrongly stored sand was seized and offence u/R. 18 of Madhya Pradesh Minerals (Prevention of illegal Mining, Transportation and Storage) Rules, 2006 (for brevity "2006 Rules") was registered. The petitioner did not choose to compound the

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offence. The Judicial Magistrate concerned was intimated by the authorized person. Thereafter the petitioner preferred an application on 13.3.2014 u/S. 457 Cr.P.C. seeking interim custody of 194516 cu.m. of sand. The Trial Court by the impugned order dated 24.4.2014 allowed the application and directed release of 194516 cu.m. of sand out of total seized sand of 438646 cu.m. and directed confiscation of the remaining seized sand and to liquidate the same by conducting auction and depositing the sale proceeds with the Trial Court. The State, aggrieved by the order of interim custody preferred a revision which has been dismissed by the impugned order dated 4.3.2015 and thus the petitioner is before this Court under Article 227 of the Constitution.

3. Learned counsel for the rival parties are heard on final disposal.

3.1 Shri M.P.S. Raghuvanshi, learned Additional Advocate General on behalf of the State has drawn attention of this Court to the provisions of Rule 18 of 2006 Rules to submit that in the given facts and circumstances and especially in the face of provisions of Rule 18 (6) proviso of 2006 Rules the seized mineral cannot be released on interim or final custody to the defaulter as the provisions indicate that the seized mineral has to be invariably confiscated thereby becoming the property of the State, and is thus not available

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for interim custody.

4. Learned counsel for the respondent on the other hand urged that the interpretation of the said Rule made by learned Additional Advocate General is fallacious. It is submitted that in a given case as herein where defaulter has not chosen to compound the offence in question, the seized mineral is always available to be handed over by way of interim custody by the orders of the Judicial Magistrate who is trying the offence and such interim custody would always remain subject to final verdict in the trial.

5. Shri Raghuvanshi, learned Additional Advocate General laying emphasis of clause (6) of Rule 18 and its proviso submits that the mineral seized under sub-clause (2) is not open to grant of interim custody and is invariably liable to be confiscated. Thus, it is submitted that neither the authorised person nor the Judicial Magistrate trying the offence are vested with any power to grant of interim custody of the seized mineral.

6. To appreciate the rival contentions of the counsel for rival parties, it is apt to reproduced Rule 18 of 2006 Rules:

“18. Penalty for unauthorised Transportation or Storage of Minerals and its Products.- (1) Whenever any person is found transporting or storing any mineral or its products or on whose behalf such transportation or storage is being made otherwise than in accordance with these rules, shall be presumed to be a party to the illegal

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transportation or storage of mineral or its products and every such person shall be punishable with simple imprisonment for a term, which may extend to two years or with fine, which may extend to Rupees Fifty Thousand or with both.

(2) Whenever any person is found transporting or storing any mineral or its products in contravention of the provisions of these rules, the authorised person may seize the mineral or its products together with tools, equipment and carrier used in committing such offence.

(3) The authorised person seizing illegally transported or stored mineral or its products, tools, equipments and carrier shall give a receipt of the same to the person, from whose possession such things were so seized and shall make report to the Magistrate having jurisdiction to try such offence

(4) The property so seized under sub-rule (2) may be released by the authorised person, who seized such property on execution of a bond to the satisfaction of the authorised person by the person, from whose possession such property was seized on the condition that the same shall be produced at the time and place, when such production is asked for by the authorised person :

Provided that where a report has been made to the Magistrate under sub-rule (3), then the property so seized shall be released only under the orders of such Magistrate.

(5) The Authorised Person not below the rank of Collector, Additional Collector of Senior IAS scale, Director, Joint Director, Deputy Director, Sub Divisional Officer Revenue and Officer Incharge (Flying Squad) may before reporting to the Magistrate, compound the offence so committed under sub-rule (1) on payment of such fine, which may extend to ten times of the market value of mineral or its products or Rupees Five Thousand, but in any case it shall not be less than

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Rupees One Thousand or twenty times of royalty of minerals so seized, whichever is higher:

Provided that in case of continuing contravention, the authorised person, not below the rank of Mining Officer in addition to the fine imposed may also recover an amount of Rupees Five Hundred for each day till the contravention continues.

(6) All property seized under sub-rule (2) shall be liable to be confiscated by order of the Magistrate trying the offence, if the amount of the fine and other sum so imposed are not paid within a period of one month from the date of order :

Provided that on payment of such sum within one month of the order, all property so seized, except the mineral or its products shall be released and the mineral or its products so seized under sub-rule (2) shall be confiscated and shall be the property of the State Government.

(7) The authorised person may, if deemed necessary, request the Police Authority in writing for the help of Police and the Police Authorities shall render such assistance, as may be necessary to enable the authorised person to exercise the powers conferred on him/her under these rules to stop illegal transportation or storage of minerals.

6.1 A microscopic scrutiny of aforesaid provision reveals that it relates to unauthorized transportation or storage of mineral and its products.

6.2 Clause (1) of Rule 18 stipulates that anyone found transporting or storing any mineral or its products in-violation of the provisions of 2006 Rules shall be presumed to be a party to the illegal transportation or storage of mineral or its products and shall

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be punishable with simple imprisonment which may extend to two years or with fine, which may extend to Rupees Fifty Thousand or with both.

6.3 Clause (2) of Rule 18 empowers the authorised person as defined in Rule 2 (b) to seize the mineral or its products together with tools, equipment and carriage used in committing the offence.

6.4 Clause (3) of Rule 18 obliges the authorised person seizing the mineral or its products as enumerated in clause (2) to give receipt to the person from whose possession such things are seized and shall also report this event to the Judicial Magistrate having jurisdiction over the offence.

6.5 Clause (4) vests power upon the authorised person to release the seized property to the person from whose possession it was seized on such person executing appropriate bond. However, this power of release of interim custody on bond can be exercised by the authorized person only till the time the report about commission of the said offence is not reported to the Judicial Magistrate as per clause (3). As soon as the Judicial Magistrate is intimated about the commission of the offence the authorised officer ceases to have any power to grant interim custody of the seized property. Meaning thereby that the moment intimation of commission of the offence is reported to the Judicial Magistrate under clause (3) the power to

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grant interim custody of the property vests exclusively with the Judicial Magistrate.

6.6 Clause (5) of Rule 18 empowers the authorized person named therein to compound the offence committed under clause (1) on payment of such fine which may extend to ten times the market value of mineral or its products or Rupees Five Thousand, but in no case shall be less than Rupees One Thousand or twenty times of royalty of minerals so seized which ever is higher.

6.7 Clause (6) of Rule 18 stipulates that if the amount of the fine and other sum so imposed under clause (5) are not paid within one month on the date of order of fine all property seized under clause (2) is liable to be confiscated by the order of the Judicial Magistrate trying the offence. However, clause (6) is circumscribed by proviso that in case the fine contemplated under clause (5) is paid within one month then all property seized except the mineral or its products shall be released except the mineral or its products seized under clause (2) shall be confiscated and shall thus become property of the State Government.

6.8 Clause (7) is not being discussed since it is not relevant to the issue herein.

7. Close scrutiny of the contents of Rule 18 which is spread in (7) clauses, reveals that it is essentially divided into two classes of

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cases. First being the cases where the offence in question is not compoundable and the other are those where compounding takes place and the fine ordered by the authorized person is deposited by the defaulter.

8. Clause (2), (3) and (4) of Rule 18 relate to those class of offences where compounding does not take place, whereas clause (5) and (6) concern cases where compounding takes place.

8.1 In the case at hand no compounding took place and thus, this case would be governed by clause (2), (3) and (4) of Rule 18. These clauses empower the authorised officer to grant interim custody of the seized property before intimation about the offence is made to the Judicial Magistrate. On receipt of intimation by Judicial Magistrate this power of grant or refusal of interim custody vests exclusively with the Judicial Magistrate.

8.2 The impugned order in the instant case has been passed on the strength of power vested in the Judicial Magistrate under proviso to Clause (4) of Rule 18.

9. After having minutely gone through the contents of Rule 18, its textual and contextual connotation and the object behind the same, this Court is of the considered view that the State is labouring under a misconception that the present case belongs to the class of cases where compounding has taken place. Clause (6) of Rule 18

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stipulates the property seized to be confiscated by the order of Judicial Magistrate only if amount of fine (pursuant to compounding) as contemplated by clause (5) is not deposited within a month. Further, proviso to clause (6) prescribes that even if payment of fine is made within one month of the order under clause (5), all properties so seized except the mineral shall be released while the seized mineral under clause (2) shall be confiscated to become property of the State. This proviso to clause (6) circumscribes/qualifies clause (6) but does not whittle down the substantive condition of clause (6) where the Judicial Magistrate trying the offence is vested with the exclusive power to order of confiscation. Thus, if clause (6) and its proviso are read in conjunction, the provisions contained in the proviso of seized mineral being confiscated is subject to passing of an order by the Judicial Magistrate in that respect. In other words, unless the Judicial Magistrate passes an express order of confiscation, the seized mineral cannot become the property of the State Government.

9.1 If the argument of learned counsel for the State is accepted then the proviso of clause (6) would eclipse the substantive provision of clause (6) which could have never been the intention of rule makers.

10. From the aforesaid discussion what comes out loud and clear

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is that the power exercised by the learned Judicial Magistrate while passing the impugned order dated 2.4.2014 Annexure P/16 was within the four corners of law. Consequently, the revisional order also cannot be found fault with.

11. Consequently, the petition in question preferred by the State stands dismissed, sans cost.

E-copy/Certified copy as per rules/directions.

(Sheel Nagu)
Judge
29/09/2021

(Anand Pathak)
Judge
29/09/2021

*Pawar**