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MCRC No. 4055/2021

Makhan Prajapati vs. State of MP

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR

(Single Bench)

Misc. Cri. Case No. 4055/2021

Makhan Prajapati

..... PETITIONER

Versus

State of MP

..... RESPONDENT

CORAM

Hon. Shri Justice Rajeev Kumar Shrivastava

Appearance

Shri Tapendra Sharma, Advocate for the petitioner.

Shri Nitin Goyal, Panel Lawyer for the respondent/State.

Reserved on

:

01.03.2021

Whether approved for reporting : Yes

Law laid down	Relevant paras
<p><i>Merely submission of royalty cannot absolve the owner of the vehicle from his liability. It is the common feature that unless it is permitted by the owner of the vehicle, no driver can transport the sand by the owner's vehicle. Moreover, deposit of penalty prima facie reflects consent of the owner of the vehicle and non-rebuttal by the owner to imposition of penalty shows implied consent of the owner with regard to illegal transportation of sand in the restricted region.</i></p> <p><i>Madhya Pradesh State vs. Udai Singh, reported in 2019 (3) CCSC 1216, relied on.</i></p>	<p><i>Para 7 & 8</i></p>

ORDER

(Passed on 15th March, 2021)

This petition is preferred under Section 482 of CrPC arising out of the order dated 28.11.2020 passed by Second Additional Sessions Judge, Karera, District Shivpuri in Criminal Revision No. 73/2020, confirming the order dated 9.9.2020 passed by Judicial Magistrate First Class (JMFC), Karera District Shivpuri in Case No.MJCR/63/2020, whereby the application filed by the petitioner under Section 457 of CrPC for releasing the vehicle, has been rejected.

2. The facts, in nutshell, are that one case was registered against the present petitioner under Section 379 of IPC and Sections 4(1) and 21(1) of Mines and Minerals Act and vehicle bearing registration No. MP33-HA-3600 has been seized. The revision preferred against the order dated 28.11.2020 passed by JMFC Karera District Shivpuri has been rejected by order dated 9.9.2020 in Criminal Revision No. 73/2020.

3. Learned counsel for the petitioner has contended that no prima facie case is made out. The petitioner is a registered owner of the vehicle in question and having all the relevant documents of the seized vehicle including permit of mining issued by the Director of Geology and Mining, Uttar Pradesh for inter-state transit pass valid till 5.9.2020. Long custody of the vehicle would destroy the vehicle entirely and seized vehicle is the only livelihood of petitioner's family. It is also submitted that the petitioner has already deposited penalty amount of Rs.50000/- on 28.9.2020, despite the seized vehicle has not been released by the Courts below. Hence, prays that the impugned order be set aside

and seized vehicle be released in favour of the petitioner.

4. Per Contra, learned State counsel has submitted that no case is made out for releasing the vehicle in question and prays for dismissal of the petition.

5. Heard learned counsel for the rival parties and perused the available record.

6. On perusal of available record, it is apparent that the petitioner has prayed for releasing the seized vehicle by contending that he is the registered owner and the vehicle in question is insured and was having permit of mining and penalty imposed to the tune of Rs.50000/- has already been deposited by him on 28.9.2020. As per prosecution case, on 4.9.2020 the sand was transported by the seized vehicle. On being stopped the vehicle, driver of the vehicle fled away leaving the vehicle on spot. On account of that, an offence has been registered under Section 379 of IPC and Sections 4(1) and 21(1) of Mines and Minerals Act.

7. In **Madhya Pradesh State vs. Udai Singh**, reported in **2019 (3) CCSC 1216**, the Hon'ble Apex Court has observed as under :-

“Protection of forests against depredation is a constitutionally mandated goal exemplified by Article 48A of the Directive Principles and the Fundamental Duty of every citizen incorporated in Article 51 A(g). By isolating the confiscation of forest produce and the instruments utilised for the commission of an offence from criminal trials, the legislature intended to ensure that confiscation is an effective deterrent. The absence of effective deterrence was considered by the Legislature to be a deficiency in the legal regime. The state amendment has sought to overcome that deficiency by imposing stringent

deterrents against activities which threaten the pristine existence of forests in Madhya Pradesh. As an effective tool for protecting and preserving environment, these provisions must receive a purposive interpretation.”

8. It is submitted by learned counsel for the petitioner that royalty has been deposited but merely submission of royalty cannot absolve the petitioner from his liability. It is the common feature that unless it is permitted by the owner of the vehicle, no driver can transport the sand by the owner's vehicle. Thereafter, petitioner deposited Rs.50000/- as penalty which prima facie reflects consent of the owner of the vehicle, rather non-rebuttal by the owner shows implied consent of the owner.

9. Considering the allegations, increasing threat and illegal transportation of sand in the locality coupled with the fact that the offence alleged affects eco system, moreover it is harmful to all the living creatures, this Court is of the view that the Courts below did not commit any mistake in rejecting the application filed under Sections 451 and 457 of CrPC.

10. Accordingly, the dated 28.11.2020 passed in Criminal Revision No.73/2020 by Second ASJ, Karera, District Shivpuri as well as the order dated 09/09/2020 passed in MJCR/63/2020 by JMFC, Karera, District Shivpuri are hereby affirmed.

The petition fails and is accordingly **rejected**.

(Rajeev Kumar Shrivastava)

Judge.

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