

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA
ON THE 27th OF FEBRUARY, 2024
MISC. CRIMINAL CASE No. 7175 of 2024**

BETWEEN:-

1. ANKUSH PANDEY S/O SHRI PUSHPENDRA PANDEY, AGED ABOUT 35 YEARS, OCCUPATION: PRIVATE JOB R/O VILLAGE CHANDELA, P.S. JAISINGHNAGAR, DISTRICT SHAHDOL (MADHYA PRADESH)

2. SHITALA PRASAD PANDEY S/O RAM PRATAP PANDEY, AGED ABOUT 60 YEARS, OCCUPATION: DRIVER R/O VILLAGE CHANDELA, P.S. JAISINGHNAGAR, DISTRICT SHAHDOL (MADHYA PRADESH)

.....APPLICANTS

(BY SHRI SHREEKANT DUBEY - ADVOCATE)

AND

STATE OF MADHYA PRADESH THROUGH VAN PRIKSHETRA ADHIKARI AMJHOR VAN PARIKSHETRA POST MUKAM AMJHOR, DISTRICT SHAHDOL (MADHYA PRADESH)

.....RESPONDENT

(BY SHRI MOHAN SAUSARKAR – GOVERNMENT ADVOCATE)

This application coming on for admission this day, the court passed the following:

ORDER

This application under Section 482 of Cr.P.C. has been filed against order dated 04.12.2023 passed by Third Additional Sessions Judge, Shahdol in Criminal Revision No.37/2023 arising out of order passed by Appellate Officer-cum-Chief Conservator of Forest, Circle Shahdol in Case No.6/2023 by which appeal filed by applicants against

confiscation of their vehicle was dismissed.

2. It is the case of applicants that tractor and trolley of applicants were seized on the allegations that sand was being transported in an illegal manner and the Driver of the tractor was not having relevant documents and accordingly, POR No.10610/2007 was registered against the accused for offence under Sections 2(4)(b), 33(1)(b) & 52 of Indian Forest Act.

3. It is submitted by counsel for applicants that applicants were not aware of the illegal activities of the Driver. The applicants in response to show cause notice had also submitted that they are ready to deposit the cost of compensation for the damages caused by their Driver to forest area and without appreciating the defence of applicants as well as readiness and willingness expressed by applicants to compensate the loss caused to forest area, tractor was confiscated by the prescribed authority. The appeal filed by applicants was also dismissed by Appellate Authority by order dated 04.07.2023 passed in Case No.6/2023 and the revision filed by applicants has also been dismissed by order dated 04.12.2023 passed by Third Additional Sessions Judge, Shahdol in Criminal Revision No.37/2023. It is submitted by counsel for applicants that State Government had formulated a policy that after depositing penalty the vehicle can be released and applicants are ready to deposit the amount.

4. Considered the submissions made by counsel for applicants.

5. The Supreme Court in the case of **Jayant and others v. State of M.P.**, reported in **(2021) 2 SCC 670** has held as under:

“17. Now so far as the submission on behalf of the private appellant violators that in view of the fact that the violators were permitted to compound the violation in exercise of powers under Rule 53 of the 1996 Rules or Rule

18 of the 2006 Rules and the violators accepted the decision and deposited the amount of penalty determined by the appropriate authority for compounding the offences/violations, there cannot be any further criminal proceedings for the offences under Sections 379 and 414 IPC and Sections 4/21 of the MMDR Act and the reliance placed on Section 23-A of the MMDR Act is concerned, it is true that in the present case the appropriate authority determined the penalty under Rule 53 of the 1996 Rules/Rule 18 of the 2006 Rules, which the private appellant violators paid and therefore the bar contained in sub-section (2) of Section 23-A of the MMDR Act will be attracted.

17.1. Section 23-A as it stands today has been brought on the statute in the year 1972 on the recommendations of the Mineral Advisory Board which provides that any offence punishable under the MMDR Act or any Rules made thereunder may, either before or after the institution of the prosecution, be compounded by the person authorised under Section 22 to make a complaint to the court with respect to that offence, on payment to that person, for credit to the Government, of such sum as that person may specify. Sub-section (2) of Section 23-A further provides that where an offence is compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded, and the offender, if in custody, shall be released forthwith. Thus, the bar under sub-section (2) of Section 23-A shall be applicable with respect to the offences under the MMDR Act or any Rules made thereunder.

17.2. However, the bar contained in sub-section (2) of Section 23-A shall not be applicable for the offences under IPC, such as, Sections 379 and 414 IPC. In the present case, as observed and held hereinabove, the offences under the MMDR Act or any Rules made thereunder and the offences under IPC are different and distinct offences.

17.3. Therefore, as in the present case, the Mining Inspectors prepared the cases under Rule 53 of the 1996 Rules and submitted them before the Mining Officers with the proposals of compounding the same for the amount

calculated according to the Rules concerned and the Collector approved the said proposal and thereafter the private appellant violators accepted the decision and deposited the amount of penalty determined by the Collector for compounding the cases in view of sub-section (2) of Section 23-A of the MMDR Act and the 1996 Rules and even the 2006 Rules are framed in exercise of the powers under Section 15 of the MMDR Act, criminal complaints/proceedings for the offences under Sections 4/21 of the MMDR Act are not permissible and are not required to be proceeded further in view of the bar contained in sub-section (2) of Section 23-A of the MMDR Act. At the same time, as observed hereinabove, the criminal complaints/proceedings for the offences under IPC — Sections 379/414 IPC which are held to be distinct and different can be proceeded further, subject to the observations made hereinabove.

18. However, our above conclusions are considering the provisions of Section 23-A of the MMDR Act, as it stands today. It might be true that by permitting the violators to compound the offences under the MMDR Act or the Rules made thereunder, the State may get the revenue and the same shall be on the principle of person who causes the damage shall have to compensate the damage and shall have to pay the penalty like the principle of polluters to pay in case of damage to the environment. However, in view of the large-scale damages being caused to the nature and as observed and held by this Court in *Sanjay [State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437]*, the policy and object of the MMDR Act and the Rules are the result of an increasing awareness of the compelling need to restore the serious ecological imbalance and to stop the damages being caused to the nature and considering the observations made by this Court in the aforesaid decision, reproduced hereinabove, and when the violations like this are increasing and the serious damage is caused to the nature and the earth and it also affects the groundwater levels, etc. and it causes severe damage as observed by this Court in *Sanjay [State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437]*, reproduced hereinabove, we are of the opinion that the violators cannot be permitted to

go scot-free on payment of penalty only. There must be some stringent provisions which may have deterrent effect so that the violators may think twice before committing such offences and before causing damage to the earth and the nature.

19. It is the duty cast upon the State to restore the ecological imbalance and to stop damages being caused to the nature. As observed by this Court in *Sanjay [State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437]*, excessive in-stream sand-and-gravel mining from riverbeds and like resources causes the degradation of rivers. It is further observed that apart from threatening bridges, sand mining transforms the riverbeds into large and deep pits, as a result, the groundwater table drops leaving the drinking water wells on the embankments of these rivers dry. Even otherwise, sand/mines is a public property and the State is the custodian of the said public property and therefore the State should be more sensitive to protect the environment and ecological balance and to protect the public property the State should always be in favour of taking very stern action against the violators who are creating serious ecological imbalance and causing damages to the nature in any form. As the provisions of Section 23-A are not under challenge and Section 23-A of the MMDR Act so long as it stands, we leave the matter there and leave it to the wisdom of the legislatures and the States concerned.”

6. Thus, it is the duty cast upon the State to restore the ecological imbalance and to stop damages being caused to the river. Excessive instream, sand and gravel mining from river beds and like resources causes the degradation of rivers which may result of drying of the rivers also. The sand/mines are public property and State is the custodian of said property and the State should be more sensitive to protect the environment.

7. So far as defence taken by applicants that they were not aware of the misdeeds of their Driver is concerned, it is really surprising that when applicants are the owner then they cannot run away from their

liabilities by saying that they are not aware of what was being run by their Driver. Illegal transportation of sand has to be dealt with all seriousness to avoid the ecological imbalance.

8. Furthermore, tractor was not having any registration number. Why a tractor without registration number was being plied by the applicants is also indicative of their guilty mind. Accordingly, tractor of Massey Ferguson Company No.1035 DI, Engine No.S33421166, Chassis No.MEAOE 761 EN2429244 and Trolley No.MP18 AA 5499 were rightly confiscated by the authorities below.

9. Under these circumstances, this Court is of considered opinion that authorities below as well as Court below did not commit any mistake by directing the confiscation of tractor and trolley.

10. Accordingly, no case is made out warranting interference.

11. The application fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

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