

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(Cr.) No. 31 of 2021
with
I.A. No. 3258 of 2021

1. Md. Sakirul Islam, aged about 42 years, son of Md. Khurshed, resident of A.G. Road, Kohima, Nagaland, at present resident of Dargadanga, P.O.-Udhwa, P.S.-Radhanagar, District-Sahibganj.

2. Rentu Sk., aged about 38 years, son of Mainul Haque, Resident of N.S.T. Colony, Kohima, Nagaland, at present resident of Dakshni Begumganj, P.O. and P.S.-Radhanagar, District-Sahibganj.

..... ... Petitioners

Versus

1. The State of Jharkhand.

2. The Deputy Commissioner, Pakur, P.O. + P.S. and District-Pakur.

3. The Superintendent of Police, Pakur, P.O. + P.S. and District-Pakur.

4. The Officer-in-charge, Pakur., P.O. + P.S. and District-Pakur.

..... ... Respondents.

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioners : Mr. Gautam Kumar, Advocate.

For the Respondent-State : Mr. Abhishek Singh, A.C. to G.A.-IV.

For the Intervener : Mr. Shashi Kant Thakur, Advocate.

06/ 09.09.2021 Heard Mr. Gautam Kumar, learned counsel appearing for the petitioners, Mr. Abhishek Singh, learned A.C. to G.A.-IV, appearing for the State as also Mr. Shashi Kant Thakur, learned counsel appearing for the intervener.

2. This petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard.

3. This writ petition has been filed for quashing the order dated 19.10.2020 passed in Criminal Revision No. 11 of 2020 by the learned District and Sessions Judge, Pakur, as well as the order dated 05.09.2020 passed in Littipara P.S. Case No. 33 of 2020 by the learned Judicial Magistrate, 1st Class, Pakur, by which the release of the vehicles, bearing registration Nos. NL-01-AB-4916 and NL-01-AB-0549 was rejected.

4. The First Information Report was filed on the following premises:-

A First Information Report was filed against the petitioners, bearing Littipara P.S. Case No. 33 of 2020 on 11.07.2020 against the said vehicles and as well as the driver and owner of the said vehicles under Sections 379 and 411 of the Indian Penal Code and under Rule 9(i), 13(i) and 13(ii) of the Jharkhand Minerals (Prevention of Illegal Mining,

Transport and Storage) Rule, 2017 with the pretext that the informant, District Mining Officer, Pakur informed on 08.07.2020 that two vehicles bearing No. NL-01-AB-4916 and NL-01-AB-0549 loaded with sand were seized and kept at Littipara Police Station premises and the documents were sent for enquiry and on enquiry it was found that only one Transport Challan No. 077540 dated 22.06.2020 was issued by the B.L. & L.R.O., Faridpur, Durgapur (West Bengal) and prima facie it appears to be an illegal and accordingly the First Information Report was registered.

5. Mr. Gautam Kumar, learned counsel appearing for the petitioners submits that the chargesheet has been submitted on 30.11.2020 against Wasim Sk., son of Mukhtarul Sk., being the owner and driver of the vehicle bearing registration No. NL-01-AB-0549 and Naim Sk., son of Sukurudi Sk., being the owner and driver of the vehicle bearing registration No. NL-01-AB-4916. He further submits that petitioner No. 1 agreed to sell the vehicle bearing registration No. NL-01-AB-0549 to one Wasim Sk. on 28.1.2020, for that an agreement was executed and the petitioner No. 2 also executed an agreement to sell his vehicle bearing registration No. NL-01-AB-4916 with Naim Sk. He also submits that counter affidavit has been filed on behalf of the State, wherein it has been disclosed that no confiscation proceeding is pending so far as these two vehicles are concerned and on the ground that the vehicles are lying in open and will be destroyed due to elapse of time and no fruitful purpose will be served in not releasing the said vehicles.

6. Mr. Abhishek Singh, learned counsel appearing for the State submits that the dispute is with regard to ownership and that has been disclosed in paragraphs-10 and 11 of the counter affidavit and has opposed the prayer for release of the said vehicles.

7. Mr. Shashi Kant Thakur, learned counsel has appeared by way of filing I.A. No. 3258 of 2021 impleading him as an intervener in this petition. He submits that agreement has been entered into between the parties and the same has been annexed with the main petition and he further submits that the agreement was executed by the petitioners in favour of the interveners. The interveners submit that they have no objection if the vehicles are released as per the agreement.

8. In view of such submission, the I.A. No. 3258 is allowed.

9. Let the said I.A. be treated as a part of the main petition.

10. It is admitted by the parties that on the ground of ownership,

the revisional court and the trial court have rejected the prayer for release of the vehicles.

11. In the light of the above facts and considering the fact that confiscation proceeding has not been initiated as yet and the vehicles in question are commercial vehicles and no purpose will be served to keep the said vehicles in open and by way of elapse of time, the same will be destroyed and this aspect of the matter has been considered by the Hon'ble Supreme Court in the case *of Sunderbhai Ambalal Desai Versus State of Gujarat* reported in (2002) 10 SCC 283. Paragraphs 5 and 17 of the said judgment are quoted herein below:-

"5. Section 451 clearly empowers the 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

(3) If the property is subject to speedy and natural decay, the dispose of the same.

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"17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles."

12. In view of the aforementioned discussion, the impugned order dated 19.10.2020 passed in Criminal Revision No. 11 of 2020 by the learned Principal District and Sessions Judge, Pakur, as well as the order dated 05.09.2020 passed in Littipara P.S. Case No. 33 of 2020 by the learned Judicial Magistrate, 1st Class, Pakur are, hereby, quashed and the vehicles in questions are directed to be released in favour of the registered owners on their undertaking on the following terms and conditions:-

- (i) The registered owner shall furnish an indemnity bond to the satisfaction of the court below.
- (ii) One of the surety must be a resident and owner of a commercial vehicle of District Pakur (Jharkhand).
- (iii) That the registered owner shall not sell, mortgage or transfer the ownership of the vehicles on hire purchase agreement or mortgage or in any manner.
- (iv) The registered owner shall not change or tamper with the

identification of the vehicles in any manner.

(v) The registered owner shall produce the vehicles as and when directed by the Trial Court.

13. The Trial Court is at liberty to impose any other terms and conditions, which the trial court deems fit and proper.

14. This criminal miscellaneous petition is allowed and disposed of with the aforesaid observations and directions. Pending interlocutory application also stands disposed of.

(Sanjay Kumar Dwivedi, J.)

Amitesh/-