
(2015) 04 AHC CK 0179

Allahabad High Court

Case No: Criminal Revision No. 1265 of 2015

Awdhesh Tripathi

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision: April 17, 2015

Acts Referred:

- Mines and Minerals (Development and Regulation) Act, 1957 - Section 21, 4
- Motor Vehicles Act, 1988 - Section 207, 21, 21(4), 22

Citation: (2015) 111 ALR 61 : (2015) 5 FLT 646 : (2016) 130 RD 343

Hon'ble Judges: Pankaj Naqvi, J

Bench: Single Bench

Advocate: Jitendra Prasad Mishra, for the Appellant

Judgement

Pankaj Naqvi, J

Heard Sri Jitendra Prasad Mishra, learned Counsel for revisionist and learned A.G.A.

This criminal revision is preferred against the order dated 31.3.2015, passed by A.C.J.M.-I, Banda in Criminal Misc. Case No. 580/XII/2015, State v. Raj Kumar, under section 207 M.V. Act and 4/21 of Mines and Minerals (Development and Regulation) Act, P.S. Atarra, Banda, rejecting an application for release of the vehicle.

The revisionist claims to be the registered owner of Tata Truck-1613, bearing registration No. UP-78-AT 0427, which was alleged to be carrying sand more than the prescribed limit on 26.2.2015. The truck was seized and given in the custody of S.H.O., P.S. Atarra. The revisionist filed an application for release of the vehicle before the Magistrate concerned on 2.3.2015. The Mines Department on 4.3.2015 reported to the Magistrate that the truck was involved in an offence under section 4/21 of the Mines and Minerals (Development and Regulation) Act, 1957 (for short "the M.M.D.R. Act") and Rule 70(2) of the U.P. Minor Minerals (Concession) Rules, 1963 (for short "the Rules") and after realizing Rs. 27,700/- as royalty, value of mineral/penalty, it be released. The learned Magistrate

refused the release of the truck on the ground of absence of any complaint pending under section 22 of the Act.

The M.M.D.R. Act and 1963 Rules framed thereunder are special enactments relating to development and regulation of mines and minerals. The first endeavour of the Court should be to trace the power of release, if any, of a thing/article including a vehicle involved in the commission of offence under the Act/Rules and only in absence thereof, recourse be taken to the provisions contained in the Cr.P.C.

2. Section 21(4) of the Act provides that whenever any person raises, transports or caused to be raised or transported, without any lawful authority, any mineral from any land and for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral, tool, equipment, vehicle or any other thing shall be liable to be seized by an officer or authority specially empowered in this behalf. Sub-section (4-A) provides that anything seized under sub-section (4), shall be liable to be confiscated by an order of the Court competent to take cognizance of the offence under sub-section (1) and shall be disposed of in accordance with the directions of such Court. Similarly, section 22 relates to cognizance of offences, which provides that no Court shall take cognizance of any offence punishable under this Act or any Rules made thereunder except upon a complaint in writing made by a person authorized in this behalf by the Central Government or the State Government.

3. A conjoint reading of sub-sections (4) and (4-A) of section 21 of the Act, would manifest that an officer or authority, especially empowered under the Act, is conferred with a power to seize any mineral, tool, equipment, vehicle or any other thing, if the same is being transported or causes to be raised without any lawful authority and upon a seizure by such an officer or an authority, as indicated above, the Court competent to take cognizance of the offence under sub-section (1) of section 21, is also competent to confiscate the aforesaid articles/things and thereafter the said article or thing shall be disposed of in accordance with the directions of such Court.

4. Analyzing sub-sections (4) and (4-A) of section 21 of the Act, position which emerges is that upon a seizure of a tool, equipment, vehicle, etc. being reported by an officer or an authority empowered under the Act, the tool, equipment, vehicle, etc. are not only liable to be confiscated by an order of the Court which is competent to take cognizance of the offence, but the same (articles/things) shall also be disposed of in accordance with the directions of such Courts.

5. Thus, once a seizure was reported by the mining officer to the Magistrate on 2.3.2015, it was incumbent on the learned Magistrate to have proceeded to pass appropriate orders on the release of the vehicle in accordance with law. Mere absence of any complaint at the stage of the release, could not be an impediment to pass appropriate orders on the release as power to release and power to take cognizance are two different facets and the former is not dependent on the latter. In this view of the matter, the order dated

31.3.2015 cannot be sustained.

6. The Apex Court in the case of [Sunderbhai Ambalal Desai and C.M. Mudaliar Vs. State of Gujarat](#), AIR 2003 SC 638 : (2002) 10 JT 80 : (2002) 10 SCC 283 : (2002) 3 SCR 39 Supp : (2003) 1 UJ 590 , has held that the Courts seizing the articles/vehicles, etc shall pass appropriate orders of release in favour of the registered owners inter alia by obtaining a bond/guarantee, for the return of the vehicle whenever directed by the Court as seizure/retention thereof would diminish the utility and the value of the vehicle, which would not serve any purpose.

7. In view of aforesaid discussion, the order of learned Magistrate dated 31.3.2015, refusing to release on the ground that no complaint under section 22 of the Act was pending, cannot be sustained and is liable to be set aside. The revision is allowed. The order dated 31.3.2015 is quashed. The Trial Court is directed to decide the application for release afresh, in the light of observations made hereinabove and in the light of judgment of the Apex Court in the case of Sunderbhai Ambalal Desai (supra), in accordance with law, as expeditiously as possible, preferably within 6 weeks from the date of production of certified copy of the order.