

(2020) 08 GUJ CK 0112

In the Gujarat High Court

Case No : R/Special Civil Application No. 8041 Of 2020

Bhati Suratsinh Premsinh

APPELLANT

Vs

State Of Gujarat & 2 Other(s)

RESPONDENT

Date of Decision : 10-08-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Code Of Criminal Procedure, 1973 — Section 451

Motor Vehicles (Driving) Regulations, 2017 — Rule 12, 12(2)(b)(ii), 22

Citation : (2020) 08 GUJ CK 0112

Hon'ble Judges : Rajendra M. Sareen, J

Bench : Single Bench

Advocate : Namrata Shah, Jay N Shah, Bhargav Pandya

Final Decision : Disposed Of

Judgement

Rajendra M. Sareen, J

[1] Rule, returnable forthwith. Learned Assistant Government Pleader Mr. Bhargav Pandya waives service of notice of rule for the respondents-

State.

[2] By this petition under Article 226 of the Constitution of India, the petitioner has prayed for following main reliefs:

â??7.(a) This Honâ??ble Court may be pleased to admit and allow the petition;

(b) This Hon'ble Court may be pleased to issue appropriate writ, order or direction for releasing the vehicle bearing Loader No. GJ-12-BJ-3811 of the

ownership of the petitioner which is seized by the respondents and at present the case is pending with the respondent, on such terms and conditions as

the Honâ??ble Court may deem think fit.

(c) This Honâ??ble Court may be pleased to quash and set aside the notice dated

23.12.2019 issued in connection with the Loader No. GJ-12-BJ-

3811 of the ownership of the petitioner which is seized by the respondents .

(d) Your lordship may be pleaded to issue writ of mandamus or any other appropriate writ, order or direction to decide the application of the petitioner

dated 20.06.2020 made to respondent no.2 and therefore release the said vehicle.â??

[3] According to the petitioner, he is the owner of the Loader No. GJ-12-BJ-3811 (hereinafter shall be referred to as â??the vehicleâ??)

[4] It is the case of the petitioner that on 14.12.2019, a team from the office of the respondent no.2 came for an inspection, and the vehicle was seized

and detained and kept at the premises of the respondent No.3 and thereafter, on 23.12.2019 a show cause notice was issued wherein it was stated

that the vehicle is found in violation of the rules and the petitioner is liable to pay Rs. 2,00,000/- towards the compounding fees and for carrying 2 Mt.

Of Minor Mineral Soil (mati). In addition to the environmental damage charges the petitioner is liable to pay Rs.494/- as penalty.

[5] It is the case of the petitioner that in spite of requesting the respondent authorities from time to time, the vehicle was not released by the detaining

authority and therefore, the petitioner made representation on 20.06.2020 to the respondent No.2 stating that the vehicle is seized by the respondent

No.2 on 14.12.2019 and till 20.06.2020 i.e. till seven months, as per Rule 12(2) (b)(ii) of the Rules if the application for compounding of offence is not

received, the vehicle so seized shall be produced before the Court having power to determine the commission of such offence, upon expiry of 45 days

from the date of seizure or upon completion of investigation, whichever is earlier. Since, the respondent authority failed to justify the reason for the

vehicle in question, fail to follow the procedure prescribed under the Rules the action of seizure of the vehicle is required to be quashed and set aside

and the vehicle is required to be released as early as possible.

[6] It is the case of the petitioner that since the vehicle is seized on 14.12.2019 by the respondent authority and almost after seven months the custody

of the vehicle is not handed-over to the court below nor any offence is registered against the petitioner, the action of the respondent authority of

seizing of the vehicle requires to be quashed and set aside and the vehicle is required to be ordered to be released as early as possible.

[7] It is the case of the petitioner that as the respondent authorities have failed to justify the reason for detention of the vehicle in question and further

failed to follow the procedure prescribed under Rule-12 of the Rules, 2017, the action of the seizure of the vehicle in question is required to be quashed

and set aside and the vehicle is required to be ordered to be released as early as possible.

[8] Learned advocate for the petitioner has submitted that the case of the petitioner is entirely covered by the decision of this Honâ??ble Court in

Letters Patent Appeal No.397 of 2018 and Special Civil Application No.7268 of 2020.

[9] On the other hand, learned Assistant Government Pleader has submitted that the show cause notice is issued to the petitioner, and therefore, the

petitioner is required to give reply to such show cause notice for the purpose of release of the vehicle in question.

[10] Having heard the learned advocates for the respective parties and having gone through the materials on record as well as the decision of the

Division Bench of this Court in the case of Zaverbhai Nanubhai Devani versus State of Gujarat in Letters Patent Appeal No.397 of 2018 in Special

Civil Application No. 3862 of 2018 with Civil Application No.1 of 2018 dated 18.04.2018, the facts of the present case is squarely covered by the said

judgment. The only substantial difference between the unamended and amended Rules is as regards the period for investigation i.e. 15 days in the

unamended Rules and 45 days in amended Rules post the date of seizure and contemplation of an application for compounding under the amended

Rules, which was not there in the unamended Rules. This Court is concerned with the consequence of non-production of the vehicle within specified

period in the Court as contemplated in Clause â?? (ii) of sub-rule 2(b) of Rule 12 and the ratio speltout in this regard in the case of Zaverbhai

Nanubhai Devani (supra) can be applied to the facts of the case despite the aforesaid amendment in absence of the complaint within specified period

the vehicle was ordered to be released in the case of Zaverbhai Nanubhai Devani (supra). The observations made in the said case can be reproduced

for beneficial reference.

â??9. Rule 12 of the Rules of 2017 provides as under:

â??12. Seizure of property liable to confiscation.-

(1) Whenever any person raises, transports or causes 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 other thing (hereinafter referred to as

“property”) shall be liable to be seized by the Government in the manner specified in subrule (2) of this rule.

(2) Every Authorised Officer seizing any property under these rules shall photograph the property and place on such property a mark in such manner

as may be prescribed, indicating that the same has been so seized and shall:

(a) issue a notice in Form J informing the person from whom the property is seized of the property so seized;

(b) conduct:

(i) an investigation and if he is satisfied that a compoundable offence has been committed in respect of the property, he may, subject to receipt of a

compounding application, order payment of such amount for compounding the offence as may be deemed appropriate; or

(ii) a preliminary investigation and shall produce the property seized before a court empowered to determine commission of such offence, if

compounding is not permissible under rule 22 or if no application for compounding is received pursuant to clause (a) above, upon the expiry of fifteen

days from the date of seizure or upon completion of the investigation, whichever is earlier.

(3) Where any property seized under subrule (1) is produced before a court under sub clause (ii) of clause (b) of sub-rule (2) and the court is satisfied

that offence has been committed in respect thereof, the court may order confiscation of the property under sub-section (4A) of Section 21 of the Act.

(4) No order for confiscating any property shall be made under sub-rule (3) unless the person from whom the property is seized is given:

(a) an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds for

confiscation; and

(b) a reasonable opportunity of being heard in the matter.

(5) Upon expiry of fifteen days from the date of seizure of the property under subrule (2) and prior to:

(a) payment for compounding the offence under sub-clause (i) of clause (b) of sub-rule (2); or (b) completion of the investigation by the Authorised Officer under sub-clause (I) of clause (b) of sub-rule (2); or (c) a determination under sub-rule (3), the Authorised Officer may release the property on the furnishing of a noninterest bearing security deposit or a bank guarantee.

(6) The bank guarantee issued under subrule (5) shall be valid for an initial period of one year and shall be renewed from time to time until payment for compounding the offence under sub-clause (i) of clause (b) of sub-rule (2) or a determination under sub-rule(3), as applicable, is made. The non-interest bearing security deposit or bank guarantee shall be for an amount equivalent to ten times of the market value of the mineral seized or for such other amount as may be specified by the Government through a notification, subject to a minimum of rupees two lakh: Provided that, if upon a determination under sub-rule (3), a penalty for an amount exceeding the amount of non-interest bearing security deposit or bank guarantee is levied and the penalty amount is not paid, then the penalty amount may be recovered in the same manner as if it were an arrear of land revenue.

(7) The property seized under this rule shall be kept in the custody of the Authorised Officer, any other third party, nearest police station or Government premises until:

(a) payment for compounding the offence is made; or (b) a bank guarantee is provided pursuant to sub-rule (5); or (c) an order of the court directing its disposal is received by the Authorised Officer.??

10. From the aforesaid provisions coupled with the facts of the present case, it is clear that after the seizure of the truck, notice was issued. However, thereafter, the respondent authority has not followed the provisions contained in Rule 12(2) (b)(ii) of the Rules of 2017. As per the said provision, if the application for compounding of offence is not received, the vehicle so seized shall be produced before the Court empowers to determine commission of such offence, upon expiry of 15 days from the date of seizure or upon completion of investigation, whichever is earlier.

11. In the present case, after completion of 15 days from the date of seizure, when application for compounding of offence is not submitted by the

petitioner, it was the duty of the respondent authority to produce the said vehicle before the concerned Court. In absence of production of such vehicle

before the competent Court, the petitioner has lost his right to file an application under Section 451 of the Code of Criminal Procedure, 1973, for

release of the vehicle.

12. Thus, in view of the aforesaid discussion, we are of the view that the respondent authorities have failed to justify the reason for seizure of the

truck in question. When the respondent authorities have failed to follow the procedure prescribed under the Rules of 2017, we are of the view that this

is fit case where the action of seizure of the truck in question taken by the respondent authorities is required to be quashed and set aside and direction

is required to be given to the respondent authorities to release the truck in question forthwith.

13. Accordingly, the appeal is allowed and the order dated 13.03.2018 passed by the learned Single Judge in Special Civil Application No.3862 of 2018

is set aside. The action of the respondent authorities in seizing the truck in question under the Rules of 2017 is quashed and set aside. The respondent

authorities are hereby directed to release the truck in question forthwith. Civil application also stands disposed of.â??

[11] In view of the above settled legal position, the petition deserves to be allowed with the following directions:

[11.1] The action of the respondent authorities of seizing the vehicle in question bearing Loader No. GJ-12-BJ-3811, under Rule-12 of the Rules, 2017

is quashed and set aside.

[11.2] The respondent authorities are directed to release the vehicle in question, bearing Loader No. GJ-12-BJ-3811 forthwith, on furnishing the bank

guarantee by the petitioner amounting to Rs.25,000/- of any nationalized bank for a period of one year before the release of the vehicle in question.

[11.3] The petitioner is further directed to file a reply to the show cause notice dated 23.12.2019 within a period of four weeks from today.

[11.4] The respondent authority is directed to decide the show cause notice within a period of four weeks from the date of the receipt of the reply that

may be received from the petitioner.

[11.5] The registry is directed to send the copy of the writ of this order to the learned advocate appearing for the petitioner through e-mail, so as to

enable him to serve the same upon the respondent authorities. Rule is made absolute to the aforesaid extent.

Direct service is permitted, to be served through Email.