

(2023) 01 GUJ CK 0024

In the Gujarat High Court

Case No : R/Special Civil Application No. 24955 Of 2022

Dilipbhai Bachubhai Barad

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 06-01-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Gujarat Mineral (Prevention Of Illegal Mining Storage And Transportation) Rules, 2017
— Rule 12, 12(2)(ii), 12(2)(b)(i), 12(2)(b)(ii), 12(7), 21, 22

Citation : (2023) 01 GUJ CK 0024

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Kruti M Shah, Dharitri Pancholi

Final Decision : Allowed

Judgement

Biren Vaishnav, J

1. Rule. Learned AGP Ms. Dharitri Pancholi waives service of notice of rule on behalf of the respondent No.1.

2. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for release of 3 unit of crushing machines with motor and 1 Generator Machine owned by the petitioner.

3. It is the case of the petitioner that the petitioner is the owner of the 3 unit of crushing machines with motor and 1 Generator Machine. On 14.03.2022, the respondent No.2 had carried out inspection and seized the said machines and kept in the custody of Sarpanch, Ghatvad Gram Panchayat.

4. Learned advocate Ms. Kruti Shah submitted that as per Rule 12 of the Gujarat Mineral (Prevention of Illegal Mining Storage and Transportation) Rules, 2017 if no other actions are taken and if the FIR is also not filed within a period of 45 days from the date of seizure of vehicle/machine, in that case, as per the catena of decisions of this Court, the machine is required to be released by this Court by

directing the authority.

5. Learned AGP Ms. Dharitri Pancholi could not dispute the aforesaid fact that 45 days from the date of seizure of the machine is over. She submitted that a complaint in this regard has though been forwarded to the competent authority but the same has not culminated into any FIR.

6. Heard the learned advocates for the respective parties and also perused the documents as pointed out by them. The issue raised in the writ petition is governed under the Rule 12(2)(b)(ii) of the Rules, 2017 which reads as under:

"12. Seizure of property liable to confiscation.-(2)(b)(ii) a preliminary investigation, and if compounding is not permissible under rule 22 or if he is satisfied that the offence committed in respect of the property is not compoundable, upon the expiry of forty-five days from the date of seizure or upon completion of the investigation, whichever is earlier, shall approach by way of making a written complaint, before the Court of Sessions."

7. The machines were seized on 14.03.2022, and therefore, undisputedly, the FIR, as envisaged under sub-clause (ii) of clause (b) of sub-rule (2) of Rule 12 of the Rules, has not been filed yet and, therefore, in absence of any FIR, the action of continuation of the detention of the machines by the respondent authority, is illegal and against the provisions of the Rules.

8. Reliance has rightly been placed on the judgment in the case of Nathubhai Jinabhai Gamara Vs. State of Gujarat, passed in Special Civil Application No.9203 of 2020. The Paragraph Nos.7, 10 and 11 of the judgment read thus:-

"7. Pertinently the competent authority under Rule 12 is only authorized to seize the property investigate the offence and compound it; the penalty can be imposed and confiscation of the property can be done only by order of the court. Imposition of penalties and other punishments under Rule 21 is thus the domain of the court and not the competent authority. Needless to say therefore that for the purpose of confiscation of the property it will have to be produced with the sessions court and the custody would remain as indicated in sub-rule 7 of Rule 12. Thus where the offence is not compounded or not compoundable it would be obligatory for the investigator to approach the court of sessions with a written complaint and produce the seized properties with the court on expiry of the specified period. In absence of this exercise, the purpose of seizure and the bank guarantee would stand frustrated; resultantly the property will have to be released in favour of the person from whom it was seized, without insisting for the bank guarantee.

10. The bank guarantee is contemplated to be furnished in three eventualities: (i) for the release of the seized property and (ii) for compounding of the offence and recovery of compounded amount, if it remains unpaid on expiry of the specified period of 30 days; (iii) for recovery of unpaid penalty. Merely because that is so, it cannot be said that the investigator would be absolved from its duty

of instituting the case on failure of compounding of the offence. Infact offence can be compounded at two stages being (1) at a notice stage, within 45 days of the seizure of the vehicle; (2) during the prosecution but before the order of confiscation. Needless to say that for compounding the offence during the prosecution, prosecution must be lodged and it is only then that on the application for compounding, the bank guarantee could be insisted upon. In absence of prosecution, the question of bank guarantee would not arise; nor would the question of compounding of offence.

11. The deponent of the affidavit appears to have turned a blind eye on Rule 12 when he contends that application for compounding has been dispensed with by the amended rules inasmuch as; even the amended Rule 12(b)(i) clearly uses the word "subject to receipt of compounding application". Thus the said contention deserve no merits. Thus, in absence of the complaint, the competent authority will have no option but to release the seized vehicle without insisting for bank guarantee. There is thus a huge misconception on the part of the authority to assert that even in absence of the complaint it would have a dominance over the seized property and that it can insist for a bank guarantee for its."

9. It has been held that it would be obligatory for the investigator to approach the Court of Sessions with a written complaint and produce the seized properties with the Court on expiry of the specified period. In absence of such exercise, the purpose of seizure and the bank guarantee would stand frustrated; resultantly, the property will have to be released in favour of the person from whom it was seized, without insisting for the bank guarantee.

10. Under the circumstances, in absence of any FIR, the petition deserves to be allowed and the action of the respondent authority in seizing the 3 unit of crushing machines with motor and 1 Generator Machine in question, deserves to be quashed and set aside, and is accordingly, quashed and set aside. The respondent authority, is forthwith directed to release the 3 unit of crushing machines with motor and 1 Generator Machine. Petition is allowed accordingly. Rule made absolute to the aforesaid extent. Direct service is permitted.