

(2008) 10 JH CK 0021
In the Jharkhand High Court

Md. Javed

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 24-10-2008

Acts Referred:

Coal Mines (Nationalisation) Act, 1973 — Section 30
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 482
Forest Act, 1927 — Section 33
Penal Code, 1860 (IPC) — Section 414

Citation : (2008) 4 JCR 688

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.K. Sinha, J.—The petitioner has invoked the extraordinary writ Jurisdiction of this Court under Article 226 of the Constitution of India with the prayer, for issuance of an appropriate writ by setting aside the order impugned dated 4.3.2008 passed by the Chief Judicial Magistrate, Hazaribagh whereby he recalled the earlier order dated 3.3.2008 whereby the seized truck No. BR 18-6556 loaded with 100 bags of coal was directed to be released in favour of the petitioner.

2. The main contention of the petitioner is that by order dated 3.3.2008 on the petition of the petitioner for release of the truck No. BR 18-6556 which was seized in connection with Mandu P.S. Case No. 516 of 2007 for the offence u/s 414 of the Indian Penal Code, Section 30(2) of the Coal Mines Act and Section 33 of the Indian Forest Act, having been satisfied the learned CJM Hazaribagh released the vehicle in question in favour of the petitioner on his furnishing bond of Rs. 7,00,000/- with two sureties of the like amount each and pursuant to that order the petitioner had filed bond and accordingly it was directed to be released but on 4.3.2008 it was communicated to the Court concerned that the confiscation proceeding No. 2 of 2008 was initiated by the D.F.O. Ramgarh

against the seized truck and 100 bags of coal loaded thereon and therefore, the CJM finally declined to issue the release by the order dated 4.3.2008 by recalling the earlier order dated 3.3.2008.

3. According to the learned Counsel, the order impugned dated 4.3.2008 passed by the learned CJM Hazaribagh was beyond his jurisdiction as he was lacking inherent jurisdiction u/s 482 of the Code of Criminal Procedure to recall his own order.

4. The FIR was instituted on 13.12.2007 and thereafter the confiscation proceeding was initiated for confiscation of the seized truck and 100 bags of coal loaded thereon but the fact regarding the confiscation proceeding being initiated before the D.F.O. Ramgarh was communicated to the CJM after the order was passed on 3.3.2008 for release of the truck and 100 bags of coal and no revision was preferred by the competent authority of the State for setting aside the order.

5. Mr. R.R. Mishra, the learned G.P. II, fairly conceded the point of law as raised by the learned Counsel for the petitioner.

6. In such circumstances, I find substance in the argument advanced on behalf of the petitioner that the learned CJM, Hazaribagh was not within his competence to recall his own order and the impugned order dated 4.3.2008 is barred by jurisdiction and it is set aside.

7. Accordingly, this petition is allowed with the modification in the impugned order dated 4.3.2008 that truck No. BR 18-6556 would be released in favour of the petitioner Md. Javed on furnishing indemnity bond of Rs. 7,00,000/- with two sureties of the like amount each to the satisfaction of the CJM Hazaribagh in connection with Mandu P.S. Case No. 516 of 2007 corresponding to G.R No. 4568 of 2007 subject to the decision of the confiscation proceeding No. 2 of 2008 pending before the DFO Ramgarh. It is further directed to the petitioner to cooperate with the confiscation proceeding and to take appropriate steps on the date fixed.