

(2020) 08 MP CK 0090

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 24565 Of 2020

M/s J.M.S. Building Material Supplier Thr. Proprietor Mr.
Bhupendra Sharma

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 17-08-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 451
Madhya Pradesh Sand (Mining, Transportation, Storage And Trading) Rules, 2019 —
Rule 20(1), 20(2)

Citation : (2020) 08 MP CK 0090

Hon'ble Judges : Sheel Nagu, J

Bench : Single Bench

Advocate : Prashant Sharma, C. P. Singh

Final Decision : Disposed Of

Judgement

1. Inherent powers of this Court u/Sec.482 Cr.P.C. are invoked assailing the order Annexure P-1 dated 11.07.2020 by which the Revisional Court (IV

ASJ, Dabra, District Gwalior) has declined to entertain the revision preferred by petitioner against interlocutory order of Trial Court dated 25.06.2020

rejecting the prayer of petitioner for release on interim custody vehicle (Dumper bearing registration No.MP07 GA 9627) which was seized in

connection with Crime No.164/2020 at Police Station Bhitwar, District Gwalior (M.P.) alleging offences punishable u/Secs.379, 414 of IPC and

u/Secs.4(A) and 21(1) of M.P. Mines and Minerals (Development And 2. Learned counsel for petitioner submits by referring to the record that after

the said vehicle was seized in regard to the said offences, the petitioner deposited penalty to the tune of Rs.93,750/- in terms of Rule 20(1)/20(2) of

Madhya Pradesh Sand (Mining, Transportation, Storage and Trading) Rules, 2019

(for brevity 2019 Rules).

3. It is evident from the letter dated 25.06.2020 written by Mining Officer to the SHO of the concerned Police Station which is accompanied by

Doc.No.5171/2020 that after depositing the penalty amount no further proceedings under 2019 Rules are pending against the petitioner.

3.1 A bare perusal of Rule 20(1) reveals that in case of illegal mining or illegal transportation the Collector is authorized to levy compound fee or the

alternative penalty calculated as per the provision of these Rules and if the owner of the vehicle deposits the same then Collector is empowered to

release the vehicle, failing which confiscation/auction can take place. While Rule 20(2) which relates to illegal transportation no such alternative power

of confiscation is available to the Collector.

4. In the present case, it seems that penalty amount has been deposited by the petitioner. Thus, the only impediment which remains is registration of

offences punishable u/Secs.379, 414 IPC which is either being investigated by police or tried by the competent court of criminal jurisdiction.

5. Since the petitioner claims to have deposited the penalty amount and the Collector has accepted the same, the option of confiscation does not seem

to be exercised by the Collector under the 2019 Rules.

6. Thus, the offence under Indian Penal Code is the only impediment between petitioner and the interim custody of the vehicle in question.

6.1 The Apex Court in *Sunderbhai Ambalal Desai Vs. State of Gujarat* (AIR 2003 SC 638) has explained the principles to be adopted by trial court

while dealing with applications for interim custody of vehicles seized in connection with offence. Relevant portion of the said judgment is reproduced

as under for ready reference and convenience :-

7. In our view, the powers under Section 451, Cr. P.C. should be exercised expeditiously and judiciously. It would serve various purposes, namely:-

1. Owner of the article would not suffer because of its remaining unused or by its misappropriation;

2. Court or the police would not be required to keep the article in safe custody;

3. If the proper panchnama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during

the trial. If necessary, evidence could also be recorded describing the nature of

the property in detail; and

4. This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

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.

In case where the vehicle is not claimed by the accused, owner, or the insurance company or by third person, then such vehicle may be ordered to be auctioned by the Court. If the said vehicle is insured with the insurance company then insurance company be informed by the Court to take possession of the vehicle which is

not claimed by the owner or a third person. If Insurance company fails to take possession, the vehicles may be sold as per the direction of the Court. The Court would pass such order within a period of six months from the date of production of the said vehicle before the Court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared.â??

6.2 Similarly in General Insurance Council and others Vs. State of Andhra Pradesh & others (2010) 3 SCC (Cri) 226 it has been held as under:-

â????It is a matter of common knowledge that as and when vehicles are seized and kept in various police stations, not only do they occupy substantial space in the police stations but upon being kept in open, are also prone to fast natural decay on account of weather conditions. Even a good maintained vehicle loses its roadworthiness if it is kept stationary in the police station for more than fifteen days. Apart from the above, it is also a matter of common knowledge that several valuable and costly parts of the said vehicles are either stolen or are cannibalised so that the vehicles become unworthy of being driven on road. To avoid all

this, apart from the aforesaid directions issued hereinabove, we direct that all the State Governments/Union Territories/Director Generals of Police shall ensure macro implementation of the statutory provisions and further direct that the activities of each and every police station, especially with regard to disposal of the seized vehicles be taken care of by the Inspector General of Police of the division/ Commissioner of Police concerned of the cities/ Superintendent of Police

concerned of the district concerned.â??

7. Consequently, this Court deems it appropriate to dispose of this petition in following terms:

(i) That, the learned Trial Judge shall release the vehicle on interim custody on furnishing security and bond each of Rs.5,00,000/- (Rupees Five Lacs

Only) after satisfying that the penalty amount in terms of Rule 20(1)/(2) of 2019 Rules has been deposited by the petitioner.

(ii) That, the vehicle so released shall be produced by the petitioner as and when directed by the Trial Court and its body, colour, content and

ownership shall not be changed by the petitioner during pendency of the case before the Trial Court.

A copy of this order be sent to the Trial Court for information and necessary compliance.