

(2010) 10 AHC CK 0117
In the Allahabad High Court
Case No : C.M.W.P. No. 4253 of 2010

Smt. Sudha Kesarwani

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 457
Mines and Minerals (Development and Regulation) Act, 1957 — Section 21, 21(1),
22, 23A
Motor Vehicles Act, 1988 — Section 207
Uttar Pradesh Minor Minerals Concession Rules, 1963 — Rule 74, 75

Citation : (2011) 2 ACR 1946 : (2011) 1 ADJ 498 : (2011) 112 RD 27

Hon'ble Judges : S.C. Agarwal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.C. Agarwal, J.—Heard learned Counsel for the Petitioner and learned AGA for the State. This petition has been filed with a prayer to quash the order dated 15.2.2010 passed by the Judicial Magistrate, Court No. 3, Allahabad in State v. Anand Kumar Criminal Misc. Application No. 68/ XII/ 2010, P.S. Koraon, District-Allahabad, whereby the application of the Petitioner Sudha Kesarwani for release of Truck No. U.P. 70-G-9495 was rejected on the ground that the Magistrate had no jurisdiction to release the vehicle. The aforesaid truck was seized by Tehsildar, Koraon on 24.1.2010 transporting the minerals in violation of the provisions of Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter referred to as the "Act") and the U.P. Minor Minerals (Concession) Rules, 1963 (hereinafter referred to as the "Rules") The aforesaid truck was seized by the Tehsildar and was handed the police for safe keeping and application for release of the aforesaid vehicle was moved by the Petitioner before the Magistrate. The Magistrate called for reports from the police and the District Magistrate.

2. As per the report of the police, vehicle was detained u/s 207 of the Motor Vehicles Act whereas the report of the Collector stated that the Petitioner could

get his vehicle released after depositing compounding fee and the application was not maintainable in view of Section 22 of the Act and Rules 74 of the Rules.

3. In the counter affidavit, it has been averred that the Petitioner has violated Rule 75 of the Rules and Section 23A of the Act and the District Magistrate is authorized to compound the offence.

4. Section 22 of the Act provides:-

22. Cognizance of Offences--No Court shall take cognizance of any offence punishable under this act, or any rules made thereunder except upon complaint in writing made by a person authorised in this behalf by the Central Government or the State Government.

5. Section 21 of the act provides for penalties and Section 23A relates to compounding of offences under the act, or any rule made thereunder.

Section 21(4A) of the Act provides:

any mineral, tool, equipment, vehicle or any other thing 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.

6. Section 21(4A) is specific on the point that a competent Court i.e. Magistrate is competent to confiscate the vehicle and is also competent to dispose it of in accordance with directions given by it. The District Magistrate or the Collector or any other authority has not been given power to confiscate the vehicle either under the act, or in the rules. This power is reserved for the Court, which is a competent to try the case after a complaint in respect of which same has been filed by the District Magistrate.

7. In this view of the matter, it cannot be said that the Magistrate has no jurisdiction to release the vehicle pending trial or even before the trial as the complaint has not yet been filed by the competent authority. The District Magistrate or Judicial Magistrate cannot compel the Petitioner to compound the case against her will. If the Petitioner is not ready to compound the case, she cannot be compelled to do so. Since the complaint has not yet been filed even after a period of nine months from the incident, a vehicle lying at the police station is likely to become junk, and it was desirable for the Magistrate to pass an order for release in favour of its registered owner subject to certain conditions, which he might impose.

8. Even u/s 457 Code of Criminal Procedure, learned Magistrate had the jurisdiction to release the truck in favour of its registered owner since there is no other provisions in either the act or the rules for release of the vehicle.

9. In view of the aforesaid, the order passed by the learned Magistrate is void-ab-initio. Learned Magistrate has failed to exercise the jurisdiction vested in it.

10. Under normal circumstances, a proper remedy for the Petitioner was to file a revision but in the instant case, revision was not filed and the same has become time barred and also since the impugned order is void-ab-initio, and since the impugned order is patently erroneous and illegal, there are sufficient grounds to interfere in the writ jurisdiction.

11. Learned Magistrate has ample authority to release the vehicle u/s 21(4A) of the Act as well as Section 457 Code of Criminal Procedure

12. The writ petition is allowed. Impugned order dated 15.2.2010 is quashed. Learned Magistrate is directed to decide the release application afresh within a period of one week from the date on which a certified copy of this order is produced before him.