

Before K.C. Puri, J

DALJIT SINGH—Petitioner

versus

STATE OF PUNJAB AND ANOTHER—Respondents

CRM–M No. 8141 of 2013

May 01, 2013

Code of Criminal Procedure, 1973 - S. 482 - Release of confiscated vehicles on superdari/recognizance - Illegal mining - Involved in - Application for release of trucks and excavator on recognizance dismissed by Judicial Magistrate - Revision against Magistrate's order also dismissed - Challenged - No proper storage facility at police station - Loss of value of vehicles if not looked after - High Court allowing application but only for conditional release of trucks for sake of their proper custody pending conclusion of trial, on the condition that these shall not be used for illegal mining and these shall not be sold nor their condition changed till the decision of the case.

Held, that so far as the authorities Jaswinder Singh's case (supra) passed by Division Bench of this Court and authority Deepak Kumar and others' case (supra) laid down by Hon'ble the Apex Court are concerned, the ratio of both these judgments is that mining should not be allowed under the circumstances mentioned in these rulings. The idea of both these authorities is to regulate the mine so as to protect the minerals which is a precious for the economy. Absolute bar has not been put in respect of mining. Otherwise also, it is yet to be determined during the course of trial that the accused are guilty for the offence for which they have been charged. The vehicles are stated to be standing in the Police Station. There is no proper facility for storing these vehicles. Otherwise also, the vehicles would lose their value significantly if not properly looked after.

(Para 9)

Further held, that So, considering whole of the circumstances, both the impugned orders in both cases stand set aside and the vehicles mentioned above except Tata Hitachi Model Ex 200 LC Hydraulic Excavator machine

are ordered to be released on sapurdari in favour of the registered owner to the satisfaction of trial Court. The owner/petitioner shall submit undertaking before the trial Court that they will not use the said vehicle for illegal mining during the pendency of the case. The petitioners shall not sell the tippers or shall not change the condition of the said vehicles till the decision of the case. The learned trial Court may impose any other condition which it deem fit before releasing the said vehicles.

(Para 15)

Amrik Singh, Advocate for the petitioner, in both cases.

Rajesh Mehta, Addl. A.G. Punjab, in both cases.

K.C. PURI, J.

(1) By this common judgment I intend to dispose of Criminal Misc. No. M-8141 of 2013 titled as Daljit Singh versus State of Punjab and another and Criminal Misc. No. M-8040 of 2013 titled as Gulzar Singh versus State of Punjab and another as these petitions have arisen out of the same FIR. Facts are being taken from Criminal Misc. No. M-8141 of 2013 titled as Daljit Singh versus State of Punjab and another.

(2) Challenge in these petitions under Sections 482 of the Code of Criminal Procedure (in short - Cr.P.C.) are the order dated 2.3.2013 passed by Shri Ajaib Singh, Additional Sessions Judge, Fast Track Court, Ropar vide which the revision against the order dated 16.2.2013 passed by Shri Baljinder Singh, PCS, Judicial Magistrate Ist Class, Anandpur Sahib was dismissed.

(3) Briefly stated complainant Pooja submitted an application to the Station House Officer, Police Station Kiratpur Sahib in which it is mentioned that on the directions of Deputy Commissioner Roopnagar, to stop illegal mining, on 4.2.2013 at 1.00a.m., a round was made at Chand Pur Bela with the police officials of the Police Station, Kiratpur Sahib by Swaran Singh Mining Guard. According to his report on checking GS Screening Plant Chand Pur Bela two tipper drivers ran away by emptying the gravel from tippers after seeing around the screening plant it was visible that fresh heaps of gravels are there and there is excavation around the plant. Accordingly to the report of the guard there are two pits near the plant which are fresh and excavation has been done in spite of ban on mining in District Rupnagar.

Action should be taken against G.S. Screening Plant owner and the tipper driver under Section 21)i)(4)(i) of the Mining Act. The tippers found parked at the spot were bearing registration Nos. PB-12-Q-0771, PB-12-Q-1783, PB-12-Q-0662, PB-12-N-5360, PB-12-Q1784, PB12-N 5360 and PB-12N5359 and Poplaine Tata Hiutachi Ex.200 LC.

(4) Petitioner Daljit Singh being attorney of Surjit Singh preferred an application for release of truck/tipper No. PB 12Q 0662 on sapurdari whereas Gulzar Singh son of Chet Ram moved an application for release of truck/tipper No. PB 12Q1783 and PB 12Q 1784 and Tata Hitachi Model Ex 200 LC Hydraulic Excavator on sapurdari. The said applications were dismissed vide two separate orders dated 16.2.2013 by Shri Baljinder Singh, Judicial Magistrate Ist Class, Anandpur Sahib. The applicants now petitioners preferred revision against the said order dated 16.2.2013 and Shri Ajaib Singh, Additional Sessions Judge, Rupnagar dismissed their revision petitions vide order dated 2.3.2013. Both these orders have been challenged by filing two separate petitions under Section 482 of the Cr.P.C.

(5) Learned counsel for the petitioners has confined his prayer for release of tippers and has not pressed the claim regarding Tata Hitachi Model Ex 200 LC Hydraulic Excavator machine.

(6) Learned counsel for the petitioner has submitted that both the Courts below have declined the prayer on the ground that there is violation of order of High Court regarding mining. It is submitted that said fact is to be decided during the course of trial. The vehicles are likely to be lost their value as there is no storage facility at the police station. So, prayer has been made for releasing the said tippers/trucks on sapurdari. To support his contention learned counsel for the petitioner has relied upon judgment of this Court in **Balwinder Singh vs. State of Punjab and another in Criminal Misc. M. No.3930 of 2013** decided on 19.2.2013 and **Radhey Shyam and others vs. State of Haryana Criminal Misc. No. M-23590 of 2012** decided on 10.09.2012 and Hon'ble Apex court in **Sunderbhai Ambalal Desai** versus **State of Gujarat (1)**.

(1) 2003 (1) RCR (Cr.) 380

(7) In reply to the above noted submissions, learned State counsel has submitted that petitioners have violated the orders of this Court passed in CWP No.9388 of 2012 titled as **Jaswinder Singh vs. State of Punjab & others** decided on 17.8.2012 and **Deepak Kumar and others** versus **State of Haryana and others (2)**.

(8) I have considered the submissions made by learned counsel for the parties and have gone through the case file.

(9) So far as the authorities **Jaswinder Singh's case (supra)** passed by Division Bench of this Court and authority **Deepak Kumar and others' case (supra)** laid down by Hon'ble the Apex Court are concerned, the ratio of both these judgments is that mining should not be allowed under the circumstances mentioned in these rulings. The idea of both these authorities is to regulate the mine so as to protect the minerals which is a precious for the economy. Absolute bar has not been put in respect of mining. Otherwise also, it is yet to be determined during the course of trial that the accused are guilty for the offence for which they have been charged. The vehicles are stated to be standing in the Police Station. There is no proper facility for storing these vehicles. Otherwise also, the vehicles would loose their value significantly if not properly looked after.

(10) However, the learned counsel for the petitioners during the course of arguments has stated at the Bar that without the permission of the Court the above said vehicles shall not be used in the mining operation.

(11) The Hon'ble Apex Court in **Sunderbhai Ambalal Desai's case (supra)** held that under Section 451 of the Code of Criminal Procedure should be exercised expeditiously and judiciously -

- (1) for the proper custody pending conclusion of the inquiry or trial ;
- (2) to order it to be sold or otherwise disposed of, after recording such evidence as it think necessary ;
- (3) if the property is subject to speedy and natural decay, to dispose of the same.

(12) In the said ruling, it has been held that vehicles should not be kept in the Police Station for long and these should be given on sapurdari by taking adequate security.

(13) This Court in authority **Balwinder Singh's case (supra)** released the tipper on sapurdari in which allegations were almost the same.

(14) Again this Court in authority **Radhey Shyam and others' case (supra)** ordered giving the vehicle on sapurdari.

(15) So, considering whole of the circumstances, both the impugned orders in both cases stand set aside and the vehicles mentioned above except Tata Hitachi Model Ex 200 LC Hydraulic Excavator machine are ordered to be released on sapurdari in favour of the registered owner to the satisfaction of trial Court. The owner/petitioner shall submit undertaking before the trial Court that they will not use the said vehicle for illegal mining during the pendency of the case. The petitioners shall not sell the tippers or shall not change the condition of the said vehicles till the decision of the case. The learned trial Court may impose any other condition which it deem fit before releasing the said vehicles.

(16) Both the petitions stand allowed in the above said terms.

(17) A copy of this judgment be sent to the trial Court for strict compliance.

S. Gupta

Before Jitendra Chauhan, J.

KASHMIR SINGH @ BITTU AND OTHERS—Appellants

versus

INSPECTOR OF CUSTOMS, AMRITSAR—Respondent

CRA No.609-SB of 2000

September 12, 2013

Narcotic Drugs and Psychotropic Substances Act, 1985 - S.15 & 25 - Code of Criminal Procedure, 1973 - S.313 - Customs Act, 1962 - S.108 - Indian Evidence Act, 1872 - S.25 'Confession' - 'Independent witness' - 'Case Property' - Appellant, driver of car was apprehended by custom officials - Two gunny bags containing 88.5 Kgs. of poppy husk recovered from car - Kashmir Kaur and Jit Kaur were also