



UPMH010032282023

In The Court of Additional Sessions Judge, Court No.I, Maharajganj

Presiding Officer- (Pawan Kumar Srivastava), (HJS) - UP06222

Criminal Revision/113/2023

Rajkumar, 40, son of Doodhnath, resident of village Sohat, P.S:
Kothibhar, District Maharajganj.

....Revisionist.

Versus

1.State of Uttar Pradesh
2. District Mining Officer

..Opposite Party.

Judgment

(1) The revisionist has filed instant revision against order dated 15/07/2023 passed by Id. JM/Civil Judge (Jr.Div.), Maharajganj in Complaint Case no. 13582 of 2022, District Mining Officer vs. Rajkumar under section 4/21 of Mines and Minerals (Development and Regulation) Act, 1957 and Rules 3/58/72 of Mines and Minerals Rules, 2021.. Through impugned order, Ld. Court has dismissed the application of revisionist for release of vehicle- JCB (Backhow loader) no. UP56AT2183 on the ground that the vehicle was seized by Mining Officer when it was found engaged in mining activity without requisite permit papers in violation of Mines and Minerals Rules and was causing loss of revenue to state exchequer.

(2) The grounds of revision are that the order passed is invalid in the eyes of law, the revisionist was valid owner of the vehicle, vehicle shall loose its value if it was detained at police station. Ld. Counsel for revisionist submitted that the revisionist was not engaged in mining activity. Ld. Counsel submitted that the Mining Officer seized the vehicle illegally and Ld. Magistrate refused to release the same and failed to exercise jurisdiction vested in it. Ld. Counsel cited case-law of Basant Kumar @ Nathu Ram versus State of U.P [2015(2) JIC 507(All)] in his support.

(3) Ld. ADGC has vehemently opposed the revision on the ground that the vehicle was validly detained under provisions of MMDR Act and the Magistrate has no power to release the vehicle as section 457crpc was not applicable in such cases as held by Hon'ble Allahabad High Court in Criminal Revision no. 1629 of 2021 Vidya Nand Yadav vs. State of U.P., decided on 05/10/2021. It was further submitted that such vehicle should not be released because tractor was meant for agricultural use.

(4) I have heard both the sides and perused the record. The issue involved in present revision is, whether the Magistrate has acted illegally in passing the impugned order? Whether the Magistrate has failed to exercise properly the jurisdiction vested with him?

(5) Ld. Magistrate, in the impugned order has mentioned the judgment of Hon'ble Allahabad High Court in Criminal Revision no. 1629 of 2021 Vidya Nand Yadav vs. State of U.P. and held that the vehicle should not be released in the light of said judgment. Regarding release of vehicle seized under MMDR Act, it may be noted that in Vidya Nand's case (supra), Hon'ble Court in para 48 of its judgment observed that, "The decisions in the case of Awadhesh Tripathi v. State of U.P., Smt. Sudha Kesarwani vs. State of U.P. and Another, Smt. Manu Devi vs. State of U.P. and Others and Mohamma CMWP no. 6866 of 2022, Harish Chandra Yadav vs. State of U.P and 3 others and Mohammad Raza vs. State of U.P. and Another, are all based on distinct facts as in all these cases subsequent to the seizure, a report had been made to the jurisdictional Magistrate whereafter the application for release was made. The fact situation in the present case is entirely distinguishable inasmuch as no report by a District Officer/ Authorised Officer had been placed before the jurisdictional Magistrate for taking cognizance in view of compounding having been sought by revisionist." (emphasis supplied). The under lined portion will show that if the seizure has been reported to Magistrate, his power under section 457crpc is available.

(6) More recently in Criminal Revision no. 452 of 2021, Ajay Kumar Tiwari vs. State of U.P., decided on 05/09/2022, Hon'ble Court held that, "Pertinent to mention that under Section 457 Cr.P.C. learned Magistrate had

the jurisdiction to release the tractor in favour of its registered owner for the reasons that in case the vehicle is allowed unnecessarily to be detained at the police station, there is every possibility that it will become junk and rusted out and no useful purpose would be served and the owner of the vehicle concerned will be put to lot of embarrassment. Therefore, the Magistrate has to exercise his jurisdiction on such release application for the detained vehicle and the application cannot be thrown away merely on ground of lack of jurisdiction.” In the light of this latest case law the question of jurisdiction is no longer *res integra*.

(7) In present case Id. Magistrate has noted the report of Mine Department and passed the impugned order rejecting release of vehicle but it may be mentioned that trial has not commenced and the veracity of allegations leveled against the accused/ revisionist has yet to be decided. That could not be ground for dismissal of application for release. As far as unauthorised use of vehicle is concerned, it is also a question of fact to be decided on the basis of trial. If the prosecution succeeds or the Authorised Officer orders for confiscation of vehicle, then the release may be prohibited but till then the vehicle may be released subject to conditions regarding safety, security, non-involvement of vehicle in similar act in future and presence of vehicle before the Court or any authority. Id. Magistrate has not properly appreciated the judgment of Hon’ble Allahabad High Court in Criminal Revision no. 1629 of 2021 Vidya Nand Yadav vs. State of U.P., decided on 05/10/2021. it may be noted that O.P. no.2 Mining Officer has filed written report in this Court stating that no proceeding was pending either before him or the Collector. Hence it is clear that no confiscation proceedings are pending. Hence the impugned order can’t be said to be passed in proper exercise of jurisdiction vested in the Id. Magistrate. The impugned order is perverse in the eye of law and is liable to be set aside. The points of determination mentioned in para (4) of this judgment is disposed off accordingly and following order is passed:

Order

Instant revision is allowed. Order dated 15/07/2023 passed by Id. JM/Civil Judge (Jr.Div.), Maharajganj in Complaint Case no. 13582 of 2022, District Mining Officer vs. Rajkumar is hereby set aside. Matter is being sent back for fresh adjudication according to law. A copy of this order and the records of concerned Court may be sent back and the revision be consigned.

Date: 07/10/2023

(Pawan Kumar Srivastava)
ASJ-I, Maharajganj.

Judgment signed, dated and pronounced by me in open court today.

Date: 07/10/2023

(Pawan Kumar Srivastava)
ASJ-I, Maharajganj.