

Order dated. 03.01.2020.

Case record is put up today on prayer.

Petitioner Sk. Amanat has filed a petition seeking return of the tractor with trolley loaded with sand which is said to be detained at Barabani P.S.

Heard the Ld. Advocate for the petitioner. Perused the report submitted by the S.I Mohini Mohan Hota of Barabani P.S submitted on 02-01-2020. Considered.

The report reflects that B.L & L.R.O, Barabani had intercepted the tractor with trolley loaded with sand on 14-12-2019 and on his instruction the said tractor with trolley was kept in safe custody in the Barabani P.S premises. The report further reflects that no written complaint relating to the detained vehicle whatsoever has been lodged by the concerned B.L & L.R.O despite reminder given to him.

It is indeed surprising that the B.L & L.R.O, Barabani arbitrarily kept the vehicle of the petitioner detained for a considerable period without lodging any written complaint in relation to the said vehicle and such act of B.L & L.R.O, Barabani is indeed condemnable and calls for an explanation from his end.

Hence, the B.L & L.R.O, Barabani is hereby directed to personally appear before this court on 16-01-2020 and submit written explanation as to why and under what authority he kept the vehicle of the petitioner detained since 14-12-19.

Let a copy of this order be sent to the O/C Barabani P.S for causing service of the same to the B.L & L.R.O, Barabani for necessary compliance of the order.

O/C Barabani P.S is hereby directed to forthwith release the tractor with trolley of the petitioner bearing registration No.WB-41G/7920 on proper verification, identification and receipt and compliance report be submitted by 16-01-2020.

Record need not be put up on 06-01-2020.

To date.

D/C by me.

ed/-
C.J.M. Paschim Bardhaman.

sd/- S. Chakrabarti
Chief Judicial Magistrate,
Paschim Bardhaman.

Copy forwarded to O/C Barabani P.S. for causing service and for necessary compliance.

Siboram Das,
02/01/20



7.1.20
03.01.2020

In the Court of the Sessions Judge, Paschim Bardhaman

Present : Sri Kausik Bhattacharyya,
Sessions Judge, Paschim Bardhaman.

Criminal Revision No. 04 of 2020

Sri Udaysankar Bhattacharya.....Revisionist

Versus

Sk. Amanat.....Respondent.

For the revisionist: Sri Swaraj Chatterjee, Learned Public Prosecutor,
Paschim, Bardhaman.

For the respondent: Sk. Mahiuddin, learned Advocate.

Date of delivery of judgment: The 23rd day of December, 2020.

JUDGMENT

This criminal revision is directed against the order dated 03.01.2020 passed by the learned Chief Judicial Magistrate, Paschim Bardhaman in M.P. Case No 93 of 2019 which stemmed from an application filed by Sk. Amanat (respondent herein) praying for return of a tractor with trolley loaded with sand which had kept detained at Barabani Police Station.

Mr. Udaysankar Bhattacharya, Block Land And Land Reforms Officer (hereinafter 'The B.L. & L.R.O.' for short), Barabani has challenged the order dated 03.01.2020 passed by the learned Chief Judicial Magistrate, Paschim Bardhaman in M.P. Case No. referred to above.

Facts leading to filing of the instant revision may be summarised as follows:

Sk. Amanat filed an application seeking return of a tractor with trolley bearing registration No. WB-41G/7920 loaded with sand which was said to be detained at Barabani Police Station. The said application was registered as M.P. Case No. 93 of 2019 and report was called for from the officer-in-charge, Barabani Police Station as regards the allegation incorporated in the application filed by Sk. Amanat for return of the tractor with trolley loaded with sand.

On 02.01.2020 Shri Mohini Mohan Hota, SI. of Police attached to Barabani P.S. submitted a report to the effect that BL&LRO had intercepted the tractor with trolley loaded with sand on 14.12.2019 and on his instruction the said tractor with trolley was kept in the premises of Barabani Police Station. In the said report, it was further mentioned that no written information relating to detained the vehicle had been given by the BL&LRO, Barabani despite issuance of

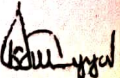


reminder in this regard. After considering the said report learned Chief Judicial Magistrate directed the BL&LRO to appear before him personally on 16.01.2020 and submit a written explanation as to why and under what authority he had kept the vehicle of the petitioner detained and kept in the premises of Barabani Police Station since 14.12.2019. Finally, the learned Chief Judicial Magistrate, Paschim Bardhaman directed the officer-in-charge, Barabani Police Station to release the tractor with trolley bearing registration No. WB-41G/7920 to the petitioner on proper verification and identification on the basis of the report of S.I. Mohini Mohan Hota.

Being aggrieved by and dissatisfied with the said order Mr. Udaysankar Bhattacharya, BL&LRO, Barabani has preferred this revision. In his revisional application, the BL&LRO, Barabani has contended that Sk. Amanat (respondent herein) filed the application for return of the tractor with trolley loaded with sand suppressing actual state of affairs. According to the BL&LRO, Barabani, the Government of West Bengal by a Notification being No. 695-CI/4M-80/88 dated 10th August, 1992 empowered all the BL&LROs of the State of West Bengal to exercise power under section 21(5) of the Mines & Minerals (Regulation & Development) Act, 1957 and, accordingly, on 14.12.2019 at about 9:05 A.M. he seized a tractor with trolley loaded with sand as the driver of the said tractor with trolley refused to pay penalty for transporting such sand without any valid paper or challan and, thereafter, he kept the said tractor with trolley loaded with sand at the premises of Barabani Police Station as neither the registered owner nor anybody on his behalf appeared to pay penalty for transporting the said sand without valid paper. And ultimately, on 02.01.2020 the BL&LRO had been to Barabani Police Station to lodge an FIR (vide Memo No. 01/BL&LRO/Barabani/2020 dated 02.01.2020), but the police officer present at the police station refused to accept the FIR on the plea that a MP case had been initiated in respect of the tractor with trolley loaded with sand and subsequently, he came to know the order of the learned Chief Judicial Magistrate, Paschim Bardhaman and thereafter, he has filed the instant revisional application.

The points require to determine this revision are: (1) Whether the learned Chief Judicial Magistrate, Paschim Bardhaman was justified in releasing the tractor with trolley loaded with sand; (2) Whether the order under challenge is tenable in the eye of law.

Contd...P/3


23.12.2020
Session Judge
Paschim Bardhaman

Decision

Learned Public Prosecutor, Paschim Bardhaman appearing for the revisionist has assailed the order under challenge on the following grounds:

- (i) that the order under challenge was passed without giving the BL&LRO, Barabani an opportunity of being heard;
- (ii) that a B.L. & L.R.O. has been empowered by the Government of West Bengal to impose penalty upon any person extracting minor mineral without a proper lease/licence or storing or transporting such minor minerals extracted in unauthorized manner.
- (iii) that the registered owner of the vehicle got the advantage to evade penalty payable to the Government of West Bengal because of such illegal order of the learned Chief Judicial Magistrate;
- (iv) that the learned Chief Judicial Magistrate, Paschim Bardhaman passed the order being influenced by the distorted information submitted by Mohini Mohan Hota, S.I. of Police attached to Barabani Police Station.

Learned Public Prosecutor, Paschim Bardhaman taken me through the certified copy of the order under challenge, photo copy of Field Memo No. 02/BL&LRO/Barabani/2019 dated 14.12.2019 of the office of the Block Land & Land Reforms Officer to show that the BL&LRO requested the officer-in-charge, Barabani Police Station to keep the tractor bearing registration No. WB-41G/7920 carrying unauthorized sand under his safe custody till receipt of instruction for release of the vehicle from the appropriate authority or any competent court.

Learned Public Prosecutor, Paschim Bardhaman has taken me through the draft complaint bearing Memo No. 01/BLLRO/Barabani/2020 dated 02.01.2020 which was refused by the officer-in-charge, Barabani Police Station on 02.01.2020.

Thereafter, learned Public Prosecutor, Paschim Bardhaman has invited my attention to the order dated 19.12.2019 of the District Magistrate and Collector, Paschim Bardhaman as regards extraction of sand from the river bed in Paschim Bardhaman District subject to compliance of all terms and conditions as envisaged in Environmental Clearance and fulfillment of other existing norms and directions as per extant Acts, Rules and Guidelines.

Learned Public Prosecutor, Paschim Bardhaman has drawn my attention to the Notification being No. 695-CI/4M-30/88 dated 10.08.1992 of the Government of West Bengal to point out that Governor has been pleased to direct that powers under sub section (5) of section 21 of the Mines and Minerals (Development & Regulation) Act, 1957 shall be exercised by the officers of the state Government mentioned in the Notification within their respective jurisdiction as defined against each.

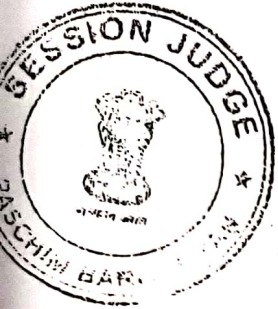
It emerges from the Notification referred to above that Block Land and Land Reforms Officers are entitled to exercise powers under the Notification within their jurisdiction.

Learned Advocate appearing for the respondent submits that the officer-in-charge, Barabani Police Station has complied with the direction of the learned Chief Judicial Magistrate, Paschim Bahamanian passed in Slipcase No. 93 of 2019 in the matter of release of the tractor with trolley bearing registration No. WB-41G/7920. He emphatically contended that the order under challenge does not suffer from any illegality or impropriety. He has contended that the order under challenge does not demand any interference.

Let me consider the contention of the parties with regards to the materials available in the record.

On scrutiny of the record I find that M.P. Case No. 93 of 2019 was initiated on the basis of the application of Sk. Amanat for return of the tractor with trolley bearing registration No. WB-41G/7920 and Mr. Udaysankar Bhattacharya, BL&LRO, Barabani was the opposite party of the said M.P. case.

On scrutiny of the order under challenge, I find that the learned Chief Judicial Magistrate, Paschim Bardhaman has passed final order as regards release the vehicle after considering the report submitted by Mohini Mohan Hota, SI of Police attached to Barabani Police Station. I am taken aback that the learned Chief Judicial Magistrate, Paschim Bardhaman did not give the opposite party/BL&LRO an opportunity of being heard though it came out from the report of the SI Mohini Mohan Hota attached to Barabani R.S. that the BL&LRO, Barabani had intercepted the tractor with trolley loaded with sand on 14.12.2019 and as per his instruction the tractor with trolley was kept in the safe custody of officer-in-charge, Barabani Police Station. It can safely be presumed that the learned Chief Judicial Magistrate was not oblivious of the Notification being No. 695-CI/4M-30/88 dated 10.08.1992 issued by the Government of West Bengal



[Signature]

12.12.2020.

empowering all Block Land and Land Reforms Officers to exercise jurisdiction under sub section (5) of the section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 within their respective jurisdiction. Rule 50 of the West Bengal Minor Minerals Concession Rules, 2016 provides that any person extracting any minor mineral without a proper lease or licence granted under these rules, or storing or transporting such minor minerals in unauthorized manner shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to one lakh rupees or both.

On scrutiny of the order under challenge I find that the learned Chief Judicial Magistrate, Paschim Bardhaman bade farewell to the principles of natural justice while disposing of the M.P. Case No. 93 of 2019 and disposed of the M.P. case ignoring the West Bengal Minor Minerals Concession Rules, 2016 and the Notification being No. 695-CI/4M-30/88 dated 10.08.1992. In fact, the learned Chief Judicial Magistrate placed reliance on the distorted information submitted by S.I. Shri Mohini Mohan Hota of Barabani Police Station and passed final order in the matter of release of the tractor with trolley loaded with sand.

In view of my above discussion, I feel no hesitation to hold that the learned Chief Judicial Magistrate, Paschim Bardhaman is not justified in passing the order dated 03.01.2020 without giving the revisionist BL&LRO an opportunity of being heard and such order is not tenable in the eye of law.

In the result, the criminal revision succeeds.

The revisional application is correctly stamped.

Hence,

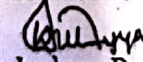
Ordered,


that the criminal revision be and the same is allowed on contest against the respondent but without any order as to costs.

The order dated 03.01.2020 passed by the learned Chief Judicial Magistrate, Paschim Bardhaman in M.P. Case No. 93 of 2019 is hereby set aside.

Let a copy of this judgment along with the L.C.R. be sent down to the learned court below for information and necessary action.

Dictated & corrected by me.


Sessions Judge, Paschim Bardhaman.
Session Judge
Paschim Bardhaman

 23.12.2020
Sessions Judge, Paschim Bardhaman.
Session Judge
Paschim Bardhaman



office copy

GOVERNMENT OF WEST BENGAL
Office of The Block Land & Land Reforms Officer,
Barabani, Paschim Bardhaman

Memo No: 16 /BLLRO/ Barabani/2021

Dated:-07.01.2021

To
The Officer-in-Charge
Barabani P.S.

Sub : F.I.R. against registered Vehicle owner (of Tractor with Trolley, the Vehicle Number being WB-41G-7920) Sk. Amanat S/O Sk. Sahaban of Rampur, P.O. Kelejora, P.S. Barabani, Dist-Paschim Bardhaman for theft and unauthorized transportation of riverine sand being transported by the said vehicle without any Challan

This is to inform you that on 14.12.19 near Goenka Road, one tractor bearing Vehicle number WB-41G-7920, the owner of which is transpired to be Sk. Amanat S/O Sk. Sahaban of Rampur, P.O. Kelejora, P.S. Barabani, Dist-Paschim Bardhaman carrying unauthorized sand without any Challan/ transit pass was intercepted by the undersigned along with Sri Saikat Chattopadhyay, R.O attached to the office of the undersigned. As measured by the then Revenue Inspector in charge of Jamgram G.P. present there, total 130 cft of sand was found in the said vehicle. The tractor was handed over to your PS as safe custody on that very day vide this Office Memo No. Field Memo No. 02/BL&LRO/Barabani/2019 dated 14.12.19. Thereafter, the undersigned after waiting for realization of penalty as per rules and finding neither the owner of the vehicle to deposit penalty as per Govt. rules, went to your Office for lodging an F.I.R vide this Office Memo No. 01/BL&LRO/Barabani/2020 Dated 02.01.2020 though on ground that the matter is sub-judice (though the undersigned had no information/notice about the court matter) as was informed from your end, FIR could not be materialized and simultaneously thereafter, the undersigned finds an order dated 03.01.2020 of the Learned Chief Judicial Magistrate in M.P. Case No. 93 of 2019 in the matter of Sk. Amanat vs Udaysankar Bhattacharya, BL&LRO from your end that directs the OC Barabani PS for release of the tractor. However, on contest, the earlier order passed by the Learned Chief Judicial Magistrate, Paschim Bardhaman in M.P. Case 93 of 2019 has been set aside in the final order passed by the Learned Session Judge, Paschim Bardhaman dated 23.12.2020 in Criminal Revision No. 04 of 2020 in the matter of Udaysankar Bhattacharya, BL&LRO, Barabani vs Sk. Amanat, the certified copy of which dated 04.01.2020 has been received today by the undersigned from the Public Prosecutor, Paschim Bardhaman appearing for the undersigned BL&LRO, Barabani. In the Judgement, the Ld. Session judge repeatedly upheld the authority of BL&LRO to seize any vehicle carrying minor minerals without valid challan.

Under such state of affairs, the undersigned Sri Udaysankar Bhattacharya S/O Late Kalidas Bhattacharya, the Block land and Land Reforms Officer, Barabani, does hereby lodge complaint against Sk. Amanat S/O Sk. Sahaban of Rampur, P.O. Kelejora, P.S. Barabani, Dist-Paschim Bardhaman who being the owner of the vehicle bearing No. W-B41G-7920 was illegally transporting the sand without any lawful authority and without any valid transit pass/Challan which is a contravention of the provisions of section 21 (4) of the MM(D&R) Act, 1957 read with Rule 50 of WB MM Concession Rules, 2016 and Rule 3 and 4 of the W.B. Minerals (Prevention of illegal Mining, Transportation and Storage) Rules, 2002, and thus committed theft of sand which is punishable u/s 378 and 379 of IPC. The photocopies of the measurement sheet, safe custody letter and both the orders of the courts as mentioned above are enclosed herewith.

This instant complaint may please be treated as an F.I.R. and here it is to mention that the undersigned getting the court order of the Learned Session Judge, Paschim Bardhaman passed in CrI. Rev Case 04 of 2020 setting aside the earlier order of the learned CJM, Paschim Bardhaman is hereby lodging this F.I. R. Be it mentioned here that the undersigned is duly authorized by the Govt. of West Bengal to lodge complaint u/s 22 of the Mines and Minerals (regulation and development) Act, 1957 in terms of notification No. 695-CI/4M-30/88 Dated 10.08.1992 issued by the Govt. of West Bengal.



Received
07.01.2021

Block Land and Land Reforms Officer
Barabani, Paschim Bardhaman
Land reforms Officer
Barabani Paschim bardhaman