

**IN THE COURT OF DEPUTY COMMISSIONER -cum-
DISTRICT MAGISTRATE, SIMDEGA**

Confiscation Case No. 01/2023-24

The Government of Jharkhand *First Party*

Vs.

Biswash Kumar Bhardwaj *Respondent/O.P,*

ORDER

14.05.2024

The proceedings of the instant Confiscation Case No. 01/2023-24 has been initiated on the basis of the proposal of the Superintendent of Police (SP), Simdega vide his Letter No. 116 dated 27.01.2023. The SP has informed that a criminal case was lodged as Kolebira P.S Case No. 74/2022 dated 16.12.2022 u/s 379 of the IPC, Section-4 of the Mines and Minerals (Development and Regulation) Act 1957, Rules 4 & 21 of the M.M.D.R., Rules 4/54 of the Jharkhand Minerals (Prevention of Illegal Mining, Transportation & Storage) Rules 2017, as well as Rules 9 & 13 of the Jharkhand Minerals (Restriction of Illegal Mines Transport & Storage) Rules 2017.

II. Subsequent to the initiation of the confiscation proceedings by this Court, notices were issued to the owner of the Hyva truck No. JH13E-8825 Biswash Kumar Bhardwaj, S/o Om Prakash Singh R/o Village – Banalat P.S. & District – Latehar, being the proprietor of M/S Bhardwaj Enterprises, and the driver of the said vehicle Manoj Munda S/o Somra Munda R/o Village – Chatakpur P.S Bhishanpur (Gurdari), District – Gumla. The District Mining



Officer, Simdega was also asked to submit a detailed factual report of the case.

III. The brief facts of the case are as under :

1. The Circle Officer (CO), Kalebira had intercepted the Hyva truck bearing registration no. JH13E-8825 on 20.12.2022 and seized it after it was found to be illegally loaded with 20 tonnes of stone. The CO, Kalebira then lodged an FIR in the matter under Kalebira P.S Case No. 74/2022. Chargesheet was later submitted against Manoj Munda the driver of said vehicle. The respondent Biswash Kumar Bhardwaj was also given notice u/s 41(A) whereupon he filed an application for anticipatory bail before A.D.J. Simdega and the same was granted in A.B.P. No. 61/2022 dated 19.05.2023. Meanwhile, on the basis of the proposal of the SP Simdega, confiscation proceedings in this Court were initiated.

IV. The Learned Counsel of the respondent(s) through his written and oral submissions has mainly submitted that :

- (i) Rule 11(i) of the Jharkhand Minerals (Prevention of Illegal Mining Transportation & Storage) Rules, 2017 lays down that only certain Officers as specified are authorized to intercept and search any vehicle at any place carrying illegal minerals. The CO is not mentioned in the list under the Rules.
- (ii) It is clear from Kalebira P.S. Case No. 74/2022 that the informant CO, Kalebira was not authorized by DC Simdega for search and seizure and he has acted in violation of the legal provisions.

(iii) U/S 23 A of Mines and Minerals (Development & Regulation) Act, 1957 and Rule 58 of Jharkhand Mines and Minerals Concession Rules, 2004 any offence punishable under the Act or any Rule may be compounded by the duly authorised Officer of the Department.

(iv) The respondent has deposited Rs. 15,114/- as penalty when the demand was raised under the provisions of the Mines and Minerals (Development and Regulations) Act, 1957 and at the time of seizure of the vehicle was carrying all the valid documents.

(v) S 23 A (2) states that where an offence is compounded under sub-section (1) no further proceeding shall be taken against the offender in respect of the offence so compounded.

(vi) It was pointed out that the seized vehicle is commercial and it is of no use to keep it under police custody for a long period. This aspect of the matter was considered by the Hon'ble Supreme Court in Sunderbhai Ambalal Desai Vs. State of Gujarat (2002).

V. In his supplementary written submission dated 20.02.2024 the Opposite Party/respondent Biswash Kumar Bhardwaj has reiterated the above mentioned facts. Besides, various orders of the Hon'ble High Court in similar cases have been referred to as follows:

(i) In Criminal Revision No. 08/2016 Naveen Kumar Choudhary Vs. State of Jharkhand the Hon'ble High Court has laid down the conditions under which vehicles seized

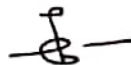


under the mining laws are to be set free.

- (ii) In Criminal Miscellaneous petition no. 1332/2022, the Hon'ble High Court has passed an order stating that the confiscation proceedings can be initiated only after the disposal of criminal case, and after the charges have been proved.
- (iii) In Criminal Miscellaneous petition no. 3098/2013, the Hon'ble High Court has held that the petition of release of vehicle cannot be set aside only on the ground that confiscation proceedings have been initiated.
- (iv) In line with the judgement delivered in other cases, the Hon'ble High Court of Jharkhand has passed an order to release the seized vehicle under the mining laws in Criminal Revision Case No. 683/2023 Suresh Prasad Gupta vs State of Jharkhand.
- (vii) In W.P.C. No. 129/2021 Subal Sahu vs State of Jharkhand the Hon'ble High Court has passed an order to release the seized commercial vehicles.

VI. The O.P. has also referred to Rule 34 K (i), Chapter 4-B of the Jharkhand Laghu Khanij Samundan Rules, 2017 where it has been mentioned that if the driver of a vehicle carrying minor minerals fails to show challan in Form-D or refuses to get the vehicle inspected then only he could be penalized. It was argued that in the instant case the driver was carrying a valid challan and the penalty imposed by the District Mining Officer was duly paid by the respondent.

VII. The attention of the undersigned was also drawn in the



aforementioned context towards certain orders passed by the Hon'ble High Court against the confiscation orders of the DC, Simdega :

(i) In WP (Cr) No. 0502/2023 Anju Devi Mishra and others Vs. State of Jharkhand a petition was filed for quashing the order dated 06.06.2023 passed by the DC Simdega in MCA No. 02/2022-23 whereby the seized vehicles of the petitioner were ordered to be confiscated and thereafter auctioned. The Hon'ble Court allowed the petition and set aside the order of the DC mainly on the following grounds :

- Any minerals, tools, equipments, vehicle can be confiscated only by an order of the Court competent to take cognizance sub-sec. 4 (A) of S.21 the Mines and Minerals (Development and Regulation) Act, 1957.
- U/S 22 of the said Act cognizance can be taken only after a written complaint is filed by the person duly authorized in this behalf.
- The Hon'ble Court has allowed to release the vehicle in favour of the petitioner on following terms and conditions :

“(i) The petitioner shall furnish indemnity bond to the satisfaction of the Learned Court.

(ii) One of the surety must be a resident and owner of a commercial vehicle of District Simdega.

(iii) The petitioner shall not sale, mortgage or transfer the ownership of the vehicles on hire purchase agreement or mortgage it in any manner.



- (iv) The owner shall not change or tamper with identification of the vehicle in any manner.
- (v) The owner shall produce the vehicle as and when directed by the Learned Trial Court."

VIII. Considering the above mentioned facts and circumstances, and the various orders of the Hon'ble High Court of Jharkhand wherein and whereby the confiscation orders earlier passed by Deputy Commissioner, Simdega, as well as other Deputy Commissioners in similar cases, the confiscation proceedings of the instant case is hereby dropped and the seized Hyva vehicle no. JH13E-8825 is allowed to be released on similar terms and conditions as laid down by the Hon'ble High Court in W.P.C. No. 502/2023 and as mentioned in the preceding para-VII.

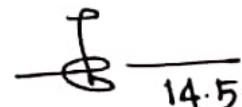
Accordingly, the confiscation proceedings of the instant Confiscation Case No. 01/2023-24 stands disposed of.

Let a copy of the order be immediately made available to SP, Simdega for information and necessary action.

Dictated and Corrected by me.



Deputy Commissioner -cum-
District Magistrate
Simdega.



14.5.24
Deputy Commissioner -cum-
District Magistrate
Simdega.