

1
IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE ACHAL KUMAR PALIWAL
ON THE 7th OF MAY, 2025
Criminal Revision No. 720/2025

LAKHAN

Versus

STATE OF MP

Appearance:

Shri M.P. Tripathi– Advocate for the petitioner.

Shri Anoop Sonkar –Panel Lawyer for the respondent.

ORDER

This criminal revision under Section 438/442 of B.N.S.S. has been preferred against the judgment dated 06.01.2025 passed by learned Sessions Judge, Burhanpur, in Criminal Appeal No.325/2024 (Lakhan Vs. State of MP), whereby appeal preferred by the petitioner against judgment dated 03.10.2024, passed by the learned JMFC, Burhanpur in RCT No. 684/2021, convicting the petitioner for commission of offence under Section 379 of IPC and sentencing with S.I. of 1 year and with fine of Rs. 1000/- with default stipulation, has been dismissed.

2. Brief facts relevant for the disposal of present revision are that on 02.05.2021 at about 9:45, petitioner was found transporting sand in tractor trolley bearing registration No. MP-68-A-3081 without any licence.

3. Learned counsel for the petitioner, after referring to evidence on record, submits that learned Trial Court as well as Appellate Court has erred in convicting and sentencing petitioner under section 379 of IPC. It is urged that Shrikant (PW-1) has turned hostile and he did not support the prosecution story. Further, Narendra (PW/5) supported prosecution story in examination-in-chief, but in cross-examination, he did not support prosecution story and has denied whole of the prosecution story. He has admitted in cross-examination that he signed all the documents in police station itself and he is not aware as to what was written in documents Ex. P/1 and Ex. P/2. Further, after referring to testimonies of Sonal Tomar (PW-3), Vishnu Rathore, ASI (PW-4), it is also urged that prosecution has failed to prove as to from which place, sand found in the possession of petitioner, was mined. No order of Collector restricting mining of sand in District, Burhanpur has been filed in the instant case. It is also urged that a person cannot be punished twice. In this connection, he has referred to complaint Ex. P-7 filed by the mining officer. Further, from evidence on record, it is not established that sand found in possession of petitioner was illegally mined and it was subject matter of theft. It is also urged that petitioner has served sentence of more than 4 months out of sentence of 1 year. There are no criminal antecedents of petitioner. Therefore, petition filed by the petitioner be allowed and he be acquitted of offence under Section 379 of IPC. Alternately it is prayed that petitioner be sentenced with the period already undergone by him.

4. Learned counsel for the State submits that in the facts and circumstances of the case, applicant cannot be sentenced with the period already undergone. He further submits that trial Court has rightly convicted and sentenced the petitioner. No interference is required in the same and appeal filed by the appellant be dismissed.

5. Heard and perused the record of the case.

6. So far as petitioner's conviction under Section 379 of IPC is concerned, it is correct that Shrikant (PW-1) has turned hostile and he did not support the prosecution story. Similarly, Narendra (PW-5), in his cross examination, did not support the prosecution story. Therefore, Narendra (PW-5) is also not a reliable witness.

7. With respect to petitioner's conviction under Section 379 of IPC, sole testimony available on record is that of ASI Vishnu Rathore (PW-4). Vishnu (PW-4) Rathore has deposed in his examination-in-chief as under:-

“मुख्य परीक्षण द्वारा राज्य की ओर से श्री अनिल सिंह बघेल सहायक अभियोजन अधिकारी :-

01 मैं दिनांक 02.05.2021 को पुलिस थाना शाहपुर में सहायक उपनिरीक्षक के पद पर पदस्थ था। उक्त दिनांक को इलाका भ्रमण करते ग्राम गोपालपुरा पहुंचा जहां पर मुखबिर द्वारा इस आशय की सूचना मिली कि अवैध रेत खान कर महलगुराडा तरफ से सोनालिका कंपनी का एक नीले रंग का ट्रैक्टर व ट्राली सिंघखेडा शाहपुर तरफ आ रहा है, सूचना पर विश्वास कर राहगीर पंचान श्रीकांत व नरेन्द्र को अवगत कराया और हमराह लेकर सिंघखेडा, मुखबिर के बताये स्थान पर

पहुंचे जहां कुछ देर बाद एक नीले रंग का बिना नम्बर का ट्रैक्टर व ट्राली आते दिखी जिसे पंचानो की मदद से घेराबंदी कर पकड़ा तथा नाम पता पूछने पर उसने अपना नाम लखन पिता अजमल राठोर उम्र 22 वर्ष निवासी सांडसखुर्द का होना बताया। ट्रैक्टर ट्राली को चेक करते ट्राली में काले रंग की रेत पाई गई। ट्रैक्टर ट्राली में भरी रेत की रॉयल्टी व वैध दस्तावेज पूछने पर नहीं होना बताया। मौके पर पंचनों के समक्ष आरोपी से बिना नम्बर का ट्रैक्टर सोनालिका कंपनी का एवं ट्रैक्टर ट्राली रेत भरी हुई व ट्रैक्टर का चालक लखन द्वारा पेश करने पर रजिस्ट्रेशन कार्ड की कापी जिसका नम्बर एम.पी.68ए 3081 था को जप्त किया था एवं जप्ती पत्रक प्रदर्श पी-1 का बनाया था जिसके बी से बी भाग पर उसके हस्ताक्षर तथा सी से सी भाग पर अभियुक्त लखन के हस्ताक्षर हैं।

02. उक्त दिनांक को अभियुक्त को उक्त पंचानों के समक्ष गिरफ्तार कर गिरफ्तारी पत्रक प्रदर्श पी-2 का बनाया था जिसके बी से बी भाग पर मेरे हस्ताक्षर तथा सी से सी भाग पर अभियुक्त लखन के हस्ताक्षर हैं। थाना वापसी पर थाने के अपराध क्रमांक 401/2021 अन्तर्गत धारा 379 भादवि एवं धारा 53-क म.प्र. गौण खनिज अधिनियम की लेखबद्ध की थी जो कि प्रदर्श पी-8 है जिसके ए से ए भागों पर उसके हस्ताक्षर हैं। विवेचना के दौरान उक्त पंचानों के समक्ष आरोपी का मेमोरेण्डम कथन लिया था जिसमें उसने बताया था कि वाहन स्वामी को बताये बिना उक्त ट्रैक्टर ट्राली में रेत चोरी कर भरकर लेकर जा रहा था, उक्त मेमोरेण्डम प्रदर्श पी 3 है जिसके सी से सी भाग पर उसके तथा डी से डी भाग पर अभियुक्त लखन के हस्ताक्षर हैं। विवेचना के दौरान साक्षी नरेन्द्र, श्रीकान्त के कथन उनके बताये अनुसार लेखबद्ध किये थे। विवेचना के दौरान वाहन स्वामी परसराम पिता ओंकार को धारा 133 मो.व्ही. अधि. का सूचनापत्र दिया था जो प्र.पी.-5 है जिसके ए से ए भाग पर उसके हस्ताक्षर हैं तथा वाहन स्वामी का अंगूठा निशानी है। प्रकरण में रवानगी वापसी सान्हा क्रमांक 11 व 8 है जो प्रदर्श पी.9 और 10 है। प्रकरण में जप्तशुदा ट्रैक्टर ट्राली में भरी रेत की गुणवत्ता मूल्य एवं परिवाद प्रदान करने के सम्बन्ध में

खनिज अधिकारी , खनिज शाखा जिला कलेक्टर कार्यालय खनिज बुरहानपुर को पत्र भेजा था जो पदार्थ पी-6 है। प्रकरण में कार्यालय कलेक्टर शाखा खनिज द्वारा जांच कर जप्तशुदा काली रेत की जांच कर रिपोर्ट एवं परिवाद प्रस्तुत किया था जो पदार्थ पी-07 है। सम्पूर्ण विवेचना पूर्ण कर अभियोगपत्र माननीय न्यायालय में प्रस्तुत किया ।”

8. Now question arises as to whether prosecution witness Vishnu Rathore (PW-4) is a reliable witness or not. Perusal of cross examination of Vishnu Rathore (PW-4) reveals that he has been extensively cross-examined on behalf of the petitioner, but in cross examination of aforesaid witness, nothing substantial has come out so as to render the testimony of Vishnu Rathore (PW-4) unreliable. The witness is wholly reliable. There is nothing on record to show that petitioner has been falsely implicated in the case on any ground whatsoever. In petitioner’s examination under Section 313 of Cr.P.C, it has not been mentioned as to why he has been falsely implicated. Further, in the instant case petitioner has failed to produce any documents pertaining to the sand being transported by him in the tractor-trolley. Further, petitioner has failed to establish that sand can be mined from anywhere and without any license, and no license is required for mining of sand.

9. This Court has also examined the judgments passed by the trial Court as well as appellate Court. Perusal of the same, reveals that both the learned courts have examined and assessed the evidence on record rightly. Learned counsel for the petitioner has failed to point out any material illegality or perversity in the findings recorded by the trial Court as well as appellate Court. Learned counsel for

the petitioner has also failed to point out any piece of evidence, which should not have been taken into consideration or which was required to be taken into consideration, but was not taken into consideration. Scope of criminal revision under Section 438 and 442 of BNSS is limited.

10. Perusal of Ex.P-7 also reveals that aforesaid pertains to confiscation and other matters of sand along with tractor-trolley seized in the instant case. Therefore, it cannot be said that petitioner is being punished twice for the same offence.

11. Hence, in view of discussion in the foregoing paras, in the considered opinion of this Court, no material illegality or perversity is found in the findings recorded by the trial Court as well as appellate Court. Learned trial Court as well as appellate Court have rightly convicted the petitioner under Section 379 of IPC and no interference is required in the same.

12. So far as sentence is concerned, learned trial Court has sentenced the petitioner under Section 379 of IPC with S.I. for one year with fine of Rs.1000/- with default stipulations. Learned counsel for the petitioner submits that petitioner has undergone sentence of more than four months and there are no criminal antecedents of identical nature. Therefore, petitioner be sentenced with the period already undergone by him.

13. On the question of sentence, this Court has examined submissions of learned counsel for the petitioner. It is correct that petitioner is not having criminal antecedents of identical nature and he has served sentence of 4 months out of

sentence of 1 year. Offence proved against present petitioner is that he committed theft of sand by mining the same from some river body. Having regard to environmental impact of the offence committed by the petitioner, no lenient view is required to be taken by this Court with respect to sentence. Therefore, no interference is required in the sentence imposed by the trial Court and affirmed by the Appellate Court. Hence, it does not appear appropriate to sentence petitioner with period already undergone by him.

14. Resultantly, no interfere is required in the sentence imposed by the trial Court and affirmed by the Appellate Court.

15. Accordingly, this criminal revision is **dismissed**.

16. A copy of this order be sent forthwith to learned trial court/ appellate court Burhanpur, & concerned jail for information & necessary action.

(ACHAL KUMAR PALIWAL)
JUDGE