

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 281 of 2015

1. Mahendra Agrawal S/o Shri Babulal Agrawal, aged about 33 years, R/o Village- Tendukona, Thana Tendukona, Civil And Revenue District- Mahasamund, Chhattisgarh.

---- Applicant/Petitioner

Versus

1. State Of Chhattisgarh through: the District Magistrate Mahasamund, District- Mahasamund, Chhattisgarh.

---- Respondent

For Applicant – Mr. Sunil Sahu, Advocate

For Respondent – Ms. Sangeeta Mishra, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

10/04/2015

1. This order shall dispose of the criminal revision filed on behalf of the petitioner under Section 397/401 of the Cr.P.C. as the applicant/petitioner faced trial before the Judicial Magistrate First Class, Pithora in Criminal Case No.321/14 wherein he was charged for offence that he was in illegal possession of liquor without any lawful authority, 108 bulk liter, in his Maruti van bearing No.CG 04/ HA 0211, the learned Judicial Magistrate First Class, Pithora, District Mahasamund vide judgment dated 22-11-2014 acquitted the applicant for offence under Section 34(2) of the C.G. Excise Act by awarding him benefit of doubt and the learned trial Court ordered that as per document Ex.-P/10 filed on behalf of the prosecution to confiscate the seized Maruti van

No.C.G. 04 /HA -0211 is sent for appropriate proceedings. Hence, the trial Court not made any order regarding the vehicle in question after conclusion of the trial. Against which the applicant preferred an appeal under Section 454 of the Cr.P.C. and challenged the order made by the trial Court regarding not making any order regarding the vehicle in question. The learned appellate Court, Second Additional Sessions Judge, Mahasamund, vide order dated 12-03-2015 passed in Criminal Appeal H-48/2014 dismissed the appeal as not maintainable by passing a detailed order mentioning that proceeding regarding confiscation is pending for the vehicle in question registered before the Court of Collector/District Magistrate as Case No.205/B-121 year 2013-2014. This fact is submitted before the appellate Court vide letter from the Court of Collector, Mahasamund, vide letter No.490/क/वाचक/2015 dated 28-02-2015. The appellate Court held that as the proceeding for confiscation is pending and as per Section 47 and 47(a) of the C.G. Excise Act opportunity is available with the applicant to present his case and may make representation in the proceedings of confiscation and the applicant may submit his case and avail relief as per law, hence, the appellate Court dismissed the appeal as not maintainable. Against such order, the applicant preferred this criminal revision and had taken ground that para 18 of the judgment of the trial Court is against the law. Mere sending a letter by the SHO to S.P. regarding confiscation of the vehicle is not proceeding of confiscation and till the decision of the case no information has been received by the trial Court regarding the confiscation proceedings therefore the order impugned is bad in law. The trial Court passed judgment on 22-11-2014 whereas the confiscation proceeding was started by the Collector, Mahasamund on 28-02-2015. The appeal was filed by the petitioner/applicant on 12-12-2014, hence, the letter dated 28-02-2015 cannot be read in deciding the appeal as the same was not part of the trial. Seized vehicle is lying in abandoned condition, the learned Additional Sessions Judge failed to see the guidelines issued by Hon'ble the Supreme Court. The

petitioner/applicant is ready to furnish surety and is also ready to produce the article when and where the Court directs. By filing this revision, the applicant prayed that the order impugned dated 12-03-2015 passed by the Second Additional Sessions Judge, Mahasamund, may kindly be set aside and the appropriate order for disposal of the seized vehicle may kindly be passed in the interest of justice.

2. Heard on admission.

3. The learned counsel for the applicant duly supported the grounds taken in the revision and submitted that on the basis of entire grounds taken in the revision petition, the petition may be allowed. He further placed reliance in the matter of **Madhukar Rao v. State of M.P. and others**¹, where full Bench of High Court of M.P. while deciding a case under Wild Life (Protection) Act held that any property including vehicle seized on accusation or suspicion of commission of an offence under the Act can be released by the Magistrate pending trial in accordance with Section 50(4) of the Act read with Section 451, Cr.P.C., and mere seizure of any property including vehicle on the charge of commission of an offence would not make the property to be of the State Government under Section 39(1)(d) of the Act. The learned counsel submitted that the revision filed by the revisioner/applicant may be allowed and the order of the appellate Court may be set aside with relief as claimed.

4. Per contra, learned counsel for the respondent/State opposed the petition/revision on the motion stage itself and submitted that there is no force in the petition, hence, the petition may be dismissed.

5. In order to appreciate the arguments advanced on behalf of the parties during motion, the petition and the judgment of the trial Court and appellate Court are perused.

6. While appreciating the Ex.-P/10, it goes to show that SHO requested the Superintendent of Police regarding confiscation of the vehicle in question. On

¹ 2000(2) M.P.H.T. 445

the basis of this letter the trial Court not made any order as the initiation of proceeding regarding confiscation is prayed by the prosecution which was challenged in appeal. During the pendency of the appeal, at the time of argument, as mentioned in para 11 of the judgment, a letter from the Collector, Mahasamund dated 28-02-2015, is submitted by the public prosecutor, by simply reading it may not be held that proceeding started on 28-02-2015, on the other hand, this is an information dated 28-02-2015 that the proceedings for the confiscation is pending before the Court of Collector, also with the perusal of the number and year of the case, it clearly shows that the case registered during the year 2013-2014 goes to show that the case was registered during year 2013-14 as this not a case registered prior to the filing of appeal or prior to the judgment passed by the trial Court because nothing certified copy or other document filed on behalf of the petitioner. Even before this criminal revision, looking to the mandatory provision of the confiscation provided in the Excise Act goes to show that if a proceeding is started, then the affected person may avail opportunity to submit his case and after the proceeding, after passing of the order for confiscation, aggrieved person is having forum to challenge the confiscation order. On the basis of the material available, it may not be held that the proceeding started at 28-02-2015 as submitted by the applicant.

7. The case law cited is based on Section 451 of the Cr.P.C. The said Section is for order of custody and disposal of property pending trial in certain cases. In the present case, the learned trial Court not passed order regarding the disposal of the property at conclusion of the trial, thus, being on different facts and legal position, the case law cited is of no help to the applicant.

8. By appreciating the entire facts, evidence and legal position even at the motion stage, the applicant failed to make out a case so as to ascertain the order of the appellate Court prima facie incorrect, illegal or perverse. As a proceeding for the confiscation is pending before the concerned authority,

under the present law, the applicant/petitioner may make a submission/representation, put the facts during the proceeding and after order of the concerned authority, he may avail opportunity to challenge the order of confiscation.

9. On due consideration, I do not find the present case liable to be admitted for hearing. Hence, the petition/revision filed by the petitioner/applicant is hereby dismissed as not maintainable even at motion stage.

Sd/-
(C.B.Bajpai)
JUDGE

