

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRIMINAL MISC. PETITION NO. 221 OF 2016**

Smt. Roop Kumari Sidar, Aged about 46 years, W/o Semelal Sidar, R/o Qr. No. 23/D, Street No.32, Sector-4, Bhilai, PS Bhilai, Bhatthi, Tehsil & Distt. Durg (CG).

----PETITIONER**Versus**

State of Chhattisgarh through District Magistrate, Distt. Durg (CG).

---- RESPONDENT

For Petitioner	:	Shri Hemant Gupta, Advocate.
For respondent/State	:	Shri Anupam Dubey, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****24/06/2016**

1. Challenge in this petition is to the order dated 04.02.2016 passed by the Additional Sessions Judge, Durg, in Criminal Revision No. 04/2016 whereby the revisional court has affirmed the order of Collector, Durg, dated 07.12.2015 ordering confiscation of a Car (Tavera make) bearing registration No. CG-07-LP-8736.
2. Facts in brief necessary for disposal of this petition is that, the said vehicle is alleged to have been found carrying 115.56 bulk liters of liquor on 11.05.2013. As per prosecution case, the police authorities on suspicion had chased the vehicle, however, the driver of the vehicle at the relevant time abandoned the said vehicle and fled away from the scene. Subsequently it was revealed that the vehicle was being driven

by one Purendra Nirmalkar and hence an offence under the provisions of Chhattisgarh Excise Act was registered against the said Purendra Nirmalkar on 11.09.2013 at Police Station Utai, District Durg. It is also necessary at this juncture to highlight the fact that the said case initiated against the said Purendra Nirmalkar is still pending consideration before the trial court. In between, the Collector, Durg, invoking the provisions of Sections 47 and 47-A of the Excise Act initiated confiscation proceedings in respect of the said vehicle involved in commission of the said offence.

3. The present petitioner is the original owner of the vehicle and it is said that present petitioner had an agreement with Purendra Nirmalkar in respect of said vehicle being operated by Purendra Nirmalkar on a lease of initially 11 months and further to be renewed periodically. As per agreement, said Purendra Nirmalkar would pay an amount of Rs.12000/- per month to the petitioner as a rent of the vehicle.
4. The petitioner, on receiving notice of confiscation issued by the Collector, entered appearance and submitted reply categorically denying petitioner's involvement in the commission of offence and brought to its notice the fact relating to the agreement with Purendra Nirmalkar, and prayed for release of the vehicle. However, the Collector, Durg, vide order dated 07.12.2015 passed an order under Section 47-A of the Excise Act confiscating the said vehicle.
5. This order dated 07.12.2015 was put to challenge before the revisional court in criminal revision No.04/2016. The revisional court vide order impugned dated 04.02.2016 has affirmed the order of Collector

confiscating the vehicle leading to filing of this petition under Section 482 of Cr.P.C.

6. At the threshold, learned counsel appearing for the petitioner submits that the order passed by two authorities firstly the Collector and thereafter the revisional court both are not proper, legal and justified and deserve to be set aside. According to him, the power of Collector for initiating the confiscation is not disputed, but the confiscation proceedings should have been initiated only after the culmination of the criminal case i.e. the case registered against the accused person for the offence under the Excise Act and also that the culmination of the proceedings should result in the conviction of the accused persons only then confiscation proceedings can be justified. The very fact that there is all chances of the accused person getting acquitted from the criminal case itself should be a good ground for confiscation proceedings to be deferred till the culmination of the criminal case. But, in the instant case, the Collector and for that matter the Excise Department appears to have shown haste in initiating confiscation proceeding and also concluded the same which therefore deserves to be set aside.
7. Section 47-A(2) of the Chhattisgarh Excise Act itself very specifically holds that Collector firstly has to be satisfied that offence covered under the Act has been committed and this satisfaction can only be reached after there is an order of conviction by the trial court. Unless there is an order of conviction, there can be no subjective satisfaction of the offence to have occurred for the reason that in the event if criminal case results in the acquittal of the accused, it would mean that

an offence has not occurred, and therefore, under these circumstances, initiation of confiscation proceeding prior to the conclusion of the criminal case would not be justified. In support of this contentions, reliance is placed upon the Full Bench judgment of MP High Court in case of Madhukar Rao Vs. State of MP & Others, reported in 200(2) MPHT-445 which has subsequently been affirmed by the Supreme Court in case of State of Madhya Pradesh Vs. Madhukar Rao, reported in 2008(14)SCC-624 laying down the principle that, the proceedings of confiscation would come into play only after a court of competent jurisdiction found the accusation and the allegations made against the accuse as true and recorded a finding that the seized vehicle/article was as a matter of fact used in the commission of offence. It further lays down the proposition that merely on the basis of seizure and accusation of allegations levelled by the departmental authorities, the proceedings initiated would render it to be invalid and unconstitutional. Therefore, prays for quashing of two orders and for release of said vehicle.

8. The State counsel, opposing the petition submits that the two orders passed firstly by the Collector and then by the revisional court are purely in accordance with provisions of law governing the field and since it is purely in accordance with the powers conferred upon them and also speaking in nature hence does not warrant any interference.
9. A perusal of the record and which is undisputed, is the fact that criminal case under Section 34 of the Excise Act has been initiated against the accused person i.e. Purendra Nirmalkar which is still pending before

the magistrate court. Pending the criminal case before the magistrate court, the Collector had initiated the confiscation proceeding in respect of the said vehicle ordering confiscation on 07.12.2015 which was put to challenge before the revisional court and the revisional court has also upheld the order of Collector.

10. This court is inclined to accept the argument of counsel for the petitioner when he says that Collector ought to have waited for the outcome of the criminal case for the reason that Section 47(2) of the Excise Act clearly says that the Collector on being satisfied that offence covered under Section 34 of Excise Act has been committed and it was the said vehicle which had been used for the commission of offence only then can he pass an order of confiscation. This satisfaction could be only after there is a clear order of the case being proved and the accused being found guilty and conviction for the offence under Section 34 of the Excise Act with a categorical finding that it was this vehicle which was involved in the commission of the offence. In the absence of any finding from the criminal case, the steps for confiscation initiated by the Collector would be totally unjustified.
11. So far as the law laid down by the Full Bench of MP High Court in Madhukar Rao (Supra) and which has also been affirmed by the Supreme Court, the issue involved in the present case stands squarely decided when the Supreme Court in paragraph 16 of its judgment (State of Madhya Pradesh Vs. Madhukar Rao) has held that “there may be a case where a vehicle was undeniably used for commission of an offence under the Act but the vehicle's owner is in a position to show

that it was used for committing the offence only after it was stolen from his possession. In that situation, we are unable to see why the vehicle should not be released in the owner's favour during the pendency of the trial”.

12. Likewise, in paragraph 23 of the same judgment again it has been held that, “ the the provisions of Section 39(1)(d) would come into play only after a court of competent jurisdiction found the accusation and the allegations made against the accused as true and recorded a finding that the seized vehicle/article was, as a matter of fact, used in the commission of offence. Any attempt to operationalize Article 39(1)(d) of the Act merely on the basis of seizure and accusations/allegations levelled by the departmental authorities would bring it into conflict with the constitutional provisions and would render it to be invalid and unconstitutional.”
13. Recently, similar issue though under the provision of Wild Life Protection Act, 1972, had crop up before the co-ordinate Bench of this court in Writ Petition (CR) No.57 of 2014 and while deciding the same on 05.04.2016, the Hon'ble Judge relying upon the Full Bench judgment of MP High Court in case of Madhukar Rao (Supra) and also judgment of Supreme Court (State of Madhya Pradesh Vs. Madhukar Rao) had taken a view that the provisions of confiscation cannot be invoked in absence of finding by the criminal court that the concerned vehicle was being used for the commission of the offence. The Bench of this court has categorically held that the order of the specified officer confiscating the vehicle without awaiting the decision of the competent

criminal court about commission of the offence has also used the offending vehicle in the said offence is without jurisdiction and without authority of law.

14. In view of aforesaid judicial pronouncement referred here in above, this court is also inclined to take the same view and reach to the conclusion that in the absence of final adjudication in the criminal case initiated for the offence under Section 34 of the Excise Act firstly against the accused person and secondly in respect of vehicle involved in the case, the initiation of confiscation proceeding by the Collector, Durg, on 07.12.2015 as also the order of revisional court dated 04.02.2016 are per se illegal and bad in law and are accordingly set aside.
15. However, liberty is reserved in favour of the authorities concerned under the Excise Act to proceed for confiscation proceeding of the said vehicle depending upon the result and outcome of the criminal case pending before the magistrate court.
16. The petition under Section 482 of Cr.P.C. is allowed to the above extent.

Sd/-
(P. Sam Koshy)
JUDGE