

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRMP No. 1408 of 2016**

- Leelaram Patel S/o Veer Singh Aged About 25 Years R/o Village-Demar, Police Station- Arjuni, Tahsil & District- Dhamtari, Chhattisgarh.

**---- Petitioner**

**Versus**

- State Of Chhattisgarh Through The District Magistrate, Dhamtari, District- Dhamtari, Chhattisgarh.

**---- Respondent**

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For the Petitioner : Shri Anil Gulati, Advocate.

For the Respondent : Shri Vijay Bahadur, PL for the State.  
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**Hon'ble Shri Justice Rajendra Chandra Singh Samant**

**Order on Board**

**21/02/2017**

1. Heard finally.
2. It is submitted that the petitioner is registered owner of the motorcycle bearing Registration No.C.G.-05/VV/6496 which was seized by Excise Circle West, Dhamtari on 15.10.2016 in connection with offence under Section 34(1)(A) and 34(2) of Chhattisgarh Excise Act, alleging that this motorcycle was used for transportation of illegal country made liquor. Motorcycle was borrowed by friends of petitioner Sagar Patel and one another. It was seized when the concerned motorcycle was in possession of Sagar Patel and one another, hence, petitioner has no connection with the concerned offence. He is entitled for the interim custody of the seized vehicle.

3. Petitioner at first filed an application before the Court of Chief Judicial Magistrate, Dhamtari with prayer for release of the seized vehicle under Section 457 of Cr.P.C., by order dated 22.10.2016 the same was rejected. This order was challenged before the Sessions Court, Dhamtari in revision No.69/2016, which was decided on 9.11.2016. Revision was dismissed and the order of Chief Judicial Magistrate, Dhamtari was maintained.
4. As per certified copies of documents, it is clear that appellant is not one of the accused in the concerned criminal case and he appears to be registered owner of the motorcycle. Copies of registration certificate and insurance policy are produced before this Court. There is no bar to order for interim custody of a vehicle seized in connection with offence under Chhattisgarh Excise Act. Property seized in such a case are liable of confiscation under Section 46 of the Act and such offence under Chhattisgarh Excise Act. Sub-section 2 of Section 47 empowers Collector to dispose of seized property under same circumstances. Hence, the grounds mentioned in the impugned order, that the proceeding of confiscation has been initiated before the Collector of District seems not to be covered under Section 47(2) of Chhattisgarh Excise Act. On the basis of these discussions, it is found that the Courts below have failed to properly exercise their jurisdiction while passing order on the application of petitioner.
5. On these grounds this petition is allowed. The impugned order and the order of Chief Judicial Magistrate are hereby set aside.

6. Petitioner is directed to approach the Court of Chief Judicial Magistrate, Dhamtari for fresh decision on the application under Section 457 of Cr.P.C. in accordance with law and in accordance with the directions given in this order.

**Sd/-**

**(Rajendra Chandra Singh Samant)**  
Judge

Nisha