

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1387 of 2017

Narottam Dhruw S/o Rajauram Dhruw Aged About 70 Years R/o
Village Doma Post Doma Police Station Bhakhara District Dhamtari
Chhattisgarh.

---- Petitioner

Versus

State Of Chhattisgarh Through District Magistrate Dhamtari District
Dhamtari Chhattisgarh.

--- Respondent

For petitioner -	Shri Avinash Chand Sahu, Advocate.
For Respondent/State –	Shri S.R.J. Jaiswal, PL.

Hon'ble Shri Justice Goutam Bhaduri
(Order on Board)

15/02/2018

1. The instant petition is against the order dated 23/08/2017 passed in Criminal Revision No. 56/2017 by the learned Additional Sessions Judge, Dhamtari whereby the order passed by the JMFC, Dhamtari dated 4/08/2017 rejecting the prayer for handing over the custody of the vehicle was affirmed.
2. As per the prosecution case, on 5/05/2017 on an information received that car bearing registration No.C.G.05/R/0228 in which liquor was kept for selling as such when it was raided in Car 89.640 bulk liters of illegal liquor was found. Thereafter, after investigation charge sheet was filed. Subsequently, an application under Section 451 of Cr.P.C. for custody of the vehicle was filed which was dismissed on 4/08/2017 by the JMFC, same having been challenged in revision it was further affirmed. Therefore, this instant petition.
3. Learned counsel for the petitioner would submit that till date no notice of confiscation has been given, only reply which is filed by the State

would show that they are contemplating confiscation proceeding but actually confiscation proceeding has not been yet started, therefore vehicle be released in favour of the petitioner.

4. Learned State counsel opposes the argument and would submit that order rejecting release of the vehicle in favour of the petitioner is well merited which do not require any interference.

5. Perused the order dated dated 23/08/2017. Order records that proposal for confiscation has already been sent to the District Magistrate and information have been received, therefore court below could not have passed any order for release of the vehicle.

6. The confiscation proceeding under Chhattisgarh Excise Act, 1915 is governed by Section 47-A of the Act. Section 47 (2) regulates the power and procedure to be adopted for confiscation which reads as under:-

“47 (2) When the Collector, upon production before him of intoxicants, articles, implements, utensils, materials, conveyance etc. or on receipt of a report about such seizure as the case may be, is satisfied that an offence covered by clause (a) or clause (b) of sub-section (1) of Section 34 has been committed and where the quantity of liquor found at the time or in the course of detection of such offence exceeds five bulk liters he may, on the ground to be recorded in writing, order the consfiscation of the intoxicant, articles, implements, utensils, materials, conveyance etc. so seized. He may, during the pendency of the proceedings for such confiscation also pass an order of interim nature for the custody, disposal etc. of the confiscated intoxicants, articles, implements, utensils, materials, conveyance etc. as may appear to him to be necessary in the circumstances of

the case.”

7. Perusal of the sub section-2 would show that power has been given to the Collector upon production of the article and on having satisfied that offence covered under the clause (a) or clause (b) of sub-section (1) of Section 34 has been committed and if liquor is more than 5 bulk liters he may order for confiscation of articles, intoxicants, implements, utensils including the conveyance so seized. It also records that he may during pendency of the proceeding may pass an order of interim nature for custody, disposal etc. of the confiscated intoxicants, articles, implements, conveyance as may appear to be necessary in the facts of this case.

8. Section 47 (B) of Chhattisgarh Excise Act, 1915 provides for appeal against the order of confiscation. Therefore it necessarily leads that order of confiscation can only be challenged when it reaches it's finality and the statute do not give any space to challenge any other order except the final one. In view of this, the necessary implication would be that any order of interim nature if any passed, the High Court in exercise of it's power vested in it under article 227 can always test the propriety or legality of the order. It is a settled proposition of jurisprudence that every wrong will have a remedy. So if the order is found to be wrong then certainly the High Court would have all the power to correct the same.

9. Reply has been filed on behalf of the State which would show that only the proposal for confiscation has been made. It is not clear that whether the confiscation proceedings has started or not. The impugned order of the rejection records that the Court is not empowered to release the vehicle which in the opinion of this Court, as observed hereinabove, cannot be sustained in totality as the vehicle if it is kept pending adjudication for confiscation, for all practical purposes it will loose its road worthiness and also occupies space in police station and it would further

prone to casual and natural decay.

10. Therefore, in view of the foregoing discussion, this court is inclined to direct for releasing the vehicle in favour of the petitioner by way of interim measure. Accordingly, it is directed that the the vehicle shall be released to the interim custody of petitioner on the following conditions:-

1. Before release of vehicle proper panchnama be prepared.
2. Photographs of vehicle should be taken and bond should also be furnished that the article would be produced if required at the time of trial.
3. Proper security i.e. personal bond of Rs. 1 lakhs and like sum of surety be obtained before release of vehicle.

11. Accordingly, the petition succeeds and is allowed. No order as to cost.

Sd/-

(Goutam Bhaduri)
JUDGE