

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1213 of 2017**

Sunil Kumar Jaiswal S/o Vedprakash Jaiswal, Aged About 38
Years R/o Old Bus Stand, Pali Police Station Pali, District
Korba Chhattisgarh., --- **Petitioner**

Versus

State of Chhattisgarh through Police Station Ratanpur.,
Chhattisgarh --- **Respondent**

For the applicant : Mr. Saleem Kazi, Advocate
For the State : Mr. Adhiraj Surana, Dy.Govt. Advocate

CRMP No. 1475 of 2017

Amit Dubey S/o Ramesh Dubey Aged About 26 Years R/o
Gond Para, Subhash Nagar, Bilaspur, District Bilaspur
Chhattisgarh, Through The Power Of Attorney Holder Ramesh
Kumar Dubey, Aged About 55 Years, S/o Lalmani Dubey, R/o
Gondpara, Subhash Nagar, Bilaspur Chhattisgarh,
Chhattisgarh --- **Petitioner**

Versus

State of Chhattisgarh through the Police Station Ratanpur,
District Bilaspur Chhattisgarh , Chhattisgarh --- **Respondent**

For the applicant : Mr. Abhijeet Mishra, Advocate
For the State : Mr. Adhiraj Surana, Dy.Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri**CAV ORDER****(Reserved on 17.01.2018)****(Delivered on 07.03.2018)**

1. Since the question of law involved in both the petitions are one and the same, they are being decided by this common order.

2. Cr.M.P. No. 1213 of 2017 is filed against the order dated 17th July, 2017 passed in Criminal Revision No.90/2017 by the 5th Additional Sessions Judge, Bilaspur. The said order has affirmed the order of the Judicial Magistrate dated 08.06.2017 whereby the application preferred by the petitioner Sunil Kumar Jaiswal for custody of the vehicle was dismissed.
3. Likewise Cr.M.P. No.1475/2017 is preferred against the order dated 07th October, 2017 passed by the 4th Additional Sessions Judge, Bilaspur, in Criminal Revision No.180/2017 which was filed against the order dated 05.07.2017 passed by the Court of JMFC Kota wherein the application filed u/s 457 of Cr.P.C., was rejected.
4. The facts of Cr.M.P. No. 1213 are that a Truck bearing Regn.No.C.G.04-JC/4238 was seized by the Police Station Ratanpur in Crime No.159/2017 for the offence punishable u/s 41(1-4) of the Code of Criminal Procedure read with section 379 of IPC and Sections 3 & 7 of the Essential Commodities Act and section 23 of the Petroleum Act, 1934 and is kept in police station. Subsequently an application was filed u/s 457 of Cr.P.C., by petitioner Sunil Kumar Jaiswal on the ground that he is owner of the said Truck and the entire livelihood is dependent upon the said vehicle, therefore, the truck may be released in his favour. The said application for custody of the vehicle was dismissed by the Judicial Magistrate First Class, Kota and having preferred a revision against such order, the revision was also dismissed by holding that the Court do not have any jurisdiction to grant Suprudnama of the vehicle u/s 6(E) of the Essential

Commodities Act. Therefore, the Cr.M.P.No.1213/2017 is preferred.

5. Likewise the facts of Cr.M.P.1475/2017 are that on 28.6.2017 certain information was received that a Truck bearing No. M.P.06-HC/0667 was carrying the food grains which was meant for the distribution to the Fair Price Shops and the same were being sold out to other persons who were not entitled to receive the same. Thereafter, the police has seized the truck from the godown of Ashwini Sahu at village Lakram with sacks of wheat and thereafter the police has registered the offence u/s 3 & 7 of the Essential Commodities Act, 1955 (hereinafter referred to Act, 1955) and section 407 read with section 34 of IPC against the driver of truck Manohar Sharma and the owner of the godown Ashwin Sahu. Subsequently, the applicant herein namely Amit Dubey has filed an application u/s 457 of Cr.P.C., before the JMFC, Kota for handing over the vehicle on interim custody. The said application was rejected on the ground that the confiscation is proposed by the Collector thereby the bar is created under section 6-E of the Essential Commodities Act 1955 and the Court has no jurisdiction to entertain the application seeking custody of the vehicle. The said order having been challenged before the Revisional Court, the revisional court also affirmed the order of the JMFC. Hence, this petition.
6. The order would reveal that the rejection for delivery of the vehicles on Suprudnama is primarily on the ground that Section 6E of the Essential Commodities Act creates a bar as it takes away the jurisdiction of the Courts to grant the custody of the vehicle. The rejection of custody of vehicle

was predominantly on the ground by reference of an order passed by the Bench of this Court in Cr.M.P. No. 1068 of 2014 (Vishnu Prasad Vaishnav Vs. State of C.G.,) decided on 17.12.2014 wherein it was held that section 6E of the Essential Commodities Act takes away the jurisdiction to grant the vehicle on Suprudnama, therefore, the respective prayers were rejected.

7. Learned counsel for the petitioner would submit that in the instant case, the confiscation proceedings has not commenced, therefore, the bar of Section 6-E of the Essential Commodities Act, 1955 would not apply. It is further submitted that the petitioner being the owner of the vehicle, the right to claim the vehicle is always with him and keeping the vehicle in the police station will not help the prosecution in any manner and the bar created by section 6-E of the Act, 1955 is not absolute. He further submits that the reply of the State would show that no documents have been placed on record, even a notice or any proceeding of the confiscation have commenced, thereby the confiscation cannot be automatically presumed. Referring to case law laid down in **(2002) 10 SCC 283 - Sunderbhai Ambalal Desai Vs. State of Gujarat**, he submitted that under the facts and circumstances of the case, the custody of the vehicle as an interim measure can always be provided for.
8. Per contra, learned State Counsel opposes the arguments and would submit that pursuant to the law laid down by the coordinate Bench of this Court in **Cr.M.P.No. 1068/2014 in Vishnu Prasad Vaishnav Vs. State of Chhattisgarh 2015 (1) CGBLJ 40** the custody of the vehicle cannot be

handed over when the vehicle is involved in some offence under the Act of 1955 as section 6-E of the Act of 1955 takes away the complete jurisdiction to grant custody of vehicle. It is further submitted that the order passed by both the courts below are well merited which do not call for any interference.

9. I have heard learned counsel for the parties and have also perused the documents filed with the petition as also the case law relied by the State Counsel in case of *Vishnu Prasad Vaishnav Vs. State (Supra)*.
10. As the entire emphasis was placed that the bar created by section 6-E of the Essential Commodities Act, 1955, the relevant sections and the provisions of the Essential Commodities Act 1955 were examined. The relevant sections of confiscation are described in the Act of 1955 from section 6-A, 6-B & 6-C of the Act and the confiscation is covered under 6-E of the Act 1955. Section 6-A, the relevant Part-1 is reproduced herein below :

6-A. Confiscation of essential commodity.-- (1) Where any essential commodity is seized in pursuance of an order made under section 3 in relation thereto, a report of such seizure shall, without unreasonable delay, be made to the Collector of the district or the Presidency town in which such essential commodity is seized and whether or not a prosecution is instituted for the contravention of such order, the Collector may, if he thinks it expedient so to do, direct the essential commodity so seized to be produced for inspection before him, and if he is satisfied that there has been a contravention of the order may order confiscation of-

- (a) the essential commodity so seized;
- (b) any package, covering or receptacle in which

such essential commodity is found; and
 (c) any animal, vehicle, vessel or other conveyance
 used in carrying such essential commodity:

Provided that without prejudice to any action which may be taken under any other provision of this Act, no foodgrains or edible oilseeds have been produced by him, be confiscated under this section :

Provided further that in the case of any animal, vehicle, vessel or other conveyance used for the carriage of goods or passengers for hire, the owner of such animal, vehicle, vessel or other conveyance shall be given an option to pay, in lieu of its confiscation, a fine not exceeding the market price at the date of seizure of the essential commodity sought to be carried by such animal, vehicle, vessel or other conveyance.

11. Likewise, the relevant part of section 6-B is reproduced herein below:

6-B. Issue of show cause notice before confiscation of food-grains, etc. - (1) No order confiscating any essential commodity, package, covering or receptacle, animal, vehicle, vessel or other conveyance shall be made under Section 6A unless the owner of such essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance or the person from whom it is seized. -

(a) is given a notice in writing informing him of the ground on which it is proposed to confiscate the essential commodity package, covering or receptacle, animal, vehicle, vessel or other conveyance

(b) is given an opportunity of making a presentation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation; and

(c) is given a reasonable opportunity of being heard in the matter

12. Section 6-C provides for appeal. It reads as under :

6-C. Appeal.-- (1) Any person aggrieved by an order of confiscation under section 6A may, within one month from the date of the communication to him of such order, appeal to any judicial authority appointed by the State Government concerned and the judicial authority shall, after giving an opportunity to the appellant to be heard, pass such order as it may think fit, confirming, modifying or annulling the order appealed against.

13. Section 6E creates a bar of jurisdiction in certain cases. It reads as under :

“6-E. Bar of Jurisdiction in certain cases-- Whenever any essential commodity is seized in pursuance of an order made under section 3 in relation thereto, or any package, covering or receptacle in which such essential commodity is found, or any animal, vehicle, vessel or other conveyance used in carrying such essential commodity is seized pending confiscation under section 6A, the Collector, or, as the case may be, the judicial authority appointed under section 6C shall have, and notwithstanding anything to the contrary contained in any other law for the time being in force, any other court, tribunal or authority shall not have, jurisdiction to make orders with regard to the possession, delivery, disposal, release or distribution of such essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance.”

14. Reading of section 6-A shows that where any essential commodity is seized in pursuance of an order made u/s 3 in

relation thereto, a report of seizure shall be made to the Collector and irrespective of the fact that whether the prosecution is instituted for the contravention of the order or not, the collector may if he thinks fit direct the production of the same for inspection and subsequent thereto if he is satisfied that there has been a contravention of the order, he may order for production of the Essential Commodities "as also the vehicle for confiscation". Therefore, reading of section 6A would show that it is "in two parts" - (1) The "first part" speaks about the production of the essential commodity for inspection and (ii) the second part touches upon that if the Collector is satisfied that there has been a contravention of the order, he may direct for confiscation. Therefore, in a given case it may also happen that after the inspection the collector may or may not order for confiscation.

15. Section 6-A creates certain riders which are to be complied before order of the confiscation by the Collector. The said section gives power of confiscation to the Collector on the ground that "if he is satisfied" that there has been a contravention of the order then the confiscation can be ordered. Reading of section 6-B would show that it prescribed the procedure for confiscation and mandates that the confiscation of the vehicle, vessel, conveyance, essential commodity etc., cannot be made unless the owner is given a notice and is heard. Therefore, the satisfaction of the Collector to proceed with confiscation under section 6-A has to be reflected in the manner prescribed u/s 6-B of the Act. Unless and until any primary notice is issued, the

contemplated satisfaction in the mind of the authority cannot be presumed. This can be looked into from other angle that once the essential commodity is seized u/s 6-A and the inspection is made by the Collector, he may find in a particular case that the confiscation may not be required. So after the seizure of essential commodity or the goods or the vehicle if the proceeding for confiscation is not commenced by issuance of notice u/s 6-B, it cannot be interpreted that except the Collector, no one has authority to grant the custody of the vehicle. As has been laid down in ***AIR 1990 SC 1849 – State of M.P. Vs. Rameshwar Rathod*** under the code of criminal procedure. The criminal courts of the country would have jurisdiction. The ouster of jurisdiction, therefore, cannot be inferred ordinarily. The power to grant the custody of any vehicle, goods, encompasses under the Cr.P.C, and when the prosecution is pending unless any specific bar is created for operations of any provisions of Cr.P.C., the criminal court will have the jurisdiction to deal with it.

16. If the facts of the both the cases are seen together, in Cr.M.P. No. 1213 of 2017 the criminal case is pending before the JMFC. Reading of the petition of Cr.M.P.No.1213/2017 would show that the petitioner has categorically averred at Para 4 of the petition that the confiscation proceeding by the Collector has not yet started. In reply to this, the State has contended that after due investigation, the charge sheet has been filed before the learned Court i.e., JMFC. One reply was filed on 01.10.2017 which is silent on the fact that whether the confiscation proceeding has commenced before the

Collector or not. Along-with the petition copy of the charge sheet has been preferred before the JMFC u/s 379, 411/34 read with section 3 & 7 of the Essential Commodities Act and section 23 of the Petroleum Act.

17. Likewise in Cr.M.P.No.1475/2017, the order of the revisional Court records that in respect of the Truck bearing M.P.06/HC/0667, report was called by the collector, Bilaspur, Food Inspector, therefore, it would lead to presume that confiscation proceedings has started. The pleading in the petition i.e., Cr.M.P.No.1475/2017, categorical submissions have been made that no confiscation proceedings have started. In reply to such petition, the State is silent and it has been stated that the enquiry report has been called from the Police by the Collector, therefore, it records that the confiscation proceeding is pending before the Collector.
18. In both the cases, not a single document has been placed by the State to substantiate that the confiscation proceeding has been started by the Collector in respect of vehicles.
19. Section 6-A of the Act of 1955 purports that after seizure, a report of such seizure shall be made to the collector of the District in which such commodity is seized. No documents have been placed in both the cases to show that there has been a compliance of first part of section 6-A. Section 6A further contemplates that irrespective of the fact whether the prosecution has been launched or not, the Collector may call for production of such goods for inspection. The reply to the State and the documents placed are also silent on the fact that whether such compliance was made to that part of section 6-A. Subsequent thereto no document is placed on

record at least the memo/notice to show that the confiscation was contemplated and show cause for hearing was given as per section 6-B.

20. Reading of section 6E would show that when the essential commodity is seized or any animal, vehicle etc., used in carrying such essential commodity so seized then “pending confiscation u/s 6-A”, the Collector shall have jurisdiction to grant the custody meaning thereby the interim custody also and if the confiscation order has been passed, then in such a case the Judicial Authority appointed under section 6-C shall have the power to order for delivery or disposal of goods, animal, vehicle, essential commodity, etc., which includes the custody of vehicle till the final adjudication of appeal against confiscation. The necessary interpretation can be made when the order for confiscation is under challenge before the Judicial Authority under section 6C in appeal, the judicial authority can also grant custody of vehicle by way of interim order. Therefore, section 6E of the Essential Commodity Act do not create an absolute bar on the judicial authority for grant of custody of vehicle.
21. Now the other question which falls for consideration is whether the Judicial Authority will have jurisdiction to grant custody of vehicle when prosecution is pending before it. As has been discussed earlier in the foregoing paragraphs, the ouster of jurisdiction of judicial authority cannot be easily inferred. Therefore, when the charge sheet is pending before the Judicial Authority by application of provisions of the Code of Criminal Procedure, normally it will have the jurisdiction. Section 6E of the Act of 1955 if is read in between the lines it

purports that it only takes away the jurisdiction of the Judicial Authority when the “confiscation proceeding has been commenced” by the Collector.

22. At this juncture, in order to assess the position of Judicial Authority, the sections of the Act of 1955 which were amended from time to time would demonstrate the intention of Legislature. The amendment made taking away of the jurisdiction of Judicial Authority was for specific period of time and after the time lapsed, the Judicial Authority again resumed its jurisdiction. Section 6C and Section 6E were amended by the special provisions of the Essential Commodities Act, 1981 wherein the right of the judicial authority was taken away by amendment which was as under:

“5. Amendment of Section 6C.- In section 6C of the principal Act, -

(a) in sub-section (1), for the words “any judicial authority appointed by the State Government concerned and the judicial authority”, the words “the State Government concerned and the State Government” shall be constituted.

(b) in sub-section (2), for the words “such judicial authority”, the words “the State Government” shall be substituted.”

.....

“6. Amendment of Section 6E.- In Section 6E of the principal Act,-

(a) for the words, figure and letter “the judicial authority appointed under Section 6C “the words, figures and letter “the State Government concerned under section 6C” shall be substituted;

(b) for the words “any other court, tribunal or authority”, the words “any court, tribunal or other

authority” shall be substituted.”

23. The said amendment by Act 34 of 1993 was in operation for a period of 15 years and after 1993 i.e., after passing of 15 years, the original sections as are existing in 6C & 6E again revived in the Act of 1955. Therefore, if any essential commodity, goods, vehicle etc., is seized, in pursuance of an order u/s 3 of the Act, the following interpretation of Sections 6-A, 6-B, 6-C & 6-E emerges out :

(i) Report of such seizure has to be made to the Collector of the District

(ii) Irrespective of the fact whether the prosecution is instituted or not, the Collector if felt expedient to do so may ask for inspection of the commodities or goods, vessel, vehicle etc., so seized

(iii) “Having satisfied” that there is contravention of the order, the Collector may direct for confiscation; AND if not satisfied about the breach of order may also release the goods, vehicles, etc.

(iv) The satisfaction to proceed for confiscation has to be reflected in terms of section 6-B of the Act of 1955 which requires notice and hearing ;

(v) Once notice of confiscation is issued it would be presumed that confiscation proceedings have started and the jurisdiction of Judicial Authority shall be barred to grant interim custody of goods, vehicles etc., even in the prosecution case pending before it as per Section 6-E of the Act;

(vii) After an order of confiscation is passed by

the Collector, the aggrieved party may file an appeal u/s 6-C of the Act of 1955. In such case, the Judicial Authority will get the jurisdiction to grant custody of goods, vehicle etc., during pendency of Appeal u/s 6-C as section 6-E of the Act makes a reference of Judicial Authority appointed u/s 6-C.

24. Therefore, section 6E of the Act takes away the jurisdiction of the Judicial Authority with regard to the possession, delivery etc., only when the confiscation is pending before the Collector. In absence of pendency of confiscation proceeding before the Collector, the Judicial Authority shall have jurisdiction to grant possession of the vehicle, vessel, goods etc.
25. In the facts and circumstances of the present case, as discussed above, as the vehicle is still lying in the custody of Police, following the law laid down in **(2010) 6 SCC 768 General Insurance Council Vs. State of A.P.**, wherein the earlier principles laid down in case of **Sunderbhai Ambalal Desai Vs. State of Gujarat (2002) 10 SCC 283** were reiterated, the orders of rejection of application for interim custody cannot be allowed to sustain. Consequently applying the said principles, it is directed that the vehicle(s) be released in favour of the petitioner(s) by way of interim measure, if the confiscation proceedings have not been concluded till the date of production of this order.
26. Therefore, the vehicle is directed to be released to the petitioner on the following conditions :
 - (i) Before release of vehicle proper Panchnama be prepared;

(ii) Photographs of vehicle should be taken and bond should also be produced that the article would be produced if required at the time of trial;

(iii) Proper security i.e., personal bond of Rs.15 lakhs and like sum of surety be obtained before release of the vehicle.

27. In view of the principles as has been interpreted by this Court, this Court is in respectful disagreement with the principles of law laid down by this Court earlier. This judgment comes into conflict with ratio of judgment reported in Cr. M. P. No.1068/2014 (Vishnu Prasad Vaishnav Vs. State of Chhattisgarh) *2015 (1) CGBLJ 40* decided by this Court as the earlier judgment has laid down that the Judicial Magistrate or any Judicial Authority shall not have the jurisdiction with regard to custody of the vehicle u/s 457 of Cr.P.C., to dispose of the vehicle seized under the Essential Commodities Act.
28. In view of the foregoing discussion, this Court is in disagreement with the view taken in judgment/order passed by the coordinate Bench of this Court in Cr. M. P. No. 1068/2014 (Vishnu Prasad Vaishnav Vs. State of Chhattisgarh) *2015 (1) CGBLJ 40* decided on 17.12.2014. In the result, I am of the considered view that the judgment delivered by this Court in Cr.M.P. No. 1068/2014 (supra) requires to be reconsidered by a Bench of two Judges.
29. Therefore, let the matter be placed before Hon'ble the Chief Justice as provided in Rule 32 (2)(ii) of the High Court of Chhattisgarh Rules, 2007 for being referred to a larger

Bench of Judges to decide the following questions of law :

(A) In absence of confiscation proceedings pending, whether section 6-E of the Essential Commodities Act, 1955 creates an absolute bar to deal with Section 457 of the Code of Criminal Procedure ?

(B) Whether section 6-E takes away the jurisdiction of the Judicial Authority to grant custody of vehicle, goods etc., pending appeal u/s 6-C of the Act of 1955 ?

30. In view of the principles as set forth in the foregoing paragraphs, both the petitions are allowed. No order as to costs.

**Sd/-
GOUTAM BHADURI
JUDGE**