

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 347 of 2018

Dilip Kumar Chauhan, S/o. Mangal Singh Chauhan, Aged About 35 Years,
R/o. Qr. No. 1, Block No. 84, Near Gurudwara Camp-1, Bhilai, District
Durg, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh, Through Collector Durg, Chhattisgarh
2. Station House Officer, Chhawani Bhilai, District Durg, Chhattisgarh

---- Respondents

For Petitioner : Mr. Anurag Jha, Advocate
For Respondents : Mr. S.K.Mishra, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

02.04.2018

Heard

1. The instant petition is against the order dated 21.12.2017 whereby an application with a prayer for interim custody of the vehicle was dismissed by the Collector.
2. As per the prosecution case, the charge sheet was filed against the petitioner that on 23.07.2017 the Betel shop of the petitioner having been raided, the Activa bearing No.C.G. 07 AQ 5830 was found parked and when it was searched from the Dickey total 6.300 bulk liter of liquor was seized thereby the offence under Section 34(2) of the Excise Act was registered.
3. Learned counsel for the petitioner submits that the confiscation proceeding of the vehicle though had commenced, however, it do not put a bar to grant the interim custody of the vehicle since the vehicle is kept in a stationary condition and it will lose its road worthiness till the proceedings are concluded. He further submits

that under the circumstances, till the confiscation proceeding is concluded, the vehicle should be handed over to the petitioner.

4. Learned State counsel opposes the argument.
5. Perused the order dated 21.12.2017 passed by the Collector. The order purports that the case under Section 34(2) of the Excise Act is pending before the Judicial Magistrate wherein the statement of the witnesses are to be recorded; therefore, the application for custody of the vehicle was dismissed. The order practically do not reflect any reasoning except the fact that criminal case is pending before the Judicial Magistrate.
6. The confiscation proceeding under Chhattisgarh Excise Act, 1915 is governed by Section 47-A of the Act. The section 47 (2) of it 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 confiscation 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 Section 482 of Cr.P.C. 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 virtually of without sufficient reasons then certainly the High Court would have all the power to correct the same.
9. The order dated 21.12.2017 virtually do not reflect any reasoning except the fact that the statement of the witnesses are to be recorded in criminal case before the Judicial Magistrate. So for all practical purpose vehicle is lying at the disposal of authorities or at police station. Therefore, if it is kept in the police station it must be occupying space or is prone to cause natural decay and may lose its road worthiness when kept in stationery position. In facts of the

case following the law laid down in case of ***General Insurance Council and others Vs. State of Andhra Pradesh and others*** reported in ***(2010) 6 SCC 768*** wherein the earlier principles laid down in case of ***Sunderbhai Ambalal Desai Vs. State of Gujarat*** reported in ***(2002) 10 SCC 283*** was reiterated, the order of rejection of application for interim custody cannot be allowed to remain. Consequently, applying the said principles, it is directed that the vehicle be released in favour of petitioner by way of interim measure, if the confiscation proceedings have not been concluded till date of production of this order.

10. In the result, order dated 21.12.2017 is quashed and the petition is allowed. The vehicle is directed to be released to the 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 produced that the article would be produced if required at the time of trial.
3. Proper security i.e. personal bond of Rs. 25,000/- and like sum of local surety be obtained before release of vehicle.

Sd/-
(Goutam Bhaduri)
Judge