

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1073 of 2018

Smt. Sarita Dani W/o Shri Dilip Gupta, Aged About 50 Years R/o
Basna, P.S. And Tahsil Basna, District Mahasamund Chhattisgarh.

---- Petitioner

Versus

State Of Chhattisgarh Through District Magistrate Mahasamund
District Mahasamund Chhattisgarh.

---- Respondent

For petitioner – Shri Vivek Tripathi, Advocate.
For State-Shri Sangarsh Pandey, Dy.G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

30/07/2018

Heard.

1. Instant petition is against the order dated 26/05/2018 passed in Criminal Revision No.13/2018. By said revision the revisional court has affirmed the refusal order of the custody of the vehicle dated 3/05/2018.
2. Facts of this case are that the petitioner claims herself to be the owner of the vehicle bearing No.C.G.04 LE 7737. It is contended that the said vehicle was taken by the accused Satrugan Yadav for the reason that he is required to take her wife for treatment to Bilaspur and it was given for such reason but the vehicle was involved in case of transporting illegal liquor and when raid was conducted from the vehicle 225 litres of illicit liquor were seized.
3. Learned counsel for the petitioner would submit that criminal case is pending and except statement of the State that confiscation proceeding has started no facts are before the court to show that actual confiscation has concluded. It is further stated that under the circumstances there is no purpose would be served to keep the vehicle for unlimited period in the custody and the vehicle may be released in favour of the petitioner.
4. Perused the order of both the court below.

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

“47-A (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.”

6. 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.

6. 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 its 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 its 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.

7. Reply of the State has been filed in this case. Reply of the State shows that only confiscation proceeding has commenced and nothing has been placed on record to show that judicial proceeding of the confiscation has commenced. It is only some reference was made in the order of the rejection by the learned court below that proposal is made for confiscation of the vehicle. As per principles as laid down by Supreme Court in **General Insurance Council and others Vs. State of Andhra Pradesh and others** reported in **(2010) 6 SCC 768** and **Sunderbhai Ambalal Desai Vs. State of Gujarat** reported in **(2002) 10 SCC 283** it is obvious that the vehicle if is kept in custody of police contemplating confiscation the vehicle for all practical purposes it will lose its road worthiness and also will occupy space in police station and it would further be prone to casual and natural decay.

8. 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 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. 5 lakhs and like sum of surety be obtained before release of vehicle.

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

Sd/-

(Goutam Bhaduri)

JUDGE

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