

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1593 of 2017**

Hajari Kachwaha S/o Ashok Kumar Kachwaha, Aged About 38
Years R/o Old Bus Stand, District Bilaspur, Chhattisgarh. --

Petitioner**Versus**

State of Chhattisgarh through the Excise Circle Sipat, District
Bilaspur, Chhattisgarh. ---

Respondent

For petitioner -

Shri Arun Kochar, Advocate.

For Respondent/State –

Shri Adhiraj Surana, Dy. G.A.

Hon'ble Shri Justice Goutam Bhaduri

(Order on Board)

09-01-2018

1. The Instant petition is against the order dated 11/08/2017 passed in Criminal Revision No. 74/2016 by the learned Additional Sessions Judge, Bilaspur in J.M.F.C. Bilaspur whereby the order passed by the JMFC dated 13.05.2016 rejecting the prayer for handing over the custody of the vehicle was affirmed.

2. As per the prosecution case on 10.05.2016, the vehicle bearing registration No.C.G.10-C/3958 i.e., an Auto was intercepted by the police and on searching the vehicle, 3 cartoons of liquor total admeasuring 24 bulk liters was found in the back side of the vehicle, which was being transported. Thereafter it was found that the petitioner is owner of the vehicle as it was registered in the name of Petitioner and the confiscation proceedings were proposed to be initiated. Subsequently an application for handing over the custody of vehicle was filed which was dismissed on the ground that the confiscation proceedings were contemplated in this case which was found by the learned court below.

3. Learned counsel for the petitioner would submit that the order would reflect that the only confiscation proceedings are contemplated which do not put a bar to release the vehicle on interim custody. He placed a reliance 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 **Sunderbhai Ambalal Desai Vs. State of Gujarat** reported in **(2002) 10 SCC 283** was reiterated and submits that in that case applying the said principle 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. Therefore, he prays that the order rejecting the application for interim custody cannot be allowed to sustain.
4. Perused the order dated 11.08.2017. The order engrafts the fact that the vehicle was seized when it was used for transportation of the illicit liquor and the learned court below referred to section 47-A of the Excise Act and observed that the court is not empowered to release the vehicle.
5. 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 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.
7. 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.

8. 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.
9. 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**