

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 37 of 2019

Gopal Sonkar S/o Girdhari Sonkar Aged About 56 Years R/o Kusmund, Police Station Arang, District - Raipur Chhattisgarh.,
--- **Petitioner**

Versus

1. State of Chhattisgarh through the Secretary, Excise Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, District - Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Collector Mahasamund, District - Mahasamund District : Mahasamund, Chhattisgarh
3. District Excise Officer Mahasamund, District - Mahasamund Chhattisgarh.
4. Station House Officer Police Station Gumgaon, District - Mahasamund Chhattisgarh.
5. Monika Prasad S/o Gopal Prasad R/o Kusmund, Police Station Arang, District - Raipur Chhattisgarh.
6. Jageshwar Sahu S/o Amaru Sahu R/o Kusmund, Police Station Arang, District - Raipur Chhattisgarh. --- **Respondents**

For the petitioner : Mr. C.R. Sahu, Advocate

For the State : Mr. Ghanshyam Patel, Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

27.02.2019

1. By this writ petition filed under Article 226 of the Constitution of India, the petitioner prays for setting aside the order dated 04.10.2018 passed by the Collector, Distt. Mahasamund whereby the application for releasing the vehicle to the interim custody of the petitioner was refused on the ground that it was involved in excise offence.
2. As per the case of prosecution on 26.07.2018, a vehicle bearing Regn. No.C.G.04-LM/1510 was apprehended while

transporting 12 litres & 600 ml., of illicit liquor thereby it was involved in commission of offence u/s 34(2) of the C.G. Excise Act 1915. Subsequently the proceedings were initiated for confiscation of vehicle under section 47-A. During the pendency of the confiscation proceeding, an application for custody of vehicle by way of interim nature was filed which was refused.

3. Learned State Counsel opposes for releasing the vehicle to the interim custody of the applicant.
4. Perused the impugned order dated 04.10.2018 passed by the Collector. The said order records the reasons that since the vehicle was involved in transportation of liquor it has been seized as such it would not be proper to release the vehicle.
5. 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.”

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 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.
8. 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 Vs. State of Andhra Pradesh* 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.

9. In view of the above discussion on facts and law, the petition is allowed and the order dated 04.10.2018 is quashed. The Vehicle No.C.G.04-LM/1510 is directed to be released to the interim custody of 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 vehicle would be produced at the time of trial, if required.

(iii) Proper security i.e., personal bond of Rs.,5,50,000/- and a surety in the like sum be obtained before release of vehicle.

Sd/-
GOUTAM BHADURI
JUDGE