

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 2344 of 2018**

- Kunjbihari Dansena S/o Shri Jadunath Dansena Aged About 35 Years R/o Lendhra, Dhobipara, Tahsil Baramkela, District Raigarh Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through District Magistrate, Raigarh District Raigarh Chhattisgarh
2. Station House Officer, Police Station Baramkela, District Raigarh Chhattisgarh

---- Respondents

For Petitioner : Shri M.K. Jaiswal, Advocate

For Respondent/State : Shri R.K. Bhagat, Dy. GA

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****08/03/2019**

1. Heard.
2. The present petition is against the rejection of prayer to handover the custody of the motorcycle, which was involved in the offence under Sections 34 (2) & 59 of the C.G. Excise Act.
3. As per the prosecution case, on 03.03.2018 a motorcycle bearing registration No.C.G. 13 UE-5768 when was apprehended, at that time from the vehicle 6.700 Bulk liter liquor was seized, therefore, it being more than 5 Liters, the offence under Sections 34 (2) & 59 of the C.G. Excise Act was registered. During the trial was commenced a recommendation was made for confiscation of the vehicle to the Collector. While the confiscation proceedings were

pending an application to get the interim custody of the vehicle was filed, which was refused by order dated 03.07.2018.

4. Learned counsel for the petitioner submits that the confiscation proceeding has not been concluded and during the pendency of the confiscation proceeding, the Collector can give the interim custody of the vehicle and without any reason the custody of the vehicle has been refused and since the motorcycle is kept in the open as such it may lose its efficacy.
5. Learned State counsel opposes the argument.
6. Perused the order dated 03.07.2018 passed by the Collector. The order only pertains heard and the confiscation proceeding is fixed for evidence. Thereafter, the application has been rejected.
7. 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.”

8. 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.
9. 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.
10. Perusal of the order dated 03.07.2018 do not reflect any reasoning except the fact that the statement of the witnesses have been recorded. 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.

11. In the result, order dated 03.07.2018 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. 30,000/- and like sum of local surety be obtained before release of vehicle.

Sd/-

Goutam Bhaduri
Judge

Ashu