

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 389 of 2018**

Sindhu Kashyap, S/o Massu Kashyap, Aged about 35 years, Resident of Village Karanji, Police Station – Parpa, Tahsil – Tokapal, District Bastar, Chhattisgarh.
(registered owner of seized vehicle CG-17-KB-9771)

---- Petitioner**Versus**

State of Chhattisgarh, through Police Station – Bodhgath, Jagdalpur, District – Jagdalpur, Chhattisgarh.

----Respondent

For Petitioner	: Mr. Akash Pandey, Advocate.
For Respondent /State	: Mr. Adil Minhaj, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****01/06/2020**

(1) The petitioner is registered owner of motorcycle bearing registration No. CG-17-KB-9771. The said vehicle has been seized by the Police Station – Bodhgath in connection with Crime No. 307 of 2017 for commission of offence punishable under Section 34(2) of the Chhattisgarh Excise Act, 1915 (henceforth 'the Act of 1915') as the said vehicle was found involved in transporting 5.580 bulk liters of country made liquor.

(2) The petitioner made an application under Section 451 of the Code of Criminal Procedure, 1973 (henceforth 'the Code') for interim custody of the vehicle in question, which has been rejected by the trial Magistrate by its order dated 27.11.2017 on the ground that learned District Magistrate has already informed to the trial Magistrate that the confiscation proceeding for the said vehicle has already been initiated, that has been upheld by the revisional Court by the impugned order, against which instant

petition under Section 482 Cr.P.C. has been preferred.

(3) Shri Akash Pandey, learned counsel appearing for the petitioner would submit that initiation of confiscation proceedings cannot be a ground to detain the vehicle in interim custody in light of the decision of the Supreme Court in the matter of **Sunderbhai Ambalal Desai v. State of Gujarat**¹.

(4) Mr. Adil Minhaj, learned counsel for the State would support the impugned order and oppose the aforesaid submission made by learned counsel for the petitioner.

(5) I have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.

(6) This Court in the matter of **Anil Kumar Narmada Vs. State of C.G.**² in the similar situation, has held that Judicial Magistrate has no jurisdiction to grant custody of the vehicle seized for excise offence, once the fact of initiation of confiscation proceedings has been intimated by the Collector to the trial Magistrate. Relevant paragraph 19 of the report states as under :-

“19. Bearing in mind the principles of law flowing from the decisions of their Lordships of the Supreme Court in the above noted cases (Supra) and in view of the specific bar contained in Section 47-D of the Act, 1915, if the facts of the present case are examined it would appear that the petitioner's vehicle was found involved in the commission of the excise offences under Section 34 of the Act, 1915 and the Collector having initiated proceedings for confiscation of the said vehicle under Section 47-A of the Act, 1915 and intimated to the trial Court having jurisdiction to try the offences under clause (a) of sub-Section 3 of Section 47-A of the Act, 1915 about the initiation of the proceedings for confiscation of the seized vehicle and, as such, the provisions of Section 47-D of the Act, 1915 squarely attracts expressly barring the jurisdiction of the trial Magistrate to grant interim

¹ (2002) 10 SCC 283

² 2015 (2) C.G.L.J. 296

custody under Section 457 of the Code, the trial Magistrate ceased to have jurisdiction to make order from the date when he received intimation in the present case i.e. 28.8.2014 to make any order about the disposal of the said vehicle and, as such, the trial Magistrate has rightly held that the Court has no jurisdiction to grant custody after initiation and intimation of the said confiscation proceedings to the Court having jurisdiction; and the learned Additional Sessions Judge is absolutely justified in affirming the order passed by the trial Magistrate refusing to interfere with the said order, as such, order passed by the learned Magistrate and duly affirmed by the revisional Court is based on the material available on record, which does not call for any interference by this Court in exercise of inherent power under Section 482 of the Code of Criminal Procedure. Further, the judgment relied upon by Mr. Pradhan passed by this Court in Cr.M.P. No. 236 of 2013 has not considered the express bar of Section 47-D of the Act, 1915, therefore, that judgment is clearly distinguishable.”

(7) Reverting to the facts of the case in light of judgment of this Court in the matter of **Anil Kumar Narmada** (supra), it is quite vivid that both the courts below have clearly held that Collector, Jagdalpur at Bastar on 5.10.2017 has already informed to the trial Magistrate about the initiation of the confiscation proceedings, as such, the judicial Magistrate has no jurisdiction to grant interim custody of the vehicle in question. Thus, both the courts below have concurrently and rightly rejected the petitioner's application for interim custody of the vehicle in question, in which, I do not find any illegality warranting interference by this Court under Section 482 of the Code of Criminal Procedure.

(8) Accordingly, the Cr.M.P. fails and is hereby dismissed.

Sd/-
(Sanjay K. Agrawal)
Judge

D/-

