

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Misc. Petition No.831 of 2020

Smt. Chandrakanti Sidar, W/o Vrindavan Bhoi, aged about 36 years, R/o Nagrapuda, Post Aamgaon, PS Tamnar, Distt. Raigarh (C.G.)

Presently R/o Health Worker (Female Supervisor), Community Health Center, Dabra, Distt. Janjgir-Champa (C.G.)

Owner of vehicle (Scorpio) bearing registration No.CG-13-UA-8318
---- Petitioner

Versus

1. State of Chhattisgarh, Through the Collector, District Mahasamund (C.G.)
2. Station House Officer, Police Station Saraipali, Distt. Mahasamund (C.G.)
---- Respondents

For Petitioner: Mr. Vivek Kumar Shrivastava, Advocate.
For Respondents / State: Mr. Ravi Kumar Bhagat, Deputy Govt. Advocate, on
advance copy.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

19/06/2020

1. Proceedings of this matter have been taken-up through video conferencing.
2. Heard.
3. Admit.
4. Issue notice.
5. Mr. Ravi Kumar Bhagat accepts notice on behalf of the State / respondents.
6. Since a very short legal point is involved in this matter, it is being disposed of at the initial stage itself.

7. The petitioner's vehicle was found involved in the excise offence under Section 34(2) of the Chhattisgarh Excise Act, 1915 (for short, 'the Excise Act'). She made an application for grant of custody of the said vehicle which has been rejected by the learned Judicial Magistrate First Class finding no merit and which has been affirmed by the revisional Court against which this petition under Section 482 of the CrPC has been preferred.
8. Learned counsel for the petitioner submits that intimation under clause (a) of sub-section (3) of Section 47-A of the Excise Act about the initiation of the proceedings for confiscation of the seized vehicle has not been given to the Judicial Magistrate by the Collector, therefore bar under Section 47-D of the Excise Act would not attract and the Magistrate has jurisdiction to grant custody.
9. On the other hand, learned State counsel opposes the petition and supports the impugned orders.
10. I have heard learned counsel for the parties and considered their submissions and also went through the record with utmost circumspection.
11. Section 47-D of the Excise Act provides as under: -

“47-D. Bar of jurisdiction of the Court under certain circumstances.—Notwithstanding anything to the contrary contained in the Act, or any other law for the time being in force, the Court having jurisdiction to try offences covered by clause (a) or (b) of sub-section (1) of Section 34 on account of which such seizure has been made, shall not make any order about the disposal, custody etc. of the intoxicants, articles, implements, utensils, materials, conveyance etc. seized after it has received from the Collector an intimation under clause (a) of sub-section (3) of Section 47-A about the initiation of the proceedings for confiscation of seized property.”
12. Section 47-D of the Excise Act came up for consideration before this

Court in the matter of Anil Kumar Narmada v. State of C.G.¹ in which this Court after consideration of the said point has held 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 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.”

13. A careful perusal of the impugned order would show that the application for interim custody of the petitioner's vehicle has been rejected only on the ground that confiscation proceeding is pending. No finding has been recorded by the trial Court as well as by the revisional Court that

1 2015(2) C.G.L.J. 296

intimation has been given by the Collector under Section 47-A(3)(a) of the Excise Act about the initiation of the proceedings for confiscation of the seized property. The impugned order passed by the trial Magistrate as well as by the revisional Court are set aside and the matter is remitted to the trial Magistrate for considering the matter afresh and to record a finding as to whether the relevant information has been received from the Collector concerned or not about the initiation of confiscation proceeding and to pass order afresh in accordance with law after hearing the interested parties, within 45 days from today. It is made clear that this Court has not expressed any opinion on the merits of the matter.

14. With the aforesaid observation, the petition stands finally disposed of.

Sd/-
(Sanjay K. Agrawal)
Judge