

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Misc. Petition No. 1001 of 2020

Gopa Bandhu Pandey S/o Shri Minketan Pandey, Aged about 45 years, R/o Chhichhinda, Block and Police Station Sohela, District Bargad (Odisha)(Registered owner of the vehicle).

---- Petitioner

Versus

State of Chhattisgarh, through Station House Officer, Police Station Baramkela, Tahsil Baramkela, District Raigarh, Chhattisgarh.

---- Respondent

 For Petitioner : Mr. Abhishek Saraf, Advocate.
 For Respondent / State: Mr. Jitendra Pali, Dy. A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

04/12/2020

1. Petitioner's vehicle is the subject-matter of excise offence alleged to have been committed by him for which he made an application for grant of interim custody which has been rejected by learned Judicial Magistrate and affirmed by the revisional Court though on a different ground.
2. Learned counsel for the petitioner submits that the initiation of confiscation proceeding has not been intimated by the Collector to the Judicial Magistrate trying the excise offence, therefore, Section 47-D of the Chhattisgarh Excise Act, 1975 would not be attracted and the petitioner is entitled for interim custody of his vehicle.
3. Learned State counsel would oppose the petition.

4. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the material available on record with utmost circumspection.
5. Section 47-D of the Act of 1915 was considered by this Court in the matter of **Anil Kumar Narmada v. State of C.G.**¹ in which it has been 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 preset 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.”

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

6. Reverting to the facts of the present case in the light of the aforesaid proposition, it is quite vivid that both the Courts did not record a clear cut finding whether the Collector has informed to the Judicial Magistrate about the initiation of confiscation proceeding under Section 47-A(3)(a) of the Act of 1915 in view of the specific bar of jurisdiction contained in Section 47-D of the Act of 1915. Therefore, the orders passed by both the Courts below holding that the jurisdiction of the Court is barred are hereby set aside. The matter is remitted to the Court of Judicial Magistrate for considering as to whether initiation of confiscation proceeding has been informed to the petitioner by the Collector under Section 47-A(3)(a) of the Act of 1915 and to pass order afresh in accordance with law within 30 days from the date of receipt of a copy of this order.
7. The petition is allowed to the extent indicated herein-above.

Sd/-

(Sanjay K. Agrawal)
Judge