

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Misc. Petition No.1465 of 2019Order reserved on: 20-12-2019Order delivered on: 2-1-2020

M/s Banarsi Lal Bansilal, Through Rajendra Nanda, Age about 60 years, S/o Shri Bansi Lal Nanda, President of Risaipara Pashim Ward Number 16, Tehsil cum District Dhamtari (C.G.)

---- Petitioner

Versus

State of Chhattisgarh, Through District Magistrate, Raipur (C.G.)

---- Respondent

For Petitioner: Mr. Pradeep Saksena, Advocate.

For Respondent / State:

Mr. Ravi Kumar Bhagat, Deputy Government Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. The petitioner is registered owner of offending tanker bearing registration No.CG-05/AE-4584 which was found involved in the commission of Crime No.118/2019 by Police Station Rakhi, District Raipur for the alleged commission of offence punishable under Sections 3 and 7 of the Essential Commodities Act, 1955 (for short, 'the Act of 1955') and on the same day i.e. 15-4-2019, the vehicle was seized by the jurisdictional police on which the petitioner applied under Section 457 of the CrPC for interim custody of the said vehicle before the Special Railway Magistrate, Raipur. The said application was rejected by the Railway Magistrate finding that the jurisdiction of criminal Court is barred in view of the decision rendered by this Court in the matter of Vishnu Prasad Vaishnav v. State of Chhattisgarh¹ holding that the Magistrate has no jurisdiction in view of the specific

¹ Cr.M.P.No.1068/2014, decided on 17-12-2014

bar contained in Section 6E of the Act of 1955 against which revision petition was preferred which has also been rejected by the learned revisional Court and feeling aggrieved against which this petition under Section 482 of the CrPC has been preferred by the petitioner herein.

2. Mr. Pradeep Saksena, learned counsel appearing for the petitioner, would submit that both the Courts below are absolutely unjustified in not granting custody of the vehicle to the petitioner in view of the decision rendered by the Supreme Court in the matter of **Sunderbhai Ambalal Desai v. State of Gujarat**² and also the decision rendered by this Court in the matter of **Sunil Kumar Jaiswal v. State of Chhattisgarh**³.
3. Mr. Ravi Kumar Bhagat, learned State counsel, would submit that the decision of this Court in **Vishnu Prasad Vaishnav** (supra) which was relied upon by the trial Court and the decision of this Court in **Sunil Kumar Jaiswal** (supra) relied upon by the learned counsel for the petitioner, were referred to Division Bench of this Court and the Division Bench of this Court in the matter of **Sunil Kumar Jaiswal v. State of Chhattisgarh**⁴ has clearly held that Section 6E of the Act of 1955 creates an absolute bar and puts embargo on the jurisdiction of the criminal Court to make any order with regard to interim custody of the vehicle to the persons entitled to possession thereof under Section 457 of the CrPC and as such, the petition deserves to be dismissed.
4. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

2 (2002) 10 SCC 283

3 Cr.M.P.No.1213/2017, decided on 7-3-2018

4 ILR 2019 Chhattisgarh 1781

5. It is not in dispute that the vehicle in question was found involved in the commission of offence punishable under Section 3 and 7 of the Act of 1955 and it was seized in connection with that offence and thereafter, confiscation proceeding has been initiated before the District Magistrate, Raipur and the petitioner has been noticed in that case which is apparent from the memo dated 23-8-2019 filed as Annexure A-1 by the State in support of the counter-affidavit filed by Anshuman Singh, Inspector, Police Station Rakhi, District Raipur, stating that confiscation proceeding of the petitioner's vehicle under Section 6 of the Act of 1955 has already been initiated and the petitioner is not appearing in the same.
6. In Vishnu Prasad Vaishnav (supra), it was held that by virtue of Section 6E of the Act of 1955, the Magistrate has no jurisdiction under Section 457 of the CrPC to grant interim custody of the vehicle to the person entitled for possession, but, in Sunil Kumar Jaiswal (Cr.M.P. No.1213/2017, decided on 7-3-2018), different view was taken and ultimately, the matter was referred to larger Bench. The Division Bench of this Court in Sunil Kumar Jaiswal reported in ILR 2019 Chhattisgarh 1781, while answering the reference, held thus: -

“26. In view of the above consideration, we answer the stated questions of law under reference, as below:—

(A). Section 6-E of the Essential Commodities Act, 1955, creates an absolute bar and puts embargo on the jurisdiction of the Magistrate or any other Court, authority or Tribunal to make any order with regard to possession, delivery, disposal, release or distribution of seized essential commodity, any package, covering, receptacle, animal, vehicle, vessel or other conveyance, to the persons entitled to possession thereof under Section 457 of the Code of Criminal Procedure or under any other law for the time being in force dealing with such essential commodity or other articles.

(B). Pending appeal under Section 6-C of the Essential Commodities Act, 1955, in view of bar created under Section 6-E of the Act, the Judicial Authority appointed by

the State Government as provided under Section 6-C alone is empowered to make orders with regard to possession, delivery, disposal, release or distribution of seized essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance and no other Courts, Tribunal, or Authority has jurisdiction to make orders with regard to possession, delivery, disposal, release or distribution of seized essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance.”

7. A careful perusal would show that the Magistrate under Section 457 of the CrPC has no jurisdiction to grant custody of the vehicle to the persons entitled to possession thereof and as such, the judicial authority appointed by the State Government as provided under Section 6-C of the Act of 1955 alone is empowered to make orders with regard to possession, delivery, disposal, release, etc..
8. In view of the categorical principle of law laid down by the Division Bench of this Court, the finding recorded by the learned Railway Magistrate, as affirmed by the revisional Court, that he has no jurisdiction to grant interim custody of the vehicle under Section 457 of the CrPC to the petitioner in view of the specific bar contained in Section 6E of the Act of 1955, is a finding of fact based on correct legal proposition which is neither perverse nor contrary to law. As such, this petition under Section 482 of the CrPC deserves to be and is accordingly, dismissed. However, the petitioner is at liberty to move before the competent authority in accordance with law at appropriate stage / time.

Sd/-
(Sanjay K. Agrawal)
Judge