

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 1674 of 2019**

Kamlesh Kushwaha, S/o Late Butan Kushwaha, aged about 45 years, R/o Bhatthi Road Kedarpur, Ambikapur, Police Station & Tahsil Ambikapur, District : Sarguja (C.G.)

---- Petitioner

Versus

State of Chhattisgarh, through : District Magistrate, Ambikapur, District Sarguja (C.G.)

----Respondent

For Petitioner	: Mr. Jitendra Shrivastava, Advocate.
For Respondent /State	: Mr. Ravi Kumar Bhagat, Dy. Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board**

12/06/2020

(1) The petitioner is registered owner of motorcycle bearing registration No. CG-15-CL-2863. The said vehicle has been seized by the Police Station – Kotwali, Ambikapur on 13.02.2019 in connection with Crime No. 87 of 2019 for commission of offence punishable under Section 34(1)(A) of the Chhattisgarh Excise Act, 1915 (henceforth 'the Act of 1915') as the said vehicle was found involved in transporting 6.300 bulk liters of foreign 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 was rejected by the trial Magistrate by its order dated 08.03.2019 as well as by the Revisional Court by its impugned order dated

17.05.2019, against which instant petition under Section 482 of the Cr.P.C. has been preferred.

(3) Learned counsel for the petitioner would submit that though the District Magistrate has not intimated to the trial Magistrate about the initiation of confiscation proceedings but on the basis of letter No. 306/2019, which has been issued for proposing 'process for confiscation' of seized vehicle, application for interim custody of the seized vehicle has been rejected by the trial Magistrate and which has been affirmed by the revisional Court by the impugned order.

(4) Mr. Ravi Kumar Bhagat, learned Deputy Govt. Advocate for the State/respondent 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) At this stage, it would be appropriate to notice Section 47-D of the Act, 1915, which reads thus :-

“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 intimated under clause (a) of sub-Section 3 of Section 47A about the initiation of the proceedings for confiscation of seized property.”

(7) Section 47-D was inserted in the Chhattisgarh Excise Act, 1915 by the Amendment Act No. 22 of 2000 with effect from 4.8.2000.

(8) A plain and careful perusal of Section 47-D of the Act, 1915 would show that it is the disabling provision and overriding provision to any other law for the time being in force; and once the Court having jurisdiction to try offences covered by clause (a) or (b) of sub-Section (1) of Section 34 receives information/intimation from the Collector under clause (a) of Sub-Section 3 of Section 47-A of the Act, 1915 about the initiation of proceedings for confiscation of the seized property, then the Court shall not make any order about the disposal/custody of the seized property including conveyance, materials, intoxicant etc.

(9) With regard to custody of the vehicle under the provisions of Chhattisgarh Excise Act, 1915, this Court in the matter of **Anil Kumar Narmada Vs. State of C.G.**¹ 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

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

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.”

(10) In the instant case, there is no finding by the trial Magistrate that the Collector has intimated under clause (a) of sub-Section (3) of Section 47A about the initiation of the proceedings for confiscation of the seized property, therefore, merely on the basis of intimation proposing 'process for confiscation' of seized vehicle, interim custody of the vehicle cannot be denied by the trial Magistrate, as such, provisions contained in Section 47D of the Act, 1915 would not attract in the present case.

(11) Accordingly, the impugned order passed by the revisional Court as well as the order passed by the Judicial Magistrate are hereby set aside and the matter is remitted to learned Judicial Magistrate to consider and decide the same afresh keeping in view of the the provisions contained in Section 47-D of the Act, 1915 as well the principles of law laid down this Court in the matter of **Anil Kumar Narmada** (supra) clearly recording a finding that whether the trial Magistrate has received the information from the Collector under clause (a) of sub-Section (3) of Section 47A about the initiation of the proceedings for confiscation of seized vehicle or not.

(12) Consequently, the Cr.M.P. is allowed to the extent indicated hereinabove.

(13) It is made clear that nothing in this order shall be construed as an expression of an opinion on merits of the case.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

