

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 107 of 2021**

- Ashraf Khan, S/o Shri Arfi Khan Momin, Aged About 42 Years Charkhula Kala, Police Station Pandatarai District Kabirdham, Chhattisgarh.

----- Applicant**Versus**

- State of Chhattisgarh, Through The District Magistrate Kabirdham, District Kabirdham Chhattisgarh.

----- Respondent

For Applicant :- Mr. Sareena Khan, Advocate.
For State/Respondent :- Mr. Soumya Rai, PL

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

04/02/2021

1. Petitioner's application under Section 457 of the Cr.P.C. has been rejected by the trial Magistrate and affirmed by the Revisional Court on the ground that the confiscation proceeding has been initiated by the learned District Magistrate and initiation of the proceeding has been

intimated to the learned Judicial Magistrate, therefore, by virtue of Section 47-D of the Chhattisgarh Excise Act, 1915, jurisdiction of learned Magistrate is barred.

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

3. The finding appears to be in accordance with law and in view of that matter, petitioner is at liberty to move application for grant of interim custody of the vehicle in question before the Collector, Kabirdham. If the application is made within 10 days from today the concerned Collector shall consider the application in the light of the decision rendered by the Hon'ble Supreme Court in the matter of **Sunderbhai Ambalal Desai v. State of Gujarat**¹ expeditiously without being prejudiced by rejection of application by the trial Magistrate and the Revisional Court.

¹ 2002(10)SCC 283

4. With the aforesaid direction/observation the present CRMP stands disposed of.

Sd/-
(Sanjay K. Agrawal)
Judge

Ankit