

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
CRMP No. 300 of 2021

Guljeet Kaur Chhabda W/o Shri Trilochan Singh Saluja, Aged About 31 Years, R/o Gujrugovind Singh Ward No. 26 Kawardha, Police Station and Tahsil -Kawardha, District -Kabirdham, Chhattisgarh, Authorized Attorney Shri Arvind Singh Chhabda S/o Harmindar Singh Chhabda, R/o Ward No. 26 Kawardha, Police Station -Kawardha, District Kabirdham, Chhattisgarh.

---- **Petitioner**

Versus

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

--- **Respondent**

For Petitioner	:	Shri H.B. Agrawal, Senior Advocate with Shri Pankaj Agrawal, Advocate.
For Respondent/State	:	Shri Hariom Rai, PL.

Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

21/10/2021

Heard.

1. Correctness and sustainability of order dated 23.12.20 passed by Additional Sessions Judge, Kabirdham, District -Kabirdham in Cr. Revision No.08/2020 is put to challenge in this petition.
2. Facts relevant for disposal of this petition are that vehicle of petitioner was seized for being involved in commission of offence under Sections 120-B, 406, 420 of Indian Penal Code & Sections 3 & 7 of the Essential Commodities Act, 1955 (for short, 'Act of 1955'). Petitioner filed an application under Section 457 of Cr.P.C before the Court of JMFC, Kawardha, District Kabirdham, (CG), seeking interim custody of vehicle which was dismissed vide order dated 03.02.2020. Said order was put to challenge by petitioner before Revisional Court by filing Cr. Revision No.08/2020 and the same also came to be dismissed in view of bar contained in Section 6-E of the Act of 1955.

3. Learned Senior Counsel submits that bar under Section 6-E of the Act of 1955 is for Tribunal and other Court, and not for High Court. Hence, even if learned Court below has rejected application filed under Section 457 of Cr.P.C considering bar under Section 6 -E, interim custody of vehicle can be ordered.
4. Learned State Counsel opposes the submissions made by learned Senior Counsel and submits that petitioner has initially filed an application under Section 451 of Cr.P.C for grant of interim custody of vehicle before JMFC, Kawardha, District Kabirdham who admittedly in view of specific provisions under Section 6-E of the Act of 1955 is not having jurisdiction to entertain the application. The learned Revisional Court has rightly dismissed revision considering the bar under Section 6-E, which cannot be said to be erroneous. He further submits that Division Bench of this Court in CRMP No.1475/2017 has considered the issue in a reference and has held that Section 6-E of the Act of 1955 creates an absolute bar, and it is the Authority prescribed under Section 6-A & 6-E of the Act of 1955 is only Competent Authority to consider application for grant of interim custody of vehicle, essential commodity, package, receptacle, animals, vessel, etc.
5. Heard learned counsel for the parties.
6. Undisputably, petitioner has moved an application under Section 457 of Cr.P.C for grant of interim custody of vehicle seized in connection with offence under Sections 3 & 7 of the Act of 1955 before the Judicial Magistrate.
7. Bar under Section 6-E of the Act of 1955 is absolute. This proceeding is arising out of application filed under Section 457 of Cr.P.C before the Court of Judicial Magistrate who was not having any jurisdiction to entertain application for grant of interim custody of vehicle involved in

offence under the Act of 1955. Hon'ble Supreme Court in case of **Shambhu Dayal Agrawal versus State of West Bengal** reported in **(1990) 3 SCC 549** has discussed the scheme contained in Section 6-E and held that whenever any essential commodity under an order made under Section 3 in relation thereto no Court; Tribunal or other Authority shall have jurisdiction to make any order with regard to the possession, delivery, disposal, released or distribution of such essential commodity save and except the Collector pending confiscation proceedings. In view of bar under Section 6-E of the Act of 1955, in the considered opinion of this Court, the Courts below have not committed any error in dismissing the application.

8. At this stage, learned Senior Counsel submits that he may be permitted to withdraw this petition with liberty to file an appropriate application before Competent Authority under the Act of 1955. He also submits that it may be observed that dismissal of the petition will not come in the way of filing of an application before the Competent Authority as prescribed under Section 6-A for handing over possession/interim custody of vehicle seized for commission of offence under the Act of 1955.
9. Accordingly, petition is dismissed as withdrawn.
10. As application filed by petitioner under Section 457 of Cr.P.C before the JMFC was dismissed on the ground of jurisdiction of the Judicial Magistrate to entertain application, petitioner will be at liberty to approach the Competent Authority prescribed under Section 6 of the Act of 1955 for relief sought by him in this petition and if such application is filed then the Competent Authority shall consider on its own merit in accordance with law.

Sd/-
(Parth Prateem Sahu)
 Judge