

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP(Cr.) No. 192 of 2018**

1. Onkar Prasad Joshi S/o Mohan Lal Joshi, aged about 64 years, R/o Chandani Chowk, Kohka, Bhilai Ward No. 9, P.S. Supela, District Durg (C.G.)
2. Bhuneshwar Joshi S/o. Shri Onkar Prasad Joshi, aged about 42 years, R/o. Chandani Chowk Kohka, Bhilai, Ward No. 9, P.S. Supela, District-Durg (C.G.).

---- Petitioners

Versus

1. State of Chhattisgarh, Through Superintendent of Police, Durg, District Durg (CG).
2. Station House Officer, Police Station Supela, District Durg (CG).
3. District Magistrate/Collector, Durg, District Durg (C.G.).

---- Respondents

For Petitioners :Mr. Awadh Tripathi, Advocate

For State :Mr.Sudeep Verma, Dy. Government Advocate

Hon'ble Shri Justice Narendra Kumar Vyas**Order on Board****25.06.2021**

1. Petitioners have filed the present writ petition challenging the order dated 15.03.2018 (Annexure P-1) passed by the District Magistrate/Collector, Durg whereby Maruti Swift Car bearing registration No. CG-07 M 9424 was seized as the said vehicle was found involved in transporting 34.560 bulk liters of illicit liquor.
2. Learned counsel for the petitioner would submit that Judicial Magistrate, First Class, Durg by its order dated 30.08.2011 passed in Criminal Case No. 325/2011, has already acquitted one of the petitioners

namely Bhuneshwar Joshi. By the impugned order dated 15.3.2018, confiscation proceeding has been initiated and the vehicle has been confiscated. Thereafter, he filed the instant writ petition before this Court and this Court vide its order dated 4.4.2018 has stayed the effect and operation of the order dated 15.03.2018 passed by the District Magistrate, Durg in Excise Case No. 18/2011. Attention was drawn by the learned counsel for the petitioner towards Section 47(B) of Chhattisgarh Excise Act, which is extracted below :

“47-B Appeal against the order of confiscation -

(1) Any person aggrieved by an order of confiscation passed under sub-section (2) of Section 47-A may, within thirty days of such order prefer an appeal to the Collector concerned or to any other officer authorised by the State Government by notification (hereinafter referred to as the Appellate Authority). Such appeal memorandum shall be accompanied by a certified copy of the order appealed against.

(2) The Appellate Authority on presentation of such memorandum of appeal, issue a notice to the appellant and to any other person who is likely to be adversely affected by the order that may be passed in appeal.

(3) The Appellate Authority after hearing the parties to the appeal, shall pass an order confirming, reversing or modifying the order of confiscation appealed against:

Provided that he may pass such order of interim nature for custody, disposal etc. of the confiscated articles during the pendency of appeal, as may appear to him just or proper in the circumstances of the case but he shall have no power to stay the order of confiscation appealed against during the pendency of appeal.”

3. Section 47(B) of the Excise Act, 1915 provides for filing of an appeal against the order passed by the District Magistrate/Collector by which proceeding under Section 47(2) (a) has been initiated. The petitioner has an alternative efficacious remedy available to him under the Act, 2015,

therefore, the writ petition (Criminal) is not maintainable.

4. In view of above, the petitioner may file an appeal before the State Government as provided under the scheme of excise Act, 1915 within a period of four weeks from the date of receipt of copy of the order and in turn the appeal will be decided by the authorities concerned in accordance with law by affording due opportunity of hearing to the petitioner.
5. Since this Court has granted interim protection to the petitioner vide order dated 4.4.2018, that will be made effective for a period of four weeks. The appellate authority will decide the application for interim relief if any filed by the petitioner in accordance with law without being influenced of the any observations made by this Court.
6. Accordingly, the instant petition is disposed of with the liberty to file appeal before the Appellate Authority.

Sd/-

(Narendra Kumar Vyas)
Judge

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