

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 22-6-2021

Pronounced on 30-6-2021

CRMP No. 477 of 2021

- Labhu Nirmalkar S/o Keju Nirmalkar Aged About 37 Years R/o Village- Daniya, Tehsil- Dhamdha, PS- Bori, Durg, Chhattisgarh., District : Durg, Chhattisgarh
---- **Petitioner**

Versus

- State of Chhattisgarh Through S.H.O. Police Station- Bori, District- Durg, Chhattisgarh.
---- **Respondent**

For petitioner : Mr. Aman Pandey, Advocate.
For State : Mr. Sudeep Verma, Dy. GA

Hon'ble Shri Justice Narendra Kumar Vyas**CAV ORDER**

(1) The petitioner has filed this petition under Section 482 of the Cr.P.C. assailing the order dated 2-1-2021 passed by learned 4th Additional Sessions Judge, Durg in Criminal Revision No. 134 of 2020, affirming the order dated 29-2-2000 passed by learned Chief Judicial Magistrate, Durg in Case No. 4 of 2020 rejecting the petitioner's application filed under Section 457 of Cr.P.C. for *Supurdnama* of the vehicle (Bike) bearing registration No. CG-07-BW-4977.

2. The facts as projected by the petitioner in the instant petition are that the petitioner is the owner of Vehicle (bike) registration No. No. CG-07-BW-4977. The said vehicle was seized by the Police of Police Station, Bori, District Durg in commission of offence punishable under Section 34(2) of the C.G. Excise Act, 1915. The allegation of the prosecution is that 6.6 bulk liters of country made

liquor was being transported through the said vehicle in which petitioner and co-accused were present. The petitioner filed an application under Section 457 of the Cr.P.C. before the Chief Judicial Magistrate, Durg *inter alia* stating that he is the owner of the aforesaid vehicle, therefore, custody of the vehicle be given to him on Supurdnama, which was rejected by learned Chief Judicial Magistrate, Durg as there is provision of confiscation of the vehicle under Section 34 (3) of the C.G. Excise Act, 1915.

3. Learned Chief Judicial Magistrate, Durg while rejecting the application under Section 457 of the Cr.P.C. has recorded a finding that as per the case diary, the vehicle was seized on 19-1-2020 and confiscation proceedings on the strength of the application submitted by Police Station, Bori, District Durg have been initiated. The Superintendent of Police, Durg has requested for confiscation of the vehicle to the District Magistrate, Durg as such, the proceedings for confiscation are pending, therefore, the application is liable to be rejected and accordingly he has rejected the same. The petitioner filed a revision petition before the learned Additional Sessions Judge, Durg assailing the said order who after considering the fact that the Superintendent of Police has already initiated the confiscation proceedings as provided under Section 34 (2) of the CG Excise Act, 1915 before the learned District Magistrate, Durg and the finding recorded by the learned Chief Judicial Magistrate is legal and justified. Therefore, learned additional Sessions Judge, Durg dismissed the criminal revision vide impugned order dated 2-1-.2021.

4. The petitioner has assailed both these orders by filing this instant petition under Section 482 of the Cr.P.C before this Court.

5. During the course of arguments, learned counsel for the petitioner would submit that since the Superintendent of Police has not informed the Magistrate about confiscation of the vehicle in question, therefore, proceedings before the Chief Judicial Magistrate, Durg and learned Revisional Court are maintainable

and the orders passed by both the courts below are illegal as provisions of Section 47-D of the Act is not applicable in the present facts of the case, therefore, the trial Court, which is competent Court, should have given the interim custody of the vehicle to the petitioner.

6. On the contrary, learned State Counsel opposes the prayer of learned counsel for the petitioner and stated that the order passed by both the courts below are legal and justified and need not to be interfered with.

7. I have heard learned counsel for the parties and perused the material placed on record.

8. Before adverting to the submission made by the learned counsel for the petitioner, it would be appropriate to note 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.”

9. From perusal of the Section 47-D of the Excise Act, it is quite apparent that if the circumstances and situation are one and the same, then, provision of Section 47-D of the Excise Act, will override any other law for the time being in force

10. The Hon'ble Supreme Court has explained the words “notwithstanding anything contained in the Act or any other law for the time being in force” in case reported in **1973 (2) SCC 1965** (***Ishar Das vs. The State of Punjab***), and has held as under:-

“7.....In this respect we find that sub-section (1) of

Section 4 of the Probation of Offenders Act contains the words “notwithstanding anything contained in law for the time being in force”. The above non obstante clause points to the conclusions that the provisions of Section 4 of the Probation of Offenders Act would have overriding effect and shall prevail if the other conditions prescribed are fulfilled. Those conditions are : (1) the accused is found guilty of having committed an offence not punishable with death or imprisonment for life, (2) the court finding him guilty is of the opinion that having regard to the circumstances of the case, including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct and (3) the accused in such an event enters into a bond with or without sureties to appear and receive sentence when called upon during such period not exceeding three years as the court may direct and, in the meantime, to keep the peace and be of good behaviour....”

11. From the records, it is quite clear that the Superintendent of Police has already initiated proceedings for confiscation of the vehicle in question. This factual matrix with regard to request made by the Superintendent of Police, Durg to the District Magistrate for confiscation of the vehicle has not been disputed by the petitioner or he has not pointed out that the findings recorded by both the Courts below on this aspect of the matter are perverse or contrary to the record as such, I am of the view that proceedings have already been initiated by the Superintendent of Police therefore, the learned trial Magistrate as well as Revisional Courts have no jurisdiction to entertain the application filed by the petitioner for grant of *Supurdnama*. Thus, the rejection of the application for *Supuradnama* by the learned Chief Judicial Magistrate vide its order dated 29-2-2020 as affirmed by 4th Additional Sessions Judge in its judgment dated 2-1-.2021 is legal and justified, therefore, the instant CRMP is liable to be quashed.

12. Before parting with the case, I would observe that as reflected in the orders, the proceedings of confiscation have already been commenced by the District Magistrate, Durg and the vehicle can be given on interim *supurdnama* by the District Magistrate, Durg considering the law laid down by the Hon'ble Supreme Court in the matter of ***Sunderbhai Ambalal Desai v.***

State of Gujarat reported in (2002) 10 SCC 283, which has also been reiterated by the Hon'ble Supreme Court in the matter of **General Insurance Council and others Vs. State of Andhra Pradesh and others reported in (2010) 6 SCC 768** wherein the Hon'ble Supreme Court has given direction with regard to seized vehicle and held as under :-

“13. In our considered opinion, the aforesaid information is required to be utilised and followed scrupulously and has to be given positively as and when asked for by the insurer. We also feel, it is necessary that in addition to the directions issued by this Court in ***Sunderbhai Ambalal Desai v. State of Gujarat reported in (2002) 10 SCC 283***, considering the mandate of Section 451 read with Section 457 of the Code, the following further directions with regard to seized vehicles are required to be given:

“(A) Insurer may be permitted to move a separate application for release of the recovered vehicle as soon as it is informed of such recovery before the jurisdictional Court. Ordinarily, release shall be made within a period of 30 days from the date of the application. The necessary photographs may be taken duly authenticated and certified, and a detailed panchnama may be prepared before such release.

(B) The photographs so taken may be used as secondary evidence during trial. Hence, physical production of the vehicle may be dispensed with.

(C) Insurer would submit an undertaking/guarantee to remit the proceeds from the sale/auction of the vehicle conducted by the Insurance Company in the event that the magistrate finally adjudicates that the rightful ownership of the vehicle does not vest with the insurer. The undertaking/guarantee would be furnished at the time of release of the vehicle, pursuant to the application for release of the recovered vehicle. Insistence on personal bonds may be dispensed with looking to the corporate structure of the insurer.”

13. The petitioner is at liberty to file an application for interim *Supuradnama* before the learned District Magistrate, Durg and in-turn the learned District Magistrate, Durg in the eventuality of filing of the application for grant of *Supuradnama* of the vehicle, will consider and decide the same without being influenced by any of

the observations made by the learned District Judge or the Chief Judicial Magistrate, in accordance with law laid down by the Hon'ble Supreme Court in the matters of ***Sunderbhai Ambalal Desai (supra) & General Insurance Council and others (Supra)***.

14. In view of the aforesaid legal position, it is held that the learned Chief Judicial Magistrate as well as the learned 4th Additional Sessions Judge have not committed any irregularity or illegality warranting interference by this Court.

15. Consequently, the instant petition filed under Section 482 of the Cr.P.C. is dismissed with the aforesaid observations and liberty granted in favour of the petitioner.

Sd/-

(Narendra Kumar Vyas)
Judge

Raju