NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No.861 of 2020

- Vivek Dubey, Son Of Shivsevak Dubey, Aged About 35 Years, R/o Ward No.12 Main Road Arang, Police Station and Tahsil Arang, District Raipur, Chhattisgarh

---- Petitioner

Versus

- State Of Chhattisgarh, Through The District Magistrate / Collector, Mahasamund, District Mahasamund, Chhattisgarh

---- Respondent

For Petitioner Shri Raghvendra Pradhan, Advocate
For Respondent Shri R. K. Bhagat, Dy. GA

Hon'ble Justice Shri Sanjay K. Agrawal

Order On Board

05/01/2021

1. The petitioner's vehicle car bearing registration No.CG-04-LW-1566 was involved in carrying 10 litre countrymade liquor, therefore, an offence under Section 34 (2) of the Excise Act was registered at Police Station Patewa bearing Crime No.80/2020. After investigation, the petitioner has been made accused in the said crime. His vehicle car was also seized during the investigation. The petitioner moved an application for grant of interim custody of the

vehicle under Section 451 of CrPC, which has been rejected by the Trial Magistrate vide order dated 28.04.2020 in Misc. Criminal Case No.97/2020 and that order has been affirmed by the Revisional Court vide order dated 21.05.2020 in Criminal Revision No.H-15/2020. Therefore, the instant CRMP has been preferred.

2. Learned counsel for the petitioner would submit that though the Collector has not informed the Judicial Magistrate about the alleged initiation of confiscation proceeding, his application for supurdnama has been rejected. He would further submit that Section 47-D of the Excise Act would apply only when the Collector having initiated the confiscation proceedings would inform the Trial Magistrate about the confiscation proceedings. As such, the impugned order is liable to be set aside.

3. Learned State counsel would oppose the prayer.

4. Admittedly, in para 5 of the return filed by the State, it is mentioned that the confiscation proceeding has not been initiated by the Collector and after completion of the investigation, the Trial Magistrate would be intimated about the confiscation proceedings. Therefore, on the date of passing of the order,

the Trial Magistrate had the jurisdiction to consider the application for interim custody of the vehicle to the petitioner, which has not been done. Thus, it would be just and proper to remit the matter back to the Trial Magistrate for consideration of the petitioner's application under Section 451 of CrPC afresh, in accordance with law, after hearing both the parties within 15 days from the date of receipt of this order. The impugned orders are set aside.

5. Accordingly, the CRMP is allowed to the extent indicated hereinabove.

Sd/-
Sanjay K. Agrawal
Judge

Nirala