

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 365 of 2021**

Rajesh Patel, S/o Firanlal Patel, Aged About 38 Years, R/o Gram
Bhanwarchuva, Thana Basna, District Mahasamund,
Chhattisgarh. **----- Petitioner**

Versus

1. State of Chhattisgarh, Through Station House Officer, Police
Station Basna, District Mahasamund, Chhattisgarh.
2. The District Magistrate (Collector) Mahasamund, District
Mahasamund, Chhattisgarh. **----- Respondents**

For Petitioner	: Mr. Sanjay Agrawal, Advocate.
For State	: Mr. Rakesh Sahu, Deputy G. A.

Hon'ble Shri Justice Narendra Kumar Vyas**Order On Board****24.06.2021**

1. Instant petition is against the order dated 18.03.2021 passed by the Learned District Magistrate (Collector), Mahasamund wherein an application for interim custody of vehicle preferred by the petitioner while the proceeding under the confiscation was continuing was dismissed.
2. Facts of this case are that on 24.11.2020 an information was received by the police of Basna, District Mahasamund that the alleged vehicle i.e. C.G. 04 KP 8868 was being used for transportation of illicit liquor. On such information, raid was conducted and the vehicle when was intercepted, from the vehicle 135 bulk litres of foreign liquor was recovered. Having

asked for the valid documents, no documents pertaining to such liquor were produced, therefore, crime bearing number 552/2020 was registered under Section 34(2) of the C.G. Excise Act, 1915 and the liquor as also the vehicle were seized by the police. It was alleged by the State that the vehicle was being used for transporting illicit liquor as such proceeding under Section 47-A (3) of Chhattisgarh Excise Act, 1915 was drawn for confiscation of vehicle. Further the collector, who is authorized under Section 47-A (3) started confiscation proceeding for the vehicle. During such confiscation proceeding, an application was filed by the petitioner for interim custody of the vehicle till the confiscation proceedings are concluded. Said prayer for release of the vehicle for interim custody was dismissed by an order dated 18.03.2021. Therefore, this instant petition.

3. Learned counsel for the petitioner would submit that confiscation proceeding though having been commenced it does not put any bar to release the vehicles on interim custody. He placed his reliance in case of **Sunderbhai Ambalal Desai Vs. State of Gujarat**, reported in (2002) 10 SCC 283 and would submit that applying such principle till confiscation proceeding is concluded, the vehicle should have been handed over to the applicant. It is submitted that no necessary useful purpose would be served by keeping the vehicle in the custody except the loss caused to it. It is further submitted that charge sheet having been filed no further enquiry is necessary in respect of criminal case and as such vehicle should have been released in favour of applicant.
4. Learned State counsel opposes the prayer.

5. Perused the order dated 18.03.2021. Perusal of the order would engrafts the reasoning that since vehicle was seized while it was being used for transportation of the illicit liquor as such it is not justified to hand over the possession of the vehicle. In a result the application for interim custody was dismissed.
6. The confiscation proceeding under Chhattisgarh Excise Act, 1915 is governed by Section 47-A (3) of the Act. Section 47 (2) of the Act regulates the power and procedure to be adopted for confiscation which reads as under:-

“47 (2) When the Collector, upon production before him of intoxicants, articles, implements, utensils, materials, conveyance etc. or on receipt of a report about such seizure as the case may be, is satisfied that an offence covered by clause (a) or clause (b) of sub-section (1) of Section 34 has been committed and where the quantity of liquor found at the time or in the course of detection of such offence exceeds five bulk liters he may, on the ground to be recorded in writing, order the confiscation of the intoxicant, articles, implements, utensils, materials, conveyance etc. so seized. He may, during the pendency of the proceedings for such confiscation also pass an order of interim nature for the custody, disposal etc. of the confiscated intoxicants, articles, implements, utensils, materials, conveyance etc. as may appear to him to be necessary in the circumstances of the case.”

7. Perusal of the sub section-2 would show that power has been given to the Learned District Magistrate (Collector) upon

production of the article and on having satisfied that offence covered under the clause (a) or clause (b) of sub-section (1) of Section 34 has been committed and if liquor is more than 5 bulk liters he may order for confiscation of articles, intoxicants, implements, utensils including the conveyance so seized. It also records that he may during pendency of the proceeding may pass an order of interim nature for custody, disposal etc. of the confiscated intoxicants, articles, implements, conveyance as may appear to be necessary in the facts of this case.

8. Section 47 (B) of Chhattisgarh Excise Act, 1915 provides for appeal against the order of confiscation. Therefore, it necessarily leads that order of confiscation can only be challenged when it reaches its finality and the statute does not give any space to challenge any other order except the final one. In view of this, the necessary implication would be that any order of interim nature if any passed, the High Court in exercise of its power vested in it under article 227 can always test the propriety or legality of the order. It is a settled proposition of jurisprudence that every wrong will have a remedy. So if, the order is found to be wrong then certainly the High Court would have all the power to correct the same.
9. The order dated 18.03.2021 under challenge would show that it is cryptic order. No reasons have been assigned for rejection and only it is stated that since vehicle was found in transporting illicit liquor as such it is not feasible to hand over the vehicle to the petitioner. So for all practical purpose vehicle is lying at the disposal of authorities or at police station. Therefore, if it is kept in the police station it must be occupying space or is prone to

cause natural decay and may lose its road-worthiness when kept in stationery position. In facts of the case following the law laid down in case of *General Insurance Council and others Vs. State of Andhra Pradesh and others*, reported in (2010) 6 SCC 768 wherein the earlier principles laid down in case of *Sunderbhai Ambalal Desai (supra)*, was reiterated, the order of rejection of application for interim custody cannot be allowed to remain. Consequently, applying the said principles, it is directed that the vehicle be released in favour of petitioner by way of interim measure, if the confiscation proceedings have not been concluded till date of production of this order.

10. Therefore, the vehicle is directed to be released to the petitioner on the following conditions:-

1. Before release of vehicle proper panchnama be prepared.

2. Photographs of vehicle should be taken and bond should also be produced that the article would be produced if required at the time of trial.

3. Proper security i.e. personal bond of Rs. 7 lakhs and like sum of surety be obtained before release of vehicle.

11. In view of foregoing discussions, the petition succeeds and is allowed. Consequently, I.A.No. 1 of 2021 stands disposed of.

No order as to cost.

Sd/-
(Narendra Kumar Vyas)
Judge