

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 389 of 2021

- Pukhraj Chandrakar @ Poku Chandrakar (wrongly mentioned as Pokhraj in impugned order), S/o Ramesh Chandrakar, Aged About 33 Years, R/o 91, Tendu Lotha Ward No.12, Bagbahara, Kalan (viran), Baghbahra, District Mahasamund Chhattisgarh., District : Mahasamund, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh, Through, S.H.O. Police Station, Bagbahara, District Mahasamund Chhattisgarh., District : Mahasamund, Chhattisgarh
2. The District Magistrate (Collector) Mahasamund, District Mahasamund Chhattisgarh., District : Mahasamund, Chhattisgarh

---- Respondents

For Petitioner – Shri Sanjay Agrawal, Advocate.

For State/respondents – Smt. Hamida Siddiqi, Deputy Advocate General.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

21-09-2021

1. This petition under Article 227 of Constitution of India has been brought being aggrieved by the order dated 03-08-2021 passed by the Collector Mahasamund in Case No.159/2020 rejecting the application filed by the petitioner for grant of interim custody of the vehicle seized.

2. It is submitted that the the vehicle bearing registration No. CG 06 GH 9211 has been seized in connection with commission of offence under Section 34(2) of the C.G. Excise Act, 1915 (in short 'the Act, 1915). During pendency of the trial, the Collector has initiated proceeding for confiscation of the seized vehicle. The applicant then filed application for grant of interim custody of the said vehicle which has been rejected by the impugned order.

3. It is submitted that the petitioner and the co-accused both have been

acquitted of charge in Criminal Case No.71/2021 by judgment dated 03-09-2021 by the Court of JMFC Mahasamund. Relying on the order of this Court passed in WP(227) No.82 of 2021 decided on 07-07-2021 it is prayed that the petitioner was entitled for grant of interim custody of the vehicle. Therefore, the petition may be allowed and relief be granted to the petitioner.

4. The State counsel opposes the petition and the submission. There is objection regarding maintainability of this petition under Article 227 of the Constitution.

5. Heard learned counsel for the parties and perused the document.

6. The Collector while taking up the confiscation proceeding has discretion with him to pass order of interim nature for custody of any seized Article, which may appear to him to be necessary in the circumstances of the case. As the order of rejection of application of interim custody is not appealable under Section 47-B of the Act, 1915, therefore, it can be challenged in either manner under Article 226 or 227 of Constitution of India. The petitioner has chosen to file this petition under Article 227 Constitution of India.

As it appears that the Collector while exercising the powers under Section 47-A Acts as a quasi judicial authority. As he has power to issue notices to the persons from whom, the article has been seized or to any other person, who is staking claim on the property seized, for the purpose of giving them hearing before passing of the order of confiscation and the Collector has to afford an opportunity to such persons for making their representation against the proposed confiscation. Therefore, the Collector exercising such power is a quasi judicial body and the orders passed are subject to supervision of this Court, hence, the objections raised by the respondents side made hereinabove are not sustainable.

I am of this view that the Collector Mahasamund had the power to exercise discretion for granting interim custody of the seized vehicle during the

pendency of confiscation. The petitioner is the person who has staked his claim over the seized vehicle, hence, for the reason that the Collector Mahasamund has failed to exercise such discretion, which is wanted in such cases, this petition is allowed and disposed off at the motion stage. The impugned order dated 03-08-2021 is set aside. The Collector Mahasamund is directed to release the vehicle under seizure in the offence mentioned hereinabove on appropriate terms and condition that the petitioner shall produce the same as and when directed by the Court, on interim custody until the completion of the confiscation proceeding. This interim custody shall remain effective until the final orders are passed by the Collector Mahasamund in the confiscation proceeding. Accordingly, this petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge