

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 872 of 2021

- Tousif Niyaz S/o Niyaz Ahmed Aged About 34 Years R/o Taj Amma Colony, No. 41, Bada Taj Bagh, Nagpur, District- Nagpur, Maharashtra.,

---- Petitioner

Versus

- State of Chhattisgarh Through Police Station Mahasamund, District- Mahasamund, Chhattisgarh.,

---- Respondent

For Petitioner	:	Mr. Anway Tiwari, Advocate.
For State	:	Mr. Gurudev I. Sharan, Govt. Advocate.

Hon'ble Shri Justice Narendra Kumar Vyas

Order on Board

03-09.2021

1. The petitioner has filed this petition under Section 482 of the Cr.P.C. assailing the order dated 22-6-2021, passed by learned Sessions Judge, Mahasamund, District- Mahasamund (C.G.) in Criminal Revision No. H -26 of 2021, affirming the order dated 5-1-2021 passed by the Chief Judicial Magistrate, Mahasamund whereby the application for supurdnama of vehicle TATA 909 bearing registration No. MH 40 N/0169 and sold white coloured Hyundai Verna Car bearing registration No. MH 49 BB 3050 which were seized by Police of Police Station Mahasamund for offence punishable under Section 34(2) of CG Excise Act in connection with Crime No. 588 of 2020, was dismissed.
2. The facts as projected by the petitioner in the instant petition, in brief, are that the petitioner is the owner of sold white coloured Hyundai Verna car bearing registration No. MH 49 BB 3050 and vehicle TATA 909 bearing registration No. MH 40 N/0169 which was borrowed from other person. The said vehicles were seized

by Police of Police Station -Mahasamund in connection with Crime No. 588 of 2020 for offence punishable under Section 34(2) of the Chhattisgarh Excise Act, 1915. The allegation of the prosecution is that 675 bulk liters of foreign made liquor were being transported through the said vehicles. The petitioner filed an application under Section 451 of the Cr.P.C. before the Chief Judicial Magistrate, Mahasamund *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, Mahasamund 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, Mahasamund while rejecting the application under Section 451 of the Cr.P.C. has recorded a finding that as per the case diary, the vehicle was seized and confiscation proceedings on the strength of the application submitted by Police Station, Mahasamund have been initiated. The Superintendent of Police, Mahasamund has requested for confiscation of the vehicle to the District Magistrate, Mahasamund as such, the proceedings for confiscation are pending, therefore, the application is liable to be rejected and accordingly he has rejected the same. Being aggrieved by the said order, the petitioner filed a revision petition before the learned Sessions Judge, Mahasamund, 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 (3) of the CG Excise Act, 1915 before the learned District Magistrate, Mahasamund and the finding recorded by the learned Chief Judicial Magistrate, Mahasamund is legal and justified. Therefore, Sessions Judge, Mahasmaund dismissed the criminal revision vide impugned order dated 22-6-2021.
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 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 are 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 which do not call for any interference.
7. I have heard learned counsel for the parties and perused the material placed on record.
8. Before advertng 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 of ***Ishar Das vs. The State of Punjab***¹, 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, which is evident from letter written by Superintendent of Police to the District Magistrate. This factual matrix with regard to request made by the Superintendent of Police, Mahasamund 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, Mahasamund vide its order dated 5-1-

1 1973 (2) SCC 1965

2021, as affirmed by the learned Sessions Judge in its judgment dated 22-6-2021 is legal and justified, therefore, the instant CRMP is liable to be disposed of.

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, Surguja and the vehicle can be given on interim Supurdnama by the District Magistrate, Surguja considering the law laid down by the Hon'ble Supreme Court in the matter of ***Sunderbhai Ambalal Desai v. State of Gujarat***², 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***³, 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

2 (2002) 10 SCC 283

3 (2010) 6 SCC 768

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 *Supurdnama* before the learned District Magistrate, Mahasamund and in-turn the learned District Magistrate, Mahasamund 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 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 disposed of with the aforesaid observations and liberty granted in favour of the petitioner.

Sd/-
(Narendra Kumar Vyas)
Judge

Raju