

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 564 of 2021

Aatmjeet Singh, S/o Khajan Singh, Aged About 56 Years, R/o Ward No. 12, Main Road, Saraipali, Police Station- Saraipali, District- Mahasamund (C.G.)

---- Petitioner

Versus

1. State of Chhattigarh, Through- Assistant Commissioner, Excise, Mahasamund, District- Mahasamund (C.G.)
2. Collector Mahasamund, District- Mahasamund (C.G.)
3. Station House Officer, Police Station- Saraipali, District- Mahasamund (C.G.)

---- Respondents

For Petitioner : Mr. Vaibhav A. Goverdhan, Advocate.

For State/Respondents : Mr. Gurudev I. Sharan, Govt. Advocate.

Hon'ble Shri Justice Narendra Kumar Vyas

Order On Board

30.09.2021

1. The petitioner has filed this petition under Article 226 of the Constitution of India challenging order dated 03.08.2021 (Annexure P/1) passed by Collector, Mahasamund (C.G.) wherein application for interim custody of vehicle preferred by the petitioner while the proceeding under the confiscation was continuing, has been dismissed.
2. The brief facts as projected in this petition are that the petitioner is owner of vehicle- Hyundai Aura Car bearing registration No. CG-06 GR-7664 which was being used for transportation of total 21.600 bulk litre illicit liquor, therefore, Crime No. 156/2020 was registered against the petitioner under Section 34 (2) of the Chhattisgarh 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 (for short "the Act, 1915") was drawn for confiscation of vehicle. Further the Collector, who is authorized under Section 47-A (3) of the Act, 1915 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 03.08.2021, therefore, the instant petition has been filed assailing the same.

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 reliance upon judgment passed by Hon'ble the Supreme Court of **Sunderbhai Ambalal Desai Vs. State of Gujarat**¹ and would submit that applying such principle till confiscation proceeding is concluded, the vehicle should have been handed over to the petitioner. It is submitted that no 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 have been filed, no further enquiry is necessary in respect of criminal case, as such, the vehicle should have been released in favour of petitioner.
4. Learned State counsel opposes the prayer made by the learned counsel for the petitioner.
5. Perused the order dated 03.08.2021. 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 the Act, 1915 is governed by Section 47-A (3) of the Act, 1915. Section 47 (2) of the Act, 1915 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

1 (2002) 10 SCC 283

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 of Section 47 of the Act, 1915 would show that power has been given to learned District Magistrate (Collector) upon production of the article and on having satisfied that offence covered under 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 the 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 03.08.2021 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**², 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 byway 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 releasing the 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. 5 lakhs** and like sum of surety be obtained before releasing the vehicle.

11. In view of foregoing discussions, the petition succeeds and is accordingly allowed.

Sd/-
(Narendra Kumar Vyas)
Judge

Arun