

IN THE HIGH COURT OF ORISSA AT CUTTACK

AFR

CRLMC No.1320 of 2022

Subash Chandra Mohanty Petitioner
Mr. Sambhu Charan Nath Sharma, Advocate

-Versus-

State of Odisha and Others Opposite Parties
Mr. S.S. Mohapatra, ASC
None for O.P. No.3

CORAM:
JUSTICE R.K. PATTANAIK

DATE OF JUDGMENT:18.10.2022

1. In the instant case, the petitioner has approached this Court invoking Section 482 Cr.P.C. assailing the impugned order dated 25th April, 2022 passed in Criminal Revision No.1 of 2022 vide Annexure-4 confirming the order of rejection dated 20th December, 2021 passed by the learned J.M.F.C., Jajpur in CMC No.127 of 2021 and for seeking a consequential direction for interim release of the seized vehicle bearing registration No.OD-02-L-6673 in his favour subject to any terms and conditions.

2. The vehicle in question was allegedly found transporting liquor which was intercepted by the Excise Department and thereafter, the contraband substance was seized. In that connection, the vehicle was seized as well. After the above seizure, the petitioner moved the learned S.D.J.M., Jajpur in CMC No.127 of 2021 but the application for release under Section 457 Cr.P.C. was rejected which was challenged before the Sessions Court which also yielded no result, so to say, the revision filed in that respect was dismissed

vide Annexue-4. Both the courts below declined to release the vehicle on the ground that there is a bar contained in Section 72 of the Odisha Excise Act, 2008 (hereinafter referred to as 'the Excise Act').

3. Mr. Sharma, learned counsel for the petitioner submits that the alleged vehicle should have been released in favour of the petitioner but the learned courts below without appreciating the facts on record and taking cognizance of the position of law mechanically rejected the application and therefore, the impugned orders under Annexure-3 and 4 are bad in law and thus liable to set aside and since the vehicle was seized on 9th June, 2021 which is lying exposed to sun and rain and vagaries to the climate, it should immediately be handed over to the petitioner. Mr. Mohapatra, learned ASC justified the impugned order and decision of the courts below declining to release the seized vehicle since the confiscation proceeding was pending before the concerned authority for which the bar under Section 72 of the Excise Act shall apply.

4. As per Section 71 of the Excise Act, vehicles and such other items used in the commission of an excise offence may be seized by the Collector or by the officers of the Excise, Police, Customs or Revenue Department which shall be liable to confiscation in the manner described therein, however, it shall be after an opportunity of being heard provided to the person from whom the property was seized. A procedure is prescribed with regard to confiscation and for that purpose, the Collector or the Authorized Officer shall have the same powers like a civil court to hold enquiry, receive evidence, summon witnesses etc. besides ensuring production of documents and finally to pass orders on confiscation. With regard to dealing with the properties seized, no court shall entertain any

such application in respect thereof and the jurisdiction of the Collector or the Authorized Officer or the Appellate Authority for that matter shall be exclusive. Since it is special law, in view of Section 5 Cr.P.C., it shall override Section 457 Cr.P.C. which is the general power or jurisdiction for a criminal court to direct release of seized property pending investigation when the seizure of the same has been informed to the Magistrate without the property being produced. In other words, if the confiscation proceeding has been commenced, the jurisdiction of a Magistrate shall stand ousted. The learned S.D.J.M., Jajpur held that Section 72 of the Excise Act shall apply to the case and with respect to the vehicle which is liable to confiscation under Section 71 thereof and the same was confirmed in Criminal Revision No.1 of 2022. On a reading of the impugned order, it is made to suggest that the confiscation proceeding was initiated vis-à-vis the vehicle on 16th August, 2021 with a direction to the IO to cause its production which was complied with and it was produced on 18th August, 2021. There is no dispute to the aforesaid factual position from the side of the petitioner.

5. If by the time the rejection order is passed and it is brought to the notice of the court which is dealing with an application under Section 457 Cr.P.C. regarding the confiscation proceeding initiated before the competent authority, it shall have to stay its hand since because Section 72 of the Excise Act imposes a bar to entertain the same. In fact, the decision of the authority is exclusive and the result of the criminal prosecution whether ends in acquittal or conviction shall have no bearing on the order of confiscation which is envisaged in Section 73 of the Excise Act. If the confiscation proceeding is initiated by the appropriate authority, the criminal court shall have no jurisdiction to deal with the property seized

under the Excise Act in any manner whatsoever in view of Section 72 of the said Act.

6. In other words, the moment the action for confiscation begins in terms of Section 71 of the Excise Act, no court shall deal with such property in view of the restriction in Section 72 thereof. In **Narender Kumar Vrs. State (NCT of Delhi)** reported in AIR 2014 SC Supp. 1864, the Apex Court held that when a property is produced before the criminal court, the court may pass appropriate order regarding its custody which may be in terms of Sections 451 Cr.P.C. and at the end on conclusion of trial as per Section 452 Cr.P.C and during the stage of investigation according to Section 457 Cr.P.C. but such court has to yield where a statute makes a special provision with regard to its confiscation and disposal while dealing with a matter under the provisions of the Delhi Excise Act, wherein, as per Section 61, jurisdiction of other courts stands excluded with regard to the property seized under the said Act. While concluding so, the Apex Court highlighted upon the non-obstante clause as appearing in Section 61 of the Act which is *pari materia* to Section 72 of the Odisha Excise Act and also lucidly explained the purpose of such law and also referred to one of its earlier judgment in the case of **State of Karnataka Vrs. K.A. Kunchindammed** reported in (2002)9 SCC 90. The Court thus reaches at a conclusion that in the event a confiscation proceeding is initiated and the competent authority under the relevant Act is seized of the matter, in view of the bar contained in Section 72 of the Excise Act, no court shall deal with or entertain matters relating to interim release and custody of the property involved in the commission of offence under the said Act. As earlier mentioned, there is no dispute to the confiscation proceeding and about its initiation before the authority which has been verified by both the courts below and on being

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satisfied rightly declined to exercise the jurisdiction and therefore, the Court does not find any legal infirmity in the impugned orders under Annexures-3 and 4. The Court cannot as well issue any direction to the confiscating authority while exercising powers under Section 482 Cr.P.C. which would be beyond its jurisdiction. For ensuring release of the vehicle, the petitioner shall have to therefore move the concerned authority by pleading that it was used without his knowledge or connivance, a defence which is available to a owner in terms of Section 71(5) of the Excise Act, if he is not an accused. Having said that, the Court is of the final conclusion that the impugned orders under Annexures-3 and 4 cannot be interfered with which are in accordance with law for the courts below having no jurisdiction to deal with the seized vehicle in view of Section 72 of the Excise Act.

7. It is ordered accordingly.

8. In the result, the petition stands dismissed.

(R.K. Pattanaik)
Judge

TUDU