

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

Before Single Bench: Hon'ble Mrs. Justice S.R. Waghmare

MCRC No.4240/15

Sardar singh

Vs.

State of M.P.

Shri Vikas Rathi., learned counsel for the applicant.

Shri Mukesh Parwal., learned PL for the respondents.

(Passed on 17/07/2015)

By this petition under Section 482 of the Cr.P.C., petitioner Sardar Singh is aggrieved by order dated 12.05.2015 passed by the A.S.J., Agar, Distt. Shajapur in Criminal Revision No.60/15 whereby the revisional Court has upheld the order of the revisional Court passed by the JMFC, Agar.

02. Briefly stated the facts of the case are that the applicant Sardar Singh is a registered owner of the vehicle Pickup Force Motors Cargo King bearing registration No. MP-13-JA-2064. This vehicle was the subject matter of an offence under Section 34(2) of MP Excise Act and the vehicle was alleged to be carrying illicit liquor to the tune of 855 liters valued at Rs.1,90,000/- and being plied for illegal transport

of the same, the applicant filed under Sections 451 & 457 of the Cr.P.C. before the JMFC, Agar for handing over the vehicle on supurdagi. The trial Court dismissed the application on 07.04.2015 and the criminal revision filed consequently was also dismissed by the order dated 12.05.2015 and hence the present petition.

Although Counsel candidly admitted that the application was in the nature of the second revision, however, he submitted the important question that was required to be decided in this petition was whether the Collector has jurisdiction to initiate the confiscation proceedings in view of the Full Bench decision in the matter of **Madhukar Rao Vs. State of M.P. [2000(1) MPLJ Page-289]** since it was affirmed by the Apex Court in the matter of **State of M.P. and others Vs. Madhukar [2008(1) JT 364]**. Counsel submitted that the Apex Court had held that until criminal case is concluded and accused are convicted, the Collector cannot initiate confiscation proceeding and the order was quashed. The applicant was directed to be handed over the vehicle. The basic fact considered by the Court in such cases was whether the seized vehicle would deteriorate due to long period at the police station and hence Magistrate

can pass appropriate orders by taking bank guarantee as well as other security for return of the vehicle if required at any further time. The controversy was properly considered by the Bench at Madhya Pradesh in the matter of **Dilip Vs. State of M.P. [2012(1) MPLJ 137]** whereby the Court considered whether the provisions of the Excise Act under Section 34(2) of MP Excise Act were para materia with the provisions of Wild Life Protection Act and in the Forest Act, the Magistrate was competent to grant interim release of the vehicle; even in excise cases during the pendency of the trial of such cases as per merits of the each case. The view taken by the trial Court or the revisional Court that the Magistrate is not competent to grant interim release of the vehicle on supurdagi to its owner, was unsustainable and, therefore, set aside by issuing directions. Counsel has relied on judgment of **Kailash Vs. State of M.P. [1992 (2) MPWN 133]** and **Paramjeet Singh Vs. State of MP [1999 (1) MPWN 100]** where under the M.P. Excise Act under Section 34(A) the interim custody was liable to be returned to the owner in spite of the liability of confiscation. In a recent judgment of this Court in the matter of **Gayatri Sonkar Vs. The State of MP [M.Cr.C.**

No.7216/2015] also this Court had directed that no fruitful purpose will be served by retaining the vehicle during the pendency of the trial or during confiscation proceedings and it will diminish the value of the said vehicle and the petitioner is ready to produce the vehicle as and when called upon to do so. The Court relied on a judgment of the Apex Court in the matter of **Ganga Hire Purchase Pvt. Ltd. vs. State of Punjab and others** reported in [(1999) 5 SCC 670] Counsel prayed that the petition be allowed.

03. Counsel for the respondent/State per contra has supported the orders of the Court below, stating that the trial Court as well as the revisional Court had categorically held that the vehicle was a subject matter of confiscation proceedings and, therefore, the Judicial Magistrate had no jurisdiction to release the vehicle. It was the Collector who would have the jurisdiction to consider the application under Section 47(d) of the Excise Act of 2000. The revisional Court relied on **Prateek Parik Vs. State of MP [2010 (II) MPJR 113]** whereby it was held that the Judicial Magistrate cannot order the supurdagi under the Excise Act. Counsel prayed for rejection of the

petition.

04. On considering the above submissions, the question that arises for consideration in the matter is whether the owner is under the circumstances entitled to release of the vehicle on supurdagi under the Excise Act of 1915.

05. On perusing the impugned judgment, I find that the case has been registered by the P.S. at No.797 on 30.03.2003 and the co-accused is still absconding and the trial is yet to begin and the sole question that arises for consideration in this petition under Section 482 of the Cr.P.C. is whether the order rejecting grant of supurdagi to the petitioner was justified under the provisions of Excise Act, 1915 ?

Counsel vehemently urged that both the Courts below had erred in rejecting the application filed under Sections 451 & 457 of the Cr.P.C. primarily because both the Courts were under misconception that the Magistrate did not have jurisdiction to grant interim custody when confiscation proceedings had been initiated under Section 46 of the MP Excise Act. It was held that the Collector alone had the jurisdiction, thereafter to deal with the disputed

vehicle and as already discussed above, Counsel urged that the Apex Court has held that the Magistrate has ample powers to grant interim custody even though confiscation proceedings have been initiated. I find that the ratio laid down in the case of **State of M.P. Vs. Madhukar Rao (supra)** would apply in a case where confiscation had begun under the Forest Act but under the M.P. Excise Act, 1915 specific provisions have been made regarding the interim custody during confiscation. Section 46 of the Excise Act, 1915 deals with declaration of confiscation; Section 47 deals with an order of confiscation to be issued by the Magistrate concerned and Section 47-A of the Excise Act, 1915 categorically bars the Magistrate from passing any order in regard to the confiscation until the proceedings are pending before the Collector. Section 47-2 of the Excise Act, 1915 provides that if the thing in question is liable to speedy and natural decay, the Collector can direct the Article to be sold and the net proceeds to be utilized accordingly. Second proviso to Sub-Section 2 of Section 47 also indicates that the Collector has the right to decide whether the thing confiscated is liable to be speedy or natural decay, the Collector can at any time direct

it to be sold; for convenience the Section is reproduced as follows:-

Section 47-A (3) direct thus:-

“(3) No order under sub-section (2) shall be made unless the Collector has -

(a) sent an intimation in a form prescribed by the Excise Commissioner about initiation of proceedings for confiscation of seized intoxicants, articles, implements, utensils, materials, conveyance, etc. to the court having jurisdiction to try the offence on account of which the seizure has been made;

(b) issued a notice in writing to the person from whom such intoxicants, articles, implements, utensils, materials, conveyance etc. have been seized and to any other person who may appear before the Collector to have an interest in it;

(c) afforded an opportunity to the persons referred to in clause (b) above or making a representation against proposed confiscation;

(d) given to the officer effecting the seizure under sub-section (1) and to the person or persons who have been noticed under clause (b) a hearing.”

06. I find from the record and the Counsel for

the petitioner has vehemently urged the fact that no such notice has been sent to him and proper opportunities have not been afforded to make representation against the proposed confiscation. This fact remains un-controverted by both the orders below then looking to the provisions of Section 47-B, I find that there is an appeal provided against the order of confiscation. **Section 47-B** reads thus:-

“47-B. Appeal against the order of confiscation.-(1) Any person, aggrieved by an order of confiscation passed under subsection (2) of Section 47-A, may, within thirty days of such order, prefer an appeal to the Divisional Commissioner of the concerned division or to any other officer authorised for the purpose by a notification of the State government (hereinafter referred to as the Appellate authority). Such appeal memorandum shall be accompanied by a certified copy of the order appealed against.

(2) The Appellate Authority shall, on presentation of such memorandum of appeal, issue a notice to the appellant and to any other person who is likely to be adversely affected by the order that may be passed in appeal.

(3) The Appellate Authority after hearing the parties to the

appeal, shall pass an order confirming, reversing or modifying the order of confiscation appealed against:

Provided that he may pass such order of interim nature for custody, disposal etc. of the confiscated articles during the pendency of appeal, as may appear to him just or proper in the circumstances of the case but he shall have no power to stay the order of confiscation appealed against during the pendency of appeal.”

07. Further a revision also provided against the order of the appellate authority whereas **Section 47-D of M.P. Excise Act, 1915** provides that there is a bar of the jurisdiction of the Court under certain circumstances. I find that the petitioner has already availed of the revision under the Cr.P.C. before the revisional authority. The application being under Sections 451 & 457 of the Cr.P.C. the petitioner has approached the Additional Sessions Judge, Agar. The revisional Court has upheld the views of the trial Court. I find that the petitioner has not availed of the appeal against the confiscation whereas it is also an admitted fact that the vehicle has already been subjected to confiscation proceedings before the

Collector under the Excise Act, 1915. Then under these circumstances, I find that it would be more appropriate to remand the matter to the competent authority under Section 47-B of the MP Excise Act. Needless to say that the limitation if any shall not stand in the way of the petitioner making a proper appeal. The impugned order are set aside since an alternative and efficacious remedy was provided under the Special Act of M.P. Excise Act, 1915 and since there is a bar of jurisdiction under Section 47-D, it would be more fruitful to remand the matter to the appellate Court for a fresh decision on the merits of the application. Needless to say that the authorities relied on by the Counsel may be considered by the appellate Court. However, the said citations pertain to property seized under the Forest Act and may be *para materia* with the provisions of the Excise Act. Needless to say that the appellate Authority shall arrive on its own conclusion in accordance with the provisions of law.

07. Consequently, the petition is partly allowed. Both the impugned orders are hereby set aside and the appellate Authority is directed to decide the appeal of the petitioner within a period of two

months from the date of receipt of the appeal. The petitioner shall file an appeal within a period of 15 days from the date of receipt of certified copy of this order. Till then the disputed vehicle shall not be alienated by either party.

08. With the aforesaid observation and directions, the petition is partly allowed to the extent herein above indicated.

Cc as per rules.

(Mrs. S.R. Waghmare)
Judge

soumya