

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE
BEFORE HON. SHRI JUSTICE ALOK VERMA,J
M.Cr.C. No.5438/2015

Mishrilal

Vs.

State of M.P.

Shri Mukesh Sharma, learned counsel for the applicant.
Shri Peyush Jain, learned counsel for the respondents/State.

ORDER

(Passed on 04/01/2016)

This application is filed under section 482 Cr.P.C. for quashment of proceedings pending before the Judicial Magistrate First Class, Khetiya, District Barwani in M.J.C. No.08/2004 in which the present applicant was given a notice to produce the vehicle bearing registration No.CPU5401 which was confiscated vide judgment dated 26.06.2004 in Criminal Case No.451/1999 in which the Judicial Magistrate in para 21 of the judgment found that the seized 600 cartons of liquor and the vehicle bearing registration No.CPU5401 were liable to be confiscated and, therefore, the supurdaginama on which the liquor in the vehicle was given were cancelled and it was ordered that the vehicle and the liquor were confiscated and the supurdar were directed to produce the property within a month.

2. The present applicant was driver of the vehicle. As per the prosecution story on 07.05.1995, Police Station Pansemal, District Barwani, received a source information that the truck bearing registration No.CPU5401 was carrying some contraband liquor. The vehicle was intercepted and searched in which liquor was found. Charge sheet was filed. After trial, the aforesaid order of confiscation was passed.

3. When the present applicant, who was also the accused in that case and faced the trial, received notice for producing the vehicle before the Magistrate. He submitted before the Court that he was only a driver. After getting the vehicle on supurdaginama, he handed over the vehicle to the owner. He further said that before confiscating the vehicle, the Magistrate should have given a show cause notice to the owner and the supurdar to show that the vehicle was being used without any knowledge of the owner and he should have also given a chance to adduce necessary evidence in this regard and then only the vehicle should have been confiscated. This proceeding was not done and, therefore, according to the present applicant the order of confiscation is bad in law.

4. Learned counsel for the applicant placed reliance on judgment of Hon'ble Apex Court in case of **Kailashchandra vs. State of M.P.; (2007) 14 SCC 595**. In this case, the facts were

similar to facts of the present case. On 26.04.1996 the driver of the vehicle was found transporting 294 boxes containing xxx-rum, dry gin, beer and other India made foreign liquor. On receiving information, the Station House Officer, Police Station Kakanwana stopped the truck and seized the truck as well as the stock of foreign liquor. During the trial, the accused was found guilty and he was convicted and sentenced. Appellant was given a show cause notice for confiscation of the truck as per provision of section 46 of M.P. Excise Act 1915. The appellant submitted reply but the trial court was not satisfied and ordered for confiscation of the truck. The matter came to this Court, this Court remanded the case back on the ground that supurdar was not given any show cause notice. On receiving back the case on remand, the trial court registered M.Cr.C. No.34/2000, issued show cause notice to supurdar, who was the appellant before the Apex Court. The appellant submitted his reply and also got himself examined as witness. The trial court again passed the order of confiscation of the truck on 07.03.2000. The matter again came before the Court and this Court again remanded the case back to the trial court on the ground that the trial court did not mention under which provision of law, new or old one, the appeal was filed and to decide the matter afresh. The matter was again heard by the trial court and the trial court decided all the issues.

5. According to the trial court, the criminal case was registered against the accused Anokhilal with regard to illegal transportation of foreign liquor in the truck on 26.04.1996. Therefore, the provision of confiscation of section 46 of the Act will apply and amended provisions of sections 47 and 47-A substituted by the M.P. Excise (Act 22 of 2000) which came into force from 04.08.2000, will not apply and final disposal of criminal case along with section 46 of the Act read with section 452 of the Code of Criminal Procedure will apply. The argument of the Public Prosecutor that the provisions of the amended Act would apply on this case as the judgment was passed after coming in force of the amended provisions. This Court was also of the view that confiscation is a penal provision and therefore it cannot be applied with retrospective effect and it can only be applied with prospective effect and, therefore, it was held that provisions of unamended act would apply to this case.

6. In the present case also the incident took place on 07.05.1995, and therefore, the provisions of unamended sections 46 and 47 of M.P. Excise Act would apply.

7. Sections 46 and 47 (before the amendment) read as follows :-

“46. Liability of certain things to confiscation – (1)

Whenever an offence has been committed which is

punishable under this Act, the intoxicant, materials, still, utensil, implement or apparatus in respect of or by means of which such offence has been committed shall be liable to confiscation.

(2) Any intoxicant lawfully imported, transported, manufactured, held in possession or sold alongwith or in addition to, any intoxicant liable to confiscation under sub-section (1), and the receptacles, packages and coverings in which any such intoxicant, material, still, utensil, implement, or apparatus as aforesaid is or are found, and the other contents if any, of the receptacles or packages in which the same is or are found, and the animals, carts, vessels, rafts, or other conveyance used in carrying the same, shall likewise be liable to confiscation.

Provided that no animals, carts, vessels, rafts or other conveyance shall be liable to confiscation, if it is proved that they are not the property of the offender and if the owner thereof establishes that he had no reason to belief that such offence was being or was likely to be committed.

47. Order of confiscation – (1) Where in any case tried by him the Magistrate decides that anything is liable to confiscation under section 46, he may either

order confiscation or may give the owner of the thing liable to be confiscated an option to pay, in lieu of confiscation, such fine as the Magistrate thinks fit".

8. It may be seen that section 41 of unamended Act, it was provided that the owner of the vehicle may be given an option to pay in lieu of confiscation, such fine as Magistrate thinks fit. The Hon'ble Apex Court in the case of **Kailashchandra (supra)** observed that no such option was given, and therefore, giving that option the Apex Court ordered that on demand of Rs.30,000/- as fine the vehicle may be released.

9. In the present case, it is apparent that no show cause notice was given to the owner and the supurdar before ordering confiscation of the matter and also no such option as provided for by the unamended provision of the Act was given by the learned Magistrate to the present applicant as well as the owner of the vehicle, and therefore, the order of confiscation passed by the Magistrate is bad in law. The Magistrate should have given such notice and only after hearing both the parties if he was of the view that confiscation is necessary the confiscation should have been ordered and the option should have been given, as this procedure was not followed in this case, this application deserves to be allowed.

10. Accordingly, this application is allowed. The order of

confiscation passed by the learned Magistrate in para 21 of the judgment passed in **criminal case No.451/1999** dated **26.06.2014** by the Judicial Magistrate First Class, Khetiya, District Barwani is set-aside. The Magistrate is directed to issue show cause notice to the owner of the vehicle as well as present applicant and also directs the concerning Police Station to seize the vehicle and produce it before the Court. The Magistrate is further directed to pass the order after hearing all the parties according to law as provided by unamended sections 46 and 47 of M.P. Excise Act.

11. With the aforesaid observations and directions, the application is disposed of.

(ALOK VERMA)
JUDGE