HIGH COURT OF MADHYA PRADESH, JABALPUR
BENCH INDORE

(Single Bench)

(Hon'ble Shri Justice Virender Singh)

M.Cr.C. No.6500 of 2018

Anil Dhakad S/o Benisingh Dhakad

V E R S U S

State of M.P. through
Police Station Neelganga, Dist. Ujjain

M.Cr.C. No.7171 of 2018

Sanjay S/o Mohanlal Choudhary

V E R S U S

State of M.P. through
Police Station Neelganga, Dist. Ujjain

M.Cr.C. No.7590 of 2018

Shabana W/o Chhenu @ Yunus

V E R S U S

State of M.P. through
Police Station Neelganga, Dist. Ujjain

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Shri Akash Rathi, learned Counsel for the petitioners.
Shri Rakesh Maheshwari, learned Government Advocate for the respondent/State.

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O R D E R

(Passed on this 5th day of July, 2018)

Heard.

2. In all these three petitions similar questions have been raised by the petitioners and replied by the State therefore, they all are being decided by this common order. For the sake of convenience facts have been taken from M.Cr.C. No.6500/2018.

3. The petitioner has assailed order dated 30.01.2018 passed in Cr.R.No.27/18 by the Xth Additional Sessions Judge, Ujjain, whereby the learned Court has maintained the order dated 13.12.2017 passed by the Judicial Magistrate First Class, Ujjain in Crime No.871/2017 registered at Police Station Neelganga, Ujjain

4. The learned Judicial Magistrate First Class dismissed the application of the petitioner for custody of Maruti Swift Dezire vehicle bearing registration No.MP04-CF-0551 seized by the Police Station Neelganga, Ujjain on 06.12.2017 in Crime No.871/2017 for the offence under Section 34 (2) of the M.P. Excise Act, 1915 (here-in-after referred to as "the Act, 1915") for carrying 171 bulk liter illegal country made liquor without any license observing that after receiving initiation of confiscation proceedings from the collector, the jurisdiction of the Court to release such vehicle is barred by Section 47-D of the Act, 1915.

5. Facts in brief are that on 06.12.2017, acting on an intelligence input, the Police intercepted the said Maruti

Swift Dezire and on search found 171 bulk liters illegal liquor in the car. The Police seized the said liquor along with car and registered the crime as stated above. On the same day i.e. 06.12.2017, the petitioner filed an application for custody of the vehicle and made a request to fix the hearing on the next day. His request was turned down by the learned Magistrate observing that it will be too early to fix the hearing as within this short period it is not possible to complete the procedure to send the intimation to the collector or to take a decision with regard to initiation of the proceedings for confiscation of the seized vehicle. The learned Magistrate called the case diary and fixed the case for hearing of this application on 12.12.2017 and thereafter for 13.12.2017 as on 12.12.2017, the advocates were abstaining from work and on 13.12.2017, after hearing the parties dismissed the application, observing that an initiation of confiscation proceedings is received vide letter No./Excise/Crime/ Confiscation /39/2017/3147 Ujjain, dated 12.12.2017 sent by Collector to the Chief Judicial Magistrate, therefore, in view of provision of Section 47D of the Act, 1915, it's jurisdiction to pass an order for custody of the vehicle is seized.

6. The order of the Judicial Magistrate was maintained by the Revisional Court.

7. Contention of the learned counsel for the petitioner is that learned Magistrate and also the Revisional Court have grossly erred in not considering the legal position that the Court cannot call for or grant time or wait for intimation of

confiscation proceedings. If at the time of moving application, no intimation is received by the court regarding confiscation proceeding of vehicle, then the right accrues in favour of the applicant for interim custody of the seized vehicle. The approach of the learned Court is erroneous, against the law and make the legal provisions otiose and also violative of law laid down by this court. Besides, other grounds like the petitioner is suffering loss, vehicle is kept at Police Station and subjected to vagaries of nature, no useful purpose shall be served by keeping the vehicle in custody, no ground for apprehension of running away or tempering with the vehicle or the evidence have also been taken by the petitioner.

8. Learned counsel for the petitioner has placed reliance on **Sunderbhai V/s. State of Gujrat** reported in **AIR 2003 SC 638**, wherein the Hon'ble the Supreme Court has directed to dispose of the application for custody of article expeditiously and judiciously and has issued some guide lines in this regard.

9. Per contra, learned Public Prosecutor has opposed the application. It is submitted by the learned counsel that at the time of considering and disposing the application, the Judicial Magistrate had intimation of confiscation proceedings sent by the Collector, therefore, his jurisdiction was barred by Section 47-D of the Act, 1915 and that the learned Magistrate has rightly dismissed the application.

10. The core question arises for consideration in this case is as to whether after filing of the application for custody of

vehicle, particularly where the vehicle is seized for contravention of the provisions of the Act, 1915, the Court is justified/competent to grant opportunity of hearing to the prosecution ?

11. An ancillary question would also arise as to what would be the relevant date for applicability of the bar created by Section 47-D of the M.P. Excise Act, 1915? Whether it would be date of filing of application or the date of hearing or decision on the application?

12. The answer of the first question lies in the principal of natural justice. The second fundamental principle of natural justice is **Audi alteram partem.** Audi alteram partem is a Latin phrase meaning "listen to the other side", or "let the other side be heard as well". It is the principle that no person should be judged without a fair hearing in which each party is given the opportunity to respond to the evidence against them. "Audi alteram partem" is considered to be a principle of fundamental justice or equity or the principle of natural justice. This principle includes the rights of a party to confront the witnesses against him, to have a fair opportunity to challenge the evidence presented by the other party, to present evidence and even to have counsel, if necessary at public expense, in order to make his case properly. This maxim includes two elements: (i) Notice; and (ii) Hearing.

13. Before any action is taken, the affected party must be given a notice to show cause against the proposed action and seek his explanation. It is a sine qua non of the right of fair

hearing. Any order passed without giving notice is against the principles of natural justice and is void ab initio.

14. The second ingredient of audi alteram partem (hear the other side) rule is the rule of hearing. If the order is passed by the authority without providing the reasonable opportunity of being heard to the person affected by it adversely will be invalid and must be set aside as held in the cases of **National Central Co-operative Bank Ltd Vs. Ajay Kumar and others A.I.R. 1994 S.C. 39**, **Vipulbhai Mansingbhai Chaudhary v. State of Gujarat AIR 2017 SC 2340** and **H. P. State Electricity Board Ltd. Vs. Mahesh Dahiya AIR 2016 SC 5341.** The reasonable opportunity of hearing which is also well known as 'fair hearing' is an important ingredient of the 'audi alteram partem' rule. This condition may be complied by the authority by providing written or oral hearing which is the discretion of the authority, unless the statue under which the action being taken by the authority provides otherwise. It is the duty of the authority to ensure that the affected party may get an opportunity of hearing.

15. A general duty to act judicially is cast on the competent authority. The Courts are also oblige to follow these principles. Thus, it was not only obligatory but was mandatory for the Judicial Magistrate to give a reasonable opportunity of hearing to the other side i.e. the prosecution.

16. In the present case, granting reasonable opportunity of hearing was necessary for one more reason. The learned trial Court had to decide the application not only considering the

bar created on its jurisdiction but also on merits of the case and to consider any application on its merits, various factors; such as criminal antecedent, ownership, any other objection regarding custody of the vehicle etc. are to be considered by the Court and for all these purposes, it was necessary rather mandatory for the Court to give reasonable opportunity of hearing to the affected party, which is the State in this case.

17. The Constitution has laid down no hard and fast rule by defining reasonable opportunity for all cases and no absolute standard can be laid down as to what will constitute "reasonable opportunity". It is neither possible nor desirable to lay down any rigid test as to what is the reasonable opportunity. What would be a reasonable opportunity is a matter of fact, which can be determined having regard to the peculiar facts and in the attaining circumstances of the case. In this regard we can usefully refer **AIR 1959 SC 1111, Phulbari Tea Estate v. Its Workmen** and **M/s. Fedco (P) Ltd. v. S.N. Bilgrami AIR 1960 SC 415.**

18. Having regard to the facts and circumstances, it does not appear that in the present case, while granting opportunity of hearing to the prosecution, the learned Magistrate has acted erroneously or has exercised its jurisdiction incorrectly.

19. The learned counsel for the petitioner vehemently argued that Section 47-D of the Act, 1915 bars jurisdiction of the Judicial Magistrate only after receiving intimation of initiation of confiscation proceedings from the Collector and when no such intimation is received at the time of filing of

application for custody of the vehicle, the bar on jurisdiction of the Judicial Magistrate does not come in operation. To prop up his contention, he placed reliance on the judgments passed in the cases of **Suresh Dave V/s. State M.P.** reported in **2003(1) M.P.H.T. 439** and **Pratik Parik V/s. State of M.P.** reported in **2010 (1) M.P.L.J. (Cri.) 205.** In both these judgments this court has held that in case of non-receipt of any communication regarding initiation of confiscation proceedings, the Magistrate may exercise jurisdiction conferred under Sections 451 and 457 of Cr.P.C.

20. It is further submitted by the petitioner that he filed the application for custody of vehicle on 06.12.2017. No information from the Collector was received by the Judicial Magistrate by that time, even then instead of deciding his application, the learned Magistrate fixed the case for hearing of application on 12.12.2017. Even on that date, no order was passed and the case was deferred for 13.12.2017. Though by that time information was received but as per provisions of Section 47-D relevant time for consideration of applicability of bar of jurisdiction created by Section 47-D of the Act, 1915 is the date of filing of the application and undisputedly by that time no intimation was received by the Judicial Magistrate from the Collector as provided under Section 47-A(3)(a) of the Act,1915, therefore, the learned Judicial Magistrate as well as the Revisional Court erred in assuming that they have no jurisdiction and therefore, order of dismissal of his application is incorrect, improper and illegal in the eyes of law.

21. The question emanates from the argument of the learned counsel is as to what would be the relevant date of creation of bar under Section 47-D of the Act, 1915. Whether it would be a date of filing of the application or it would be a date of hearing and deciding the application.

22. To adjudicate the second question, it is necessary to refer the provisions of Section 47-D of the M.P. Excise Act, 1915, which is being reproduced as under :-

> **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 intimation under clause (a) of sub-section (3) Section 47-A about the initiation of the proceedings for confiscation of seized property.
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> (emphasis supplied)

23. A plain reading of Section 47-D of the Act, 1915 shows that the Section mandates that the court having jurisdiction to try offences covered by the Clause-(a) or (b) of Sub-Section 1 of Section 34 of the Act, 1915 shall not make any order about the disposal, custody etc. of the vehicle after it has received intimation of initiation of confiscation proceedings from the Collector. It transpires from unambiguous provision of the Act that if at the time of hearing on the application or at the time of passing of the order, the concerned Magistrate has information before him

regarding initiation of confiscation proceeding then this provision takes away his jurisdiction and he cannot exercise powers under Section 451 & 457 of Cr.P.C. because the provisions of Section 47-D of the Act, 1915 has overriding effect over the general provisions of Section 451 and 457 of Cr.P.C., thus, there is no doubt that relevant date of exercising jurisdiction under Sections 451 & 457 of Cr.P.C. with regard to the disposal of property seized under the provisions of Clause (a) or (b) of Sub Section (1) of Section 34 of the Act, 1915 is the date of hearing of the application or passing the order on the same and not the date of filing of the application.

24. It is not disputed in the present case that while considering the application and passing the impugned order, the concerned Magistrate was having information before it regarding initiation of confiscation proceedings under the provisions of the Act, 1915 sent by the Collector, therefore, the learned Trial Court as well as the Revisional Court has correctly dismissed the plea of the petitioner of releasing the vehicle on the ground of lack of jurisdiction under the provisions of the Act, 1915. I do not find any incorrectness, impropriety, illegality or perversity in the order passed by both the Courts below.

25. Otherwise also the legislation has provided alternate remedy under Sub Section 2 of Section 47-A of the Act, 1915 and therefore, there is no reason for the petitioner to impress upon the Judicial Magistrate to pass an order with regard to custody of the vehicle on merits. He may easily

and legally redress his grievance by approaching Collector before whom the proceedings for confiscation are pending. Section 47-A (2) reads thus:

> **47-A. Confiscation of seized intoxicants, articles, implements, utensils, materials, conveyance etc.—**
> (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 34 covered by clause (a) or clause (b) of sub-section (1) of Section 34 has been committed and where the quantity of liquor found at the time or in the course of detection of such offence exceeds fifty bulk litres he may, on the ground to be recorded in writing, order the confiscation of the intoxicants, 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.
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> (emphasis supplied)

26. Thus, in view of the aforesaid discussion, no ground for interference in the impugned orders is made out. Present petitions are devoid of merit, deserve to be and are **dismissed** hereby.

27. A copy of this order be placed with the record of rest two M.Cr.Cs.

(Virender Singh)

Judge

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