

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE**

HON'BLE SHRI JUSTICE ANIL VERMA

ON THE 15th OF DECEMBER, 2022

MISC. CRIMINAL CASE No. 37758 of 2022

BETWEEN:-

**PREMSINGH S/O SHRI NAHARU DAMAR, AGED
ABOUT 30 YEARS, OCCUPATION: AGRICULTURE
GRAM GOPALPURA, DISTRICT RATLAM
(MADHYA PRADESH)**

.....PETITIONER

(BY SHRI OMPRAKASH SOLANKI, - ADVOCATE)

AND

- THE STATE OF MADHYA PRADESH**
- 1. COLLECTOR / DISTRICT MAGISTRATE
DISTRICT RATLAM. (MADHYA PRADESH)**
 - 2. SHAYAK AABKARI AYUKTA RATLAM R/O B-11,
RATAN NAGAR, MADAN MAHAL JABALPUR,
DISTRICT JABALPUR (M.P.) (MADHYA
PRADESH)**
 - 3. POLICE THANA SELANA THROUGH THANA
PRABHARI POLICE THANA SELANA POLICE
THANA SELANA DISTRICT RATLAM (MADHYA
PRADESH)**

.....RESPONDENTS

(BY SHRI PRANAY JOSHI PL)

*This application coming on for admission this day, the court passed
the following:*

ORDER

The petitioner has filed present petition filed under section 482 of Code of Criminal , 1973 (in short “ Cr.P.C”) being aggrieved by the impugned order dated 09/04/2022 passed by the 5th Additional Sessions Judge, Ratlam in Criminal Revision no. 30/2019, whereby the revision

has been dismissed and the order dated 04/01/2019 passed by the Additional Commissioner (Excise), Gwalior in Appeal no. REC/152/2017 -2018 has been upheld.

2. Brief facts of the case are that on 03/03/2015 at about 8:40 p.m., on the basis of secret information police intercepted one Mahindra Maxima bearing registration No. MP-43-T- 0797 and on being searched 120 bulk liters of country made liquor was found in the vehicle, which was being transported without having any permit. Police seized the liquor and vehicle and thereafter registered FIR bearing Crime No. 34/2015 at Police-Station-Sailana, District-Ratlam for commission of offence punishable under Section 34(2) of the M.P. Excise Act, 1915 against the applicant. After completion of investigation, the charge-sheet was filed. SHO, Police Station-Sailana, Ratlam submitted an application on 14/09/2017 under Section 47(A) of the M.P. Excise Act before the Collector (Excise Act), Ratlam for confiscation of the seized vehicle, which was registered as Case No. 21/B-121/Excise/14-15 and show cause notice was issued to the applicant, who submitted his reply. After considering the submission made by both the parties, the Collector (Excise Act), Ratlam directed to confiscate the said vehicle. Being aggrieved by the aforesaid order of confiscation, an appeal was filed by the applicant before the appellate Authority (Assistant Excise Commissioner), Gwalior, which was also got dismissed vide order dated 04/01/2019 passed in Criminal Appeal No. R.E.C./152/2017- 18. The aforesaid orders were challenged by the applicant before the Sessions Court by preferring Criminal Revision No. 30/2019, however, the same has also been dismissed on the ground that the present appeal is filed beyond the period of limitation and no explanation has been offered by the applicant regarding the aforesaid delay in filing the appeal. It is

further held that the revision application is filed against the order passed by Assistant Excise Commissioner, Gwalior, therefore, the Court of Ratlam is not having any territorial jurisdiction to hear the present appeal. The said order is subject matter of challenged before this Court. Thereafter, vide order dated 04/02/2020 passed in MCRC no. 39567/2019, co-ordinate Bench of this Court has set aside the order dated 23/07/2019 passed by the 5th ASJ, Ratlam in Criminal case no. 30/2019/ and the matter is remanded back to the 5th ASJ, Ratlam with direction to decide the matter on merit after hearing both the parties in accordance with law.

3. Apart from that, the petitioner has filed appeal before the Additional Commissioner (Excise), Gwalior being aggrieved by the Additional Collector, Ratlam. The same was dismissed vide order dated 04/01/2019, thereafter, the petitioner has preferred criminal revision before the 5th ASJ, Ratlam and the same was also dismissed vide order dated 09/04/2022. The said order is the subject matter challenged before this Court.

5. Learned counsel for the petitioner submitted that the analogy adopted by the trial Court is illegal and contrary to the sprit of section 47(c) of the M.P. Excise Act. It is also stated that trial of the offence bearing no. 34/2015 registered at police station, Sailana is pending before the CJM, Ratlam in Criminal Case no. 1115/2015 and before final disposal of the trial, proceedings of confiscation / forfeiture cannot be maintainable. Only Collector has been authorized to conduct confiscation under section 47 and 47-A of the M.P. Excise Act,, but the impugned order dated 14/09/2017 has been passed by the Additional Collector. The State Government has not delivered such powers to the Additional Collector. The impugned order dated 14/09/2017 is passed

beyond jurisdiction and it is not maintainable.

6. Reliance has been placed by counsel for the petitioner upon the judgment delivered in the case of **Rajesh Kumar @ Pillu Patel Vs. State of M.P. Reported in 2016(3) MPLJ (cRI) 570 and order dated 16/01/2020 passed in W.P. no. 172/2020 (Ranveer Singh Vs. State of M.P.)** passed by co-ordinate Bench of this Court.

7. Per-contra, learned counsel for the respondent has opposed the petition and submitted that the impugned order passed by the District Magistrate, the Additional Commissioner (Excise) as well as the subsequent order passed by the ASJ, Ratlam in revision do not suffer from any illegality or perversity, therefore, no interference is called for.

8. I have considered all the facts of the case and rival contention of the parties,

9. Relevant sections 47 and 47-A of the M.P. Excise Act, 1915 is reproduced for the sake of reference as under

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 shall order confiscation of the same :

Provided that where any intimation under clause (a) of sub -section (3) of Section 47-A has been received by the Magistrate, he shall not pass any order in regard to confiscation as aforesaid until the proceedings pending before the Collector under Section 47-A in respect of thing as aforesaid have been disposed of, and if the Collector has ordered confiscation of the same under sub-section (2) of Section 47-A, the Magistrate shall not pass any order in this regard. (2) When an offence under

this Act has been committed, but the offender is not known or cannot be found, the case shall be inquired into and determined by the Collector, who may order confiscation :

Provided that no such order shall be made until the expiration of one month from the date of seizing the thing intended to be confiscated, or without hearing any person who may claim any right thereto, and the evidence (if any) which he may produce in support of his claim:

Provided further that if the thing in question is liable to speedy and natural decay, or if the Collector is of opinion that the sale would be for the benefit of its owner, the Collector may at any time direct it to be sold; and the provisions of this sub-section shall, as nearly as may be practicable, apply to the net proceeds of such sale.

47-A. Confiscation of seized intoxicants, articles, implements, utensils, materials, conveyance etc.— (1) Whenever any offence covered by clause (a) or (b) of sub-section (1) of Section 34 is committed and the quantity of liquor found at the time or in the course of detection of offence exceeds fifty bulk litres, every officer, empowered under Section 52, while seizing any intoxicants, articles, implements, utensils, materials, conveyance etc. under sub-section (2) of Section 34 or Section 52 of the Act, shall place on the property seized a mark indicating that the same has been so seized and

shall without undue delay either produce the seized property before the officer not below the rank of District Excise Officer authorised by the State Government by a notification in this behalf (hereinafter referred to as the Authorised Officer), or where having regard to its quantity or bulk or any other genuine difficulty it is not expedient to do so, make a report containing all the details about the seizure to him.

(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.

(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 person staking claim to 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 of 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.

10. Full Bench of this Court in the case of **Madhukar Rao Vs., Tate of M.P. Reported in 2000(1) MPLJ (FB) 389** has laid down the principle that once criminal case is pending, confiscation proceeding should not be held and finalized. That was also affirmed by Hon'ble Supreme Court in the case of **State of M.P Vs. Madhukar Rao reported in 2008 (1) JLJ 427 .**

Co-ordinate bench of this Court in case of **Santosh S/o Tulsiram Jaiswal vs. The State of Madhya Pradesh & others**, (Writ Petition No.1037/2016) vide order dated 13.05.2016, while relying upon a decision dated 13.07.2015 rendered by this Court in the case of **Sheikh Kaleem vs. State of MP, (Writ Petition No.1296/2015)**, has set aside the order of confiscation and has directed the respondents to release the

vehicle on the ground that confiscation can only take place after the person is convicted. In the case of Premdas Vs. State of M.P and others reported in 2013(1) MPJR SN 10 , co-ordinate Bench of this Court has held that vehicle cannot be confiscated by the department so long, as the criminal case is pending.

11. The word “ *the offence covered by Clause A or B of sub-section 1 of section 34 has been committed*” used in sub-section 2 of section 47-A indicates that the order of forfeiture can be passed when the Collector satisfies himself that the offence covered under Clause A or B of sub-section 2 of section 34 has been committed, therefore, forfeiture / confiscation order can be passed only after conviction has been recorded by the trial Court and not before that.

12. In the instant case, the Additional District Magistrate, Ratlam directed confiscation / forfeiture of the vehicle and the same order was upheld by the Additional Commissioner (Excise) Gwalior, but criminal proceeding is still pending before the CJM, Ratlam in Criminal case no. 34/2015. The petitioner is the registered owner of the said vehicle. The said vehicle is lying with the police station in open place and getting damaged day by day. If the aforesaid vehicle is not given on Supurdagi, then the petitioner will suffer irreparable loss

13. In light of the aforesaid, present petition filed under section 482 of Cr.P.C by the petitioner is allowed and the impugned order dated 14/09/2017 passed by the Additional District Magistrate / Additional Collector, Ratlam, the order dated 09/04/2022 passed by the 5th Additional Sessions Judge, Ratlam in Criminal Revision no. 30/2019, order dated 04/01/2019 passed by the Additional Commissioner (Excise), Gwalior in Appeal no. REC/152/2018 are hereby quashed.

14. As the vehicle in question is in custody of respondent and

possibility of vehicle to be destroyed, cannot be ruled out, interest of justice requires that the custody of the vehicle be given to the owner on certain conditions. Therefore, it is directed that seized vehicle bearing registration no. MP-43-T- 0797 be released to the petitioner upon verification of his ownership and on his execution of a personal bond of **Rs. 2,00,000/- (Rs. Two Lacs)** with one surety in the like amount to the satisfaction of the trial Court with the following conditions :

(i) The vehicle shall be produced before the trial Court or before the District Magistrate as and when directed ;

(ii) The petitioner shall not alienate or part with the possession of the vehicle during the pendency of the proceeding for confiscation or criminal trial;

(iii) The external appearance of the vehicle shall not be changed in any manner so as to make it difficult to identify.

15. In light of aforesaid terms and conditions, present petition stands disposed of accordingly.

Cc as per rules.

(ANIL VERMA)
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