

1
**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA**

ON THE 9th OF MAY, 2023

MISC. CRIMINAL CASE No. 14200 of 2023

BETWEEN:-

**KARANSINGH S/O PITU WAKHLA, AGED ABOUT 40
YEARS, OCCUPATION: BUSINESS R/O VILLAGE
CHOGALA DISTT. JHABUA (MADHYA PRADESH)**

.....PETTIONER

(BY SHRI BHARAT YADAV - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH STATION
HOUSE OFFICER THROUGH POLICE STATION
BIAORA DEHAT DISTRICT RAJGARH (MADHYA
PRADESH)**
- 2. BHASKAR S/O PRATAP HIHOR, AGED ABOUT 27
YEARS, OCCUPATION: LABOUR VILLAGE
DUGAWANI, DIST. ALIRAJPUR (MADHYA
PRADESH)**

.....RESPONDENTS

***(BY SHRI VINOD THAKUR - G.A. FOR THE RESPONDENT NO.1/STATE.
SHRI MANOJ KUMAR SAHANI - ADVOCATE FOR THE RESPONDENT
NO.2)***

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

ORDER

1. The present petition is filed under Section 482 of the Code of Criminal Procedure, being aggrieved by the order dated 1/3/2023 passed by the Ist ASJ, Rajgarh, District - Rajgarh(M.P.) in Criminal Revision No.21/2023 arising out of the order dated 2/2/2023 passed by Judicial Magistrate, Rajgarh in criminal case No.174/2023 arising out of crime No. 17/2023 registered at P.S. - Biaora Dehat,

District - Rajgarh (M.P.) whereby the Courts below rejected the application filed by the petitioner under Section 451 of Cr.P.C for interim custody of the vehicle No. MP-45-H-0341.

2. The facts of the case are that the petitioner is a registered owner of mini truck bearing registration No.MP-45-H-0341. The petitioner entered into an agreement on 10/10/2022 for rent of the aforesaid vehicle to the respondent No. 2 namely Bhaskar Hihor and against whom the aforesaid case is registered by the respondent No.1. On secret information received on 18/1/2023, the respondent No. 2 was arrested by the respondent No. 1 and it is alleged that the respondent No. 2 was carrying 725.76 bulk litre of foreign liquor in the said vehicle without possessing any valid permit/license. The vehicle was seized on the spot. After completion of the investigation, charge-sheet has been filed on 21/2/2023. The petitioner being owner of the said vehicle filed an application for interim custody of the aforesaid vehicle before the Trial Court which was rejected by order dated 2/2/2023. The petitioner filed a Revision Petition against the said order. The said Revision has also been dismissed by impugned order dated 1/3/2023. Being aggrieved by the aforesaid the petitioner has invoked the jurisdiction under Section 482 of the Code of Criminal Procedure.

3. Counsel for the applicant submits that the Trial Court has rejected the application under Section 451 of Cr.P.C read with Section 457 of Cr.P.C. considering the bar under Section 47(D) of the M.P. Excise Act (in short referred to as "the Act"). It is submitted that the application for interim custody of the vehicle was filed on 25/1/2023. The arguments were heard on 28/1/2023 and on the same day the Trial Court issued a letter to the District Magistrate/Collector, Rajgarh seeking an information regarding initiation of

confiscation proceedings and by letter dated 2/2/2023, the Collector informed the Court that the proceedings for confiscation have been initiated. He has drawn attention of this Court to Annexure P-6 dated 28/1/2023 and Annexure P-7 dated 2/2/2023. It is argued that on the date of application, there was no communication by the Collector, Rajgarh regarding initiation of proceedings of confiscation of seized property under Section 47(A)(2) of the Act and, therefore, the bar under Section 47(D) of the Act would not apply. In support of his submissions, he has placed reliance on the judgment of a co-ordinate Bench of this Court dated 29/4/2022 in the case of *Kishore Vs. State of M.P.* passed in *M.Cr.C No. 32547/2019* and also order passed by this Court dated 17/3/2023 in the case of *Narendra Vs. State of M.P.* passed in *M.Cr.C no.37250/2022* whereby it has been held that if there is no communication received about initiation of the proceedings of confiscation on the date of application, the bar under Section 47(A) of the Act would not apply.

4. Counsel for the State supports the impugned orders and placed reliance on an order by a co-ordinate Bench of this Court dated 5/7/2018 passed in the case of *Anil Dhakad Vs. State of M.P.* (M.Cr.C No.6500/2018) and other connected petitions, wherein it has been held that the bar under Section 47(D) of the Act would not apply in the cases where the intimation regarding initiation of proceedings for confiscation have been received by the Court before passing the order for interim custody of vehicle.

5. I have heard learned counsel for the parties.

6. To appreciate the rival submissions, it is apposite to refer to the relevant provisions of Section 47(D) of the Act which is 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 the clauses (a) or (b) of sub Section (1) of the 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) of Section 47-A about the initiation of the proceedings for confiscation of seized property..

7. On bare reading of the aforesaid provision, it is apparent that if the Criminal Court has been given intimation as per provision under section 47(A) (3)(a) of the Act about initiation of confiscation proceedings by the Collector regarding confiscation then the criminal court is ceased of the matter and has no jurisdiction to pass any order for interim custody of vehicle as held by this Court in the order dated 03/01/2003 passed in the case of **Suresh R. Dave Vs. State of Madhya Pradesh (M.Cr.C.No.4390/2002)** reported in **2003(1) MPHT 439** and order dated 20/07/2009 passed in the case of **Pratik Parik Vs. State of Madhya Pradesh (M.Cr.C.No.4244/2009)** reported in **2010 (1) MPLJ (Cri) 205.**

8. Further elaborating his submission, learned counsel for the petitioner contends that unless intimation under Clause (a) of sub-section (3) of Section 47-A of the Act is received by the Court, the Court has full jurisdiction to deal with the application for 'supurdagi' on merits. That has not been done.

9. Upon hearing counsel for the parties, at the outset, it is expedient to observe that if law requires a particular act to be done in a particular manner, it can be done in the same manner and not otherwise. Conjoint reading of Section 47-A and 47-D of the Act suggests that jurisdiction of the Court is barred, if intimation of initiation of confiscation proceedings of seized property is

received under clause (a) of sub-section (3) of Section 47-A of the Act.

10. In the case of Suresh R. Dave, Prateek Parik (supra) and in the case of Kishore and Narendra (supra) it has been held that if there is no communication regarding initiation of proceedings of confiscation by the Collector to the Court prior to filing of application for "Supurdaginama", the bar under Section 47(D) of the Act would not come in the way while deciding the application under Section 451/457 of the Code of Criminal Procedure. The petition was allowed and the orders were set aside. The law laid down in the case of Suresh R. Dave and Prateek Parik (supra) has not been considered in the judgment passed in the case of Anil Dhakad (supra) which has been relied upon by the respondents and, therefore, it is held that the law laid down in the case of Anil Dhakad (supra) is *per incuriam*.

11. In the facts of the present case, it is evident that the application for interim custody of the vehicle was moved on 25/1/2023 and the matter was heard on 28/1/2023. Thereafter, the Court sought information from the Collector regarding initiation of proceedings for confiscation. In turn, on 2/2/2023 intimation was sent by the Collector to the Court regarding initiation of confiscation proceedings. Thus, on the date of the application, there was no intimation received by the Court from the Collector, Rajgarh regarding initiation of proceedings for confiscation and, therefore, the bar under Section 47(D) of the Act would not attract.

12. In view of the aforesaid, the present petition is allowed. The impugned order dated 1/3/2023 passed by Ist ASJ, Rajgarh District - Rajgarh (M.P.) in Criminal Revision No.21/2023 and order dated 2/2/2023 passed by Chief Judicial Magistrate, Rajgarh in Criminal Case No.174/2023 rejecting the application for interim custody of the said vehicle are set aside. The application

filed by the applicant under Section 451 of Cr.P.C is allowed. The vehicle in question shall be released subject to the following conditions:-

(i) The applicant shall not change the original nature/colour of the vehicle.

(ii) The applicant shall not alienate or transfer the said vehicle to any third party or shall not create any interest of third party.

(iii) The applicant shall produce the said vehicle before the Court as and when directed by the Court during trial at his own risk and cost.

(iv) In case, in the opinion of the court the applicant does not produce the vehicle in the condition in which it was given in his possession, the applicant shall pay the amount which would be determined by the court.

(v) In case of confiscation of the vehicle by the Competent Authority, the applicant shall produce the vehicle in the same condition in which it was given in his possession and if the Competent Authority found that the vehicle is not found in the same condition, then he shall pay the cost in lieu thereof as determined by the Competent Authority.

(VIJAY KUMAR SHUKLA)
JUDGE

Pramod