

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

BEFORE

HON'BLE SHRI JUSTICE PRANAY VERMA

MISC. CRIMINAL CASE No. 5287 of 2023

BETWEEN:-

**ALTAF S/O SITAB KHA, AGED ABOUT 40 YEARS,
OCCUPATION: LABOUR, R/O: GRAM
KACHHIKHEDA TEHSIL SARANGPUR DISTRICT
RAJGARH (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI A.K. SAXENA - ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH STATION
HOUSE OFFICER THROUGH POLICE STATION
SARANGPUR, DISTRICT RAJGARH (MADHYA
PRADESH)**

.....RESPONDENT

**(BY MS. VINITA DWIVEDI – PANEL LAWYER FOR THE
RESPONDENT/STATE)**

Reserved on :- 31.07.2023

Pronounced on :- 25.10.2023

.....
*This application having been heard and reserved for orders
coming on for pronouncement this day, the court passed the following:*

ORDER

This petition under Section 482 of the Code of Criminal Procedure has been preferred by the petitioner being aggrieved by the order dated 05.01.2023 passed in Criminal Revision No.05/2023 by the IInd Additional Sessions Judge, Rajgarh, District Rajgarh affirming the order

dated 16.12.2022 passed in Crime No.445/2022 by the Judicial Magistrate, First Class, District Rajgarh, whereby his application under Section 451 of the Cr.P.C. for grant of custody of the vehicle to him had been rejected.

02. The facts reveal that on the basis of a secret information on 21.08.2022, the Police party stopped a vehicle Maruti Suzuki Brezza bearing registration No.MP-04-CY-3827 and recovered total 80 liters of country made liquor from the same which was being transported illegally without a valid license. Accordingly, a case under Section 34(2) of the M.P. Excise Act, 1915 has been registered against the petitioner.

03. Thereafter, the petitioner preferred an application under Section 451 of the Cr.P.C. before the Judicial Magistrate, First Class, Rajgarh for custody of the aforesaid vehicle which was rejected vide order dated 16.12.2022 on the ground that intimation of initiation of confiscation proceedings by the Collector, Rajgarh (Biora), dated 01.09.2022 as regards the vehicle has been received, hence, as per provisions of Section 47-D of the Excise Act, it has no jurisdiction to release the vehicle on interim custody. The said order has been maintained by the Revisional Court in revision preferred by the petitioner.

04. Learned counsel for the petitioner submits that the impugned orders passed by the Courts below are illegal and contrary to law. Despite receipt of intimation from the Collector as regards initiation of the confiscation proceedings, the Courts below had ample power to direct the vehicle to be released on interim custody and there was no bar upon them for passing such an order. In not doing so, the Courts below have failed to exercise jurisdiction vested in them. It is hence submitted that the impugned orders be set aside and the application preferred by the petitioner be allowed. Reliance has been placed on the order dated

15.05.2019 passed in M.Cr.C. No.12900/2019 (**Rajesh Sisodiya Vs. State of M.P.**), dated 24/02/2022 passed in M.Cr.C. No.62546/2021 (**Moin Khan Vs. State of M.P.**), dated 29.09.2021 passed in M.Cr.C. No.1729/2021 (**Yogesh Sahu Vs. State of M.P.**), dated 15.09.2021 passed in M.Cr.C. No.39397/2021 (**Vikas Vs. State of M.P.**), dated 01.09.2021 passed in M.Cr.C. No.36888/2021 (**Pinkesh Vs. State of M.P.**), dated 27.11.2019 passed in M.Cr.C. No.11251/2019 (**Bapulal Vs. State of M.P.**), dated 15.11.2022 passed in M.Cr.C. No.18496/2019 (**Nitesh Vs. State of M.P.**), dated 11.05.2023 passed in W.P. No.19528/2022 (**Suresh Vs. State of M.P. and Others**), dated 06.09.2022 passed in W.P. No.19535/2022 (**Dharam Vs. State of M.P. and Others**) and dated 13.07.2015 passed in M.Cr.C. No.1296/2015 (**Sheikh Kalim Vs. State of M.P.**).

05. Per contra, learned counsel for the State has submitted that in view of the mandatory provisions of the Excise Act, the Courts below had no jurisdiction whatsoever to release the vehicle on interim custody hence they have not committed any error in rejecting the application preferred by the petitioner.

06. I have considered the submissions of learned counsel for the parties.

07. The provisions of Section 47-A and 47-D of the Excise Act being relevant are reproduced herein under:-

“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 office, 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 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 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.

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 intimated under clause (a) of sub-section (3) Section 47-A about the initiation of the proceedings for confiscation of seized property.”

08. In **Yogesh Sahu (Supra)** it has been held by this Court that if intimation is given to the Criminal Court as per provisions of Section 47-D of the Act of 1915 about initiation of confiscation proceedings by the Collector then the Criminal Court has no jurisdiction to pass any order for interim custody of vehicle. The relevant part of the order is as under:-

“Bare reading of the aforesaid provision, it is apparent that if the intimation is given to the Criminal Court as per provision of Section 47-D of the Act of 1915 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 High 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) and order dated 20/07/2009 passed in the case of Pratik Parik Vs. State of Madhya Pradesh (M.Cr.C.No.4244/2009).”

09. Similar view was taken by this Court in the case of **Vikas (Supra)**. Thus, it is well settled that if intimation is given to the Criminal Court as per Section 47-A(3) of the Act, 1915 about initiation of proceedings by the Collector regarding confiscation then the Criminal Court has no jurisdiction to pass any order for interim custody of vehicle.

10. The order in the case of **Rajesh Sisodiya (Supra)** was passed by taking analogy from the decision of this Court in **Madhukar Rao Vs. State of M.P. and Others, W.P. No.4421/1997 decided on 28.10.1999** which was arising out of a case under the Forest Act and the orders of the Forest Authorities under the Forest Act were under challenge hence cannot be held to be a binding precedent. In **Moin Khan (Supra)** order for release of vehicle on interim custody was passed on the ground that no intimation as regards initiation of confiscation proceedings had been received from the Collector. In **Bapulal (Supra)**, the interim custody was

granted by taking into consideration the provisions of M.P. Govansh Vadh Pratishedh Adhinyam, 2004, which contains provisions which are not pari materia to the provisions of the Excise Act and also on the ground that intimation as regards confiscation proceedings had not been received from the Collector. In **Nitesh (Supra)**, **Suresh (Supra)**, **Dharam (Supra)** and **Pinkesh (Supra)**, it was the order of Collector directing confiscation of the vehicle under Section 47-A(2) of the Excise Act, which was under challenge. However, in the present case, there has not been any order of confiscation passed by the Collector but it is the order of the Courts below which are under challenge, whereby interim custody of the vehicle has been denied. The judgments relied upon by the learned counsel for the petitioner hence are not applicable to the facts of the present case.

11. Since intimation as regards initiation of confiscation proceedings by the Collector has already been received on 01.09.2022 i.e. prior to passing of order by the trial Court it had no jurisdiction whatsoever to allow the application preferred by the petitioner for interim custody. It has hence not committed any error in rejecting the same and the Revisional Court has also rightly affirmed the said order.

12. As a result of the aforesaid, the petition is found to be devoid of merits and is hereby dismissed.

(PRANAY VERMA)
JUDGE

Shilpa