

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

BEFORE

HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA

ON THE 7th OF NOVEMBER, 2023

WRIT PETITION No. 28288 of 2023

BETWEEN:-

**BHASKAR @ BALKISHAN SONONE S/O
VITTHALRAO SONONE, AGED ABOUT 55
YEARS, OCCUPATION: BUSINESS, R/O: 34/2,
ANNAPURNA, DEVENDRA NAGAR, INDORE
(MADHYA PRADESH)**

.....PETITIONER

(BY SHRI RAMKRISHNA SHASTRI - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH
COLLECTOR DISTRICT INDORE
(MADHYA PRADESH)**
- 2. THE SUPERINTENDENT OF POLICE
INDORE (MADHYA PRADESH)**
- 3. STATION HOUSE OFFICER THROUGH
POLICE STATION CHANDAN NAGAR,
DIST. INDORE (MADHYA PRADESH)**

.....RESPONDENTS

(BY MS. PRANJALI YAJURVEDI – PANEL LAWYER)

*This petition coming on for orders this day, the court passed the
following:*

ORDER

The present petition has been filed by the petitioner under Article 226 of the Constitution of India, challenging the legality and validity of

the order dated 14.06.2021 by which the vehicle of the petitioner MP-09-CZ-5698 has been ordered to be confiscated under Section 47(A)(2) of the M.P. Excise Act, 1915 (hereinafter referred to as 'the Act').

02. Facts of the case are that a case under Section 34(2) of the Act was registered at Police Station Chandan Nagar, District Indore bearing Crime No.535/2020 against Rahul and two other persons alleging that accused persons were transporting 360 bulk liter country made liquor in the said vehicle. During investigation, a show cause notice was issued to the petitioner being registered owner of the aforesaid vehicle. He had applied for vehicle on *Supurdginama* before the trial Court. The trial Court dismissed the same vide order dated 02.09.2022 mainly on the ground that an intimation of initiation of proceedings of confiscation was already received from the Magistrate and therefore, in view of the bar under Section 47(D) the trial Court could not have passed the order for release of the vehicle against the said order the revision was preferred which was dismissed. However, the same order was challenged before this Court in M.Cr.C. No.37732/2020 (**Bhaskar Sonane V. State of M.P.**) and the same was dismissed on 28.01.2021.

03. Learned counsel for the petitioner submits that during the pendency of the trial, the Collector has passed the impugned order of confiscation dated 14.06.2021 contrary to the provisions of Section 47(A)(2) of Excise Act. It is argued that during the pendency of the trial, the Collector cannot pass an order for confiscation. In support of his submission, he has placed reliance on orders passed by Coordinate Bench in the case of *Sheikh Kalim Vs. State of M.P.* passed in *M.Cr.C. No.1296/2015*, *Suresh Vs. State of M.P. and Others(W.P. No.19528/2022)*) order dated 11.05.2023, **Aman Vs. State of M.P. and**

Others (W.P. No.12666/2023) vide order dated 14/06/2023 and also in the case of **Akash Raikwar Vs. State of M.P and Others** (W.P. No.18178/2023) vide order dated 28.07.2023.

04. In the aforesaid cases, after considering the provisions of Section 47(A)(2) of the Excise Act, the Court held that the word used “an offence has been committed” has to be interpreted that unless trial is concluded and offence is proved in the trial under Section 34(2) under the M.P. Excise Act, the order for confiscation cannot be passed.

05. The relevant provision under Section 47(A)(2) reads as under:-

(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.

06. The word “offence has been committed” used in the said sub-section has rightly been interpreted by Coordinate Bench that the “offence has been committed” is to mean that when the trial Court has recorded a finding that the offence has been proved then the order of confiscation can be passed by the Collector therefore it is held that till the trial is not concluded the Collector cannot pass an order of confiscation.

07. The *peri materia* provisions of Govansh Vadh Pratishedh Adhiniyam, 2004 were considered in the case of **Sheikh Kalim (supra)**.

The Court held that during the pendency of the criminal case confiscation proceedings cannot be held and finalized.

8. The Full Bench of this Court in the case of **Madhukar Rao Vs State of MP [2000(1) JJJ-304]** has laid down the principle that during pendency of the criminal case, confiscation proceedings should not be held and be finalized. This judgment has been affirmed by the Hon'ble Supreme Court in the case of **State of MP Vs Madhukar Rao 2008(1) JJJ-427** wherein the Court observed that :-

“.....The submission was carefully considered by the Full Bench of the High Court and on an examination of the various provisions of the Act it was held that the provision of Section 39(1)(d) would come into play only after a Court of competent jurisdiction found the accusation and the allegations made against the accused as true and recorded the finding that the seized article was, as a matter of fact, used in the commission of offence.”

9. The aforesaid principle laid down in **Madhukar Rao (Supra)** reiterated and affirmed by the Hon'ble Supreme Court in the case of **Principal Chief Conservator of Forest Vs J.K.Johnson AIR 2012 SC 61.**

10. Learned counsel for the State has supported the impugned order and submits that the petitioner has not availed the alternative remedy as provided under Section 47(B) and the remedy of provision under Section 47(C) of the M.P. Excise Act, 1915. It is further submitted that the Coordinate Bench at Jabalpur in **W.P. No.28700/2022 (Danish Rayin Vs State of M.P.) decided on 12.05.2023** held that the Collector can pass an order of confiscation even if trial is pending before the Criminal Court, the Collector is not dependent on the order passed by the trial Court for passing order of confiscation.

11. In regard to maintainability of petition because of availability of alternative remedy is concerned, the law is settled by the Supreme Court in the case of **Whirlpool Corporation V. Registrar of Trade Marks 1998 (8) SCC 1**, where it has been held that if the order is patently illegal arbitrary and violative of statutory provisions, there is no absolute bar for exercising writ jurisdiction on account of availability of alternative remedy if the order is without jurisdiction, arbitrary and in violation of statutory provision. In view of the various orders passed by the Coordinate Bench and upon consideration of the provision of Section 47(A)(2) of the M.P. Excise Act, it is manifest that the impugned order has been passed contrary to the settled law therefore objection regarding maintainability of petition on account of alternative remedy is rejected.

12. In view of the aforesaid enunciation of law, it is held that the Collector could not have passed order of confiscation till the trial is pending.

13. The judgment and the order passed in the case of **Danish Rayin (Supra)** was dealing with the power of the jurisdiction of the Magistrate for release of the vehicle under Section 47(A)(2) of the Act and in that context, it has been held that once the intimation has been received by the Magistrate regarding initiation of confiscation proceedings under Section 47(A)(2) of the Act, the Magistrate has to wait for passing order on confiscation till case in respect of confiscation is pending before the District Magistrate. In the said context, the Court has passed an observation that the Collector can pass order of confiscation even if trial is pending before criminal case.

14. In the said case, the judgment in the case of **Sheikh Kalim (supra)** has not been discussed though referred and the provisions of Section 47(A)(2) of the Act has not been considered.

15. In the judgment passed by the Full Bench in the case of **Jabalpur bus operators Vs. State of M.P. and Ors.** reported in , **2003 (1) MPHT 226**, it has been held that if in the later judgment of equal strength of Bench, the previous judgment has not been considered, then the previous judgment shall be binding on the co-ordinate Bench.

16. Considering the aforesaid, the order passed by Coordinate Bench dated 12.05.2023 in the case of **Danish Rayin** (supra) is held to be *per-incuriam* and would not be binding because previous orders and Section 47(A)(2) of the Act have not been considered.

17. In view of the aforesaid enunciation of law, the impugned order dated 14.06.2021 passed by the District Magistrate, Indore regarding confiscation of the vehicle in question is quashed. It would be open for the petitioner to file an application for custody of the vehicle in accordance with the law before the Collector.

18. Accordingly, the petition is **allowed and disposed off.**

(VIJAY KUMAR SHUKLA)
JUDGE

Shilpa