

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

BEFORE

HON'BLE SHRI JUSTICE ANIL VERMA

ON THE 23rd OF NOVEMBER, 2023

WRIT PETITION No. 29095 of 2023

BETWEEN:-

**PANKESH S/O DHANNALAL KHANNA,
AGED ABOUT 33 YEARS, OCCUPATION:
LABOR R/O BAANDARKATCH TEHSIL
THIKRI DISTT. BARWANI (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI MITESH JAIN – ADVOCATE)

AND

- 1. THE COLLECTOR, COLLECTOR
OFFICE DISTRICT BARWANI
(MADHYA PRADESH)**
- 2. SUPERINTENDENT OF POLICE
BARWANI (MADHYA PRADESH)**
- 3. STATE OF MADHYA PRADESH
THROUGH P.S. ANJAD, BARWANI
(MADHYA PRADESH)**

.....RESPONDENTS

(SHRI ANAND BHATT – GOVT. ADVOCATE)

Whether approved for Reporting : YES

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

ORDER

The petitioner has filed present petition under Article 226 of the

Constitution of India being aggrieved by the impugned order dated 03/01/2023 passed by the Collector, District Barwani (M.P.) under sub-section 2 of Section 47(A) of the M. P. Excise Act, 1915 (hereinafter referred to as 'the Act'), whereby the motorcycle bearing registration number MP-46-MV-4471 owned by the present petitioner has been confiscated on account of involvement in a criminal case registered under Section 34 of the Act.

2. Brief facts of the case are that the petitioner was tried under Section 34 of the Act by the Chief Judicial Magistrate, Barwani (M.P.) and upon receiving information the Collector, Barwani initiated proceeding under Section 47(A) of the Act for confiscation of the vehicle from which 60 bulk litres country made liquor was seized. The Collector after hearing both the parties, on the basis of *prima facie* evidence available on record, has passed the impugned order for confiscation of the aforesaid vehicle. Being aggrieved by the said order, petitioner has filed this writ petition.

3. The petitioner has preferred present writ petition mainly on the ground that Collector has no jurisdiction under sub-section 2 of Section 47(A) of the Act to pass an order of confiscation during the pendency of the trial before the criminal Court.

4. Learned counsel for the respondent / State opposes the prayer and prays for its rejection by submitting that Collector, Barwani after complying all the necessary requirements passed the impugned order, which is just and proper and does not warrant any interference.

5. Heard learned counsel for both the parties at length and perused the documents filed by the parties.

6. Section 47 of the Act is reproduced below:-

“47-A. Confiscation of seized intoxicants,

articles, implements, utensils, materials, conveyance etc.— (1) Whenever any offence covered by clause (a) of (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 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.”*

7. Full Bench of this Court in the case of **Madhukar Rao Vs. State 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**.

8. 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 M.P.** (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 also held that vehicle cannot be confiscated by the department so long, as the criminal case is pending.

9. The word “*the offence covered by Clause A or B of subsection 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.

10. In the instant case, the Collector / District Magistrate has passed the confiscation order of the said vehicle despite knowing the fact that criminal proceeding is still pending before the CJM, Barwani in Criminal Case No.357/2022. This Court is of the considered opinion that the impugned order passed by the Collector, Barwani is bad in law and deserves to be quashed.

11. In view of the aforesaid analysis, this writ petition is allowed and the impugned order dated 03/01/2023 passed by the Collector, Barwani is hereby quashed.

12. Accordingly, the writ petition stands disposed off.

Certified copy as per rules.

(ANIL VERMA)
J U D G E