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MCRC-15378-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PREM NARAYAN SINGH

MISC. CRIMINAL CASE No. 15378 of 2025*MANISH @ MAHESH SOLIYA**Versus**THE STATE OF MADHYA PRADESH*

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Appearance:

Shri Bharat Yadav, learned counsel for the applicant.

Shri Virendra Khadav, learned Govt. Advocate for the respondent/State.

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HEARD ON : 08.04.2025

PRONOUNCED ON : 24.4.2025
.....

ORDER

The petitioner has filed the instant application under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 being aggrieved by the order dated 25.01.2025 passed by the learned third Additional Sessions Judge, District Dewas in Criminal Revision No.08/2025, arising out of the order dated 09.12.2024 passed by Judicial Magistrate First Class, District Dewas in MJCR No. 1510/2024 arising out of Crime No. 315/2024 registered at Police Station Vijayganj Mandi, District Dewas (M.P.) whereby the Courts below rejected the application filed by the petitioner under Sections 451 and 457 of Cr.P.C. 1973 (Section 497 & 503 of BNSS, 2023) for interim custody of his vehicle bearing registration No. MP09 CR 4436.



2. As per the prosecution story, the petitioner is a registered owner of Car bearing registration No. MP09 CR 4436. The aforesaid crime was registered against the petitioner on 07.12.2024. It is alleged that the petitioner was carrying total 54 bulk litres of countrymade liquor without any valid permit and licence. During the pendency of the case, petitioner moved an application under Sections 451 & 457 of Cr.P.C. on 07.12.2024 before the trial Court for interim custody of the said vehicle, which was rejected by the trial Court vide order dated 09.12.2024. Further, revision petition was filed before Third Additional Sessions Judge, District Dewas whereby impugned order dated 25.01.2025 was passed and application filed by the petitioner was rejected. Hence, present petition has been filed.

3. Learned counsel for the petitioner has submitted that in this case, an application was filed for supurdginama of the vehicle bearing registration No. MP09 CR 4436 on 07.12.2024 before the trial Court and trial Court has rejected the application vide order dated 09.12.2024 stating that there is an information regarding confiscation of vehicle whereas, intimation was received from the Collector on 20.12.2024. This fact has also been acknowledged by the Revisional Court in para 11 of the order dated 25.01.2025. Even then, application was rejected. It is further submitted that if the intimation of confiscation of the alleged vehicle is given to the Magistrate prior to the date of filing of application, then the vehicle should not be released. The trial Court has grossly erred in taking into account the provisions envisaged under Section 47-D of MP Excise Act, 1915 while rejecting the application preferred under Section 451 read with Section 457



of Cr.P.C.

4. Learned counsel for the petitioner has relied upon the judgment of this Court, the **State of Madhya Pradesh Vs. Jafar S/o Hanif** decided on 22.02.2024 in Cr.R. No. 5303/2023 and **State of Madhya Pradesh Vs. Vahid Khan** decided on 30.07.2024 in Cr.R. No. 6219/2019. It also submitted that the petitioner is registered owner of the vehicle and the present value of the vehicle is approximately Rs.10/- lacs and he is ready to furnish cash surety of Rs.2,00,000/- either in the form of FD or Bank Guarantee before the trial Court. Hence, alleged vehicle should be released.

5. On the other hand, learned counsel for the State has opposed the prayer by submitting that the learned Court below has rightly dismissed the application of the petitioner, the vehicle was being used in the crime. Hence, he is not entitled for supurdginama. However, he has not disputed the approximate value of the vehicle and conceded the fact that the information was received on 20.12.2024, while the application of supurdginama was filed on 07.12.2024 and rejected on 09.12.2024 by learned Magistrate with regard to confiscation from the Collector.

6. I have heard the learned counsel for the parties and have perused the record.

7. So far as the contention regarding section 47-D of Excise Act is concerned, it is crystal clear from the record that on the date of order i.e. 09.12.2024, no intimation for initiation of proceeding of confiscation from



the Collector was received on 20.12.2024.

8. Before dwelling upon the point, it would be apposite to refer here the relevant portion of Section 47-D of Excise Act:-

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

9. On bare reading of the aforesaid provision, it is crystal clear that if the criminal Court has been given intimation as per the provision under Section 47- A(3)(a) about initiation of confiscation proceedings by the Collector regarding confiscation then the criminal Court is ceased to pass any order in the matter because it has no jurisdiction to pass any order for interim custody of vehicle. In this regard, the law laid down by Coordinate Bench of this Court in **Suresh Dave Vs. State of Madhya Pradesh 2023 law suit (MP) 14** is worth to refer here:-

" 5) We have carefully perused the chargesheet. The allegation in the chargesheet is that hydrocarbons mixed in different proportions by using mixing machines create a mixture that looks exactly like petrol and diesel. It is alleged that such a mixture smells like petrol and diesel. It is alleged that Shivam Industries supplied the mixture and sold it to the petrol pumps instead of petrol or diesel. It is alleged that by cheating ordinary customers, the appellants are causing illegal losses to the customers. Even the Government is deprived of the tax which can be levied on petroleum and diesel. It is alleged that after a search of Shivam Industries' factories, it was found that there were several tanks of thousands of litres capacity, out of which five were found to be filled with different hydrocarbons. As per the chargesheet, on 11th October 2021, the



hydrocarbon mixture was loaded in the tanker in question.

6) Thus, the prosecution's case is that a hydrocarbon mixture was found in the seized tanker, which was being sold by the appellants, representing it to be petrol or diesel. Along with a letter dated 13th October 2021, the police forwarded four samples of the liquid seized from the tanker to the Forensic State Laboratory at Sagar in Madhya Pradesh, requesting the laboratory to submit an opinion on whether petrol in the samples at Exhibit A and B is of human grade used as a normal fuel in vehicles. The second question posed to the laboratory was whether there is any standard level petrol or diesel used as a normal fuel in samples C and D or if the liquid has been adulterated. Similarly, the Collector (Food) sent another set of samples to the State Level Coordinator, IOCL, Bhopal, for testing. The impugned judgment notes that along with the letter dated 3 rd November 2021, samples were also sent to the Laboratory Incharge, BPCL, Indore. It appears that the laboratory in charge of the BPCL laboratory has not submitted the result of the analysis. That is the specific observation in the impugned judgment. By the order dated 27th March 2023, the learned counsel appearing for the respondent was granted time to ascertain whether a report was received from the laboratory of BPCL. The learned counsel for the respondent stated on instructions that till date, the report of analysis has not been received.."

10. In this regard, the law laid down in the case of **Prakash Vishwakarma Vs. State of Madhya Pradesh** and another ILR (2018) MP 2722 (passed in MCRC No. 33134/2018, order dated 24.9.2018) is also worth considering in which this Court while considering the provisions about jurisdiction of the Magistrate to release the vehicle has been ordained as under:-

"11. Learned Additional Sessions Judge disposed of the criminal revision on 30.6.2018 holding that the required intimation had been given by the District Magistrate by letter dated 30.1.2018. Actually, both the Courts below ought to have decided the matters with reference to



the date of 15.1.2018, i.e., the date on which the application under Section 457 of the Cr.P.C. was decided by learned Magistrate. A Criminal revision cannot be dismissed on the sole ground that the required intimation has been received on some date after dismissal of the application for temporary custody by learned Magistrate and before disposal of the criminal revision by the revisionary Court."

11. This Court in the case of **Kunjilal Vaishya Vs. State of Madhya Pradesh 2020 law suit MP (909)** has held that in the absence of specific requirement of intimation under Section 47-A (3)(a) and Section 47-D of Excise Act, jurisdiction of Court with regard to releasing the vehicle cannot said to be seized. Further, in a recent judgement of this Court in **Karan Singh Vs. State of Madhya Pradesh (2023) law suit (MP) 210**, the coordinate Bench of this Court has held as under:-

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 subsection (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.

12. In view of aforesaid propositions, the matter has been perused.

13. It is apparent that the application under Section 451/457 of CrPC was made on 07.12.2024 for interim custody of alleged vehicle No. MP09 CR 4436 before learned trial Court, which was rejected by the trial Court on 09.12.2024. Thereafter, petitioner filed a revision petition before the learned IIIrd Additional Sessions Judge, District Dewas whereby impugned order dated 25.01.2025 was passed and revision was rejected on the ground that the confiscation proceedings have been started by the learned Collector, District Magistrate in respect of aforesaid vehicle and due to bar under Section 47-D,



learned trial Court was not having jurisdiction. It also appears from the record that, date of order i.e. 09.12.2024, there was no intimation to the learned trial Court by the Collector in respect of confiscation proceedings of the said vehicle. Even on 20.12.2024, on the very first time after filing of the application, learned Collector intimated Trial Court regarding confiscation proceeding of the alleged vehicle. As such, it is clear that till 09.12.2024, neither the intimation as required under Section 47- A(3)(a), was received by the learned Magistrate, nor confiscation proceedings had been initiated, no information has been received till 09.12.2024, the date on which the application under Section 451/457 of Cr.P.C.. was decided. In this regard, Annexure P-6 filed by the applicant is worth to be seen. This letter contains the issuing date as 20.12.2024 whereas the application was filed before the learned Magistrate on 7.12.2024 and decided on 9.12.2024. Hence, on the basis of this letter, the finding of Revisional Court regarding intimation of confiscation is not correct in the purview of law as the Revisional Court is bound to decide the revision in view and circumstances of the case which was produced before the learned Trial Court. That apart, the said intimation is not an intimation of the Collector in accordance with provision predicated under Section 47-A(3)(a) and Section 47-D of Excise Act but rather it is only a notice of Collector.

14. Having gone through the provisions of law, it is expedient to observe that if the particular provisions of particular Act requires that peculiar act to be done in a peculiar manner, it has to be done in the same manner and not otherwise. Conjoint reading of Sections 47-A and 47-D of



the Act specifically suggests that 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, the jurisdiction of the Court is barred.

15. In the case at hand, the said intimation was not received in a prescribed form from the Collector before deciding the application of Supurdginama. On contrary, a notice was received from the Collector when the Trial Court has already decided the application. Hence, as per the aforesaid discussion, the intimation was not in accordance of Section 47-A of the Act. It is also evident that the petitioner is the registered owner of the said vehicle in support of which documents regarding ownership have already been produced before the Trial Court. Therefore, the learned trial Court is bound to pass the order of Supurdginama in accordance with law settled by this Court in the case of **Suresh Dave Vs. State of M.P. reported as 2003(1) MPHT 439**. In this regard, judgment of Full Bench of this Court recently decided in the case of **Ramlal Jhariya Vs. State of Madhya Pradesh and others**, passed in WP No. 11356/2024, vide order dated 21.4.2025 is also relevant to refer here. In this case Hon'ble Full Bench of this Court, after categorical and detailed discussion, has held that the provisions of Section 47-A of the Act has been declared ultravires, hence the relevant conclusions of the judgement is worth to be quoted here:-

" 96. Therefore, the questions referred to us in the matter of jurisdiction to pass confiscation order during pendency of criminal proceedings under M.P. Excise Act, 1915 and Cow Progeny Act are answered in the following manner :

A. Section 47-A of M.P. Excise Act conferring authority on the Collector to pass order for confiscation is declared ultravires being



disproportionately violative of Articles 19(1)(g) and 300-A of the Constitution of India. Therefore, question of confiscation by the Collector during pendency of criminal trial no longer survives in the matter, as order for confiscation can now be passed only by the Criminal Court trying the offence in terms of sections 46 and 47 thereof. As a necessary consequence thereto, Section 47-D would become inoperative in all cases where confiscation orders have not been passed as yet, having rendered superfluous.

B. For cases under Cow Progeny Act, the Collector/District Magistrate shall be competent to initiate proceedings for confiscation during pendency of criminal trial, but no confiscation order can be passed before conclusion of criminal trial and the Collector/District Magistrate would be empowered to confiscate the vehicle only if conviction is recorded in criminal trial and involvement of vehicle and knowledge/connivance of the owner is proved in the criminal trial.

C. Writ petition is maintainable once an order is passed by the Collector/District Magistrate confiscating the vehicles by exercising powers under the provisions of M.P. Excise Act, 1915 and in case of Cow Progeny Act, if it is passed before conclusion of trial, because it will be without jurisdiction.

97. As we have held Section 47-A of the M.P. Excise Act to be ultra-vires of Constitution of India, and a number of cases must have been decided by now since the provision has been in existence, therefore, to avoid any chaos and needless heavy burden on State machinery and exchequer, we direct that this order would be applicable only prospectively in the following manner :-

- a. for those pending cases where confiscation order has not yet been passed by the Collector till date of this order, this order will be applicable,
- b. for the concluded cases where confiscation order has already been passed prior to date of this order, this order would apply only if an appeal/revision/petition under Section 482 CrPC or U/s 528 BNSS/writ petition or challenge in any manner is pending against confiscation order as on date of this order.
- c. where either (a) the confiscation order or (b) order in appeal has already been passed prior to date of this order, the benefit of this order will be applicable only if statutory limitation for challenging the same has not expired on date of this order and if (c) order in Revision has been passed less than three months prior to date of this order, then also, benefit of this order will apply while making challenge before the High Court in Writ petition/Section 482 CrPC or Sec. 528 BNSS.



d. where the confiscation order has already been passed and it has not been challenged, or if challenged, the challenge has failed and not pending as on today and in case of confiscation order or appellate order, limitation to challenge the same has expired, or in case of Revisional order, same has been passed more than three months prior to date of this order and not put to challenge till today, confiscations in those cases will stand closed and shall not be re-opened in any manner for any purpose whatsoever for taking benefit of this order.

98. We having given our conclusions, W.P. No.6542/2025 is disposed of, while the remaining matters be placed before the appropriate Bench for adjudication of the case."

16. Hence, in view of the law laid down by Hon'ble Apex Court in case of **Suderbhai Ambalal Desai vs. State of Gujarat**, AIR 2003 SC 638, and in view of the law laid down by this Court in the cases of **Suresh Dave (Supra)**, and the judgment passed by Full Bench of this Court decided in the case of **Ramlal Jhariya (supra)**, the petition is allowed and the dated 09.12.2024 (Annexure-P/3) passed by the learned JMFC, District Dewas in MJCR No.1510/2024 and in order dated 25.01.2025 (Annexure-P/4) passed by learned Third Additional Sessions Judge, District Dewas in Cr.R. No.08/2025 is hereby set aside.

17. Since the vehicle is subject matter of the confiscation, if the learned Trial Court passed the order of conviction. Therefore, some cash surety is required to be taken for giving the vehicle on Supurdginama. Therefore, it would be appropriate to release the vehicle at Supurdiginama after taking security of Rs.2,00,000/- alongwith other security either in the form of FD or Bank Guarantee. The offending vehicle MP09-CR-4436 is directed to be released on interim custody subject to the following



conditions:-

1. That, petitioner shall furnish cash surety of Rs.2,00,000/-(Rupees Two lakhs only) in the form of fixed deposit in a nationalized bank or Bank Guarantee along with Supurdginama of Rs. 2,00,000/- to the satisfaction of the concerned Trial Court with one surety in the like amount to the satisfaction of the concerned CJM/trial Court, for releasing the seized said vehicle vide Crime No.315/2024 Registered at Police Station Vijayaganj Mandi, Dewa. The said amount shall be subject to the final outcome of the case by the trial Court. The deposit receipt/certificate so produced by the applicant shall be endorsed by the learned Judge of the lower Court to be, *'furnished towards Supurdginama and shall be subject to the final decision of the case by the trial Court'*.

2. That, the applicant shall produce necessary documents like original registration certificate, before the trial Court.

3. That, the applicant shall get the vehicle photographs showing the registration number as well as the chassis number of the said vehicle. Such photographs shall be taken in the presence of the



responsible officer, who will be deputed by the trial Court and to be kept in the file of the case.

4. That, the photographs of the applicant as well as surety must have been placed in the personal bond and bond of surety. Further, the photograph of person identifying him before the Court must also have been placed in the personal bond. The applicant surety and person identifying shall carry their full residential proof.

5. The applicant shall undertake not to transfer the ownership of the vehicle and shall not lease it to anyone and not make or allow any changes in it to be made so as to make unidentifiable.

6. The applicant will not allow the vehicle to be used in any anti-social activities.

7. In the event of confiscation order of the Court competent, the applicant shall keep the vehicle present positively for confiscation.

18. It is further directed that before releasing the vehicle in interim custody of applicant, the S.H.O. of concerning police station shall get photographs size 18 x 12 inches of the concerned vehicle taken from all sides and also the photographs showing engine and chassis numbers. Such



14

MCRC-15378-2025

photographs shall be filed in the trial Court to be kept along with the record.

19. With the aforesaid directions, this petition stands **disposed of**.

Certified copy as per rules.

(PREM NARAYAN SINGH)
JUDGE

Vindesh