

HIGH COURT OF JUDICATURE MADHYA PRADESH,
JABALPUR

WRIT PETITION NO.5849 OF 2017

Mohammad Waseem

Vs.

The State of Madhya Pradesh and others

Present :-

Shri Ahadulla Usmani, Advocate for the petitioner.

Shri Naveen Dubey, Government Advocate for the respondents.

Whether Approved for Reporting : Yes

Law Laid Down: (i) Section 6-A of Essential Commodities Act, 1955 – confiscation of vehicle (ii) Appeal - maintainable only against final order of confiscation and not interim order. (ii) Interim custody of seized vehicle – speaking order should be passed.

Significant Paragraph No.10, 11, 12, 13, 14 & 15

ORDER

(Passed on this the 20th day of September, 2017)

This petition is filed under Article 226 of the Constitution of India against the order dated 18.1.2017 (Annexure P/1) passed by the Commissioner, Jabalpur whereby the order dated 4.8.2016 (Annexure P/2) passed by the District Magistrate, Seoni has been affirmed.

2. The District Magistrate, Seoni has ordered for the confiscation of the petitioner's truck bearing Registration No.UP78-CN-3523. In the proceedings the District Magistrate has held that prima facie it appears that the petitioner has

committed the offence under Section 3/7 of the Essential Commodities Act, 1955 by transporting the kerosene, hence the Judicial Magistrate First Class, Seoni has been informed that the petitioner's truck shall not be given on Supurdagi. Against the aforesaid order, the petitioner preferred an appeal before the Commissioner, Jabalpur although it is not mentioned as to under which provision of law the appeal has been preferred.

3. The case of the petitioner is that he is the registered owner of the aforesaid vehicle which was being run on the National Permit and Basic Goods Permit. On 12.6.2016 when the petitioner's vehicle was searched by the police of Police Station, Kanhiwada, it was found that 50 liters of prohibited kerosene was being transported in blue colour Cane and in the Diesel Tank, on being inspected by opening it, it was found that the kerosene smell was coming out and subsequently F.I.R. No.196/2016 was registered under the provision of Section 3/7 of the Essential Commodities Act, 1955. Challan has also been filed by the Police on 10.8.2016 before the Judicial Magistrate First Class, Seoni against two persons, namely Hasan Khan (driver of the vehicle) and Raseed Navla Khan (cleaner) whereas the petitioner has not been a party in the aforesaid criminal case.

4. Since the petitioner is a registered owner of the vehicle, a show cause notice was issued by the District Magistrate for confiscation of the aforesaid truck and the petitioner also filed an application for release of the aforesaid truck on Supurdagi which was dismissed by the District Magistrate vide its order

dated 4.8.2016 on the ground that there no sufficient ground to release the seized vehicle. Against the aforesaid order, the petitioner preferred an appeal before the Commissioner but the same was also dismissed on the ground that only an interim, order has been challenged by the petitioner and no final order has been passed in the present case and the respondent No.3 has been directed to decide the proceeding of confiscation on merits. It is further submitted by the petitioner that he had already submitted an application for obtaining the seized vehicle on Supurdnama before the Judicial Magistrate First Class, Seoni which was rejected vide order dated 27.6.2016 against which a criminal revision was preferred by the petitioner before the Second Additional Sessions Judge, Seoni who also dismissed the revision on 06.01.2017. Against the order dated 06.01.2017 passed in criminal revision, the petitioner also preferred a petition under Section 482 of Cr.P.C., being M.Cr.C. No.2780/2017 and while deciding the aforesaid petition, this Court observed that since the petitioner has not challenged the order of the Commissioner, Jabalpur dated 18.1.2017, hence the petition was dismissed with liberty to the petitioner to challenge the final order of Confiscating Officer/District Magistrate, Jabalpur.

5. It is submitted by the counsel for the petitioner that the aforesaid miscellaneous criminal case was also dismissed as already stated above that the petitioner has not challenged the order of the Commissioner, hence in this petition the aforesaid

order passed by the Commissioner is being challenged.

6. It is further submitted by the counsel for the petitioner that the Truck is too expensive to be run on kerosene and only 50 liters of kerosene has been found in the truck, which cannot be the intention of the petitioner and it clearly shows that the same was being transported without his knowledge and authority and it is only the driver and cleaner who are responsible for the same.

7. On the other hand, a return has also been filed by the respondents wherein the order of dismissal has been tried to be justified by them and they have also relied upon the decision in the case of **Mohd. Ajeem Khan Vs. State of M.P., ILR (2010) MP 1187** wherein it is provided that as the confiscation proceedings are still pending before the competent authority, hence there is no question of giving the truck on Supurdginama. The respondents have also relied upon the decision of the Apex Court in the case of **State of M.P. & others Vs Smt Kallo & others** in Criminal Appeal No.932/2017 which is a case under the provisions of Forest Act wherein it is held that the confiscating proceedings are independent of the main criminal proceedings.

8. Heard learned counsel for the parties and perused the record.

9. From the record, it is apparent that the Commissioner has dismissed the petitioner's appeal simply on the ground that

since it has been preferred against an interim order and the District Magistrate has been directed to decide the case on merits. Whereas, in M.Cr.C. No.2780/2017 preferred by the petitioner, this Court has dismissed the same observing as under :-

“12. The petitioner had also applied for “supardnama” before learned District Magistrate/Confiscating Officer, which was dismissed on 04.08.2016 and subsequently the petitioner filed a revision against the said order before learned Commissioner, Jabalpur Division, Jabalpur which was also dismissed as per averment made in paragraph 4 of the memo of this petition. The petitioner has not challenged the order passed by Commissioner, Jabalpur.

13. This petition is, therefore, dismissed with the liberty to the petitioner to challenge the final order of Confiscating Officer/District Magistrate, Jabalpur.”

Thus from the aforesaid facts, it is clear that this Court had dismissed the petition under Section 482 of Cr.P.C. which had arisen out of an order passed by the Judicial Magistrate First Class, Seoni and this Court has only observed that the petitioner is at liberty to challenge the final order of Confiscating Officer/District Magistrate, Jabalpur, hence the petitioner has come up before this Court in this writ petition challenging the order passed by the Commissioner in appeal.

10. Before we proceed further, it would be necessary to

examine the provisions of the Essential Commodities Act, 1955. Section 6-A of the Essential Commodities Act provides for confiscation of essential commodity, it reads as under:-

“6A. Confiscation of essential commodity—
 [(1)] Where any essential commodity is seized in pursuance of an order made under section 3 in relation thereto, a report of such seizure shall, without unreasonable delay, be made to the Collector of the district or the Presidency town in which such essential commodity is seized and whether or not a prosecution is instituted for the contravention of such order, the collector may, if he thinks it expedient so to do, direct the essential commodity so seized to be produced for inspection before him, and if he is satisfied that there has been a contravention of the order may order confiscation of –
 (a) the essential commodity so seized;
 (b) any package, covering or receptacle in which such essential commodity is found; and
 (c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity:

Provided that without prejudice to any action which may be taken under any other provision of this Act, no foodgrains or edible oilseeds in pursuance of an order made under section 3 in relation thereto from a producer shall, if the seized foodgrains or edible oilseeds have been produced by him, be confiscated under this section:

Provided further that in the case of any animal, vehicle, vessel, or other conveyance used for the carriage of goods or passengers

for hire, the owner of such animal, vehicle, vessel or other conveyance shall be given an option to pay, in lieu of its confiscation, a fine not exceeding the market price at the date of seizure of the essential commodity sought to be carried by such animal, vehicle, vessel or other conveyance.”

Section 6B of the Act reads as under :

“6B. Issue of show cause notice before confiscation of foodgrains etc— [(1)] No order confiscating any essential commodity, package, covering or receptacle, animal, vehicle, vessel or other conveyance shall be made under section 6A unless the owner of such essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance or the person from whom it is seized—

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the essential commodity package, covering or receptacle, animal, vehicle, vessel or other conveyance;

(b) is given an opportunity of making a presentation in writing within such reasonable time as may be specified in the notice against the ground of confiscation; and

(c) is given a reasonable opportunity of being heard in the matter.

(2) Without prejudice to the provisions of sub-section (1), no order confiscating any animal, vehicle, vessel or other conveyance shall be made under section 6 A if the owner of the animal, vehicle, vessel or other conveyance proves to the satisfaction of the Collector that

it was used in carrying the essential commodity without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the animal, vehicle, vessel or other conveyance and that each of them had taken all reasonable and necessary precautions against such use.

(3) No order confiscating any essential commodity package, covering, receptacle, animal, vehicle, vessel or other conveyance shall be invalid merely by reason of any defect or irregularity in the notice, given under clause (a) of sub-section (I), if, in giving such notice, the provisions of that clause have been substantially complied with.”

Section 6C of the Act reads as under :-

“6C. **Appeal**—(1) Any person aggrieved by an order of confiscation under section 6A may, within one month from the date of the communication to him of such order, appeal to any judicial authority appointed by the State Government concerned and the judicial authority shall, after giving an opportunity to the appellant to be heard, pass such order as it may think fit, confirming, modifying or annulling the order appealed against.

(2) Where an order under section 6A is modified or annulled by such judicial authority, or where in a prosecution instituted for the contravention of the order in respect of which an order of confiscation has been made under section 6A, the person concerned is acquitted, and in either case it is not possible for any reason to return the essential commodity seized, such persons shall, except as provided

in sub-section (3) of section 6A, be paid the price therefor as if the essential commodity, had been sold to the Government with reasonable interest calculated from the day of the seizure of the essential commodity and such price shall be determined—

- (i) in the case of foodgrains, edible oilseeds or edible oils, in accordance with the provisions of sub-section (3B) of section 3;
- (ii) in the case of sugar, in accordance with the provisions of sub-section (3C) of section 3; and
- (iii) in the case of any other essential commodity, in accordance with the provisions of sub-section (3) of section 3.

6E. Bar of jurisdiction in certain cases

Whenever any essential commodity is seized in pursuance of an order made under section 3 in relation thereto, or any package, covering, or receptacle in which such essential commodity is found, or any animal, vehicle, vessel or other conveyance used in carrying such essential commodity is seized pending confiscation under section 6A, the Collector, or, as the case may be the State Government concerned under section 6C shall have, and, notwithstanding anything to the contrary contained in any other law for the time being in force, any court, tribunal or other authority shall not have, *jurisdiction to make orders with regard to the possession, delivery, disposal, release or distribution of such essential commodity, package, covering, receptacle, animal, vehicle, vessel, or other conveyance.*"

(emphasis supplied)

Thus from the aforesaid provisions of the Essential Commodities Act, it is clear that the District Magistrate has the power to confiscate the vehicle and as provided in sub-section (2) of Section 6B that the owner of the vehicle has an

opportunity to challenge the confiscating proceeding on the ground if he satisfies the Collector that the vehicle was being used in carrying the essential commodity without his knowledge or connivance of himself or his agent and the person in charge of the animal, vehicle, vessel or other conveyance and that each of them had taken all reasonable and necessary precautions against such use. It is also apparent that such order of confiscation is appealable under s.6C of the Act and also that under second proviso to s.6A, a person whose goods or vehicle is to be confiscated, shall be given an option to pay the market price of the property on the date of seizure.

11. In the circumstances, this Court is of the opinion that the appeal before the Commissioner against the interim order was not maintainable as the appeal is provided only against the final order of confiscation. In such circumstances, no illegality can be bound in the order of dismissal of petitioner's appeal by the Commissioner.

12. So far as the order 04.08.2016 passed by the District Magistrate is concerned, which is also under challenge, it is simply recorded that no adequate reason is made out for interim custody of the vehicle. In the considered opinion of this court, the order is bereft of reason and has been passed in a cavalier manner only hence the same is liable to be quashed.

13. The respondents have relied upon the decision of the Apex Court in the case of **State of Madhya Pradesh and others**

vs Madhukar Rao, (2008) 14 SCC 624 but the facts of the aforesaid case are distinguishable and relates to environmental protection and pollution control /Wile Life (Protection) Act, 1972, and the question before the Apex Court was whether the vehicle or vessel, etc. seized under Section 50(1)(c) can be released by Magistrate during pendency of trial in exercise of power under S.451 Cr.P.C.

14. In the facts and circumstances of the case, where 50 Liters of prohibited kerosene was being transported in the petitioner's truck on 12.06.2016 which was registered in the year 2012 and the confiscating proceedings are likely to take some time where the defense of the petitioner is yet to be tested, this court is of the opinion that the powers under Article 226 of the Constitution can be invoked to release the vehicle on appropriate conditions as no purpose would be served if the truck is kept in disuse and in idle condition in the police station and has the chances of theft of various parts and further deterioration specially in the rainy season.

15. In the result, this petition stands **allowed**, the impugned order dated 04.08.2016 is hereby **quashed** and the District Magistrate Seoni is directed to release the vehicle of the petitioner on his furnishing the Bank Guarantee to the sum equal to the market value of the vehicle as on the date of seizure i.e. on 12.06.2016 and for ascertaining the market value of the vehicle, the petitioner is also at liberty to place on record

appropriate documents to the satisfaction of the District Magistrate.

(Subodh Abhyankar)

Judge

20/09/2017

DV