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

**BEFORE
HON'BLE SHRI JUSTICE DINESH KUMAR PALIWAL**

ON THE 30th OF JUNE, 2022

MISC. CRIMINAL CASE No. 52807 of 2020

Between:-

**AMAN AHIRWAL S/O LAKHAIYA , AGED ABOUT
60 YEARS, OCCUPATION: LABOUR CHAINPURA
CHOWKI NARSINGHAR PS DAMOH DEHAT
DISTRICT DAMOH (MADHYA PRADESH)**

.....APPLICANT

(BY SHRI SANDEEP KUMAR MISHRA, ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH THROUGH
PS DAMOH DISTRICT DAMOH. (MADHYA
PRADESH)**

.....RESPONDENTS

(BY MS KAMLESH TAMRAKAR, PANEL LAWYER)

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

ORDER

This petition under Section 482 of Cr.P.C. has been filed against the order dated 09.12.2020 passed by 7th Additional Session Judge, Damoh in Criminal Revision No. 56/2020 arising out of order dated 20.10.2020 passed by Judicial Magistrate First Class, Damoh in MJCR No. 2556/2020 whereby, it dismissed the application of applicant registered owner of the vehicle filed under Section 451/457 of Cr.P.C. for getting interim custody of vehicle (Maruti Alto) bearing registration No MP-20-CA-8630. Application of the applicant has been dismissed by both the Courts below on the ground that as per the provision under Section 47-D of MP Excise Act, 1915 (hereinafter referred to

as "Act"). The criminal Court has no jurisdiction to release the vehicle on interim custody because the District Magistrate has already initiated the proceeding against the applicant for confiscation of the vehicle and other seized property as per the provision under Section 47-D of the Act.

The contention of the learned counsel for the applicant is that applicant is a registered owner of the vehicle Maruti Alto bearing registration No. MP-20-CA-8630. No liquor was seized from him. Under the provision of Section 47-D of the Act, the criminal Court was not intimated by the District Magistrate for initiation of confiscation proceeding regarding the seized Alto Car. Therefore, the criminal court has jurisdiction to release the vehicle on Supurdginama. Learned counsel placing reliance on the case of **Sunderbhai Ambalal Desai Vs. State of Gujarat (2002)10 SCC 283** has submitted that seized vehicle should be given on interim Supurdginama to the applicant registered owner otherwise vehicle will get deteriorate by being kept unused and unattended in the premises of police station. Learned counsel has also placed reliance on order dated 13.08.2019 passed in M.Cr.C. No. 30714/2019 (Hari Prakash & another Vs. State of MP) and order dated 20.08.2020 passed in M.Cr.C. No. 23043/2020 (Yogndra Singh Vs. State of M.P.) passed by Coordinate Bench of this Court and has prayed that seized vehicle should be released on interim Supurdginama. He is ready to furnish the adequate security and Supurdginama for the same.

On the other hand, learned Panel Lawyer for the State has supported the impugned orders. According to learned counsel for the State, as per the provision under section 47-D of the Act, the Criminal Court has no jurisdiction to release the property seized in interim custody because the confiscation proceeding are already pending before the learned District Magistrate.

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

In the case in hand, liquor more than 50 bulk liters was seized from the Alto Car bearing registration No. MP-20-CA-8630. Application under Section 451/457 of Cr.P.C. was filed before the learned JMFC by the applicant. Applicant is registered owner of the vehicle but same was dismissed on 20.10.2020 by the JMFC as intimation dated 06.10.2020 by Collector/District Magistrate Damoh about the initiation of confiscation proceeding was received in his Court on 10.10.2020.

It is undisputed that the applicant is registered owner of the vehicle in question and application filed by him to take the vehicle in temporary custody was dismissed on 20.10.2020 as intimation dated 06.10.2020 by Collector/District Magistrate Damoh was received in his Court on 10.10.2020. Section 47-D of the Act is as under:-

"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 the clauses (a) or (b) of sub Section (1) of the 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) of Section 47-A about the initiation of the proceedings for confiscation of seized property.

On a perusal of Section 47-D, it reveals that jurisdiction of the trial Court to make any order about the custody of conveyance is ceased only after it has

received from the Collector an intimation under Clause (a) of sub-Section (3) of Section 47-A about the initiation of the proceeding for confiscation of seized conveyance. Thus, the cut of point of jurisdiction is not commenced of proceeding of confiscation of seized property but intimation thereof received by the Magistrate having jurisdiction to try the offence under Section 47-A(3)(a) of the Act, The Coordinate Bench of this Court in the case of **Suresh Vs. State of MP, 2003(1) MPLJ 638** has held as under:-

"Jurisdiction of the criminal Court competent to try the offences covered by clauses (a) or (b) of subsection (1) of Section 34 to release seized vehicle in temporary custody is ousted only when the Court receives from the Collector an intimation under S. 47-A (3) (a) about the initiation of proceedings to confiscate the seized property. Till then the criminal Court has jurisdiction to entertain the application filed by owner of the vehicle to pass appropriate orders regarding custody of the vehicle.

The Coordinate bench of this Court in the case of **Prakash Vishwakarma Vs. State of MP and another, ILR (2018) MP 278 2** has held as under:-

10. In the light of aforesaid legal position reverting back to the facts of the case, we find that the application was probably made on 8.1.2018. On 9.1.2018 an intimation was given by the office of Sub Inspector of Excise Circle, Lakhnadon to learned Magistrate that a letter has been written to the District Magistrate, Seoni for confiscation of the vehicle seized in the case. Thus, it is clear that till 9.1.2018 neither the intimation as required under Section 47-A (3) (a) was received by the Magistrate nor indeed, confiscation proceedings had been initiated. No intimation had been received till 15.1.2018, i.e., the date on which the application under Section 457 of the Cr.P.C. was decided. The required intimation was given on 30.1.2018 and was received by learned Magistrate on 31.1.2018. Thus, the jurisdiction of Magistrate to release the vehicle in temporary custody was legally ousted on 31.1.2018 and not therebefore. Thus, there is no doubt that learned Magistrate clearly erred in dismissing the application under Section 457 of the Cr.P.C. on the sole ground that the confiscation proceedings are under way.

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.

In the case of **Anil Dhakad Vs. State of MP, ILR (2018) M.P. 1835,**

a coordinate bench of this Court held as under:-

"23. A plain reading of Section 47-D of the Act, 1915 shows that the Section mandates that the court having jurisdiction to try offences covered by the Clause-(a) or (b) of Sub- Section 1 of Section 34 of the Act, 1915 shall not make any order about the disposal, custody etc. of the vehicle after it has received intimation of initiation of confiscation proceedings from the Collector. It transpires from unambiguous provision of the Act that if at the time of hearing on the application or at the time of passing of the order, the concerned Magistrate has information before him regarding initiation of confiscation proceeding then this provision takes away his jurisdiction and he cannot exercise powers under Section 451 & 457 of Cr.P.C. because the provisions of Section 47-D of the Act, 1915 has overriding effect over the general provisions of Section 451 and 457 of Cr.P.C., thus, there is no doubt that relevant date of exercising jurisdiction under Sections 451 & 457 of Cr.P.C. with regard to the disposal of property seized under the provisions of Clause (a) or (b) of Sub Section (1) of Section 34 of the Act, 1915 is the date of hearing of the application or passing the order on the same and not the date of filing of the application."

In the light of aforesaid legal position, it is clear that that the Court having jurisdiction to try offences covered by the Clause-(a) or (b) of Sub- Section 1 of Section 34 of the Act, 1915 shall not make any order about the disposal, custody etc. of the vehicle after it has received intimation about initiation of confiscation proceedings from the Collector.

In the case in hand, application under Section 451 of Cr.P.C. for taking the vehicle in interim custody was filed by the applicant/registered owner which

was decided on 20.10.2020 by learned JMFC and intimation dated 06.10.2020 by Collector/District Magistrate, Damoh was received in his Court on 10.10.2020. Thus, it is clear that the power of Magistrate having jurisdiction to try the offence to release the vehicle on interim Supardagi was ousted on 10.10.2020 when it had received intimation about initiation of proceedings for confiscation of seized property under Section 47-A(3) of the Act by Collector.

In these circumstances, learned Magistrate had no jurisdiction to grant the vehicle in temporary custody on 20.10.2020. As far the orders dated 13.08.2019 and 20.08.2020 passed in Hari Prakash and another Vs. State of MP and Yogendra Singh Vs. State of MP by Coordinate Bench of this Court are concerned in both the cases, till the date of the order passed by Criminal Court no intimation was sent to the concerned Criminal Courts by Collector as mandated under Section 47-A and required under Section 47-D of the Act to the learned Court. Therefore, Coordinate Bench had allowed the petition in light of the fact of those cases but in the facts of present case aforesaid orders have no application.

Thus, I am of the considered view that learned trial Court as well as revision Court committed no error in dismissing the plea of the applicant of releasing the vehicle on the interim Supurdginama as on 20.10.2020 it had no jurisdiction under the provision of the Act to release the vehicle on the Supurdginama.

Thus, in view of the aforesaid discussion, no ground for interference in the impugned order. Consequently, present petition being shorn of merit, is **dismissed.**

L.R.

