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

**BEFORE  
HON'BLE SHRI JUSTICE VISHAL DHAGAT**

**ON THE 12<sup>th</sup> OF MAY, 2023**

**WRIT PETITION No. 28700 of 2022**

**BETWEEN:-**

**DANISH RAYIN S/O SHRI RASEED RAYIN, AGED ABOUT  
27 YEARS, OCCUPATION: PRIVATE WORK R/O WARD  
NO. 22, MAHAL MARG, BADI KUNJRAHTI, CHATARPUR  
DISTRICT CHATARPUR (MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI PRADEEP NAVERIA - ADVOCATE)***

**AND**

- 1. THE STATE OF MADHYA PRADESH THROUGH ITS  
SECRETARY COMMERCIAL TAXES DEPARTMENT  
VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**
- 2. ADDITIONAL COMMISSIONER EXCISE  
DEPARTMENT, GWALIOR MOTI MAHAL  
GWALIOR (MADHYA PRADESH)**
- 3. COLLECTOR CHHATARPUR, DISTRICT  
CHHATARPUR (MADHYA PRADESH)**

**.....RESPONDENTS**

***(BY SHRI PRAVEEN NAMDEO - GOVERNMENT ADVOCATE)***

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

**ORDER**

Petitioner has filed this petition under Article 226 of the Constitution of India challenging order dated 18.04.2022 contained in Annexure-P/3 passed by respondent No.3/Collector, Chhatarpur (MP) in Case No.123/B-121/Excise/2021-22. By impugned order vehicle belonging to petitioner bearing

No.MP-16-CB-0502 and 500 quarters of liquor was confiscated.

2. Learned counsel appearing for petitioner submitted that petitioner has preferred an appeal before Commissioner Excise Department, Gwalior. It is submitted that law has been settled by this Court that vehicle cannot be confiscated by Collector so long as criminal case is pending. He places reliance on judgment passed by Single Bench in case of *Sheikh Kaleem Vs. State of Madhya Pradesh* in *MCRC No.1296/2015* order dated 13.07.2015. In view of same, it is submitted that since law is settled in the matter, therefore, order of Collector be set aside and petitioner may be given vehicle on *supurdiginama* till criminal case is decided in trial.

3. Learned Government Advocate appearing for State supported the impugned order passed by Collector.

4. Heard the counsel for the parties.

5. Petitioner has placed reliance on an order which has been passed in case relating to The M.P. Govansh Vadh Pratishedh Adhinyam, 2004. In said order reliance was placed by Court in judgment passed in case of *Premdas Vs. State of MP reported in 2013 (I) MPJR SN 10*. Court while considering order of confiscation passed by Collector in these two cases took into consideration MP Govansh Vadh Pratishedh Adhinyam, 2004 and MP Vanopaj (Vyapar Viniyaman) Adhinyam, 1969. Confiscation of vehicle belonging to petitioner is not being taken under aforesaid Acts. Case of petitioner is to be examined in view of statutory provision of MP Excise Act, 1915. Relevant provision which is necessary for adjudication of this case is Section 47 of the Act which is quoted as under:-

*"47. Order of confiscation (1) Where in any case tried by him the Magistrate, decides that anything is liable to*

*confiscation under Section 46, he shall order confiscation of the same:*

*Provided that where any intimation under clause (a) of sub0section (3) of Section 47-A has been received by the Magistrate, he shall not pass any order in regard to confiscation as aforesaid until the proceedings pending before the Collector under Section 47-A in respect of thing as aforesaid have been disposed of, and if the Collector has ordered confiscation of the same under sub-section 92) of Section 47-A, the Magistrate shall not pass any order in this regard."*

6. On going through the said provision, it is clear that when Magistrate receives an intimation under Section 47-A of the MP Excise Act, 1915, he shall not pass any order in regard to confiscation as aforesaid until proceeding pending before Collector under Section 47-A of the Act has been disposed of. This part shows that Magistrate has to wait for passing order on confiscation till case in respect of confiscation is pending before District Magistrate and if District Magistrate/Collector has ordered confiscation then Magistrate shall not pass any order in this regard. This shows that order of District Magistrate so far as it relates to confiscation of vehicle is final, Magistrate has no jurisdiction to pass order of confiscation or release of vehicle if intimation has been sent by Collector to Magistrate. Bar has also been created under Section 47-D. On Courts having jurisdiction to try the offence for disposal of property seized after intimation has been received from Collector. Proceedings for confiscation and trial has to proceed simultaneous. Act gives exclusive jurisdiction to

Collector to pass order of confiscation and Magistrate has to wait for passing order of confiscation if Collector is seized with the matter, therefore, it is clear that Collector can pass order of confiscation even if trial is pending before criminal Court. Collector is not dependent on the order passed by trial Court for passing order of confiscation.

7. In view of same, there is no merits in the case. Writ petition is *dismissed*.

8. Commissioner Excise Department, Gwalior is directed to hear appeal on its merits if same has not been considered and decided.

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**(VISHAL DHAGAT)**  
**JUDGE**