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

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

**ON THE 2<sup>nd</sup> OF AUGUST, 2023**

**MISC. PETITION No. 2141 of 2023**

**BETWEEN:-**

**VIJAY S/O SHRI RAVI, AGED ABOUT 47 YEARS,  
OCCUPATION: PRIVATE WORK R/O 90 SARDAR  
VALLABH BHAI WARD , WARD NO 9, AMLA TAHSIL  
AMLA DISTT. BETUL (MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI ASHOK KUMAR TIWARI, ADVOCATE )***

**AND**

- 1. THE STATE OF MADHYA PRADESH THROUGH  
SECRETARY DEPARTMENT OF EXCISE VALLABH  
BHAWAN BHOPAL (MADHYA PRADESH)**
- 2. THE COLLECTOR B E T U L DISTRICT BETUL  
(MADHYA PRADESH)**
- 3. THE ADDITIONAL COLLECTOR, COLLECTORATE  
OFFICE BETUL DISTRICT BETUL (MADHYA  
PRADESH)**
- 4. SUPERINTENDENT OF POLICE, BETUL DISTRICT  
BETUL (MADHYA PRADESH)**
- 5. STATION HOUSE OFFICER, POLICE STATION  
AMLA DISTRICT BETUL (MADHYA PRADESH)**
- 6. EXCISE OFFICER, AMLA TAHSIL AMLA, DISTRICT  
BETUL (MADHYA PRADESH)**

**.....RESPONDENTS**

***(BY SHRI NARENDRA CHOURASIA, GOVT. ADVOCATE)***

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

**ORDER**

Petitioner has filed this petition under Article 227 of Constitution of India, challenging order dated 5.8.2022 passed by Additional District Magistrate, Betul i.e. respondent no.3.

2. Respondent no.3 has initiated proceedings for confiscating of Scooty vehicle bearing no.MP-MV-3221 owned by Vijay, Son of Ravi. Petitioner was proceeded ex parte as he did not appear after service of notice. District Magistrate found that vehicle in question was used in transportation of 50 bulk litres of country made liquor without any licence or permit. In said circumstances vehicle was confiscated in favour of State Government.

3. Learned counsel for the petitioner has challenged impugned order on ground that vehicle in question, at the time of seizure was being driven by Mohit Mandal i.e. neighbour of petitioner. It is submitted that petitioner is not accused in the case, therefore, his vehicle cannot be confiscated. In these circumstances, prayer is made for setting aside impugned order. Learned counsel for the petitioner relied on judgment passed by Apex Court in the case of **State of M.P. vs. Madhukar Rao, (2008) 14 SCC 624**. On strength of aforesaid judgment, it was argued that Magistrate cannot pass an order of confiscation until case has been finally decided by Magistrate.

4. Heard learned counsel for the parties.

5. Perused the order passed by the Apex Court. In aforesaid judgment passed by Apex Court question was "whether vehicle or vessel seized under section 50(1)(c) Wild Life (Protection) Act, 1972 is put beyond the power of Magistrate to direct its release during pendency of trial in exercise of power under section 451 CrPC, 1973 ?"

6. Brief facts of said case was that vehicle Tata Sumo was seized as it

was carrying 206 Kg. of antlers. Vehicle was owned by Madhukar Rao and it was submitted that vehicle was borrowed by his friend and neighbour Shri Lohiya to visit his ailing father. Case is registered against him and he is an accused in the case. Madhukar Rao was neither an accused in the case nor is he connected with the offence. In these circumstances he had filed an application before the Magistrate for release of his vehicle on supurdnama which was allowed.

(i). State Government challenged order of Magistrate in revision before Sessions Judge, Raipur. Sessions Court held that Magistrate disregarded Section 39(1)(d) of Wild Life (Protection) Act and stated that court has no power to release the vehicle on supurdnama. Power under section 451 of CrPC, can be exercised only in respect of vehicle seized by police officer and order of Magistrate was set aside.

(ii). State Government challenged order before High Court in writ petition. Full Bench of High Court held that Magistrate's power to release the vehicle was not affected by the legislative changes in the Act relied upon by the State and in appropriate cases it was open to the Magistrate to pass an order of interim release of vehicle.

(iii). Order passed by High Court was challenged before Apex Court. Apex Court in its judgment held that High Court had correctly appreciated the facts of law. In the case it was held that provision under section 39(1)(d) of the Act, will come into play only after a court of competent jurisdiction found the accusation and the allegations made against the accused is true and recorded a finding that the seized vehicle was, as a matter of fact, used in commission of offence. Any attempt to operationalise Section 39(1)(d) of the Act merely on basis of seizure and accusations/allegations levelled by the department

authorities would bring it into conflict with the constitutional provisions and would render it unconstitutional and invalid.

7. Section 39(1)(d) of the Act is reproduced as under:-

**"39. Wild animals, etc., to be Government property-** (1) Every -  
(d) vehicle, vessel, weapon, trap or tool that has been used for committing an offence and has been seized under the provisions of this Act,

shall be the property of the State Government, and, where such animal is hunted in a sanctuary or National Park declared by the Central Government, such animal or any animal article, trophy, uncured trophy or meat [derived from such animal, or any vehicle, vessel, weapon, trap or tool used in such hunting] shall be the property of the Central Government."

8. Said section lays down that vehicle, vessel, weapon, trap or tool which has been used for committing an offence and has been seized under the provisions of this Act, will be the property of the State Government. Provision under section 39(1)(d) of the Act, is different from the provisions regarding confiscation of vehicle under Excise Act, 1915. Confiscation procedure is laid down in Section 47(1) of M.P. Excise Act, which is reproduced 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 sub -section (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 (2) of Section 47-A, the Magistrate shall not pass any order in this regard."

9. As per aforesaid section, there is bar on power of Magistrate to exercise its jurisdiction to release the vehicle on supurdnama if intimation has been sent to him under section 47-A of M.P. Excise Act by Executive Magistrate and he is barred from exercising the power until proceedings under section 47-A of the Act which is pending before District Magistrate/Collector have been disposed of. Section 47-A lays down for confiscation of intoxicants, articles, implements, utensils, materials and conveyance if same is used for commission of offence under section 34(1)(a) & (b) of M.P. Excise Act and quantity of liquor is found to be more than 50 bulk litres and if Collector/District Magistrate has passed an order of confiscation under section 47-A of the Act, then Magistrate shall not pass any order in this regard. Section 47-A of the Act, only states that use of vehicle in commission of offence. Bar has been created only in respect of passing an order of confiscation of vehicle and Magistrate shall not proceed to pass orders on confiscation of vehicle but Magistrate is free to proceed with trial of the case for commission of offence which means that Judicial Magistrate can proceed with trial of a case under Excise Act but will not pass on order of confiscation in regard to vehicle if intimation of same has been given to him and District Magistrate/Collector is proceeding in the case for confiscation of vehicle. If order of confiscation has been passed by Executive Magistrate then same will be final and Judicial Magistrate will not pass any order regarding confiscation.

10. Section 39(1)(d) of Wild Life (Protection) Act provides that if

vehicle is used for commission of offence and seized then same will become property of State Government. No hearing, trial, etc. is provided, therefore, Supreme Court held that confiscation will take place once trial is concluded. However, under section 47(1) of M.P. Excise Act, procedure for confiscation with opportunity of hearing is provided and further aggrieved person has remedy of appeal and revision, therefore, scheme of two sections i.e. under Wild Life (Protection) Act, 1972 and M.P. Excise Act, 1915 is entirely different.

11. Trial of accused and confiscation of vehicle are proceeded parallel to each other and there is no bar for District Magistrate/Collector to wait until criminal proceedings have been finally decided by Judicial Magistrate. In these circumstances, judgment relied on by learned counsel for the petitioner in the case of **Madhukar Rao** (Supra) is not applicable in the present case.

12. In view of same, Misc. Petition filed by the petitioner is **dismissed** with liberty to petitioner to approach Appellate Authority or Revisional Court in accordance with the M.P. Excise Act.

(VISHAL DHAGAT)  
JUDGE