

1
**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL**

ON THE 17th OF OCTOBER, 2023

WRIT PETITION No. 21818 of 2023

BETWEEN:-

**MADDURI NAGENDRA S/O KANNA REDDY, AGED
ABOUT 31 YEARS, OCCUPATION: VEHICLE OWNER
TRANSPORT MARUCHIL KALAM ROMPICHERLA
GUNTUR 522617 TAHSIL RUMCHARLA MANDLESH
DISTRICT GUNTUR (ANDHRA PRADESH)**

.....PETITIONER

(BY SHRI ANUBHAV SINGHAL - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH THROUGH
PRINCIPAL SECRETARY DEPARTMENT OF
REVENUE MANTRALAYA VALLABH BHAWAN
BHOPAL (MADHYA PRADESH)**
- 2. EXCISE COMMISSIONER REVENUE
DEPARTMENT 4TH FLOOR, COMPOSITE RAJASV
BHAWAN NEEDAM ROAD NAKA
CHANDRAVANDNI LASHKAR GWALIOR
(MADHYA PRADESH)**
- 3. COURT OF ADDL. COLLECTOR COLLECTOR
DISTRICT KHANDWA COLLECTORATE
KHANDWA (MADHYA PRADESH)**
- 4. SUPERINTENDANT OF POLICE POLICE
HEADQUARTERS CIVIL LINES, KHANDWA
(MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI ROHIT JAIN - GOVERNMENT ADVOCATE FOR THE STATE)

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

ORDER

This petition is filed being aggrieved of the order dated 06.06.2023 passed by the Court of Additional Collector, District Khandwa in Excise Case No.132/B-121/2020-2021 on the ground that Collector/Additional Collector could not have ordered for confiscation of the vehicle used in commission of an excise offence without there being pendency of the trial before the Criminal Court.

In support reliance is placed by Shri Anubhav Singhal, learned counsel for the petitioner on a judgement of a Coordinate Bench in the High Court of Madhya Pradesh at Indore in W.P. No.19528/2022 decided on 11.05.2023 wherein in para 9 Hon'ble Coordinate Bench has mentioned as under :-

"9. Since the word "offence has been committed" is used, therefore, the Collector cannot pass an order for confiscation during pendency of the trial. The vehicle can be confiscated either by a Magistrate while convicting the accused or after conviction under Section 47-A of the Act."

सत्यमेव जयते

Shri Rohit Jain, learned Government Advocate placing reliance on the decision of **Rauf Khan Vs. State of M.P. [2017 (2) MPLJ 325]** submits that though the judgment in **Rauf Khan (supra)** is in relation to Forest Act but in para 8 of the judgment it is held that confiscation proceedings being under Section 52 of Forest Act, 1927, read with Section 15 of 1969 Act, being independent than the criminal proceedings, the decision in S.P. Sales Agencies (supra) has not been taken note of in Premdas (supra) 2013(2) MPLJ 218, therefore, is of no assistance to the petitioner.

It is also submitted by Shri Rohit Jain that since there is an alternative statutory remedy of appeal provided under Section 47-B against the order of

confiscation this petition is not maintainable.

After hearing learned counsel for the parties and going through the record, order of the Coordinate Bench dated 11.05.2023 makes a mention of the fact that since sub-section (2) of Section 47-A, Collector is empowered to record satisfaction that the offence is covered by clause (a) or clause (b) of sub-section (2) and the word used is "offence has been committed", therefore, the Collector cannot pass an order for confiscation during pendency of the trial.

When this aspect is tested in terms of the provisions contained in Section 52 of the Indian Forest Act, 1927, then sub-section (1) of Section 52 of the Indian Forest Act, 1927 also provides that "when there is reason to believe that a forest offence has been committed in respect of any forest produce, such produce, together with all tools, boats, carts or cattle used in committing any such offence, may be seized by any Forest Officer or Police Officer."

Thus, the language used in Section 47-A(2) of the M.P. Excise Act and in sub-section (1) of Section 52 of the Indian Forest Act, 1927 are almost identically worded, thus commission of offence and conviction being two different things, Coordinate Bench mixed the two and held that Collector cannot act and proceed with confiscation without there being conviction by the trial Court. I am afraid that, that is not the correct interpretation and is not the correct spirit of the provisions as contained in sub-section (2) of Section 47-A or in Section 52 of the Indian Forest Act, 1927 as has been discussed by a Coordinate Bench in **Rauf Khan (supra)**. Therefore, that being the fact that commission of offence is one thing for which there has to be a satisfaction of the authority and conviction being a different thing, judgment rendered by a Coordinate Bench of this High Court at Indore Bench has no application and in my opinion that cannot be treated as a precedent.

Therefore, when facts of the present case are examined in the light of the law laid down by a Coordinate Bench in **Rauf Khan (supra)** especially when the provisions *inter alia* as contained in Indian Forest Act, 1927 and in the M.P. Excise Act, 1915 are identically worded, pendency of trial will not preclude the Collector from passing an order of confiscation.

Thus, petition fails and is hereby **dismissed**.

(VIVEK AGARWAL)
JUDGE

Tabish

