IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 10th OF APRIL, 2024

WRIT PETITION No. 7695 of 2024

BETWEEN:-

RADHA GUPTA W/O SHRI DINESH PRASAD GUPTA, AGED ABOUT 46 YEARS, R/O WARD NO. 43 NEAR KABIRSTAN, GUPTA COLONY, TIKURIYA TOLA, HARDI, SATNA (MADHYA PRADESH)

.....PETITIONER

(BY SHRI FALGUN YADAV - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY HOME DEPARTMENT VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)**
2. **COLLECTOR DISTRICT SATNA (MADHYA PRADESH)**
3. **SUPERINTENDANT OF POLICE DISTRICT SATNA (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI MOHAN SAUSARKAR – GOVERNMENT ADVOCATE)

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

ORDER

1. This petition under Article 226 of the Constitution of India has been filed against order dated 3.11.2021 passed by Collector, Satna in case

no.147/B/121/2021-22, by which vehicle Bolero four-wheeler bearing registration no. MP19-CA-7483 has been confiscated on the allegation that it was found illegally transporting 34.560 bulk liters of english liquor. Admittedly, the petitioner has not filed an appeal against the said order and has approached this Court directly on the basis of judgment passed by JMFC, Satna on 12.10.2023 in Case No. 483/2021, by which, accused has been acquitted for offence under Section 34 (2) of M.P. Excise Act.

2. It is submitted by counsel for the petitioner that petitioner is registered owner of the vehicle in question. Driver of the vehicle who was arrested along with vehicle and contraband was tried for offence under Section 34 (2) of the M.P. Excise Act and by judgment dated 12.10.2023 he has been acquitted, therefore, it is claimed that vehicle in question could not have been confiscated. To buttress his contention, counsel for the petitioner has also relied upon the order passed by a Coordinate Bench of this Court in the case of **Amit Thadani vs. State of M.P. and others**, decided on 13.10.2023 in **W.P.No.25846 / 2023** and **Chhotelal Tiwari Vs. State of M.P. and others,** decided on 23.1.2024 in **M.Cr.C. No.43470/2023.**

3. Per contra, the petition is vehemently opposed by counsel for the State. It is submitted that confiscation proceedings and criminal trial are two different proceedings and conviction of the accused is not *sine quo non* for confiscation of the vehicle. To buttress his contention, counsel for the respondents has relied upon the judgment of the Supreme Court in the case of **State of M.P. and others vs. Kallo Bai,** reported in **2017 (14) SCC 502.**

4. Heard learned counsel for the petitioner.

5. Before considering the facts and circumstances of the case, this Court would like to consider the order passed by Coordinate Bench of this Court in the case of **Amit Thadani (supra),** which reads as under :-

> "By the instant petition filed under Article 226 of the Constitution of India, the petitioner is challenging the order dated 21.08.2023 (Annexure-P/2) passed by the District Magistrate Satna, whereby the application submitted by the petitioner for release of his vehicle, has been rejected.
>
> 2. Learned counsel for the petitioner submits that though the vehicle of the petitioner bearing registration number MP-04 CJ-8886 (XUV Car) was confiscated in an excise offence, but since the petitioner has been acquitted in the alleged offence vide judgment dated 01.11.2021, therefore, his vehicle should also be released.
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> 3. Considering the aforesaid, though the objection has been raised by the counsel for the respondent/State, but I am inclined to consider and allow this petition. Accordingly, the same is allowed. The order dated 21.08.2023 contained in Annexure-P/2 passed by the District Magistrate Satna is hereby set aside. The authority is directed to release vehicle of the petitioner as he acquitted in the offence in which his vehicle was seized after getting satisfied with the documents of ownership, if any, is submitted by the petitioner.
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> 4. With the aforesaid observations, this petition is disposed of."

6. From plain reading of this order it is clear that no reasons have been assigned for setting aside the order of confiscation. Even objections

raised by the respondents / State were not reproduced and the order was passed by mentioning that "I am inclined to consider and allow this petition."

7. Only question for consideration is that whether assigning of a reason is necessary even in judicial proceeding or not.

8. This question is no more *res integra.*

9. The Supreme Court in the case of **Central Board of Trustees v. M/s Indore Composite Pvt. Ltd.** reported in **(2018) 8 SCC 443** has held as under :-

> "**13.** Indeed, in the absence of any application of judicial mind to the factual and legal controversy involved in the appeal and without there being any discussion, appreciation, reasoning and categorical findings on the issues and why the findings impugned in the writ petition deserve to be upheld or reversed, while dealing with the arguments of the parties in the light of legal principles applicable to the case, it is difficult for this Court to sustain such order of the Division Bench. The only expression used by the Division Bench in disposing of the writ petition is "on due consideration". It is not clear to us as to what was that due consideration which persuaded the Division Bench to dispose of the writ petition because we find that in the earlier paragraphs only facts are set out.
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> **14.** Time and again, this Court has emphasised on the courts the need to pass reasoned order in every case which must contain the narration of the bare facts of the case of the parties to the lis, the issues arising in the case, the submissions urged by the parties, the legal principles applicable to the issues involved and the reasons

> in support of the findings on all the issues arising in the case and urged by the learned counsel for the parties in support of its conclusion. It is really unfortunate that the Division Bench failed to keep in mind these principles while disposing of the writ petition. Such order, in our view, has undoubtedly caused prejudice to the parties because it deprived them to know the reasons as to why one party has won and other has lost. We can never countenance the manner in which such order was passed by the High Court which has compelled us to remand the matter to the High Court for deciding the writ petition afresh on merits."

10. Thus, assigning of reasons in judicial proceeding is minimum requirement of law. Since the said aspect is missing in the order passed by Coordinate Bench in the case of **Amit Thadani (supra),** therefore, this Court would like to consider the submissions made by counsel for the petitioner afresh to find out as to whether confiscation proceedings under M.P. Excise Act are dependent upon the trial of the accused or are independent to each other.

11. Section 47-A of the M.P. Excise Act reads as under :-

> **"47-A. Confiscation of seized intoxicants, articles, implements, utensils, materials, conveyance etc**. (1) Whenever any offence covered by clause (a) of (b) of sub-section (1) of Section 34 is committed and the quantity of liquor found at the time or in the course of detection of offence exceeds fifty bulk litres, every office, empowered under Section 52, while seizing any intoxicants, articles, implements, utensils, materials, conveyance etc. under sub-section (2) of Section 34 or Section

52 of the Act, shall place on the property seized a mark indicating that the same has been so seized and shall without undue delay either produce the seized property before the officer not below the rank of District Excise Officer authorised by the State Government by a notification in this behalf (hereinafter referred to as the Authorised Officer), or where having regard to its quantity or bulk or any other genuine difficulty it is not ex-pedient to do so, make a report containing all the details about the seizure to him.

(2) When the Collector, upon production before him of intoxicants, articles, implements, utensils, materials, conveyance etc. or on receipt of a report about such seizure as the case may be, is satisfied that an offence covered by clause (a) or clause (b) of sub -section (1) of Section 34 has been committed and where the quantity of liquor found at the time or in the course of detection of such offence exceeds fifty bulk litres he may, on the ground to be recorded in writing, order the confiscation of the intoxicants, articles, implements, utensils, materials, conveyance etc. so seized. He may, during the pendency of the proceedings for such confiscation also pass an order of interim nature for the custody, disposal etc. of the confiscated intoxicants, articles, implements, utensils, materials, conveyance etc. as may appear to him to be necessary in the circumstances of the case.

(3) No order under sub-section (2) shall be made unless the Collector has –

(a) sent an intimation in a form prescribed by the Excise Commissioner about initiation

> of proceedings for confiscation of seized intoxicants, articles, implements, utensils, materials, conveyance, etc. to the Court having jurisdiction to try the offence on account of which the seizure has been made;
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> (b) issued a notice in writing to the person from whom such intoxicants, articles, implements, utensils, materials, conveyance, etc. have been seized and to any person staking claim to and to any other person who may appear before the Collector to have an interest in it;
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> (c) afforded an opportunity to the persons referred to in clause (b) above of making a representation against proposed confiscation;
>
> (d) given to the officer effecting the seizure under sub -section (1) and to the person or persons who have been noticed under clause (b) a hearing."

12. Opening line of Section 47-A (1) specifically provides that whenever any offence covered by clause (a) of (b) of sub-section (1) of Section 34 is **committed…**……

13. Even in Section 47-A (2) it is provided that when the Collector, upon production before him of intoxicants, articles, implements, utensils, materials, conveyance etc. or on receipt of a report about such seizure as the case may be, is satisfied that an offence covered by clause (a) or clause (b) of sub-section (1) of Section 34 has been **committed**. Therefore, it is clear that for confiscation of a vehicle, satisfaction of the Collector that offence has been committed is the paramount consideration.

14. Counsel for the petitioner could not point out any provision from 47-A of the M.P. Excise Act to show that order of confiscation would be subject to conviction of the accused in a criminal trial.

15. The Supreme Court in the case of **State of M.P. and others vs. Kallo Bai,** reported in **2017 (14) SCC 502** has held as under :-

> "**14.** Sub-section (1) of Section 15 empowers forest officers concerned to conduct search to secure compliance with the provisions of the Adhiniyam. On a plain reading of sub-section (2), it is clear that the officer concerned may seize vehicles, ropes, etc. if he has reason to believe that the said items were used for the commission of an offence under the Adhiniyam. Confiscation proceedings as contemplated under Section 15 of the Adhiniyam is a quasi-judicial proceedings and not a criminal proceedings. Confiscation proceeds on the basis of the "satisfaction" of the authorised officer with regard to the commission of forest offence. Sub-section (3) of the provision lays down the procedure to be followed for confiscation under the Adhiniyam. Sub-section (3-A) authorises forest officers of rank not inferior to that of a Ranger, who or whose subordinate, has seized any tools, boats, vehicles, ropes, chains or any other article as liable for confiscation, may release the same on execution of a security worth double the amount of the property so seized. This provision is similar to that of Section 53 of the Forest Act as amended by the State of Madhya Pradesh. Sub-section (4) mandates that the officer concerned should pass a written order recording reasons for confiscation, if he is satisfied that a forest offence has been committed by using the items marked for confiscation. Sub-section (5) prescribes various procedures for

confiscation proceedings. Sub-section (5-A) prescribes that whenever an authorised officer having jurisdiction over the case is himself involved in the seizure, the next higher authority may transfer the case to any other officer of the same rank for conducting confiscation proceedings. Sub-section (6) provides that with respect to tools, vehicles, boats, ropes, chains or any other article other than timber or forest produce seized, confiscation may be directed unless the person referred to in clause (*b*) of sub-section (5) is able to satisfy that the articles were used without his knowledge or connivance or, as the case may be, without the knowledge or connivance of his servant or agent and that all reasonable and necessary precautions had been taken against the use of such objects for commission of forest offence.

15. Section 15-A provides the remedy of appeal against the order of the authorised officer under Section 15 in confiscation proceedings. Section 15-B of the Adhiniyam provides for revision before the Court of Session against the order of the appellate authority in the confiscation proceedings.

22. In view of the foregoing discussions, it is apparent that Section 15 gives independent power to the authority concerned to confiscate the articles, as mentioned thereunder, even before the guilt is completely established. This power can be exercised by the officer concerned if he is satisfied that the said objects were utilised during the commission of a forest offence. A protection is provided for the owners of the vehicles/articles, if they are able to prove that they took all reasonable care and precautions as envisaged under sub-section (5) of Section 15 of the Adhiniyam and the

> said offence was committed without their knowledge or connivance."

16. Although the judgment in the case of **Kallo Bai (supra)** was passed where an offence under Forest Act was registered but even in the present case, counsel for the petitioner could not point out that confiscation of the vehicle can be ordered only after the accused is convicted. Confiscation proceedings are quasi-judicial in nature and appeal is also provided against the order of confiscation. Since, the order of confiscation and outcome of a criminal trial are not interdependent upon each other and they are independent to each other, therefore, conviction of the accused is not a *sine quo non* for directing for confiscation of intoxicants, conveyance etc.
17. Under these circumstances, this Court is of the considered opinion that merely because the accused has been acquitted by the trial Court would not *ifso facto* render the order of confiscation bad.
18. Accordingly, no case is made out warranting interference. Petition fails and is hereby **dismissed.**

(G.S. AHLUWALIA)
JUDGE