

IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE ANIL VERMA

ON THE 24th OF FEBRUARY, 2022

MISC. CRIMINAL CASE No. 62546 of 2021

Between:-

MOIN KHAN THROUGH POER OF ATTERNEY HOLDER MIJAAN KHAN S/O RAIS KHAN , AGED ABOUT 22 YEARS, OCCUPATION: FARMER GRAM UMATPALIA, TEHSIL PIPLODA (MADHYA PRADESH)

.....PETITIONER

(BY SHRI Manu Maheshwari, Advocate)

AND

THE STATE OF MADHYA PRADESH STATION HOUSE OFFICER THROUGH P.S. INDUSTRIAL AREA JAORA (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI Kapil Mahant, learned PL)

This M.Cr.C.coming on for this day, the court passed the

following:

ORDER

Both the parties heard finally.

This is a petition under Section 482 of Cr.P.C. for quashment of the impugned order dated 28.8.2021 whereby an application filed under Sections 451 and 457 of Cr.P.C by the petitioner has been dismissed. The petitioner has also assailed the impugned order dated 29.9.2021 passed by II Additional Sessions Judge Jaora District Ratlam in criminal case No. 23/2021 whereby the learned Sessions Court has affirmed the order passed by JMFC Jaora.

2/ The facts in brief are that on 1.8.2021 police received discrete information that four accused persons namely Moin, Anokhilal, Ranjit @ Tamma and Suresh are producing country made liquor at

Suresh's farm. Acted upon said information, police reached on the spot and seized 60 bulk liters of country made liquor from Moin, Suresh and Prabhulal alongwith a pickup vehicle being registration No. MP-14-GB-1076. During investigation one Maruti Baleno Vehicle bearing registration No. MP-43-CA-8416 has been also recovered. Accordingly offence under sections 34(2) and 49(1) of MP Excise Act, 1915 and Section 420 of IPC have been registered against the accused persons. The petitioner/owner of the vehicle filed an application under Sections 451 and 457 of IPC before JMFC Jaora to release the seized vehicle bearing registration No. MP-43-CA-8416. After hearing both the parties JMFC dismissed the application filed by petitioner by observing that record reflects that there is a correspondence between SP Ratlam and Assistant Commissioner Excise and District Magistrate Ratlam regarding confiscation of vehicle in question. The petitioner preferred a revision before Additional Sessions Judge Jaora. The same was also dismissed by the impugned order dated 29.9.2021. Hence this petition under section 482 of Cr.P.C.

3/ Learned counsel for the petitioner submits that petitioner is registered owner of said vehicle. The impugned order passed by both the courts below are contrary to law facts and circumstances of the case and also against the settled provisions of law. The Collector is required to send intimation regarding initiation of confiscation proceeding to the JMFC Jaora but only proposal for initiation of confiscation proceeding was sent by SP Ratlam but no intimation was sent to the concerned criminal court as mandated under Section 47-A and as required under Section 47-D of MP

Excise Act. Learned Court below was having jurisdiction to release the aforesaid vehicle on interim custody but, both the courts below committed error of law in dismissing the application by passing the impugned orders. Learned court below committed impropriety and irregularity by passing the impugned orders, hence, he prays that impugned order be set aside and direction may be issued for releasing the seized vehicle on interim custody to the petitioner.

4/ Learned Panel Lawyer opposes the present petition and supports the impugned orders by stating that the orders do not suffer from any illegality, therefore many not be interfered with.

5/ I have considered the facts of the case and rival contentions of the parties.

6/ Section 47-D of MP Excise Act, 1915 is relevant for deciding the controversy, which provides 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 clause (a) or (b) of sub- section (1) of 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) Section 47-A about the initiation of the proceedings for confiscation of seized property."

7/ In *Pratik Parik vs. State of M.P. 2010(1) MPLJ (cri.) 205*, the Coordinate Bench of this Court has held that application for release of vehicle rejected on the ground that liquor seized from the vehicle was more than 50 bulk liters and the jurisdiction to pass an

order of disposal of such property was barred under M. P. Excise Act. Bar under Section 47-D of the Act was not attracted unless intimation was received by the Court from the Collector.

8/ In the case of **Ramesh Kumar Soni Vs. State of Madhya Pradesh**, the coordinate Bench of this Court vide order dated 15.05.2017 passed in M.Cr.C. No.1285/2017 has held as under:-

"Having perusal of the impugned orders, it is found that on behalf of the Collector no intimation has been given to the trial Court/ Magistrate under Section 47(A)(3)(a) of M.P. Excise Act and the provision relating to bar of jurisdiction to release the vehicle under section 47-D of M.P. Excise Act is not attracted and the Magistrate is competent to release the vehicle. There is no other ground to keep the vehicle idle till disposal of the case. So far as the proceeding of confiscation is concerned, if it is going on, the order for release of vehicle may be given effect subject to order of the confiscation so that the order of confiscation may also be implicated."

(Emphasis supplied)

9/ In the case of **Suresh Vs. State of M.P.**, 2003 (1) MPLJ, 638, coordinate Bench of this Court has held as under:-

“The legal position is that if the Criminal Court has been given intimation as per provision under Section 47-D of the Act about intention of confiscation proceeding by the Collector regarding confiscation then the Criminal Court is ceased of the matter and has no jurisdictional to pass any order for interim custody or confiscation of vehicle. But at the same time, the Collector has jurisdiction to pass order for interim custody of the vehicle or property looking to the facts and circumstances of the case and in the interest of safeguard of property as well as to protect the person suffering form financial loss. In the facts and circumstances of the present case, since there is no compliance of section 47-D of the Act up-till now and no notice has been issued by the Collector/ Authority to the applicant for intimation of confiscation proceedings, it would be just and proper to

release the vehicle on interim custody in favour of the applicant who is the Registered owner of the aforesaid vehicle(Tata Sumo).

10/ After perusal of the order sheets of JMFC Jaora it reveals that at the time of passing of the impugned order District Magistrate did not inform the JMFC Jaora regarding initiation of confiscation proceedings of the seized vehicle. The court was only informed regarding correspondence between SP Ratlam and District Magistrate Ratlam.

11/ On perusal of the impugned order dated 29.9.2021 passed by II Additional Sessions Judge Jaora it clearly reflects that District Magistrate Ratlam sent a letter No. /आबकारी/अपराध /2020-21/2746 dated 31.8.2021 to JMFC Jaora regarding initiation of proceedings of confiscation of the vehicle. Therefore, it is clear that the said information was sent by Collector Ratlam after passing of the impugned order by JMFC Jaora. However, in absence of satisfying the requirement of Section 47-A(3)(a) and 47-D, bar of Section 47-D does not come in way while deciding the application under Section 451 and 457 of Cr.P.C.

12/ In the opinion of this Court, the courts below have committed error in not releasing the vehicle in question on interim custody. Resultantly, in view of the aforesaid analysis, this M.Cr.C. is allowed.

13/ The seized vehicle Maruti Baleno bearing registration No. MP-43-CA-8416 is directed to be released on interim custody to the petitioner upon his furnishing bond of Rs.3 lakhs with one surety of equal amount to the satisfaction of the concerned criminal court, subject to the following conditions:-

(1)Applicant shall not alienate the said vehicle,

(2)The applicant shall not change the colour and condition of the vehicle,

(3)The applicant shall produce the said vehicle before the Court as and when directed by the Court;

(4)The breach of any of the conditions will entail cancellation of this order.

14/ This order will not affect the confiscation proceeding (if any) pending before the Collector and the learned Court below has a right to seize the vehicle, in case, confiscation order is passed.

15/ In view of the aforesaid analysis, the impugned order dated 28.8.2021 passed by JMFC Jaora in case No. 56/2021 and order dated 29.9.2021 passed by II Additional Sessions Judge Jaora District Ratlam in Cri.Riv. No. 23/2021 are hereby set aside.

Let a copy of this order be sent to the concerned Collector.

C.C. as per rules.

(Anil Verma)
Judge

BDJ