



**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WPCR No. 372 of 2022**

- Shyam Bihari Yadav

--- Petitioner

**Versus**

1. State Of Chhattisgarh Through The Collector Durg, District Durg Chhattisgarh.
2. Assistant Commisioner, Excise, Durg, District Durg Chhattisgarh.

--- Respondents

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For Petitioner : Shri T.K. Jha, Advocate

For Respondent/State : Shri Ajay Kubrani, PL

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**HON'BLE SHRI JUSTICE GOUTAM BHADURI**

**ORDER**

**26/04/2022**

Heard.

1. The present petition is against the order dated 25.11.2021 passed by the Collector, Durg whereby the interim custody of the vehicle sought for by the petitioner was rejected.
2. The brief facts of this case are that on 17.05.2021 on an information received, the vehicle bearing No. CG-11 E 1777 was intercepted and from the vehicle illicit liquor to the extent of 34.54 bulk liters were seized. Therefore, the case was registered under Section 34(2) of the Chhattisgarh Excise Act, 1915 (for short 'the Act') and the liquor as also the vehicle was seized by the police. It was alleged by the State that the vehicle was being used for transporting illicit liquor as such proceeding under Section 47-A(3) of the Act was drawn for confiscation of vehicle. Further the Collector, who is authorised under Section 47-A(3) started confiscation proceeding for the vehicle. During such confiscation proceeding, an application was filed by the petitioner who is



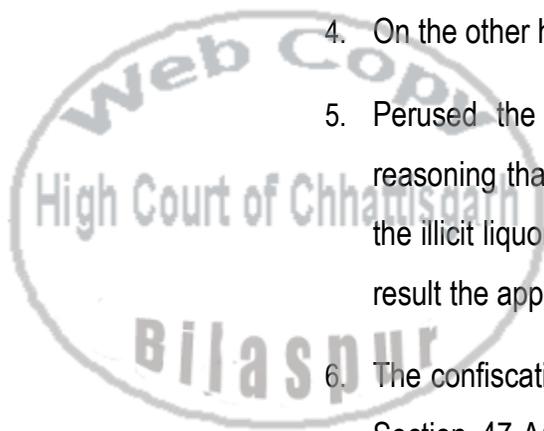


owner of the vehicle to release the vehicle and interim custody of the vehicle was sought for, which was dismissed. Therefore, this instant petition.

3. Learned counsel for the petitioner would submit that confiscation proceeding though having been commenced it does not put any bar to release the vehicles on interim custody. He placed his reliance upon the decision rendered by the Hon'ble Supreme Court in the case of **Sunderbhai Ambalal Desai Vs. State of Gujarat** reported in **(2002) 10 SCC 283** and would submit that applying such principle till confiscation proceeding is concluded, the vehicle should have been handed over to the applicant. It is submitted that no necessary useful purpose would be served by keeping the vehicle in the custody except the loss caused to it. It is further submitted that charge sheet having been filed no further enquiry is necessary in respect of criminal case and as such vehicle should have been released in favour of applicant.
4. On the other hand, learned counsel appearing for the State opposes the prayer.
5. Perused the order dated 25.11.2021. Perusal of the same would engrafts the reasoning that since vehicle was seized while it was being used for transportation of the illicit liquor as such it is not justified to hand over possession of the vehicle. In the result the application for interim custody was dismissed.
6. The confiscation proceeding under the Act is governed by Section 47-A(3) of the Act. Section 47-A(2) of the Act regulates the power and procedure to be adopted for confiscation which reads as under:

“47-A(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 five bulk liters 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 (*sic* or) 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.”

7. Perusal of sub-section (2) would show that power has been given to the District Magistrate (Collector) upon production of the article and on having satisfied that



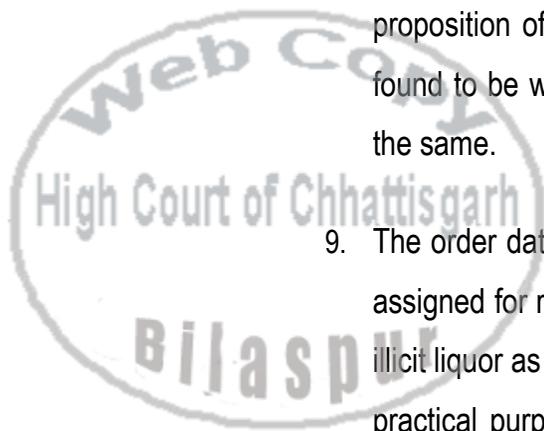


offence covered under clause (a) or clause (b) of sub-section (1) of Section 34 has been committed and if liquor is more than 5 bulk liters he may order for confiscation of articles, intoxicants, implements, utensils including the conveyance so seized. It also records that he may during pendency of the proceeding may pass an order of interim nature for custody, disposal etc. of the confiscated intoxicants, articles, implements, conveyance as may appear to be necessary in the facts of this case.

8. Section 47-B of the Act provides for appeal against the order of confiscation. Therefore, it necessarily leads that order of confiscation can only be challenged when it reaches its finality and the statute do not give any space to challenge any other order except the final one. In view of this, the necessary implication would be that any order of interim nature if any passed, the High Court in exercise of it's power vested in it under Article 227 can always test the propriety or legality of the order. It is a settled proposition of jurisprudence that every wrong will have a remedy. So if the order is found to be wrong then certainly the High Court would have all the power to correct the same.

9. The order dated 25.11.2020 under challenge would show that no reasons have been assigned for rejection and only it is stated that since vehicle was found in transporting illicit liquor as such it is not feasible to hand over the vehicle to the petitioner. So for all practical purposes vehicle is lying at the disposal of authorities or at police station. Therefore if it is kept in the police station it must be occupying space or is prone to cause natural decay and may loose its road worthiness when kept in stationery position. In facts of the case following the law laid down by the Hon'ble Supreme Court in the case of **General Insurance Council and others Vs. State of Andhra Pradesh and others** reported in (2010) 6 SCC 768 wherein the earlier principles laid down in the case of **Sunderbhai Ambalal Desai Vs. State of Gujarat** reported in (2002) 10 SCC 283 was reiterated, the order of rejection of application for interim custody cannot be allowed to remain. Consequently, applying the said principles, it is directed that the vehicle be released in favour of petitioner by way of interim measure, if the confiscation proceedings have not been concluded till date of production of this order.

10. Therefore, the vehicle is directed to be released to the petitioner on the following conditions:-





1. Before release of vehicle proper panchnama be prepared.
2. Photographs of vehicle should be taken and bond should also be produced that the article would be produced if required at the time of trial.
3. Proper security i.e. personal bond of Rs.8.00 lacs and like sum of surety be obtained before release of vehicle.

11. In view of foregoing discussions, the petition succeeds and is allowed. No order as to cost(s).

Sd/-  
Goutam Bhaduri  
Judge

Pawan

