

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

WP No. 11356 of 2024

RAMLAL JHARIYA

Vs

STATE OF M.P. AND OTHERS

*Shri Jayant Neekhra - Advocate with Shri Sanjeev Neekhra -
Advocate for petitioner.*

Shri V.P. Tiwari - Government Advocate for respondents-State.

ORDER

(Passed on this 06.05.2024)

Petitioner is aggrieved by the order of confiscation passed by the Collector, District Narsinghpur under Section 47(A)(2) of the M.P. Excise Act, 1915 (hereinafter referred to as 'Act of 1915') on 14.08.2023, whereby the vehicle Mahindra Bolero bearing registration No.MP04-TB-2350 owned by petitioner was ordered to be confiscated. Petitioner has challenged the order of Collector passed under Section 47(A)(2) of the Act, 1915 by preferring the present writ petition mainly on the ground that the order passed during the pendency of criminal case registered under Section 34(2) of the Act, 1915 and, therefore the order is without jurisdiction and the same can be assailed in the writ petition.

2. The short facts of the case are that, on 25.01.2023, upon secrete information, Police party stopped and searched vehicle in question Mahindera Bolero driven by Manish Singh Thakur and 35 crates of illicit liquor (315 bulk liters) were found in the vehicle. Police Station

Suatala, District Narsinghpur registered Crime No.34/2023 for the offence punishable under Section 34(2) of the Act, 1915 against respondents No.3 and 4 and after completion of investigation, filed the charge sheet against them wherein the petitioner is not an accused.

3. A report was forwarded by Station House Officer, Police Station Suatala, District Narsinghpur for confiscation of the vehicle and the intimation for the same was forwarded to the competent Judicial Magistrate. After registering the Confiscation Case No.0019B/121/2023-24, Collector Narsinghpur issued notices to the petitioner and respondents No.3 and 4. The petitioner appeared and filed reply, wherein the petitioner stated that the vehicle was used without his knowledge and connivance. He filed the copy a rent agreement to demonstrate that the vehicle was provided by petitioner to respondent No.3 on rent and the vehicle cannot be confiscated in view of facts and circumstances of the case. The Collector Narsinghpur after considering the reply of the petitioner and facts and circumstances of the case, on the basis of available material and evidence, passed the impugned order on 14.08.2023, whereby ordered to confiscate the vehicle under the provision of Section 47(A)(2) of the Act, 1915.

4. Learned counsel for the petitioner submits that the order passed by the Collector Narsinghpur is without jurisdiction as criminal case registered on the basis of the charge sheet filed after completion of investigation in respect of Crime No.34/2023 is pending and the same has not been culminated into conviction, and therefore, the Collector was not empowered to confiscate the vehicle during the pendency of criminal case. He relied on the judgment of Apex Court delivered in the matter of **State of M.P. and others vs. Madhukar Rao, (2008) 14**

SCC 624, whereby the Apex Court after considering the provisions of Section 39 (1)(d) of the Wild Life (Protection) Act held that, until and unless, pending criminal trial culminated to the conviction of accused, no order for confiscation of any article including vehicle can be passed.

The relevant paras of the judgment are as under:-

“**13.** At the same time, amendments were made in Section 39(1)(d) after which it reads as follows:

“39. Wild animals, etc., to be government property.—

(1) Every—

(a)-(c)***

(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.”

15. Learned counsel submitted that Section 50 of the Act provided a complete and comprehensive scheme in matters of entry, search, arrest and detention for prevention and detection of offence under the Act and excluded the application of any other Act, including the Code, in the matter. She maintained that at no time it was open to the Magistrate to direct for interim release of a vehicle seized under Section 50(1) (c) of the Act. Previously officers of certain higher ranks had the power to release the seized vehicle but after deletion of sub-section (2) the power was taken away from the departmental officers as well and hence, a vehicle seized for commission of an offence under the Act could no longer be released on interim basis. In support of the submission that Section 50 provided a complete code she also referred to Sections 51 and 53 of the Act. She submitted that the punishment for

wrongful seizure too was provided under the Act itself and hence, the seizure would not attract the provisions of any other law, including the Code. In support of the submission she relied upon the decision of this Court in State of Karnataka v. K.A. Kunchindammed [(2002) 9 SCC 90 : 2003 SCC (Cri) 1085] . She particularly relied upon para 23 of the decision.

16. We are unable to accept the submissions. To contend that the use of a vehicle in the commission of an offence under the Act, without anything else would bar its interim release appears to us to be quite unreasonable. There may be a case where a vehicle was undeniably used for commission of an offence under the Act but the vehicle's owner is in a position to show that it was used for committing the offence only after it was stolen from his possession. In that situation, we are unable to see why the vehicle should not be released in the owner's favour during the pendency of the trial.

18. Sub-section (4) of Section 50 reads as follows:
“50. (4) Any person detained, or things seized under the foregoing power, shall forthwith be taken before a Magistrate to be dealt with according to law under intimation to the Chief Wild Life Warden or the officer authorised by him in this regard.”

It has to be noted here that the expression used in the sub-section is “according to law” and not “according to the provisions of the Act”. The expression “according to law” undoubtedly widens the scope and plainly indicates the application of the provisions of the Code.

19. We find that the Full Bench of the High Court has correctly taken the view that the deletion of sub-section (2) and its replacement by sub-section (3-A) in Section 50 of the Act had no effect on the powers of the Magistrate to release the seized vehicle during the pendency of trial under the provisions of the Code. The effect of deletion of sub-section (2) and its replacement by sub-section (3-A) may be summed up thus: as long as sub-section (2) of Section 50 was on the statute book the Magistrate would not entertain a prayer for interim release of a seized vehicle, etc. until an

application for release was made before the departmental authorities as provided in that sub-section. Further, in case the prayer for interim release was rejected by the departmental authority the findings or observations made in its order would receive due consideration and would carry a lot of weight before the Magistrate while considering the prayer for interim release of the vehicle. But now that sub-section (2) of Section 50 stands deleted, an aggrieved person has no option but to approach the Magistrate directly for interim release of the seized vehicle.

22. We have, therefore, no doubt that the provisions of Section 50 of the Act and the amendments made thereunder do not in any way affect the Magistrate's power to make an order of interim release of the vehicle under Section 451 of the Code.

23. Learned counsel submitted that Section 39(1)(d) of the Act made the articles seized under Section 50(1) (c) of the Act as government property and, therefore, there was no question of their release. The submission was carefully considered by the Full Bench of the High Court and on an examination of the various provisions of the Act it was held that the provision of Section 39(1)(d) would come into play only after a court of competent jurisdiction found the accusation and the allegations made against the accused as true and recorded the finding that the seized article was, as a matter of fact, used in the commission of offence. Any attempt to operationalise Section 39(1)(d) of the Act merely on the basis of seizure and accusations/allegations levelled by the departmental authorities would bring it into conflict with the constitutional provisions and would render it unconstitutional and invalid. In our opinion, the High Court has taken a perfectly correct view and the provisions of Section 39(1)(d) cannot be used against exercise of the magisterial power to release the vehicle during pendency of the trial.”

5. Learned counsel for petitioner has further relied on the order passed by the Coordinate Benches following the dictum laid down by the Apex Court in the matter of Madhukar Rao (supra) in the following cases:-

(i) **Sheikh Kalim vs. State of M.P.** passed in M.Cr.C. No.1296/2015 dated 13.7.2015:-

“[6] Undisputedly the Collector has passed the order of confiscation on 4-2-2014 i .e. before the conclusion of trial by the criminal court. The JMFC has passed the order of acquittal on 21.3.2014 holding that the Nitesh @ Santosh and Bablu have not committed an offence u/s 4,6, and 9 of the Adhiniyam and 11(d) of the Prevention of cruelty to Animals Act. As per the provision of section 11(5) of the Adhiniyam, the Collector can confiscate the vehicle when by a competent court it is found that any violation of section 4,5,6,6A and 6B of the Adhiniyam has been committed. The Collector should have refrained from passing any order of confiscation of vehicle during pendency of the criminal case.

[7] That in the similar circumstances this Court while dealing a case under the Indian Forest Act read with the MP Vanopaj Vyapar Viniyaman Adhiniyam 1969 in case Premdas (supra) held that confiscation of the vehicle is unsustainable until and unless the criminal proceedings are finalized.

[8] The Full Bench of this Court in the case of Madhukar Rao Vs State of MP [2000(1) JLJ-304] has laid down the principle that during pendency of the criminal case, confiscation proceedings should not be held and be finalized. This judgment has been affirmed by the Hon'ble Supreme Court in the case of State of MP Vs Madhukar Rao 2008(1) JLJ-427 wherein the Court observed that :-

“.....The submission was carefully considered by the Full Bench of the High Court and on an examination of the various provisions of the Act it was held that the provision of Section 39(1) (d) would come into play only after a Court of competent jurisdiction found the accusation and the allegations made against the accused as true

and recorded the finding that the seized article was, as a matter of fact, used in the commission of offence.”

[9] The aforesaid principle laid down in Madhukar Rao (Supra) reiterated and affirmed by the Hon'ble Supreme Court in the case of Principal Chief Conservator of Forest Vs J.K.Johnson AIR 2012 SC 61.

[10] In the present case the trial court has not found guilt of the accused persons and acquitted them from the charges of Adhinyam as well as of the Prevention of Cruelty to Animals Act.

[11] Thus, in absence of any finding with regard to violation of section 4,5,6,6A and 6B of the Adhinyam, by the Criminal Court, the order passed by the Collector, confiscating the said vehicle under the section 11(5) of the Adhinyam is bad in law.

[12] Thus, in view of the above dictum the order of confiscation passed by the Collector is not sustainable and hence it is hereby set-aside and consequential orders in appeal before Commissioner and Revision before the Sessions Court are also set-aside. And it is herewith directed that the vehicle in question be released to the registered owner.”

(ii) **Suresh vs. State of M.P.** passed in Writ Petition No.19528/2022 dated 11.5.2023:-

“8. This Court has repeatedly held that under sub-section 2 of Section 47(A), the Collector upon recording satisfaction that the offence is covered by Clause A or Clause B of sub-section 2 of the Act has been committed and where the quantity of liquor is found at the time or during the course of detection of such offence exceeds 50 bulk litres, he may on the ground to be recorded in writing, order the confiscation to intoxicants, articles, conveyance, etc.

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.”

(iii) **Akash Raikwar vs. State of M.P. and others** passed in W.P. No.18178 of 2023 dated 28.7.2023:-

“6. Heard. Having considered the rival submissions, and on perusal of the case diary as also the documents filed by the petitioner on record, this Court finds force in the submissions advanced by the counsel for petitioner, and is of the opinion that as the criminal case is still pending against accused persons, the order of confiscation could not have been passed, and in such circumstances, taking note of the order passed by this Court in W.P.No.23371/2023 order dated 14.07.2023, this court is inclined to quash the impugned order dated 11.5.2023, passed by the Collector, Indore, and accordingly, the same is hereby **quashed**, and it is directed that the vehicle in question i.e., Toyota Etios car bearing registration No.MP 09 CF 7417, be also released and handed over to the petitioner, as no purpose would be served to keep the vehicle in the police station where it is likely to wear down due to harsh weather and disuse. Thus, it is directed that subject to the petitioner's furnishing adequate surety to the satisfaction of the trial court, with an undertaking that till the final disposal of the criminal case he shall not alienate the aforesaid vehicle in any manner, the custody of the vehicle be restored to its owner, the petitioner herein.”

(iv) **Bhaskar @ Balkishan Sonone vs. State of M.P. and others**, passed in W.P. No.28288/2023 dated 7.11.2023:-

“12. In view of the aforesaid enunciation of law, it is held that the Collector could not have passed order of confiscation till the trial is pending.

13. The judgment and the order passed in the case of Danish Rayin (Supra) was dealing with the power of the jurisdiction of the Magistrate for release of the vehicle under Section 47(A)(2) of the Act and in that context, it has been held that once the intimation has been received by the Magistrate regarding initiation of confiscation proceedings under Section 47(A)(2) of the Act, the Magistrate has to wait for passing order on confiscation till case in respect of

confiscation is pending before the District Magistrate. In the said context, the Court has passed an observation that the Collector can pass order of confiscation even if trial is pending before criminal case.”

(v) **Pankesh vs. The Collector and others**, passed in W.P. No.29095 of 2023 dated 23.11.2023:-

“7. Full Bench of this Court in the case of Madhukar Rao Vs. State of M.P. reported in 2000(1) MPLJ (FB) 389 has laid down the principle that once criminal case is pending, confiscation proceeding should not be held and finalized. That was also affirmed by Hon'ble Supreme Court in the case of State of M.P. Vs. Madhukar Rao reported in 2008 (1) JLJ 427.

8. Co-ordinate bench of this Court in case of Santosh S/o Tulsiram Jaiswal Vs. The State of Madhya Pradesh & others, (Writ Petition No.1037/2016) vide order dated 13/05/2016, while relying upon a decision dated 13/07/2015 rendered by this Court in the case of Sheikh Kaleem Vs. State of M.P. (Writ Petition No.1296/2015), has set aside the order of confiscation and has directed the respondents to release the vehicle on the ground that confiscation can only take place after the person is convicted. In the case of Premdas Vs. State of M.P. and others reported in 2013(1) MPJR SN 10, co-ordinate Bench of this Court has also held that vehicle cannot be confiscated by the department so long, as the criminal case is pending.

9. The word “*the offence covered by Clause A or B of subsection 1 of section 34 has been committed*” used in subsection 2 of section 47(A) indicates that the order of forfeiture can be passed when the Collector satisfies himself that the offence covered under Clause A or B of subsection 2 of section 34 has been committed, therefore, forfeiture / confiscation order can be passed only after conviction has been recorded by the trial Court and not before that.

10. In the instant case, the Collector / District Magistrate has passed the confiscation order of the said vehicle despite knowing the fact that criminal proceeding is still pending before the CJM, Barwani in Criminal Case No.357/2022. This Court is of the considered opinion that the

impugned order passed by the Collector, Barwani is bad in law and deserves to be quashed.

11. In view of the aforesaid analysis, this writ petition is allowed and the impugned order dated 03/01/2023 passed by the Collector, Barwani is hereby quashed.”

6. In all the above cases, the Coordinate Benches after relying the judgment of Madhukar Rao (supra) and other orders of Coordinate Benches have held that, during the pendency of criminal proceedings, Collector has no jurisdiction to confiscate any article including the vehicle under Section 47(A)(2) of the Act, 1915, and therefore, the Coordinate Single Benches quashed the orders passed by the Collector under the Act of 1915. Learned counsel for the petitioner further submits that in view of judgment passed by the Apex Court in the case of Madhukar Rao (supra) and the orders passed by the Coordinate Benches, the impugned order is liable to be quashed and the petition be allowed.

7. Learned Government Advocate appearing on behalf of State has supported the order passed by the Collector, District Narsinghpur. He also relied on some orders passed by the Coordinate Single Benches, wherein the Coordinate Benches held that, criminal proceedings and confiscated proceedings can go on parallel. Learned Government Advocate relied on the judgment delivered by Apex Court in the matter of **State of M.P. vs. Kallo Bai, 2017 (14) SCC 502**, which is a case in respect of Forest Act and after considering the provisions of Forest Act, the Apex Court has held that the parallel proceedings may go on. The relevant paras are as under:-

“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.

23. Criminal prosecution is distinct from confiscation proceedings. The two proceedings are different and parallel, each having a distinct purpose. The object of confiscation proceeding is to enable speedy and effective adjudication with regard to confiscation of the produce and the means used for committing the offence while the object of the prosecution is to punish the offender. The scheme of the Adhiniyam prescribes an independent procedure for confiscation. The intention of prescribing separate proceedings is to provide a deterrent mechanism and to stop further misuse of the vehicle.

24. At the cost of repetition we clarify that confiscatory proceedings are independent of the main criminal proceedings. In view of our detailed discussion in the preceding paragraphs we are of opinion that High Court as well as the revisional court erred in coming to a conclusion that the confiscation under the law was not permissible unless the guilt of the accused is completely established.”

8. There are some other orders passed by the Coordinate Benches wherein it is held that, confiscation proceedings are quasi-judicial in nature and same is not dependent upon the outcome of the criminal trial and therefore, the confiscation proceedings may go on parallel. These orders are as under:-

(i) In the case of **Danish Rayin vs. State of M.P. and others**, passed in W.P. No.28700/2022 dated 12.5.2023:-

“6. On going through the said provision, it is clear that when Magistrate receives an intimation under Section 47-A of the MP Excise Act, 1915, he shall not pass any order in regard to confiscation as aforesaid until proceeding pending before Collector under Section 47-A of the Act has been disposed of. This part shows that Magistrate has to wait for passing order on confiscation till case in respect of confiscation is pending before District Magistrate and if District Magistrate/Collector has ordered confiscation then Magistrate shall not pass any order in this regard. This shows that order of District Magistrate so far as it relates to confiscation of vehicle is final, Magistrate has no jurisdiction to pass order of confiscation or release of vehicle if intimation has been sent by Collector to Magistrate. Bar has also been created under Section 47-D. On Courts having jurisdiction to try the offence for disposal of property seized after intimation has been received from Collector. Proceedings for confiscation and trial has to proceed simultaneous. Act gives exclusive jurisdiction to Collector to pass order of confiscation and Magistrate has to wait for passing order of confiscation if Collector is seized with the matter, therefore, it is clear that Collector can pass order of confiscation even if trial is pending before criminal Court. Collector is not dependent on the order passed by trial Court for passing order of confiscation”.

(ii) In the case of **Vijay vs. State of M.P. and others**, passed in M.P. No.2141/2023 dated 2.8.2023:-

“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.”

(iii) In the case of **Madduri Nagendra vs. State of M.P. and others**, passed in W.P. No.21818/2023 dated 17.10.2023:-

“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.”

(iv) In the case of **Radha Gupta vs. State of M.P. and others**, passed in W.P. No.7695/2024 dated 10.4.2024:-

“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.

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 ipso facto render the order of confiscation bad.”

9. In view of conflicting views of the Coordinate Benches of similar strength, I deem it proper to grant the interim relief to the petitioner by way of issuance of directions to the Collector, District Narsinghpur to release the vehicle in question on supurdginama upon execution of supurdginama and furnishing the security equivalent to the value of the vehicle to be decided by the Collector. Upon furnishing the suprudginama and security, the vehicle will be released on the terms, which will be decided by the Collector, District Narsinghpur. This interim order shall remain in force, till disposal of this petition.

10. It is apposite to reproduce the provision of Section 47(A) of the Act, 1915, which reproduce 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 officer, 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 expedient 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 34 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;

(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;

(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.”

11. In the present matter, the confiscating proceedings were initiated under Section 47-A of the Act during the pendency of the trial. However, the present petitioner is not accused in the criminal case. Section 47-A of the Excise Act empowers the Seizing Officer to report the matter to the Authorized Officer for the purpose of confiscation of the article etc. including the vehicle and sub-section (2) of Section 47-A of the Act empowers the Collector to pass the order of confiscation, after following the due process enumerated in sub-section (3). Section 47 of the Act provides that where in any case tried by the Magistrate, the Magistrate may confiscate the article including vehicle under Section 46 of the Act provided that the Magistrate has not received any intimation under clause (a) of sub-section (3) of Section 47-A and if any intimation has been received by the Magistrate, order of confiscation shall not be passed by Magistrate till proceedings pending before Collector for confiscation and if Collector has ordered confiscation of the same under sub-section (2) of Section 47-A of the Act, the Magistrate shall not pass any order in this regard. The Magistrate may pass order for confiscation at the time of passing the final judgment and if at the time of passing the final judgment, it is reported to the Magistrate that the article including the vehicle has already been confiscated by the Collector under Section 47 (A) (2), the Magistrate will not pass any order of confiscation. Meaning thereby,

the Collector is empowered to continue the parallel proceeding of confiscation and pass the order of confiscation even during the pendency of criminal case and if no order of confiscation is passed by the Collector and proceedings are not pending before the Collector, then only the Magistrate may pass the order of confiscation, in accordance with Section 46 and 47(A) of the Act, 1915.

12. The embargo is in respect of exercise of powers under Section 46 and 47 of the Act, 1915 to wait till the final decision of criminal trial but no such embargo is there in respect of Section 47-A of the Act. Proceedings for confiscation and trial has to proceed simultaneously and Collector is not under obligation to wait till final disposal of criminal case before passing order of confiscation. Therefore, in view of this Court, judgment delivered by Apex Court in the matter of **Madhukar Rao (supra)** is not applicable to the confiscation proceeding arising out of Section 47-A of the Act as the same provides a complete procedure for confiscation of the vehicles, which has no connectivity with the pending criminal proceedings.

13. The discussion by the Coordinate Bench in the matter of Vijay (supra) appears to be more authoritative as in the said case the coordinate bench after considering the judgment of Madhukar Rao (supra) and the provisions of Section 39(1)(D) of Wild Life Protection Act, held that, the provisions of M.P. Excise Act are different then the provisions of Wild Life Protection Act and therefore, the order passed by the Full Bench in the matter of Madhukar Rao (supra) upheld by Apex Court, is not applicable to the cases of the Act of 1915 as the same is entirely different. Whereas, in the other cases the coordinate benches have held that, the decision of Apex Court delivered in the

matter of Madhukar Rao (supra) are squarely applicable to the cases of Section 47(A) of the Act, 1915. However, the other judgments passed by the coordinate benches in the matter of Sheikh Kalam (supra), Suresh (supra), Akash Raikwar (supra) were not considered by the coordinate bench at the time of passing the order in the matter of Vijay (supra) while the strength of the benches are same and therefore, after recording the different view, the same could have been referred to Hon'ble the Chief Justice.

14. It appears that there are conflicting views of the Coordinate Benches of the same strength and without considering the reasons assigned by the other Coordinate Benches, some orders have been passed by the Coordinate Bench, which are not in consonance with the *doctrine of stare decisis* and therefore, the subsequent order wherein the earlier orders of the Coordinate Bench of same strength were not considered or discussed, has not delivered any binding precedent. If the earlier order of Coordinate Bench of the same strength is not considered or discussed, then the subsequent order amounts to *per incuriam* and if these orders are allowed to hold, the following consequences may arise:-

- (i) As there are conflicting dictum by the Coordinate Benches of the same strength, it may lead to anomalous situation for the subordinate Courts and the Confiscating Authorities.
- (ii) This will give free hands to Confiscating Authorities to follow the dictum of any Bench, which suits to them.
- (iii) Since the issues involved have some serious consequences and are of public importance, and there should not be conflicting views of the different Courts.

15. In the view of this Court, following questions emerge for decision:-

(A) Whether, any articles or vehicles can be confiscated under Section 47(A) of the M.P. Excise Act, 1915 during the pendency of criminal trial initiated against the offenders before the Judicial Courts?

(B) Whether, the dictum laid down by the Apex Court in the matter of Madhukar Rao vs. State of M.P., (2008) 14 SCC 624 is applicable to the cases registered under Section 34(2) and the Confiscation proceedings under Section 47(A) of the Act, 1915?

(C) Whether, the confiscation proceedings can go on parallel to the criminal proceedings and Collector can pass the order of Confiscation irrespective to the pendency of criminal case?

(D) Whether, the Coordinate Benches were justified in delivering the conflicting views without referring the matter under Chapter IV Rule 8(3) of the High Court Rules, 2008 and the conflicting view in the absence of any reference can be considered as binding precedent, in view of the *doctrine of stare decisis*?

(E) Whether, writ petition can be entertained against the order of confiscation, in view of judgment of Apex Court in the matter of **Whirlpool Corporation vs. Registrar of Trade Marks, (1998) 8 SCC 1** and judgment of Division Bench of this Court in the matter of **Alok Kumar Choubey vs. State of M.P., (2021) 1 MPLJ 348**, on the ground that Collector had no authority to pass any order of confiscation during the pendency of criminal case?

16. This Court deem it proper to make a reference to Hon'ble the Chief Justice with a request under the provisions of Chapter IV Rule

8(3) of the High Court of Madhya Pradesh Rules, 2008 to refer the issue involved in cases to Larger Bench.

17. Registry to place the papers before Hon'ble the Chief Justice so that appropriate decision can be taken for the constitution of a Larger Bench in this case for adjudication of the points on which contrary opinions have been expressed by different coordinate Benches.

(VINAY SARAF)
JUDGE

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