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IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 5221 of 2023

(Arising out of the Order dated 10.10.2023 passed by Ld. NGN-cum-JMFC, Rajnagar in the Criminal Misc. Case No. 41/23 arising out of 2(a) CC No. 12/23 in connection with PR No. 149 of 2022-23 dt. 07.03.2023 of Pattamundai Excise Station registered u/s. 52(a) of Odisha Excise Act)

Manjulata Bhuyan

....

Petitioner

Mr. P. K. Mishra, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. D. Biswal, ASC

P R E S E N T :

HONOURABLE SHRI JUSTICE CHITTARANJAN DASH

★ **Date of Judgment: 08.01.2024** ★

1. Heard learned counsel for the Petitioner and the State.
2. By means of the present application, the Petitioner seeks the indulgence of this Court to quash the order dated 10.10.2023 passed by the learned Session Judge Kendrapara in Criminal Revision No. 24/23 affirming the order dt. 04.05.2023 passed by the Ld. NGN-cum-JMFC, Rajnagar in Crl. Misc. case No. 41/23 arising out of 2(a) CC No. 12/23 in connection with PR No. 149 of 2022-23 dt. 07.03.2023 of Pattamundai Excise Station registered u/s. 52(a) of Odisha Excise Act (herein referred to as "Act") under Annexure-1 regarding interim release of TVS Jupiter Base Refresh BSVI bearing Registration No.OD-29K-4120, Engine No. GGSHN1118984 and Chassis

No.MD62EG52N1H19754 seized in connection with the PR No. stated above.

3. The brief facts of the case are that the petitioner had filed a case bearing CrI. Misc. Case No. 41/23 arising out of 2(a) CC No. 12/23 in the court of Ld. NGN-cum-JMFC, Rajnagar for interim release of said scooty and moved an application u/s 457 of the CrPC on 18.03.2023 before the Learned JMFC, Rajnagar who, by the impugned order rejected her prayer for interim custody of the scooty mainly on the ground that a confiscation proceeding in respect of the same, as mandated in section 71 of the Act has since been initiated. On 05.03.2023, Pattamundai Excise Station on getting information seized one TVS Jupiter Base Refresh BSVI bearing Registration No. OD-29K-4120, Engine No. GGSHN1118984 and Chassis No. MD62EG52N1H19754 from the nephew of the petitioner with 24 litres beer i.e. 07.200 litres of IMFL and a case was registered u/s. 52(a) Odisha Excise Act in connection with PR No. 149 of 2022-23 dt. 07.03.2023 of Pattamundai Excise Station corresponding to 2(a) CC No. 12/23 pending in the court of Ld. NGN-cum-JMFC, Rajnagar. The petitioner is the registered owner of aforesaid vehicle and she has not arrayed as an accused in the aforesaid case. The petitioner received summon from the OIC, Pattamundai Excise Station to produce documents and the confiscation proceeding has been initiated in respect of the said Scooty by the Authorised Officer-cum-Superintendent of Excise, Kendrapada.

4. The learned counsel for the petitioner states that the seized vehicle, according to the petitioner is now kept in the Excise Office premises and is not being taken care of, for which there every chance of its machineries is being removed. The vehicle being exposed to open air, it

is submitted, there is possibility of the deterioration of its quality and performance which would cause loss to her. It is further submitted that the petitioner is not arraigned as an accused and had no knowledge about the user of the Scooty in transportation of any contraband articles. The petitioner, hence, being the registered owner is entitled for its interim custody, especially when the confiscation proceeding, claimed by the prosecution has not been properly and duly initiated. The counsel has relied on the judgments rendered by the Hon'ble Court in the case of *Priyabrata Sahoo vs. State of Odisha* reported in 2021 (1) OLR-412 and *Sudarbhai Ambala Desai vs. State of Gujrat* reported in (2003) 24 OCR (SC) 444.

5. Learned counsel for the State has supported the correctness of the impugned order contending that by the time the petitioner had moved the application u/s 457 of the Cr.P.C. before the learned court below, the confiscation proceeding had been already initiated and therefore, section 72 of the Act is a bar that prevents the petitioner from approaching the learned JMFC for taking interim custody of the scooty despite the fact that she is not directly connected with the transportation of the contraband article therein.

6. Heard Mr. P. K. Mishra, learned Counsel appearing for the petitioner, Mr. D. Biswal, learned Counsel for the State and perused the case records. It is a prima facie view that the Scooty in question has been seized on the ground of illegal transportation of 24 litres of beer and was intercepted on 07.03.2023 by the patrol team led by the OIC, Pattamundai Excise Station. The rider of the Scooty namely Bikash Chandra Bhuyan, as is evident from the LCR was booked u/s 52(a) of the Act. There is also no doubt to the fact that the petitioner is the registered owner of the said Scooty. It is so apparent from the report

dated 24.03.2023 of the OIC, Pattamundai Excise Station and the copies of the RC particulars as well as Insurance Policy and the invoice dated 15.09.2022 issued by Shree Mahaveer Motors, Rajnagar in her name. There is also no dispute that the petitioner is not arraigned as an accused by the prosecution in 2(a) CC No. 12 of 2023.

7. It is also evident from the report of the OIC. Pattamundai Excise Station that on 15.03.2023, the seized vehicle was produced before the Authorised Officer-cum-Superintendent of Excise, Kendrapada for the initiation of confiscation proceeding as per the requirement of section 71 of the Act and was thus initiated by the Authorised Officer-cum-Superintendent of Excise, Kendrapada (Annexure -3). In response of the Session court's order, the OIC of Pattamundai Excise Station has submitted a status report on the confiscation proceeding annexing letter no. 3090 dated 26.09.2023 of the Authorised Officer.

8. Section 72 of the Act reads as follows:

Bar of other proceedings during pendency of confiscation proceedings: Notwithstanding anything contained in the Code of Criminal Procedure 2 of 1974, when the Collector or the Authorized Officer or the Appellate Authority is seized with the matter of confiscation of any seized property under Section 71, no Court shall entertain any application in respect of the same property and the jurisdiction of the Collector or the Authorized Officer or the Appellant Authority with regard to the disposal of the same shall be exclusive.

The bar as contemplated under Section 72 of the Act comes into play when the Collector or the Authorized

Officer or the Appellate Authority has seized the matter of confiscation of any property seized under Section 71 of the Act. The issue where confiscation proceedings in relation to a vehicle are pending under Section 72 of the Excise Act with respect to a crime registered under the said Act, the Magistrate has jurisdiction under Section 451 Cr.P.C. to release a seized vehicle pending investigation or trial notwithstanding the pendency of confiscation proceedings before the Collector.

According to ***Santosh Kumar Das & Somanath Jena Vs. State of Orissa (CRLMC No.2416 of 2021)*** – *As per Section 71(3), the property so seized after being produced before the Collector or the Authorized Officer by the seizing authority, order of confiscation is passed but by following a procedure as specified in sub-section (4) thereof. If the seizing officer requisitioned the authority competent to confiscate the seized property, consequent upon which, a proceeding is initiated by the Collector or the Authorized Officer as per Section 71 of the Excise Act, it would be said that the confiscating authority is seized of the matter for the purpose of Section 72.*

9. In the decision of this Court in ***Kalpana Sahoo Vs. State of Odisha (CRMLC 123 and 197 of 2019)***, it was thereby directed that *the learned Magistrates are directed to release the vehicles in question in the interim custody of the respective applicants on being satisfied about their ownership, and on obtaining appropriate security from them besides an*

undertaking from them in shape of affidavit that they shall produce their respective vehicles before the competent authority as and when so required for the purpose of confiscation proceeding, and shall not transfer the same pending closure of the confiscation proceeding and/or trial of the concerned cases, and an endorsement in that regard shall also be made in the respective R.C. Books of the vehicles.

In the event of an application being filed before the Magistrate seeking for custody of vehicle allegedly involved in a case under the Act, if the Magistrate after giving an opportunity of hearing to the Investigating Officer / the Officer who effected the seizure, is satisfied that the seized motorcycle has not been produced before the Collector or Authorized Officer, and no confiscation proceeding has been initiated as per the provisions of the Act, he shall pass appropriate order regarding interim custody of the motorcycle in the light of the direction given in the case.

10. The factual scenario in the instant case being different, the ratio of the aforesaid decision cannot be applied because in the present the procedure has been rightly followed and the initiation of confiscation proceeding is begun by the Authorised Officer-cum-Superintendent of Excise, Kendrapada.

11. In the case of ***Ratnakar Behera Vs. State of Odisha (CRLMC No. 985 of 2020)***, interim release of vehicle was allowed with conditions relying upon the judgments of Allahabad High Court in the cases of Kamal Jeet Singh v. State 1986 UPCri 50, Mohd. Hanif v. State of U.P. 1983 UPCr 239 and Jai Prakash Sharma vs. State of U.P. 1992 AWC 1744 stating that *mere initiation of confiscation proceeding cannot act as a bar for delivery of the vehicle to its owner when the owner of the registered vehicle has not been found guilty.*

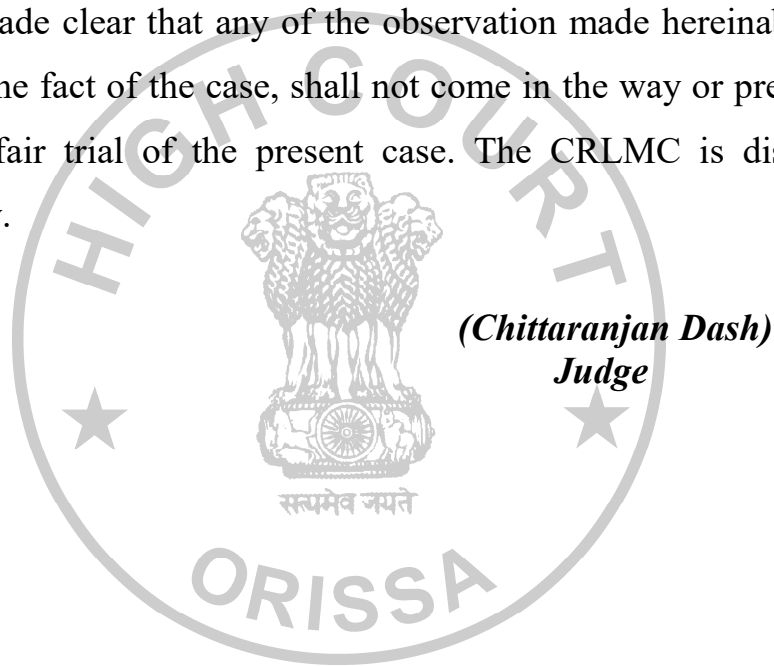
However, in the case of Ratnakar Behera (*supra*), the former Inspector of Excise had initiated the proceedings unjustly. The provision of Section 71 of the Odisha Excise Act provides that the Investigating Officer must produce the seized vehicle before the Superintendent of Excise, Collector (section 71(2)) or the Authorised Officer for the initiation of the confiscation proceedings. The Inspector of Excise is not empowered to initiate a confiscation proceeding as provided in the Act.

12. If Section 71(1) and sub-section (3) thereof are read conjointly and properly understood, it would mean that a property seized in relation to an excise case shall be liable to confiscation and if produced before the Collector or the Authorized Officer, order of confiscation shall be passed after due procedure followed with an opportunity of hearing provided to the person from whom it was seized. There is a due process by which a seized property is produced before the authority, who thereafter, proceeds to confiscate it after hearing the other side. In the instant case, it can be affirmed from the report of the OIC, Pattamundai Excise Station that on 15.03.2023, the seized vehicle was produced before the Authorised Officer-cum-Superintendent of Excise, Kendrapada for the initiation of confiscation proceeding as per the requirement of section 71 of the Act and was thus initiated by the Authorised Officer-cum-Superintendent of Excise, Kendrapada (Annexure-3). In response of the Session court's order, the OIC of Pattamundai Excise Station has submitted a status report on the confiscation proceeding annexing letter no. 3090 dated 26.09.2023 of the Authorised Officer. Since, it can be confirmed from Annexure - 3 that the confiscation proceeding is not only in the stage of initiation in respect of the concerned vehicle but it can be said to be in progress because a summons had been issued to the

Petitioner, it must be held that the court below did not err in applying the bar contained in Section 72 of the Excise Act.

13. Hence, the petition stands dismissed. Consequently, in order to ensure release of the seized vehicles, for the reasons discussed herein above, the petitioners shall have to approach the Authorised Officer-cum-Superintendent of Excise, Kendrapada and participate therein by taking such defence as available to them in terms of Section 71(5) of the Excise Act.

14. It is made clear that any of the observation made hereinabove with respect to the fact of the case, shall not come in the way or prejudicially affect the fair trial of the present case. The CRLMC is disposed of accordingly.



Bijay