

(2022) 05 CHH CK 0068

In the Chhattisgarh High Court

Case No : Criminal Miscellaneous Petition No. 398 of 2022

Ashok Mandhani

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 02-05-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 457
Cigarettes And Other Tobacco Products (Prohibition Of Advertisement And Regulation Of Trade And Commerce, Production, Supply And Distribution) Act, 2003 — Section 12, 13, 13(2), 14, 18

Citation : (2022) 05 CHH CK 0068

Hon'ble Judges : Goutam Bhaduri, J

Bench : Single Bench

Advocate : Vinay Nagdev, Arjit Tiwari

Final Decision : Allowed

Judgement

Heard.

1. This petition is against the order dated 15/02/2022 whereby in a revision an order of rejection of custody of goods under Section 457 of the Cr.P.C. was affirmed. In a result, the custody of the goods seized were not handed over to the petitioner.

2. Learned counsel for the petitioner would submit that on a raid being conducted on 10/11/2021 the articles i.e. Hukka Flavour (Royals Smokin-Ki.V. Blast-1000 packet, Apple R.S.N.-Flavoured, Molases-1000 packet, Hukka Flavour (Royals Smokin-U.S. Commissioner)-1000 Packet, Hukka Pot 1100 pieces and Hukka pipe 1000 pieces total cost 25 lakhs were seized. He would submit that the said goods were illegally seized and provisions of the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (hereinafter referred to as 'the Act of 2003') were not followed. He would further submit that the authorities were under bounden duty to act within a specified time, which having

not been done, no purpose would be served to keep the goods with the police authorities, as such the goods so seized may be directed to be returned to the petitioner and the petitioner is ready and willing to furnish the security for the same.

3. Per contra, learned State counsel would submit that the tobacco were being used in contravention to the Act of 2003 and therefore the seizure was rightly made and they would be required during the evidence, as such the custody of the goods may not be handed over to the petitioner.

4. I have heard learned counsel for the parties, perused the documents and the reply filed by the State.

5. On a raid being conducted on 10/11/2021, from the premises of the petitioner i.e. House No. M-34 articles Hukka Flavour (Royals Smokin-Ki.V. Blast-1000 packet, Apple R.S.N.-Flavoured, Molasses-1000 packet, Hukka Flavour (Royals Smokin-U.S.Commissioner)-1000 Packet, Hukka Pot 1100 pieces and Hukka pipe 1000 pieces were seized. The documents attached with the petition would show that the seizure was effected in exercise of the power under Section 12 and 13 of the Act of 2003. Section 12 of the Act of 2003 gives the power of entry and search whereas the power to seize is governed by section 13 of the Act of 2003. In the instant case, since the issue is post entry and search and effect the seizure, therefore section 13 of the Act of 2003 would be relevant which is reproduced hereunder:-

"13. Power to seize.-(1) If any police officer, not below the rank of a sub-inspector or any officer of State Food or Drug Administration or any other officer, holding the equivalent rank being not below the rank of Sub-Inspector of Police, authorised by the Central Government or by the State Government, has any reason to believe that,-

(a) in respect of any package of cigarettes or any other tobacco products, or

(b) in respect of any advertisement of cigarettes or any other tobacco products, the provisions of this Act have been, or are being, contravened, he may seize such package or advertisement material in the manner prescribed.

(2) No package of cigarettes or any other tobacco products or advertisement material seized under clause (a) of sub-section (1) shall be retained by the officer who seized the package or advertisement material for a period exceeding ninety days from the date of the seizure unless the approval of the District Judge, within the local limits of whose jurisdiction such seizure was made, has been obtained for such retention."

6. Reading of section 13 of the Act of 2003 would show that sub-section (2) mandates that the package of cigarettes or other tobacco products or advertisement material shall not be retained by the officer who seized the package for a period exceeding ninety days from the date of the seizure unless the approval of the District Judge, within the local limits of whose jurisdiction

such seizure was made, has been obtained for such retention. The reply of the State is silent as to whether statutory mandate were followed or not. State counsel on instruction would submit that said sanction under Section 13(2) of the Act of 2003 was never obtained.

7. The confiscation of package is further governed by Section 14 and thereafter option also exist to pay cost in lieu of the confiscation. Further the Section 18 mandates that before such confiscation proceeding are being followed, opportunity to the owner of the seized packet should be given and further time limit is also fixed. Reading of the Section 13 to Section 18 of the Act of 2003, scheme and object of the Act would show that the legislature wanted to curb the spreading of tobacco and its product but at the same time certain obligations are also imposed on the officers who seized those articles. Time limit under the Act of 2003 has been fixed that in case of tobacco so seized shall be dealt with within an outer limit of 90 days and if it exceeds, then the permission of the District Judge should be required. Further Section 18 which governs the confiscation that also mandates that if the notice of confiscation is not given within a period of 90 days from the date of seizure of the packet, cigarettes or any other tobacco products, such packet shall be returned, after expiry of that period, to the owner or the person from whose possession it was seized.

8. Primary examination of the facts would show that there has been utter failure on the part of the respondent to follow the mandate of Section 13(2) or Section 18 of the Act of 2003 to obtain the approval of District Judge. In respect of the Hukka and the pipe, the analogy which has been laid by the Supreme Court in case of *Sunderbhai Ambalal Desai Vs. State of Gujarat* reported in (2002) 10 SCC 283 would apply to the said product of Hukka and the pipes and keeping it at stationary state would hardly serve any purpose and instead it will lose its value and would decay. Reply of the State is also silent as to whether confiscation proceeding has started or not.

9. Under the circumstances, it is directed that the interim custody of the goods so seized i.e. Hukka Flavour (Royals Smokin-Ki.V. Blast-1000 packet, Apple R.S.N.-Flavoured, Molases-1000 packet, Hukka Flavour (Royals Smokin-U.S.Commissioner)-1000 Packet, Hukka Pot 1100 pieces and Hukka pipe 1000 pieces are required to be returned to the petitioner. In a result, order dated 15/02/2022 and the order dated 21/12/2021 is set aside. The petition is allowed and the goods are directed to be released to the petitioner on the following conditions.

1. Before release of the said goods proper panchnama be prepared.
2. Photographs of the goods shall be taken and bond shall be executed that the article Hukka and the pipe shall be produced, if required at the time of trial. In respect of the tobacco, after keeping the samples of each lot of each 500 gm, the rest of tobacco be handed over to the petitioner.
3. Proper security i.e. personal bond of Rs. 25 lakhs and like sum of local surety

be obtained before release of the goods as evaluated by petitioner.

4. Attested photographs of goods be kept which can be used during the trial.