

**(1987) 06 MP CK 0002**

**In the Madhya Pradesh High Court**

**Case No : Miscellaneous Cr. C. No. 710 of 1987**

Kanhaiyalal

APPELLANT

Vs

Govt. of India

RESPONDENT

**Date of Decision : 11-06-1987**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 482

**Citation : (1987) JLJ 586 : (1988) MPLJ 583**

**Hon'ble Judges : V.D. Gyani, J**

**Bench : Single Bench**

**Advocate : V.S. Chabra, for the Appellant; G.S. Solanki, Govt. Advocate, for the Respondent**

## **Judgement**

V.D. Gyani, J.

Shri V. S. Chhabra for the applicant, Shri Solanki, Govt Advocate for the State. They are heard on an application u/s 482, Criminal Procedure Code for return of the motor cycle seized.

Case diary produced and perused.

The Narcotics Inspector is also present in person.

He is also heard.

By this application the petitioner prays for release of his motor-cycle, bearing registration No. MPU-4738, of which he is the registered owner.

Admittedly the motorcycle in question was ordered to be released in favour of the applicant by the trial Court, but when the applicant after fulfilling the terms imposed by the trial Court was taking it out it was seized by the Narcotics Inspector. Although the Narcotics Inspector present denied having any knowledge about the release order by the learned Magistrate, but this denial does not help him. The manner in which the above named Inspector effected the seizure of the motor cycle is indicative of the lack of regard for the judicial orders

passed by the trial Court This tendency on the part of the officers, who are supposed to be custodians of law, needs to be curbed but also condemned. If an order passed by the competent Court is not acceptable, it does not behove any public servant to defy the order instead of taking legal steps for getting it altered or modified or corrected what happened in this case is that after having seized the motor cycle in question, the same was produced in another Court in connection with another offence. It does not appear from the record that the Inspector concerned had in fact brought to the notice of the Court that it was ordered to be released by the learned Magistrate and it was in defense of the said order, while the vehicle was being actually taken out by the applicant that it was seized.

The applicant moved the Court of Addl. Sessions Judge for release of the motor cycle, but his prayer was refused on two grounds:

(i) that it was liable to be confiscated as it was seized in connection with an offence punishable under Sections 8/18 of the Psychotropic Drugs Act and (ii) that the motor cycle was not seized from the possession of the registered owner, the applicant As such, although the applicant is a registered owner, he was not entitled to interim custody of the vehicle. Both these grounds do not justify the order passed by the Addl. Sessions Judge. Merely because a property is liable to be confiscated, it should not be released during pendency of trial, it is not a justifiable ground for refusing the interim custody of a vehicle seized. Needless to add that a vehicle is meant for user and the owner should not be deprived of such user. It is also equally true that for want of user the vehicle is likely to rot and rust. If a vehicle has been seized as an article of evidence and is liable to be confiscated, while passing an order on the question of interim custody, the primary consideration which should weigh with the court is whether when called upon the vehicle would be produced for the purposes of evidence and if in the event of an confiscation order, the same would be available for confiscation: There are numerous laws providing for confiscation of vehicles. It does not necessarily mean that vehicles must always be confiscated and there can be no order for interim custody nor does it mean that no order as regards its interim custody can be passed. Unless where are grounds to believe that the seized vehicle disjoint going to be produced when required for purposes of evidence, after affording reasonable opportunity to the person to whom the interim custody of any vehicle is given. The impugned order is silent on this aspect of the matter. The learned Judge has nowhere indicated that in case the interim custody of the vehicle is given to the registered owner, the same would not be produced when required. No such apprehension, much less reasonable ground is borne out from the impugned order. Making of sweeping generalisation to the effect that the property being liable to confiscation, it is not desirable to release it even for interim custody. In order to secure and satisfy this purpose, conditions can be imposed while passing an order as regards interim custody. But it would not be proper to refuse interim custody of any property solely on the basis that it is liable to be confiscated, as has been done in the instant case. Conditions could

have been imposed by the learned Judge to safeguard the interests of the State in case an order of confiscation or forfeiture was passed. Even in such a situation the guiding principle would be, whether the person applying for interim custody, in case of such custody being granted, would not produce the same in the event an order of forfeiture is proposed to be passed. Such a person can be bound down. In any case, the refusal must not be mechanical refusal. The learned Judge does not appear to be right in saying that the release order was passed *ex parte*. In fact the Narcotics Inspector was noticed and he did appear on the preceding date. It cannot be said that the order passed by the Magistrate was *ex parte*.

In the circumstances the impugned order deserves to be set aside and is accordingly set aside. It is directed that the vehicle in question be released and be given in interim custody of the applicant, who is the registered owner of the same on condition that he Executes a personal bond in a sum of Rs. 5000/- (Rupees five thousand) with one surety in like amount to the satisfaction of the Special Judge (Addl. Sessions Judge), Shajapur before whom the trial is pending and before whom the vehicle is produced, thereby undertaking to produce the vehicle in question at the time of recording of evidence and also undertaking to comply with any direction, if made by the Court while passing a final order as regards confiscation or forfeiture of the vehicle.

C.C. on payment of usual charges today.