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MUSTAFA

v.

STATE OF UTTAR PRADESH & ORS.

(Civil Appeal No. 6438 of 2019)

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AUGUST 20, 2019

[L. NAGESWARA RAO AND HEMANT GUPTA, JJ.]

- United Provinces Excise Act, 1910 – ss. 60 and 72 – Jurisdiction of Collector to order confiscation of vehicle – A FIR was registered for offences u/s.60 & 72 of the Act and ss.420, 467, 468 and 471 of IPC in respect of seizure of 154 cartons of illicit liquor, one 0.315 bore country made pistol with two 0.315 bore live cartridges, by a team of Excise Department and the police officials – A notice was served upon the appellant by the District Magistrate, who was also the Collector of the district to show cause as to why the seized truck be not confiscated – Pursuant thereto, the District Magistrate passed an order of confiscation and auction of vehicle – Aggrieved, appellant filed appeal before the District Judge, which was dismissed – Challenge to the said order before the High Court was also unsuccessful – On appeal before the Supreme Court, the appellant contended that since FIR was registered in respect of transportation of illicit liquor, therefore, the Magistrate who is competent to conduct trial alone was competent to pass an order of release of vehicle – It was further contended that it is on completion of the trial; the Magistrate would pass an order of confiscation of the vehicle – Thus, Collector had no jurisdiction to pass an order of confiscation of the vehicle – Held: The confiscation of the vehicle found in illicit transportation of the liquor is an offence which can be investigated by an Excise officer as well as by a police officer – But, sub-section (2) of s.72 of the Act confers power upon the collector to order confiscation of such thing or animal ‘whether or not a prosecution for such offence has been instituted’ – Therefore, the power of the Collector to confiscate the seized thing or animal is independent of prosecution – Also, the proviso to sub-section (2) of Section 72 of the Act gives an option to the owner to pay such fine as the Collector thinks adequate not exceeding its market value in lieu of its confiscation – It, thus, transpires that it is*

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the Collector who has been conferred exclusive jurisdiction to order confiscation of a thing or animal – Further, the criminal court before whom the prosecution is lodged, will not have jurisdiction to release anything or animal whether interim or final as the Act in question has provisions contrary to the provisions contained in the Code of Criminal Procedure – In view thereof, there is no error in the order passed by the High Court regarding the jurisdiction of the Collector to order confiscation – However, matter remitted back to the High Court to exercise the power of judicial review over the order of confiscation passed by the Collector and affirmed by the District Judge.

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United Provinces Excise Act, 1910 – Code of Criminal Procedure, 1973 – Procedure of confiscation of vehicle – Held: The offences under the Act in terms of sub-section (2) of s. 4 of the Code are to be dealt with according to the provisions of the Code but subject to the provisions of the Act, 1910 regulating the manner or place of investigating, inquiring into, trying or dealing with such offences – Since the procedure of confiscation of the vehicle is prescribed under the Act, 1910 it is the provision of the Act which will be applicable and not Chapter XXXIV of the Code – S. 5 of the Code saves special or local laws or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

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Disposing of the appeal, the Court

HELD: 1. The proviso to sub-section (2) of Section 72 of the United Provinces Excise Act, 1910 gives an option to the owner to pay such fine as the Collector thinks adequate not exceeding its market value in lieu of its confiscation. It, thus, transpires that it is the Collector who has been conferred exclusive jurisdiction to order confiscation of a thing or animal. The Collector has been further empowered to impose fine not exceeding the market value of the thing on the date of seizure. Thus, the power of confiscation of a vehicle or a thing is absolutely vested with the Collector except in certain circumstances, instead of confiscation, the fine, not exceeding the market value, can also be imposed but by the Collector alone. [Para 16] [768-D-E]

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- A 2. Sub-section (3) of Section 72 of the Act is exception to sub-section (2) wherein, on receiving report of seizure or on inspection of the seized things, including any animal, cart, vessel or other conveyance, which are subject to speedy wear and tear or natural decay or it is expedient in public interest to do so, the Collector may order such things or animal, except an intoxicant, to be sold by auction or otherwise. Therefore, in case any seized thing is subject to speedy wear and tear or natural decay, the Collector is empowered to sell the same by public auction. The power to sell the thing or animal pending confiscation proceedings is also contemplated if it is expedient in public interest to do so.
 - B Such provision empowers the Collector to order the sale of the vehicle or animal if he is satisfied that it is expedient in public interest even before an order of confiscation is passed by him. [Para 17] [768-F-G]
3. In terms of Section 4 of the Code of Criminal Procedure,
- D 1973 trial of offences under IPC are to be investigated, inquired into, tried, and otherwise dealt with according to the provisions contained in the Code. It further provides that all offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. The offences under the Act in terms of sub-section (2) of Section 4 of the Code are to be dealt with according to the provisions of the Code but subject to the provisions of the Act regulating the manner or place of investigating, inquiring into, trying or dealing with such offences.
 - E Since the procedure of confiscation of the vehicle is prescribed under the Act, it is the provision of the Act which will be applicable and not Chapter XXXIV of the Code. Section 5 of the Code saves special or local laws or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force. [Para 21] [769-G-H; 770-A-B]

4. The confiscation of a vehicle found in illicit transportation of the liquor is an offence which can be investigated by an Excise Officer as well as by a Police Officer. But the exclusive power of

confiscation is vested with the Collector in terms of sub-section (2) of Section 72 of the Act. The sale proceeds of seized things or Animal which are subject to speedy wear and tear or natural decay, if sold, are required to be paid to the person found entitled thereto in terms of sub-sections (4) and (8) of Section 72 of the Act. [Para 26] [771-G-H; 772-A]

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5. Sub-section (9) of Section 72 of the Act clarifies that no order of confiscation made by the Collector shall prevent the infliction of any punishment to which the person affected thereby may be liable under this Act. Thus, the punishment consequent to the prosecution is distinct from the order of confiscation passed by the Collector. [Para 27] [772-B]

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6. After examining the provisions of the Act, this Court holds that the Collector has exclusive jurisdiction to confiscate the vehicles and in case the seized things are subject to speedy wear and tear or natural decay, he may order to sell the same in the manner prescribed under sub-section (3) of Section 72 of the Act. Sub-section (4) deals with distribution of sale proceeds when the seized thing is sold which is subject to wear and tear and natural decay or when it is expedient in public interest to do so. Sub-section (8) of Section 72 of the Act deals with a situation where a prosecution of an offence is instituted in relation to which confiscation was ordered, the thing or animal shall be disposed of subject to the provisions of sub-section (4) of Section 72 of the Act in accordance with the order of the Court. The order of the Court in sub-section (8) of Section 72 of the Act is after conclusion of the prosecution which is different from the seized things which are subject to speedy wear and tear or natural decay as contemplated by sub-section (3) of Section 72 of the Act. [Para 30] [772-H; 773-A-C]

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Yogendra Kumar Jaiswal & Ors. v. State of Bihar & Ors. (2016) 3 SCC 183 : [2015] 14 SCR 1037 ; State (NCT of Delhi) v. Narendra (2014) 13 SCC 100 : [2014] 1 SCR 109 ; State of Karnataka v. K. A. Kunchindammed (2002) 9 SCC 90 : [2002] 3 SCR 162 – relied on.

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- A *State of Madhya Pradesh & Ors. v. Madhukar Rao (2008) 14 SCC 624 : [2008] 1 SCR 413 – held inapplicable.*
State of Madhya Pradesh v. Uday Singh AIR 2019 SC 1597 ; State of Madhya Pradesh and Others v. Kallo Bai (2017) 14 SCC 502 ; Divisional Forest Officer and Another v. G. V. Sudhakar Rao and Others (1985) 4 SCC 573 : [1985] 3 Suppl. SCR 680 – referred to.
- B *Divisional Forest Officer and Another v. G. V. Sudhakar Rao and Others (1985) 4 SCC 573 : [1985] 3 Suppl. SCR 680 – referred to.*

Case Law Reference

C	[2014] 1 SCR 109 [2008] 1 SCR 413 [2015] 14 SCR 1037 AIR 2019 SC 1597 (2017) 14 SCC 502	relied on held inapplicable relied on referred to referred to	Para 8 Para 9 Para 10 Para 10 Para 15
D	[1985] 3 Suppl. SCR 680 [2002] 3 SCR 162	referred to relied on	Para 15 Para 24

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6438 of 2019.

- E From the Judgment and Order dated 30.10.2017 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 6728 of 2017.

Ms. Preetika Dwivedi, Pranav Krishna, Advs. for the Appellant.

- F Tanmaya Agarwal, Shwetank Sailakwal, Yashashvi Virendra, Wrick Chatterjee, Nipun Goel, Advs. for the Respondents.

The Judgment of the Court was delivered by

HEMANT GUPTA, J. 1. Leave granted.

- G 2. The owner of seized truck is in appeal aggrieved against an order passed by the High Court of Judicature at Allahabad on October 30, 2017, whereby the order passed by the Collector on 12.11.2016 and by the District Judge on 3.8.2017 confiscating the Vehicle for violation of Sections 60 and 72 of the United Provinces Excise Act, 1910¹, remained unsuccessful.

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¹ for short, ‘Act’

3. An FIR was lodged on November 17, 2015 for the offences under Sections 60 and 72 of the Act and Sections 420, 467, 468 and 471 of the Indian Penal Code, 1860² in respect of seizure of 154 cartons of illicit liquor, one .315 bore country made pistol with two .315 bore live cartridges, by a team of Excise Department and the Police Officials. The investigation was taken up by Mr. Satyaveer Singh, Sub-Inspector.

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4. On December 17, 2015, a notice was served upon the appellant by the District Magistrate, who is also the Collector of the District to show cause as to why the seized truck be not confiscated. The show cause notice in respect of the Santro Car meant for Nisar Ahmed son of Nazir was issued as to why the car be not confiscated.

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5. On an application filed by Nisar Ahmed, the Chief Judicial Magistrate, Muzaffarnagar on March 15, 2016 passed an order of release of Santro Car.

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6. The appellant filed objections before the District Magistrate on September 23, 2016 in response to the show cause notice served on him wherein the appellant sought release of the Vehicle as it is sole means of his livelihood and that he will suffer financial loss. In pursuance of such show cause notice, the District Magistrate passed an order of confiscation and auction of both vehicles, owned by Nisar Ahmed and the Appellant, and the sale proceeds be deposited in Government treasury. However, the appellant was given an option in terms of Section 72 of the Act to pay Rs.4,50,000/- as market value of the truck. Nisar was given an option to pay Rs.1,20,000/- to seek release of the car.

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7. The appellant filed an appeal before the learned District Judge, a judicial authority appointed by the State Government, which was dismissed on August 3, 2017. Further, challenge to the said order remained unsuccessful before the High Court vide the order impugned in the present appeal.

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8. The High Court held that in terms of Section 5 of the Criminal Procedure Code, 1973³, the Act is special and local Act to deal with the properties seized under the Act, therefore, the provisions contained in the Code with regard to disposal of property can be used only to the extent they are not inconsistent with Section 72 of the Act. The High

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² for short, 'IPC'

³ for short, 'Code'

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- A Court relied upon an order passed by this Court in *State (NCT of Delhi) v. Narender*⁴.

9. Ms. Preetika Dwivedi, learned counsel for the appellant has vehemently argued that since FIR has been registered in respect of transportation of illicit liquor, therefore, the Magistrate who is competent

- B to conduct trial alone is competent to pass an order of release of vehicle. It is on completion of the trial; the Magistrate will pass an order of confiscation of the vehicle. Thus, it is argued that the Collector has no jurisdiction to pass an order of confiscation of the vehicle. Reliance is placed upon judgment in *State of Madhya Pradesh & Ors. v. Madhukar Rao*⁵. It is also argued that judgment in *Narender* is not applicable to the facts of the present case, as in the aforesaid case, the jurisdiction of all courts was specifically excluded but that is not the situation in the present case.

- D On the other hand, Mr. Tanmaya Agarwal, learned counsel for the respondents argued that confiscation of a vehicle is an independent proceeding, independent of prosecution of the offences under the IPC. The confiscation of the vehicle engaged in transportation of illicit liquor exclusively falls within the jurisdiction of the Collector in terms of the various provisions of the Act. Learned counsel relied upon judgment in *Yogendra Kumar Jaiswal & Ors. v. State of Bihar & Ors.*⁶ as also in E *The State of Madhya Pradesh v. Uday Singh*⁷.

- F 11. Before we consider respective arguments of the learned counsel for the parties, some of the provisions from the Act would be necessary to reproduce to appreciate the arguments. Chapter IX of the Act confers power on the authorised officers of the Excise Department and the competent Police Officers to investigate into the offences punishable under the Act. Section 50 of the Act confers power of arrest, seizure and detention on the specified Excise and Police Officers whereas Chapter X deals with offences and penalties which can be imposed for the violation of the provisions of the Act. Section 72 of the Act deals G with the things which are liable for confiscation. The relevant provisions read as under: -

“49. Powers of certain officers to investigate into offences

⁴ (2014) 13 SCC 100

⁵ (2008) 14 SCC 624

⁶ (2016) 3 SCC 183

H ⁷ AIR 2019 SC 1597

punishable under this Act. - (1) A police officer not below the rank of Sub-Inspector and an officer of the Excise Department not below such rank as the State Government may prescribe, may investigate into any offence punishable under this Act committed within the limits of the area in which such officer exercises jurisdiction.

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(2) Any such officer may exercise the same powers in respect of such investigation as an officer in charge of a police station may exercise in a cognizable case under the provisions of Chapter XII of the Code of Criminal Procedure, 1973, and if specially empowered in that behalf by the State Government, such officer may, without reference to a Magistrate, and for reasons to be recorded by him in writing, stop further proceedings against any person concerned or supposed to be concerned in any offence punishable under this Act into which he has investigated.

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50. Power of arrest, seizure and detention. - Any officer of the excise, police, salt, opium or land revenue department not below such rank and subject to such restrictions as the State Government may prescribe, and any other person duly empowered in this behalf, may arrest without warrant any person found committing an offence punishable under Section 60, Section 62, Section 63 or Section 65; and may seize and detain any intoxicant or other article which he has reason to believe to be liable to confiscation under this Act or other law for the time being in force relating to excise revenue; and may detain and search any person upon whom, and any vessel, vehicle, animal, package, receptacle or covering in or upon which he may have reasonable cause to suspect any such article to be.

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70. Cognizance of offence. - (1) No Magistrate shall take cognizance-

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- (a) of an offence punishable under Section 60, Section 63, Section 64-A, Section 65 except on his own knowledge or suspicion or on the complaint or report of an Excise Officer; or
- (b) of an offence punishable under Section 64, Section 66, Section 67 or Section 68 except on the complaint or report to the

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- A Collector or an Excise Officer authorised by him by a general or special order in that behalf.
- (2) Except with the special sanction of the State Government no magistrate shall take cognizance of any offence punishable under this Act, unless the prosecution is instituted within a year after the date on which the offence is alleged to have been committed.
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- 72. What things are liable to confiscation.** - (1) Whenever an offence punishable under this Act has been committed-
- C (a) every intoxicant in respect of which such offence has been committed;
- (b) every still, utensil, implement or apparatus and all materials by means of which such offence has been committed;
- D (c) every intoxicant lawfully imported, transported, manufactured, held in possession or sold along with or in addition to any intoxicant liable to confiscation under clause (a);
- (d) every receptacle, package and covering in which any intoxicant as aforesaid or any materials, still, utensil, implement or apparatus is or are found, together with the other contents (if any) of such receptacle or package;
- E (e) every animal, cart, vessel or other conveyance used in carrying such receptacle or package shall be liable to confiscation.
- (2) Where anything or animal is seized under any provision of this Act and the Collector is satisfied for reasons to be recorded that an offence has been committed due to which such thing or animal has become liable to confiscation under sub-section (1), he may order confiscation of such thing or animal "whether or not a prosecution for such offence has been instituted":
- G Provided that in the case of anything (except an intoxicant) or animal referred to in sub-section (1), the owner thereof shall be given an option to pay in lieu of its confiscation such fine as the Collector thinks adequate not exceeding its market value on the date of its seizure.
- (3) Where the Collector on receiving report of seizure or on
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inspection of the seized things, including any animal, cart, vessel or other conveyance, is of the opinion that "any such things or animal is subject to speedy wear and tear or natural decay or it is otherwise expedient in the public interest so to do", he may order such things (except an intoxicant) or animal to be sold at the market price by auction or otherwise.

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(4) Where any such things or animals is sold as aforesaid, and-

(a) no order of confiscation is ultimately passed or maintained by the Collector under sub-section (2) or on review under sub-section (6); or

(b) an order passed on appeal under sub-section (7) so requires; or

(c) in the case of a prosecution being instituted for the offence in respect of which the thing or the animal is seized, "the order of the court so requires";

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the sale proceeds after deducting the expenses of the sale shall be paid to the person found entitled thereto.

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(5) (a) No order of confiscation under this section shall be made unless the owner thereof or the person from whom it is seized is given-

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(i) a notice in writing informing him of the grounds on which such confiscation is proposed;

(ii) an opportunity of making a representation in writing within such reasonable time as may be specified in the notice; and

(iii) a reasonable opportunity of being heard in the matter.

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(b) Without prejudice to the provisions of clause (a), no order confiscating any animal, cart, vessel, or other conveyance shall be made if the owner thereof proves to the satisfaction of the Collector that it was used in carrying the contraband goods without the knowledge or connivance of the owner, his agent, if any, and the person in charge of the animal, cart, vessel or other conveyance and that each of them had taken all reasonable and necessary precautions against such use.

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(c) Where on an application in that behalf being made to the

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- A Collector within one month from any order of confiscation made under sub-section (2), or as the case may be, after issuing notice on his own motion within one month from the order under the sub-section refusing confiscation to the owner of the thing or animal seized or to the person from whose possession it was seized, to show cause why the order should not be reviewed, and after giving him a reasonable opportunity of being heard, the Collector is satisfied that the order suffers from a mistake apparent on the face of the record including any mistake of law, he may pass such order on review as he thinks fit.
 - B (6) Where on an application in that behalf being made to Collector within one month from any order of confiscation made under sub-section (2), or as the case may be, after issuing notice on his own motion within one month from the order under the sub-section refusing confiscation to the owner of the thing or animal seized or to the person from whose possession it was seized to show cause why the order should not be reviewed, and after giving him a reasonable opportunity of being heard, the Collector is satisfied that the order suffers from the mistake apparent on the face of the record including any mistake of law, he may pass such order on review as he thinks fit.
 - C (7) Any person aggrieved by an order of the confiscation under subsection (2) or sub-section (6) may, within one month from the date of the communication to him of such order, appeal to such judicial authority as the State Government may appoint in this behalf and the judicial authority shall, after giving an opportunity to the appellant to be heard, pass such order as it may think fit, confirming, modifying or annulling the order appealed against.
 - D (8) Where a prosecution is instituted for the offence in relation to which such confiscation was ordered the thing or animal "shall subject to the provisions of sub-section (4) be disposed of in accordance with the order of the Court".
 - E (9) No order of confiscation made by the Collector under this section shall prevent the infliction of any punishment to which the person affected thereby may be liable under this Act."
- (emphasis supplied)
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12. The argument of learned counsel for the appellant is based upon the expression “order of the court so requires” appearing in Section 72(4)(c) of the Act. Reliance is also placed on the language used in sub-section (8) of Section 72 of the Act contemplating that where a prosecution is instituted for an offence in relation to which such confiscation was ordered, the thing or animal shall be disposed of in accordance with the order of the court subject to the provisions of sub-section (4). However, we do not find any merit in the arguments raised.

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13. Under the Act, an Officer of the Excise Department not below the rank as the State Government may prescribe has been granted the power to investigate; to arrest and detain any intoxicant or other article which he has reason to believe to be liable to confiscation under the Act. Therefore, the power of an Excise Officer is in addition to power conferred on the Police Officer to investigate, to seize articles and vehicles involved in the commission of crime. In terms of Section 70 of the Act, no Magistrate can take cognizance except on his own knowledge or suspicion or on the complaint or report of the Excise Officer. The cognizance can also be taken on the complaint or report to the Collector or an Excise Officer authorised by him by general or special order. Sub-section (2) of Section 70 of the Act categorically puts an embargo that the Magistrate cannot take cognizance without special sanction of the State Government and unless the prosecution is instituted within a year.

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14. Section 72(1) of the Act confers power of confiscation of animal, cart, vessel or other conveyance used by means of which an offence has been committed. Sub-section (2) of Section 72 of the Act confers power upon the Collector to order confiscation of such thing or animal “whether or not a prosecution for such offence has been instituted”. Therefore, the power of the Collector to confiscate the seized thing or animal is independent of prosecution. This Court in ***Yogendra Kumar Jaiswal*** was dealing with the confiscation of property under the Orissa Special Courts Act, 2006 and the Bihar Special Courts Act, 2009. It was held that such confiscation is independent of result of prosecution under the Prevention of Corruption Act, 1988. The Court held as under:

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“146. In the case at hand, the entire proceeding is meant to arrive at the conclusion whether on the basis of the application preferred by the Public Prosecutor and the material brought on record, the whole or any other money or some of the property in

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- A question has been acquired illegally and further any money or property or both have been acquired by the means of the offence. After arriving at the said conclusion, the order of confiscation is passed. The order of confiscation is subject to appeal under Section 17 of the Orissa Act. That apart, it is provided under Section 19 where an order of confiscation made under Section 15 is modified or annulled by the High Court in appeal or where the person affected is acquitted by the Special Court, the money or property or both shall be returned to the person affected. Thus, it is basically a confiscation which is interim in nature. Therefore, it is not a punishment as envisaged in law and hence, it is difficult to accept the submission that it is a pre-trial punishment and, accordingly, we repel the said submission.

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- D 149. We have already held that confiscation is not a punishment and hence, Article 20(1) is not violated. The learned counsel for the State would lay stress on the decision in *State of A.P. v. Gandhi* [*State of A.P. v. Gandhi*, (2013) 5 SCC 111 : (2013) 2 SCC (Cri) 884]. In that case, the issue that arose for consideration was: when the disciplinary proceeding was initiated one type of punishment was imposable and when the punishment was imposed due to amendment of rule, a different punishment, which was a greater one, was imposed. The High Court opined that the punishment imposed under the amended rule amounted to imposition of two major penalties which was not there in the old rule. Dealing with the issue the Court referred to the rule that dealt with major penalties and the rule-making power. Reference was made to the decision in *Pyare Lal Sharma v. J&K Industries Ltd.* [*Pyare Lal Sharma v. J&K Industries Ltd.*, (1989) 3 SCC 448 : 1989 SCC (L&S) 484] wherein it has been stated that no one can be penalised on the ground of a conduct which was not penal on the date it was committed. Thereafter, the two-Judge Bench referred to the authority in *K. Satwant Singh v. State of Punjab* [*K. Satwant Singh v. State of Punjab*, AIR 1960 SC 266 : 1960 Cri LJ 410] wherein it has been held thus: (*Gandhi case* [*State of A.P. v. Gandhi*, (2013) 5 SCC 111 : (2013) 2 SCC (Cri) 884], SCC pp. 133-34, para 46)

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“46. ... ‘28. ... In the present case a sentence of imprisonment was, in fact, imposed and the total of fines imposed, whether described as ‘ordinary’ or ‘compulsory’, was not less than the amount of money procured by the appellant by means of his offence. Under Section 420 of the Penal Code an unlimited amount of fine could be imposed. Article 20(1) of the Constitution is in two parts. The first part prohibits a conviction of any person for any offence except for violation of law in force at the time of the commission of the act charged as an offence. The latter part of the article prohibited the imposing of a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. The offence with which the appellant had been charged was cheating punishable under Section 420 of the Penal Code which was certainly a law in force at the time of the commission of the offence. The sentence of imprisonment which was imposed upon the appellant was certainly not greater than that permitted by Section 420. The sentence of fine also was not greater than that which might have been inflicted under the law which had been in force at the time of the commission of the offence, as a fine unlimited in extent could be imposed under the section.”” (*K. Satwant Singh case [K. Satwant Singh v. State of Punjab, AIR 1960 SC 266 : 1960 Cri LJ 410] , AIR p. 275, para 28)*”

15. Recently, this Court in *Uday Singh* referred to earlier judgments of this Court in *State of Madhya Pradesh and Others v. Kallo Bai*⁸ and *Divisional Forest Officer and Another v. G V Sudhakar Rao and Others*⁹ to approve the argument that criminal proceedings are distinct from confiscation proceedings. The Court held as under:

“22. In 2017, a similar view has been taken by another two judge Bench of this Court in *Kallo Bai* (supra) while construing the provisions of the *Madhya Pradesh Van Upaj (Vyapar Viniyam) Adhiniyam, 1969*. By virtue of the amendments made to the *Adhiniyam*, Sections 15-A to 15-D were introduced to provide for confiscation proceedings in line with the provisions contained in the Forest Act as amended in relation to the State of Madhya

⁸ (2017) 14 SCC 502

⁹ (1985) 4 SCC 573

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- A Pradesh. Relying on the earlier decisions of this Court including *GV Sudhakar Rao* (*supra*), Justice NV Ramana, speaking for the two judge Bench held:
- “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.”
- B 16. The proviso to sub-section (2) of Section 72 of the Act gives an option to the owner to pay such fine as the Collector thinks adequate not exceeding its market value in lieu of its confiscation. It, thus, transpires that it is the Collector who has been conferred exclusive jurisdiction to order confiscation of a thing or animal. The Collector has been further empowered to impose fine not exceeding the market value of the thing on the date of seizure. Thus, the power of confiscation of a vehicle or a thing is absolutely vested with the Collector except in certain circumstances, instead of confiscation, the fine, not exceeding the market value, can also be imposed but by the Collector alone.
- C 17. Sub-section (3) of Section 72 of the Act is exception to sub-section (2) wherein, on receiving report of seizure or on inspection of the seized things, including any animal, cart, vessel or other conveyance, which are subject to speedy wear and tear or natural decay or it is expedient in public interest to do so, the Collector may order such things or animal, except an intoxicant, to be sold by auction or otherwise. Therefore, in case any seized thing is subject to speedy wear and tear or natural decay, the Collector is empowered to sell the same by public auction. The power to sell the thing or animal pending confiscation proceedings is also contemplated if it is expedient in public interest to do so. Such provision empowers the Collector to order the sale of the vehicle or animal if he is satisfied that it is expedient in public interest even before an order of confiscation is passed by him.
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18. The distribution of sale proceeds after the thing or animal is sold, is contemplated by sub-section (4) of Section 72 of the Act. It deals with a situation when no order of confiscation is ultimately passed or maintained by the Collector or an order passed on appeal under sub-section (7) so requires. Similar power is conferred to distribute the sale proceeds in terms of the order of the Court in case of a prosecution instituted for the offence in respect of thing or animal seized. Thus, sub-section (4) deals with the disposal of sale proceeds of the seized thing or Animal in terms of sub-section (3) of Section 72 of the Act. In other words, the sale conducted by auction or otherwise in terms of sub-section (3) is complete but the distribution of proceeds of sale alone is to be dealt with in the manner prescribed in sub-section (4) of Section 72 of the Act including an order of the Court dealing with prosecution instituted for the offence.

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19. Sub-section (5) of Section 72 of the Act deals with the procedure and the limitations on the power of the Collector to sell the seized thing including any animal, cart, vessel or other conveyance in terms of sub-section (3) of Section 72 of the Act. Sub-section (6) of Section 72 of the Act confers power of review on the Collector of an order passed under sub-section (2).

20. Sub-section (7) of Section 72 of the Act confers a right of appeal to a judicial authority, as the State Government may appoint, against an order of confiscation under sub-section (2) or sub-section (6) of Section 72 of the Act. In other words, an order of confiscation, other than in respect of seized things which are subject to speedy wear and tear or natural decay falling in sub-section (3) of Section 72 of the Act, is subject to appeal to the judicial authority. No appeal is provided in respect of an order passed under sub-section (3) of Section 72 of the Act in respect of seized things or animal which are subject to speedy wear and tear or natural decay or otherwise expedient in the public interest.

21. We find that in terms of Section 4 of the Code, trial of offences under IPC are to be investigated, inquired into, tried, and otherwise dealt with according to the provisions contained in the Code. It further provides that all offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. The offences under the Act in terms of sub-section (2)

- A of Section 4 of the Code are to be dealt with according to the provisions of the Code but subject to the provisions of the Act regulating the manner or place of investigating, inquiring into, trying or dealing with such offences. Since the procedure of confiscation of the vehicle is prescribed under the Act, it is the provision of the Act which will be applicable and not Chapter XXXIV of the Code. Section 5 of the Code saves special or local laws or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

22. However, where a prosecution is instituted for an offence in relation to which confiscation was ordered, the things or animals are to be disposed of in accordance with the order of the Court subject to provisions of sub-section (4) of Section 72 of the Act. The order passed by the Court where a prosecution is instituted for the offence, in terms of sub-section (8) of Section 72 of the Act, is subject to provisions of sub-section (4) of Section 72 of the Act. Thus, the provision again deals D with distribution of the sale proceeds after confiscation on conclusion of prosecution.

23. The power of release of the property produced before any criminal court whether interim or final in terms of Sections 451, 452 or 457 of the Code will not be available to court except the order in respect E of distribution of sale proceeds. Therefore, the power under Sections 451, 452 or 457 of the Code available to criminal court or Magistrate is inconsistent with the provisions contained in the Act regarding disposal of the property not only in respect of pending trial but also after the conclusion of the trial.

F 24. The argument raised that the judgment in *Narender* is not applicable to the present case cannot be accepted as the criminal court before whom the prosecution is lodged, will not have jurisdiction to release anything or animal whether interim or final as the Act in question has provisions contrary to the provisions contained in the Code. This Court in *Narender* relied upon the judgment in *State of Karnataka v. K. A. Kunchindammed*¹⁰ and held as under:

“13. In our opinion, the general provision of Section 451 of the Code with regard to the custody and disposal of the property or for that matter by destruction, confiscation or delivery to any person

entitled to possession thereof under Section 452 of the Code or that of Section 457 authorising a Magistrate to make an order for disposal of property, if seized by an officer and not produced before a criminal court during an inquiry or trial, however, has to yield where a statute makes a special provision with regard to its confiscation and disposal.

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14. We have referred to the scheme of the Act and from that it is evident that the vehicle seized has to be produced before the Deputy Commissioner, who in turn has been conferred with the power of its confiscation or release to its rightful owner. The requirement of production of seized property before the Deputy Commissioner under Section 59(1) of the Act is, notwithstanding anything contained in any other law, and, so also is the power of confiscation. Not only this, notwithstanding anything to the contrary contained in any other law for the time being in force, no court, in terms of Section 61 of the Act, has jurisdiction to make any order with regard to the property used in commission of any offence under the Act.

B

15. In the present case, the legislature has used a non obstante clause not only in Section 59 but also in Section 61 of the Act. As is well settled, a non obstante clause is a legislative device to give effect to the enacting part of the section in case of conflict over the provisions mentioned in the non obstante clause. Hence, Sections 451, 452 and 457 of the Code must yield to the provisions of the Act and there is no escape from the conclusion that the Magistrate or for that matter the High Court, while dealing with the case of seizure of vehicle under the Act, has any power to pass an order dealing with the interim custody of the vehicle on security or its release thereof.”

C

16. Though, Section 61 of the Delhi Excise Act, 2009 bars the jurisdiction of all Courts but, even in the absence of similar provisions in the Act, the principle laid down is applicable in the present case as the Act is inconsistent with the provisions of the Code.

D

17. The confiscation of a vehicle found in illicit transportation of the liquor is an offence which can be investigated by an Excise Officer as well as by a Police Officer. But the exclusive power of confiscation is vested with the Collector in terms of sub-section (2) of Section 72 of

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- A the Act. The sale proceeds of seized things or Animal which are subject to speedy wear and tear or natural decay, if sold, are required to be paid to the person found entitled thereto in terms of sub-sections (4) and (8) of Section 72 of the Act.

27. Sub-section (9) of Section 72 of the Act clarifies that no order B of confiscation made by the Collector shall prevent the infliction of any punishment to which the person affected thereby may be liable under this Act. Thus, the punishment consequent to the prosecution is distinct from the order of confiscation passed by the Collector.

28. In **Madhukar Rao's** case, the provisions of the Code and C that of the Wild Life (Protection) Act, 1972 were examined. The Court found 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 be quite unreasonable. The Court held that the provisions of Section 50 of the Wild Life (Protection) Act, 1972 and the amendments made D 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. The Court held as under:

E “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 F should not be released in the owner's favour during the pendency of the trial.”

G 29. We find that sub-section (3) of Section 72 of the Act confers power on the Collector for release of the vehicle if it is considered expedient in public interest apart from the fact, when anything or animal is subject to speedy wear and tear or natural decay. Therefore, the basis of the order in **Madhukar Rao** are not applicable in the case in hand.

30. After examining the provisions of the Act, we hold that the Collector has exclusive jurisdiction to confiscate the vehicles and in case the seized things are subject to speedy wear and tear or natural decay,

he may order to sell the same in the manner prescribed under sub-section (3) of Section 72 of the Act. Sub-section (4) deals with distribution of sale proceeds when the seized thing is sold which is subject to wear and tear and natural decay or when it is expedient in public interest to do so. Sub-section (8) of Section 72 of the Act deals with a situation where a prosecution of an offence is instituted in relation to which confiscation was ordered, the thing or animal shall be disposed of subject to the provisions of sub-section (4) of Section 72 of the Act in accordance with the order of the Court. The order of the Court in sub-section (8) of Section 72 of the Act is after conclusion of the prosecution which is different from the seized things which are subject to speedy wear and tear or natural decay as contemplated by sub-section (3) of Section 72 of the Act.

31. In view of the above, we do not find any error in the order passed by the High Court which may warrant interference in the present appeal. Since the High Court has decided the matter only on the question of jurisdiction of the Collector to order confiscation, the matter is remitted back to the High Court to exercise power of judicial review over the order of confiscation passed by the Collector and as affirmed by the District Judge. The appeal is disposed of accordingly.

Ankit Gyan

Appeal disposed of. E