

- 2.** In the instant case, it appears that the police personnel when they were on patrolling duty had intercepted the vehicle in question on the basis of a secret information received by them. It was alleged that the driver of the said vehicle was carrying English Liquor (1240.200 litres) worth of rupees 7 lakhs in the said vehicle without any pass or permit. The said vehicle along with the liquor was seized and the aforesaid FIR was registered against the accused Lakhabhai Khengarbhai (the son of the present appellant), and others on 29.04.2023 at the Police Station Pardi, Valasad.
- 3.** The respondent – State of Gujarat by filing the counter-affidavit has contented *inter alia* that Section 98 (2) of the Gujarat Prohibition Act 1949 (hereinafter referred to as the said ‘Act’) forbids the release of such vehicle till the final judgment of the Court, where the quantity of seized liquor is exceeding the quantity prescribed by the Rules. In the instant case, the seized quantity of liquor was 1240 litres as against the prescribed quantity of 20 litres as per the Notification dated 02.07.2019, and hence the said vehicle was liable for the confiscation and could not be released on bond or surety till the final judgment of the court.
- 4.** At the outset, it may be noted that Chapter XXXIV of Cr.P.C deals with the disposal of the property. Section 451 thereof

pertains to the order to be passed by the Criminal Court for custody and disposal of the property produced before the court pending an inquiry or trial, whereas Section 452 pertains to the order to be passed for the disposal or confiscation of the property at the conclusion of the trial. Section 451 reads as under: -

“451. Order for custody and disposal of property pending trial in certain cases. —

When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation. —For the purposes of this section, “property” includes—

- (a) property of any kind or document which is produced before the Court or which is in its custody;
- (b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.”

- 5.** From the bare reading of the aforesaid provision, it clearly transpires that when any property is produced before any criminal court during the course of inquiry or trial, the Court is required to make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or the trial. If the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of. Thus, it is the criminal

court, before whom the property in question is sought to be produced, would have the jurisdiction and the power to pass appropriate orders for the proper custody of such property or for selling or disposing of such property, having regard to the nature of the property in question, after recording the evidence in that regard.

- 6.** In the instant case, the appellant without approaching the concerned court under Section 451, Cr.P.C, directly approached the High Court by filing Special Criminal Application under Article 226/227 of the Constitution of India, which could not be said to be the proper course of action for getting the custody of the property i.e. the vehicle in question in this case. When there is a specific statutory provision contained in the Cr.P.C. empowering the criminal court to pass appropriate order for the proper custody and disposal of the property pending the inquiry or trial, the appellant could not have invoked the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India seeking release of his vehicle.
- 7.** The respondent State has also raised the contention that Section 98(2) of the said Act puts an embargo against release of the vehicle till the final judgment of the court if the quantity of seized liquor is more than the prescribed quantity. Since, such contention is often raised, we deem it necessary to deal with the provisions contained in Section 98 of the Act also. Section 98 reads as under: -

“98. Things liable to confiscation- (1) Whenever any offence punishable under this Act has been committed,

(a) any intoxicant, hemp, mhowra flowers, molasses, materials, still, utensil, implement or apparatus in respect of which the offence has been committed,

(b) where, in the case of an offence involving illegal possession, the offender has in his lawful possession any intoxicant, hemp, mhowra flowers or molasses other than those in respect of which an offence under this Act has been committed, the entire stock of such intoxicant, hemp, mhowra flowers, or molasses,

(c) where, in the case of an offence of illegal import, export or transport, the offender has attempted to import, export or transport any intoxicant, hemp, mhowra flowers or molasses, in contravention of the provisions of this Act, rule, regulation or order or in breach of a condition of a licence, permit, pass or authorization, the whole quantity of such intoxicant, hemp, mhowra flowers or molasses which he has attempted to import, export or transport,

(d) where, in the case of an offence of illegal sale, the offender has in his lawful possession any intoxicant, hemp, mhowra flowers or molasses other than that in respect of which an offence has been committed, the whole of such other intoxicant, hemp, mhowra flowers or molasses, shall be confiscated by the order of the Court.

(2) Any receptacle, package or covering in which any of the articles liable to confiscation under sub-section (1) is found and the other contents of such receptacle, package or covering and the animals, carts, vessels or other conveyances used in, carrying any such article shall like-wise be liable to confiscation by the order of the Court. [but it shall not be released on bond or surety till the final judgement of the Court where the quantity of the seized liquor is exceeding the quantity as may be prescribed by the rules.]”

8. Sub-section (1) of Section 98 deals with the articles liable to confiscation, whenever any offence punishable under the Act has been committed. However, sub-section (2) of Section 98 is in two parts. The first part upto the conjunctive word “but”, states about the

confiscation of the articles like receptacle, package or covering and about the confiscation of the animals, carts, vessels or any other conveyances used in carrying any such article, and the second part starting with the conjunctive word “but” is perceived to be an embargo against release of the conveyance used for carrying the article liable to be confiscated if the quantity of the seized liquor carried in such conveyance is more than the prescribed quantity, till the final judgment of the court. It may be noted that the second part of sub-section (2) of Section 98 was incorporated by the Gujarat Act 29 of 2011. However, in our opinion, this incorporation of the second part by amendment in 2011 is not very happily worded, and therefore, it is seen as an embargo.

- 9.** When the conjunction “but” is used in a provision, after the punctuation mark “comma”, it is deemed that such conjunction is used to carve out an exception or proviso to the main provision. Meaning thereby, when the entire provision is divided into two parts by using the punctuation mark “comma” followed by the conjunctive word “but”, the second part is required to be construed as an exception or proviso to the first part. However, so far as sub-section (2) of Section 98 is concerned though it is in two parts connected with the conjunctive word “but”, there is hardly any co-relation between the first part and the second part thereof. It is difficult to comprehend

the second part of sub-section (2) as an exception or proviso to the first part thereof. Since it is not happily worded, applying the doctrine of harmonious construction, we will have to harmonise the provisions contained therein with the other provisions of the Act and with the provisions contained in the Cr.P.C.

10. It is pertinent to note that the words “confiscation” or “seizure” are not defined either in the said Act or in the Cr.P.C. As per the Black’s Law Dictionary in the 11th Edition, the word “confiscation” means seizure of property for the public treasury or seizure of property by actual or supposed authority, and the word “seizure” means an act or an instance of taking possession of a person or property by legal right or process. Having regard to the said meanings, it is clear that “seizure” would be a preliminary step that would lead to confiscation of an article seized. The power to seize an article may be exercised by the statutory authorities like police personnel, prohibition officers, revenue authorities etc. in accordance with the concerned Statutes, whereas the power of confiscation is normally exercised by the jurisdictional Courts in accordance with the provisions of the concerned Statutes.

11. Coming back to the Gujarat Prohibition Act, provisions with regard to the articles liable to be confiscated and the powers of the court to confiscate such articles have been incorporated in Section 98,

whereas the powers of the authorised Prohibition Officer or police officer to arrest the offender and seize the contraband articles are contained in Section 123, followed by other provisions with regard to the procedure to be followed after the seizure of the articles as contained in Section 132 of the said act.

12. Section 132 reads as under: -

“132. Article seized - [When anything has been seized, under the provisions of this Act by a Prohibition Officer exercising powers under section 129 or by an Officer in-charge of a Police Station], or has been sent to him in accordance with the provisions of this Act, such officer, after such inquiry as may be deemed necessary, —

- (a) if it appears that such thing is required as evidence in the case of any person arrested, shall forward it to the Magistrate to whom such person is forwarded or for his appearance before whom bail has been taken,
- (b) if it appears that such thing is liable to confiscation but is not required as evidence as aforesaid, shall send it with a full report of the particulars of seizure to the Collector,
- (c) if no offence appears to have been committed shall return it to the person from whose possession it was taken.”

13. As could be seen from the bare reading of Section 132, the authorised Prohibition Officer or the officer in charge of Police Station may after such inquiry as may be necessary either (a) forward the article seized to the jurisdictional Magistrate where the person arrested is forwarded, if it appears to him that such seized article is required as an evidence; or (b) send the seized article to the collector with the full report, if it appears to him that such seized article is liable to confiscation but is not required as an evidence; or (c) return such

seized article to the person from whose possession it was taken, if no offence appears to have been committed.

14. Thus, on the conjoint reading of the provisions contained in Section 98 and 132 of the said Act and of Section 451 Cr.PC, it is discernible that all these provisions operate in different fields. Section 98 deals with the Confiscation of the Articles whenever any offence punishable under the Act has been committed. The second part of sub-section (2) thereof would come into play when the Prohibition Officer or Police Officer sends the seized article liable to be confiscated but not required as an evidence, to the Collector as per Clause (b) of Section 132. However, Section 451 of the Cr.P.C. would come into play when the article property seized during the course of inquiry or investigation is produced before the jurisdictional Court as per Clause (a) of Section 132 and the Court is called upon to pass appropriate orders for the proper custody of such article/property pending the conclusion of the inquiry or the trial.

15. So far as the facts of this case are concerned, the vehicle in question appears to have been seized as it was allegedly carrying huge quantity of liquor exceeding the prescribed quantity. However, there is nothing on record to suggest as to whether the said vehicle was sought to be produced before the concerned court so as to invoke Section 451 of Cr.P.C or whether such vehicle was forwarded by the

police officer to the concerned Magistrate as contemplated in Clause (a) of Section 132 of the said Act. In absence of any such factual material placed on record, it is difficult to release the vehicle in question in favour of the appellant.

16. It is true that when the property/vehicle is seized during the course of investigation and the same is produced before the concerned Criminal Court, it is incumbent on the part of the concerned Court to pass appropriate orders for keeping the vehicle in proper custody pending the trial. It is also true that as held by this Court in case of ***Sunderbhai Ambalal Desai vs. State of Gujarat***¹, it is of no use to keep the seized vehicles at the police stations for a long period and it is for the magistrate to pass appropriate orders for the proper custody of the said such vehicles during the pendency of the trial. However, as observed earlier, the appellant without approaching the concerned criminal court under Section 451 of the Cr.P.C seeking custody of the vehicle in question, directly approached the High Court by filing Special Criminal Application under Article 226/227 of the Constitution of India, which was not the proper course as adopted by the appellant.

¹ (2002) 10 SCC 283

17. In that view of the matter, the present Appeal deserves to be dismissed and is hereby dismissed. It is however clarified that it shall be open for the Appellant to approach the concerned Court where the property/vehicle in question is sought to be produced during the course of inquiry or trial.

18. The Appeal stands dismissed accordingly.

.....J.
[BELA M. TRIVEDI]

..... J.
[PANKAJ MITHAL]

NEW DELHI;
08th APRIL, 2024.