

**HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE**  
**BEFORE HON.MR. JUSTICE ALOK VERMA, JUDGE**

**M.Cr.C. No.6840/2016**

**Jakir Hussain**

**Vs.**

**State of Madhya Pradesh**

**O R D E R**

**Post for 31.08.2016**

**(ALOK VERMA)  
JUDGE**

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Mr. Vivek Singh, learned counsel for the applicant.

Mr. Rajiv Jain, learned counsel for the respondent.

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**O R D E R**

**( Passed on this 31<sup>st</sup> day of August, 2016 )**

This application filed under Section 482 Cr.P.C. is directed against the order passed by learned Additional Sessions Judge, Agar in criminal revision No.71/2016 dated 20.06.2016 whereby the learned revisional court maintained the order passed by learned Judicial Magistrate First Class, Agar in criminal case No.609/2016 dated 15.06.2016.

The relevant facts are that Police Station-Agar seized a truck bearing registration No.RJ-02-GA-8427 with bottles of Tuborg

strong beer loaded in the truck amounting to 8580 bulk liters and valuing to Rs.3,23,075.89. An offence was registered under Section 34(2) of M.P. Excise Act by the Police Station-Agar on 11.05.2016.

The present applicant filed an application under Section 457 Cr.P.C. for obtaining custody of the vehicle as well as the liquor loaded in it, which was dismissed by the learned Judicial Magistrate First Class, Agar vide order 15.06.2016 in which it was observed that the Superintendent of Police had been written a letter by the concerning Police Station to request the District Magistrate to initiate proceeding for confiscation of the vehicle and the seized liquor, and therefore, the Magistrate proceeded to dismiss the application. A revision was filed before the revisional court where also the present applicant did not succeed.

Counsel for the applicant submits that the truck was carrying Tuborg strong premium beer and the beer was being transported under a valid permit issued by Excise Department of State of Rajasthan. The permit also provides the route which was via Ujjain and the consignment was meant for Carlsberg India Private Ltd., Indore, Dewas Naka opposite Lasodia Police Station. According to counsel for the applicant, when the truck reached Ujjain it was not allowed by the authorities to pass through the city, as Simhastha Mela was going on. The permit was valid only upto 10.05.2016 and

truck was seized on 11.05.2016. The liquor was not a contraband liquor but a duty paid liquor and was being transported under a valid permit dated 09.05.2016. Under these circumstances, he submits that the liquor and the vehicle was not liable to be confiscated as this is only a case of violation of permit condition. He further submits that according to provision of Section 61 of M.P. Excise Act, 1915, a cognizance can only be taken on a complaint by the Collector or Excise Officer not below the rank of District Excise Officer as may be authorised by the Collector in this behalf. According to him, in this regard, the concerning Police Station directly registered the crime.

Counsel for the respondent submits that a report was called from the concerning Police Station and according to report, the Collector has already seized of the matter and started proceeding for confiscation of the vehicle and the liquor.

After due consideration and going through the case-diary, I find that this is merely a case of violation of permit condition. The permit was issued on 08.05.2016 for a short duration of 24 hours. The truck could not pass through Ujjain which fell within the route prescribed in the permit due to Simhastha Mela going on there and this fact was not considered by the courts below, and therefore, the courts below erred in dismissing the application for custody of the

vehicle and the liquor. It is also painful to note that due to callous attitude shown by both the courts below, the liquor which is a parsable article and duty paid goods might have turned unfit for human consumption.

Taking all these facts into consideration, the application is allowed. The impugned orders passed by revisional court and the learned Judicial Magistrate First Class are set-aside. It is directed that on furnishing of Supurdaginama for Rs.12 lac. Liquor and the vehicle bearing registration No.RJ-02-GA-8427 be handed over to the interim custody of the present applicant on following conditions:-

- (i) That on receiving custody of the vehicle, he will produce the vehicle whenever asked to do so by the trial court or by the District Magistrate before whom confiscation proceedings are going on.
- (ii) During this period, he will not transfer the vehicle and change its appearance in any manner whatsoever.
- (iii) The liquor should be handed over under custody only after obtaining certificate from the manufacturer of the liquor that the liquor is still fit for human consumption and also that they have valid permit for transporting the vehicle from the place where it is stored at present to its

ultimate destination where it was earlier being transported and for this purpose, before handing over the liquor a certificate from the concerning District Excise Officer, Ujjain should be obtained.

(iv) In case, the seized liquor is found liable to be confiscated, the applicant shall deposit the value of liquor i.e. Rs.3,23,075.89 before the concerning Magistrate.

With aforesaid observations and directions, this application stands disposed of.

Certified copy, as per rules.

**(Alok Verma)**  
**Judge**

Chitranjan